

**PLAN OF COMPROMISE OF 2907160 CANADA INC.
(f.k.a. ProSep Inc.)**

**PLAN DE COMPROMIS DE 2907160 CANADA INC.
(anciennement ProSep Inc.)**

Avis au lecteur : Ce document est la version originale anglaise.

Si vous désirez obtenir des informations en français sur ce document, prière de contacter un des représentants de KPMG Inc., contrôleur nommé par le tribunal de 2907160 Canada Inc. (anciennement connue sous le nom de ProSep Inc.).

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
No.: 500-11-045554-132

SUPERIOR COURT

(Commercial Division)

(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

**IN THE MATTER OF THE PLAN OF
COMPROMISE OF:**

**2907160 CANADA INC. (formerly known as
PROSEP INC.)**

Debtor

-and-

KPMG INC.

Monitor

**PLAN OF COMPROMISE OF 2907160 CANADA INC. (formerly known as
PROSEP INC.)
(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36)**

WHEREAS:

- A. 2907160 Canada Inc., formerly known as Prosep Inc. (the "**Debtor**"), is insolvent;
- B. The Debtor has sought and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");
- C. The Debtor obtained an Order of the Superior Court of Quebec (Commercial Division) (the "**Court**") under the CCAA on October 28, 2013 (as same may be amended, restated or varied from time to time, the "**Initial Order**"); and
- D. The Debtor hereby proposes this Plan of Compromise under and pursuant to the CCAA.

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Plan (including the Schedules hereto), unless otherwise stated or unless the subject matter or context otherwise requires:

"**Affected Claim**" means any Claim against the Debtor, excluding Unaffected Claims;

"**Affected Creditor**" means any Creditor holding an Affected Claim under the Plan;

"**Affected Creditors' Entitlement**" means the full entitlement of Affected Creditors under the Plan;

"**APA**" means the agreement entered into by the Debtor, the Purchaser and PWA on October 23, 2013, which provides for the sale of the Purchased Assets;

"**Applicable Law**" means, in respect of any Person, property, transaction, event or other matter, any law, statute, regulation, code, ordinance, principle of common law or equity, municipal by-law, treaty or Order, domestic or foreign, applicable to that Person, property, transaction, event or other matter and all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, and policies, in each case, having the force of law, of any Governmental Authority having or purporting to have authority over that Person, property, transaction, event or other matter and regarded by such Governmental Authority as requiring compliance;

"**Business**" means the direct and indirect business operations and activities of the Debtor and its affiliates;

"**Business Day**" means a day, other than a Saturday, a Sunday, or a non-judicial day (as defined in article 6 of the *Code of Civil Procedure*, R.S.Q., c. C-25, as amended);

"**Cash and Cash Equivalents**" means all cash on hand, cash on deposit, cheques received but not yet deposited or cleared, wire transfers transmitted but not yet received and cash equivalents;

"**CCAA Charges**" has the meaning ascribed to such term in the Initial Order;

"**CCAA Proceedings**" means the proceedings under the CCAA in respect of the Debtor;

"**Claim**" means any right or claim of any Person, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by guarantee, by surety, by warranty or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation, any claim arising from or caused by the termination, disclaimer, rescission, assignment or repudiation of any contract, lease or other agreement, whether written or oral, the commission of a tort

(intentional or unintentional), any breach of duty (including without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to property, employment, contract, a trust or deemed trust, howsoever created or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any grievance, matter, action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which existed on the Filing Date (including a Claim which relates to any time period prior to the Filing Date), together with any other claims of any kind that, if unsecured, would constitute a debt provable in bankruptcy within the meaning of the BIA;

"Claims and Meeting Procedure Order" means the Order to be made by the Court under the CCAA that, among other things, establishes procedures for proving Claims, and for the Creditors' Meeting, as same may be amended, restated or varied from time to time;

"Claims Bar Date" means the claims bar date for Claims against the Debtor as set out in the Claims and Meeting Procedure Order;

"Conditions Precedent" means the conditions precedent to the implementation of the Plan set out in Section 5.3 of the Plan;

"Creditor" means any Person asserting an Affected Claim or an Unaffected Claim and may, where the context requires, include the assignee of such Claim or a personal representative, agent, mandatary, trustee, interim receiver, receiver, receiver and manager, liquidator or other Person acting on behalf of such Person;

"Creditors' Meeting" means the meeting or meetings of the Affected Creditors to be called and held pursuant to the Claims and Meeting Procedure Order, for the purpose of considering and voting upon the Plan and includes any adjournment, postponement or rescheduling of such meeting or meetings;

"Disclosure Letter" means the disclosure letter provided by the Debtor to the Purchaser concurrently with the execution of the APA;

"Disputed Claim" means that portion of an Affected Claim of an Affected Creditor in respect of which a Proof of Claim has been filed in accordance with the Claims and Meeting Procedure Order, and which is the subject of negotiation with the Monitor or adjudication before the Court, and that at any particular time, has not been finally determined to be a Proven Claim in whole or in part, or is subject to a revision or disallowance that is contested in accordance with the Claims and Meeting Procedure Order, or any other Order made in the CCAA Proceedings and as such is not a Proven Claim in whole or in part;

"Distribution Date" means the date or dates from time to time set in accordance with the provisions of the Plan at the sole and absolute discretion of the Monitor to effect distributions in respect of the Proven Claims of the Affected Creditors;

"Employees" means any and all former and current employees of the Debtor, including, for greater certainty and without limiting the generality of the foregoing, (i) full-time, part-time or temporary employees, (ii) employees who are on approved leaves of absence (including maternity leave, parental leave, short-term disability leave, workers' compensation and other statutory leaves), and (iii) employees being the object of a temporary or permanent layoff;

"Employee Priority Claim" means of the following Claims of Employees:

- (a) Claims equal to the amounts that such Employees would have been qualified to receive under paragraph 136(1)(d) of the BIA if the Debtor had become bankrupt on the Filing Date; and
- (b) Claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date;

"Equity Claim" shall have the meaning ascribed thereto in Section 2 of the CCAA;

"Excluded Claim" means (i) any Claim secured by the CCAA Charges (ii) Post-Filing Trade Payables, and (iii) any other Claim ordered by the Court to be treated as an Excluded Claim;

"Final Order" means a final Order of the Court, the implementation, operation or effect of which shall not have been stayed, varied, vacated or subject to pending appeal and as to which any appeal periods relating thereto shall have expired;

"Filing Date" means October 28, 2013;

"Government Priority Claims" means all Claims of Governmental Authorities in respect of amounts that are outstanding and that are of a kind that could be subject to a demand on or before the Final Distribution Date under:

- (a) subsections 224(1.2) and 224(1.3) of the Tax Act;
- (b) any provision of the *Canada Pension Plan* or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the Tax Act and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or employee's premium or employer's premium as defined in the *Employment Insurance Act* (Canada), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:

- (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Tax Act; or
- (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;

"Monitor" means KPMG Inc., in its capacity as court-appointed monitor of the Debtor;

"Monitor's Certificate" means the certificate substantially in the form appended as Schedule "B" to the Sanction Order to be filed with the Court declaring that all of the Conditions Precedent to implementation of the Plan have been satisfied or waived in accordance with the Sanction Order;

"Monitor's Website" means <http://www.kpmg.com/ca/prosep>;

"Non-Plan Released Party" as defined in section 4.1(c) of this Plan;

"Order" means any order of the Court;

"Person" is to be broadly interpreted and includes an individual, a partnership, a corporation, a trust, a joint venture, any Governmental Authority, any trade union, any employee association or any incorporated or unincorporated entity or association of any nature and the executors, administrators, or other representatives of an individual in such capacity;

"Plan" means this Plan of Compromise filed by the Debtor under the CCAA, as such Plan may be amended, varied or supplemented from time to time by the Debtor, acting reasonably, and by the Monitor, all in accordance with the terms hereof;

"Plan Implementation Date" means the Business Day or Business Days on which all of the Conditions Precedent have been fulfilled or, to the extent permitted pursuant to the terms and conditions of the Plan, waived, as evidenced by the Monitor's Certificate to be filed with the Court;

"Plan Released Party" as defined in section 4.1(a) of this Plan;

"Plan Sanction Date" means the date that the Sanction Order is made by the Court;

"Post-Filing Trade Payables" means post-Filing Date trade payables (excluding for greater certainty any Tax Claims) that were incurred by the Debtor (i) after the

Filing Date and before the Plan Implementation Date, and (ii) in the ordinary course of Business;

"Proof of Claim" means the form to be completed and filed by a Creditor, pursuant to the Claims and Meeting Procedure Order, by the applicable Claims Bar Date setting forth its applicable Claim;

"Proven Claim" means a Claim of an Affected Creditor as finally determined for voting and distribution purposes in accordance with the Claims and Meeting Procedure Order and the Plan;

"Purchased Assets" means all of the assets purchased by the Purchaser under the APA;

"Purchaser" means PWA Prosep, Inc.;

"PWA" means Produced Water Absorbents, Inc.;

"Released Parties" as defined in section 4.1(c) of this Plan;

"Remaining Assets" means all of the Debtor's right, title and interest in, to and under, or relating to, the assets, property and undertaking, owned or used or held by the Debtor for use in, or relating to the Business, but excluding the Purchased Assets;

"Required Majority" means a majority in number of Affected Creditors who represent at least two-thirds in value of the Voting Claims of such Affected Creditors who actually vote on the Resolution (in person or by proxy) at the Creditors' Meeting;

"Resolution" means the resolution approving the Plan presented to the Affected Creditors for consideration at the Creditors' Meeting;

"Sanction Hearing" means the Court hearing of the Debtor's motion for the Sanction Order;

"Sanction Order" means the Order to be granted by the Court as contemplated under the Plan which, *inter alia*, approves and sanctions the Plan and the transactions contemplated thereunder, which shall be a Final Order;

"Tax" means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer, health, excise, franchise, real property, and personal property taxes and other taxes, customs, duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers'

compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

"Tax Act" means the *Income Tax Act* (Canada) and the legislations promulgated thereunder, as amended from time to time;

"Tax Claims" means claims of any Taxing Authorities against the Debtor arising from and after the Plan Implementation Date;

"Tax Obligation" means any amount of Tax owing by a Person to a Taxing Authority;

"Tax Statutes" means section 159 of the Tax Act, section 270 of the *Excise Tax Act*, section 14 of the *Tax Administration Act* (Quebec), or any other similar, federal, provincial or territorial tax legislation;

"Taxing Authorities" means anyone of Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or non-Canadian government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and **"Taxing Authority"** means any one of the Taxing Authorities, as well as any corresponding taxing authorities of a foreign jurisdiction;

"Unaffected Claims" means the Excluded Claims, the Employee Priority Claims and the Government Priority Claims;

"Unaffected Creditors" means a Creditor who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim;

"Unsecured Creditors' Class" means the sole class of Affected Creditors entitled to vote on the Plan at the Creditors' Meeting;

"Voting Claim" means the amount of the Affected Claim of a Affected Creditor as finally determined for voting purposes entitling such Affected Creditor to vote at the Creditors' Meeting in accordance with the provisions of the Claims and Meeting Procedure Order, the Plan and the CCAA, and includes, for greater certainty, a Proven Claim;

1.2 Time

For purposes of the Plan, unless otherwise specified, all references to time herein and in any document issued pursuant hereto, means prevailing local time in Montreal, Quebec, Canada, unless otherwise stipulated.

1.3 Date and Time for any Action

For purposes of the Plan:

- (a) In the event that any date on which any action is required to be taken under the Plan by any Person is not a Business Day, that action shall be required to be taken on the next succeeding day which is a Business Day, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day; and
- (b) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day.

1.4 Successors and Assigns

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, liquidators, receivers and trustees in bankruptcy, successors and assigns of any Person or party named or referred to in the Plan.

1.5 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the exclusive jurisdiction of the Court.

1.6 Governing Language

In the event of any conflict, inconsistency, ambiguity or difference between the English version of the Plan and any translations thereof, the English version shall govern and be paramount, and the applicable provision in the translation thereof shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

ARTICLE 2 PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose and Background

The purpose of the Plan is to effect a compromise, settlement and payment of all Affected Claims as finally determined for voting and distribution purposes, with the expectation that all Persons with an economic interest in the Debtor will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy.

2.2 Persons Affected

The Plan provides for the compromise of Affected Claims. On the Plan Implementation Date, each Affected Claim will be fully and finally compromised, released, settled and discharged under the Plan. The Plan shall be binding on and enure to the benefit of the Debtor, the Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the Plan.

2.3 Persons Not Affected

For greater certainty, the Plan does not affect the Unaffected Creditors with respect to and to the extent of compromising their Unaffected Claims.

2.4 Equity Claims

All persons holding Equity Claims shall not be entitled to vote at or attend the Creditors' Meeting, and shall not receive a distribution under the Plan or otherwise receive anything in respect of their shares. On the Plan Implementation Date, all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred.

2.5 Purchased Assets

The purchase price payable to the Debtor for the Purchased Assets pursuant to the APA (the "**APA Proceeds**"), less the total amount of any Unaffected Claims paid on or before the Plan Implementation Date, shall, on the Plan Implementation Date, be remitted by the Debtor to the Monitor in the Monitor's trust account.

2.6 Liquidation of Remaining Assets

The Debtor will conduct and/or complete the orderly liquidation of all Remaining Assets, and on the Plan Implementation Date, the proceeds of such liquidation, if any, shall be remitted to the Monitor in the Monitor's trust account (collectively referred to as the "**Liquidation Proceeds**", together with the APA Proceeds, the "**Proceeds**"). Prior to the Plan Implementation Date, the Debtor, may, if deemed advisable by the Debtor and the Monitor, elect to abandon any and all Remaining Assets.

2.7 Distribution of the Proceeds

The Proceeds will be distributed by the Monitor, in a timely manner, as follows:

- a) First, to pay Unaffected Claims, in full; and
- b) Second, to pay the first \$2,000 of each Proven Claim, or if the amount of the Proven Claim is less than \$2,000, the amount of the Proven Claim;

with the remaining balance, if any, being distributed to and shared by the holders of Affected Claims in proportion to their respective Proven Claims.

ARTICLE 3
CLASSIFICATION OF CREDITORS AND RELATED MATTERS

3.1 Classification of Creditors

For the purpose of considering, voting on and receiving distributions under the Plan, the Affected Creditors shall constitute a single class, the "**Unsecured Creditors' Class**".

3.2 Affected Claims

Affected Creditors will be entitled to vote their Voting Claim at the Creditors' Meeting in respect of the Plan and shall be entitled to receive their respective Affected Creditors' Entitlement provided for under and pursuant to the Plan.

3.3 Priority Claims

The Employee Priority Claims and the Government Priority Claims, if any, shall be paid on or after the Plan Implementation Date from the Proceeds pursuant to and in accordance with Section 2.7 of the Plan, the Sanction Order and the CCAA.

3.4 Creditors' Meeting

The Creditors' Meeting shall be held in accordance with the Plan, the Claims and Meeting Procedure Order and any further Order of the Court. The only Persons entitled to attend the Creditors' Meeting shall be representatives of the Debtor and its legal counsel and advisors, the Monitor and its legal counsel and all other Persons, including the holders of proxies, entitled to vote at the Creditors' Meeting and their legal counsel and advisors.

3.5 Voting

Each Affected Creditor in the Unsecured Creditors' Class who is entitled to vote at the Creditors' Meeting, pursuant to and in accordance with the Claims and Meeting Procedure Order, the Plan and the CCAA, shall be entitled to one vote equal to the dollar value of its Affected Claim determined as a Voting Claim.

3.6 Procedure for Valuing Voting Claims

The procedure for the filing and adjudication of Claims is set forth in the Claims and Meeting Procedure Order.

3.7 Approval by Creditors

In order to be approved, the Plan must receive an affirmative vote in the Required Majority of the Unsecured Creditors' Class.

3.8 Interest

Interest shall not accrue or be paid on Affected Claims after the Filing Date, and no holder of an Affected Claim shall be entitled to interest accruing on or after the Filing Date and any Claims in respect of interest accruing on or after the Filing Date shall be deemed to be forever extinguished and released.

ARTICLE 4 PLAN RELEASES

4.1 Plan Releases

- (a) On the Plan Implementation Date, the Debtor and its past and present directors, Employees, financial advisors, legal counsel and agents, (being herein referred to individually as a "**Plan Released Party**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor or other Person may be entitled to assert, including any and all Claims in respect of the payment and receipt of proceeds and statutory liabilities of the directors, the Employees and any alleged fiduciary or other duty (whether such Employees are acting as director, officer, member or employee), whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by this Plan or the Claims and Meeting Procedure Order and all Claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Debtor's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge (A) any Released Party if such Plan Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct or (B) any director with respect to matters set out in section 5.1(2) of the CCAA.
- (b) On the Plan Implementation Date, PWA and the Purchaser shall be released and discharged from any and all demands, claims, actions, causes

of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any and all Employees may be entitled to assert against PWA and the Purchaser, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date.

- (c) On the Plan Implementation Date, the Monitor, its respective directors, officers, employees, advisors, legal counsel and agents (being herein referred to individually as a "**Non-Plan Released Party**", and together with the Plan Released Party, PWA and the Purchaser, the "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished hereunder and all Claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Debtor's obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Non-Plan Released Party if such Non-Plan Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.
- (d) The Sanction Order will enjoin the prosecution, whether directly, derivatively or otherwise, of any Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.

ARTICLE 5
COURT SANCTION, CONDITIONS PRECEDENT AND IMPLEMENTATION

5.1 Application for Sanction Order

If the Required Majority of the Affected Creditors approves the Plan, the Debtor shall apply for the Sanction Order on or before the date set in the Claims and Meeting Procedure Order for the hearing of the Sanction Order or such later date as the Court may set. The Sanction Order shall not become effective until the Plan Implementation Date.

5.2 Sanction Order

The Sanction Order shall, among other things:

- (a) declare that (i) the Plan has been approved by the Required Majority of Affected Creditors with Proven Claims in conformity with the CCAA, (ii) the Debtor has complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects, (iii) the Court is satisfied that the Debtor has not done or purported to do anything that is not authorized by the CCAA, and (iv) the Plan is fair and reasonable;
- (b) declare that as of the filing of the Monitor's Certificate, the Plan and all associated steps, compromises, transactions, arrangements, and releases effected thereby are approved, binding and effective upon the Debtor, all Affected Creditors, the Released Parties and all other Persons and Parties affected by the Plan;
- (c) authorize the Monitor to perform its duties and functions and fulfil its obligations under the Plan to facilitate the implementation thereof;
- (d) compromise, discharge and release the Released Parties from any and all Affected Claims of any nature in accordance with the Plan, and declare that the ability of any Person to proceed against the Released Parties in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims;
- (e) authorize and direct the Monitor to administer and finally determine the Affected Claims of Affected Creditors and to manage the distribution of the Proceeds in accordance with the applicable provisions of the Plan;
- (f) declare that any Affected Claim for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims and Meeting Procedure Order shall be forever barred and extinguished;

- (g) declare that all distributions to and payments by or at the direction of the Monitor, in each case on behalf of the Debtor, to the Affected Creditors with Proven Claims under the Plan are for the account of the Debtor and the fulfillment of its obligations under the Plan including to make distributions to Affected Creditors with Proven Claims;
- (h) declare that the Monitor shall not incur any liability under the Tax Statutes in respect of its making any payments, ordered or permitted under the Sanction Order and is thereby forever released, remised and discharged from any Claims against it under the Tax Statutes or otherwise at law, arising in respect of payments made under the Plan and the Sanction Order and any Claims of such nature are thereby forever barred;
- (i) declare that in no circumstances will the Monitor have any liability for the Debtor's tax liabilities regardless of how or when such liability may have arisen; and
- (j) declare that the Debtor and the Monitor may apply to the Court from time to time for advice and direction in respect of any matters arising from or under the Plan, including without limitation regarding the distribution mechanics thereunder and under the Plan.

5.3 Conditions Precedent to Implementation of the Plan

The implementation of the Plan shall be conditional upon the fulfilment or waiver, where applicable, of the following conditions precedent (collectively the "**Conditions Precedent**"):

- (a) The Claims and Meeting Procedure Order shall have been granted by the Court;
- (b) The Plan shall have been approved by the Required Majority of the Affected Creditors in the Unsecured Creditors' Class at the Creditors' Meeting; and
- (c) The Sanction Order shall have been granted by the Court in form satisfactory to the Debtor and the Monitor, and for greater certainty shall be a Final Order.

5.4 Monitor's Certificate

Upon the fulfilment or waiver of the Conditions Precedent to implementation of the Plan as set out in Section 5.3 of the Plan, the Monitor shall file the Monitor's Certificate with the Court.

ARTICLE 6
LIQUIDATION AND OTHER CORPORATE MATTERS

6.1 Articles of Dissolution

Upon filing the Monitor's Certificate with the Court, the Debtor and/or the Monitor shall be authorized, but not required, to proceed with the voluntary liquidation of the Debtor, which shall include preparing and filing articles of dissolution with this Court (the "**Articles of Dissolution**") and obtaining a certificate of dissolution from the Director appointed under the *Canada Business Corporations Act*.

6.2 Directors

Upon filing the Articles of Dissolution, the term of office of those individuals who are directors of the Debtor shall terminate.

ARTICLE 7
GENERAL

7.1 Binding Effect

On the Plan Implementation Date:

- (a) the Plan will become effective;
- (b) the treatment of Affected Claims under the Plan shall be final and binding for all purposes and enure to the benefit of the Debtor, all Affected Creditors, the Released Parties and all other Persons and Parties named or referred to in, or subject to the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;
- (c) all Affected Claims shall be and shall be deemed to be forever discharged and released, except only the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in the Plan;
- (d) each Person named or referred to in, or subject to the Plan, will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety; and
- (e) each Person named or referred to in, or subject to the Plan, shall be deemed to have executed and delivered to the Debtor all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

7.2 Waiver of Defaults

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Debtor then existing or previously committed by the Debtor, or caused by the Debtor, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Debtor arising directly or indirectly from the filing by the Debtor under the CCAA and the implementation of the Plan and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the Debtor from performing its obligations under the Plan or be a waiver of defaults by the Debtor under the Plan and the related documents. This Section does not affect the rights of any Person to pursue any recoveries for a Claim that may be obtained from a guarantor (other than the Debtor) and any security granted by such guarantor.

7.3 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

7.4 Modification of the Plan

- (a) The Debtor, in consultation with the Monitor, reserves the right to file any modification of, or amendment, variation or supplement to, this Plan (a "**Plan Modification**"), prior to the Creditors' Meeting or at the Creditors' Meeting, in which case any such Plan Modification shall, for all purposes, be and be deemed to form part of and be incorporated into the Plan. The Debtor shall give notice of any such Plan Modification at the Creditors' Meeting in respect of the Affected Creditors prior to the vote being taken to approve the Plan. The Debtor may, after having consulted the Monitor, give notice of any such Plan Modification at or before any Creditors' Meeting by notice which shall be sufficient if, in the case of notice at any Creditors' Meeting, given to those Affected Creditors present at such meeting in person or by proxy. The Monitor shall post on the Monitor's Website, as soon as possible, any such Plan Modification.
- (b) After the Creditors' Meeting (and both prior to and subsequent to the obtaining of the Sanction Order), the Debtor, in consultation with the Monitor, may at any time and from time to time, modify, amend, vary or supplement the Plan, without the need for obtaining an Order or providing notice to the Affected Creditors if the Monitor determines that such modification, amendment, variation or supplement would not be materially prejudicial to the interests of the Affected Creditors under the

Plan or the Sanction Order and is necessary or useful in order to give effect to the substance of the Plan or the Sanction Order. The Monitor shall post on the Monitor's Website, as soon as possible, any such modification, amendment, variation or supplement to the Plan.

7.5 Paramountcy

Except with respect to the Unaffected Claims, on the Plan Implementation Date, any conflict between:

- (a) the Plan; and
- (b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Debtor as at the Plan Implementation Date;

will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

7.6 Severability of Plan Provisions

If, prior to the Plan Sanction Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Debtor and with the consent of the Monitor, shall have the power to either (a) sever such term or provision from the balance of the Plan and provide the Debtor with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that the Debtor proceeds with the implementation of the Plan, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

7.7 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings with respect to the Debtor and not in its personal or corporate capacity for any and all acts, or decisions to not act in the implementation of the Plan, whether same occurs before or after the Plan Implementation Date. The Monitor is acting and will continue to act in its capacity as Monitor in the CCAA Proceedings with respect to the Debtor and not in its personal and corporate capacities while establishing any of the Distribution Dates, Materials Record Date, or the timing or sequence of the transactions under the Plan. The

Monitor will not be responsible or liable for any obligations of the Debtor, including with respect to the making of distributions or the receipt of any distribution by a Affected Creditor pursuant to the Plan. The Monitor will have the powers and protections granted to it by the Plan, the CCAA, the Initial Order, the Claims and Meeting Procedure Order, and any other Order made in the CCAA Proceedings.

7.8 Different Capacities

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Person in writing or unless its Claims overlap or are otherwise duplicative.

7.9 Further Assurances

Each of the Persons named or referred to in, or subject to, the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein, notwithstanding any provision of this Plan that deems any transaction or event to occur without further formality.

DATED as of the 15th day of November, 2013.