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COURT FILE NUMBER Q.B. 1639 of 2015  
COURT COURT OF QUEEN'S BENCH OF  
SASKATCHEWAN  
JUDICIAL CENTRE SASKATOON  
APPLICANT GOLDEN OPPORTUNITIES FUND INC.  
RESPONDENTS PHENOMENOME DISCOVERIES INC. and  
PHENOMENOME LABORATORY SERVICES  
INC.  
DOCUMENT THIRD REPORT OF FTI CONSULTING  
CANADA INC., IN ITS CAPACITY AS  
COURT APPOINTED RECEIVER OF  
PHENOMENOME DISCOVERIES INC. and  
PHENOMENOME LABORATORY SERVICES  
INC.

August 22, 2016

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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## INTRODUCTION

1. On February 25, 2016 (the “**Date of Appointment**”), FTI Consulting Canada Inc. (“**FTI Consulting**”) was appointed as receiver and manager (in such capacity and not in its personal or corporate capacity, the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**”) of Phenomenome Discoveries Inc. (“**PDI**”) and Phenomenome Laboratory Services Inc. (“**PLSI**” and together, the “**Company**”) pursuant to an Order of the Court of Queen’s Bench for Saskatchewan granted on February 26, 2016 (the “**Receivership Order**”).
2. On April 15, 2016, this Honourable Court granted an order (the “**KERP Order**”) which, *inter alia*, approved the KERP and the increase in the Receiver’s Borrowing Charge from \$400,000 to \$800,000.
3. On May 2, 2016, this Honourable Court granted an order (the “**Sales Procedures Order**”) which, *inter alia*, approved the Sales Procedures and the increase in the Receiver’s Borrowing Charge from \$800,000 to \$3,000,000.
4. On July 18, this Honourable Court granted an order (the “**Veto Disclaimer Order**”) which, *inter alia*, ordered that the Receiver was entitled to disclaim the Veto Right and was not required to perform any obligations under clause 2.7 of the MLD Agreement.
5. The Receiver’s reports and other publically available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/pdi> (the “**Receiver’s Website**”).
6. The purpose of this report (the “**Third Report**”) is to inform the Court as to the following:
  - (a) the status of various aspects of the Receivership Proceedings including the Sales Procedures;

- (b) the Receiver's receipts and disbursements from the Date of Appointment to August 13, 2016 and budget to actual results for the Forecast Period (as defined below);
  - (c) cash flow statement (the "**Wind-down Budget**") for the period of August 14, 2016 to December 10, 2016, (the "**Wind-down Period**");
  - (d) the Receiver's summary and comments with respect to its efforts to solicit offers to purchase the Assets.
7. At an application returnable on August 30, 2016, the Receiver is requesting the following relief from this Honourable Court:
- (a) approval of the activities of the Receiver since the Date of the Second Report including its receipts and disbursements;
  - (b) approval of the MLD SPA (as defined below);
  - (a) an increase to the Receiver's Borrowing Charge; and
  - (b) granting a sealing Order over the Confidential Supplement (as defined below).

#### **TERMS OF REFERENCE**

8. In preparing this Third Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
9. Except as described in this Third Report:

- (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this Second Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
10. Future oriented financial information reported or relied on in preparing this Third Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
  11. The Receiver has prepared this Third Report in connection with the Receiver's Application returnable August 30, 2016. This Third Report should not be relied on for other purposes.
  12. Any information and advice described in this Third Report has been provided to the Receiver by its counsel, Blake, Cassels & Graydon LLP (the "**Receiver's Counsel**"), in order to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.
  13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meaning defined in previous reports.

## RECEIVERSHIP PROCEEDINGS

### Marketing and Advertisement

14. The following tasks were completed as prescribed by the Sales Procedures Order:
- (a) on May 5, 2016, the Company, in a form satisfactory to the Receiver, announced the Sales Procedures had been approved by this Honourable Court and released the timeline and publically available information relating to the Assets on its website;
  - (b) on or around May 5, 2016, the Receiver, in consultation with the Company, prepared and delivered a teaser and confidential information memorandum with respect to the Company and its Assets for distribution to numerous targeted industry contacts in North America, Europe and Asia, including pharmaceutical companies, diagnostics companies and private equity funds;
  - (c) on or around May 5, 2016, the Receiver made available a confidential virtual data room describing the opportunity to acquire all or a portion of the Assets to prospective purchasers that executed a non-disclosure agreement with the Receiver;
  - (d) on June 1, 2016, the Receiver caused notice of the Sales Procedures to be published in the Globe and Mail (National Edition);
  - (e) two parties entered into the Agency Agreements with the Receiver to market and solicit interest in the Assets;
  - (f) the Receiver engaged certain consultants to assist with the marketing and Sales Procedures;

(g) the Receiver and select members of the PDI management team and its consultants engaged in the marketing roadshow as described in the Sales Procedures Order to meet with prospective purchasers, which included attending various meetings in the following locations:

- (i) Tokyo, Shanghai and Hong Kong on May 23<sup>rd</sup>, May 25<sup>th</sup>, and May 27<sup>th</sup> respectively;
- (ii) the BIO Conference in San Francisco on June 6<sup>th</sup> through June 9<sup>th</sup>; and
- (iii) a Cancer Diagnostic Conference in Rome on June 13<sup>th</sup> through June 15<sup>th</sup>.

- 15. The Receiver engaged two public relations firms to place targeted advertisements and issue Press Releases to a large multi-National audience in order to present the recent developments of the Assets to the marketplace.
- 16. The week of July 25, 2016, the Receiver again attended various meetings with prospective purchasers in Shanghai and Hong Kong in order to answer any additional or outstanding questions relating to the Sales Procedures or the Assets.

## RECEIPTS AND DISBURSEMENT

17. Receipts and Disbursements from the Date of Appointment to August 13, 2016 are summarized in the Schedule of Receipts and Disbursements below:

<b>Schedule of Receipts and Disbursements</b>	
February 26 to August 13, 2016	
<b>Receipts</b>	
Receiver Certificate	2,600,000
Bank Account Transfer	72,726
Opening Cash	54,444
Other	653
<b>Total - Receipts</b>	<b>2,727,823</b>
<b>Disbursements</b>	
Employee Related Obligations	644,291
Receiver's Fees and Disbursements	774,891
Occupation Rent	290,924
Consultants	231,574
Other Professional Fees	133,456
Asset Marketing Expense	98,583
Operating Expense	86,395
Interim Receivership Payables	62,599
GST/PST Paid and Remitted	79,246
Insurance	21,783
MLD Royalty Interest	8,751
Other Miscellaneous Disbursements	8,244
Legal Fees and Disbursements	118,374
<b>Total - Disbursements</b>	<b>2,559,111</b>
<b>Net Cash on Hand</b>	<b>168,712</b>

18. The amounts set out in the Schedule of Receipts and Disbursements are as follows:
- (a) Receiver Certificate – in accordance with the Receivership Order the Receiver has issued Receiver Certificate's and the total represents the funds advanced from GOFI, Concorde Centres Inc. and PIC Flight Services Inc. (the "Syndicate");

- (b) Bank Account Transfer – balances in the Company’s bank accounts on the Date of Appointment which were transferred to the Receiver’s account;
- (c) Opening Cash – cash balance held by FTI Consulting Canada Inc. in its capacity as Interim Receiver pursuant to the Interim Financing;
- (d) Other Receipts – including bank interest and GST refunds;
- (e) Employee Related Obligations – amounts paid by the Receiver in respect of employee related obligations including payroll, payroll remittances, health insurance;
- (f) Receiver’s Fees and Disbursements – amounts paid to the Receiver for its fees and disbursements to and including June 30, 2016;
- (g) Occupation Rent – amounts paid to the Company’s landlord pursuant to its occupation rent to and including July 31, 2016;
- (h) Consultants – amounts paid to consultants, including management consulting services provided by the President and CEO, the Company’s representative providing business and contract research services in Japan and consultant engaged by the Receiver to assist with the Sales Procedures;
- (i) Other Professional Fees – amounts paid to the Company’s external legal counsel to maintain and protect its intellectual property;
- (j) Asset Marketing Expense – amounts paid by the Receiver relating to the Sales Procedures including, amounts paid to public relations firms, to attend conferences, maintain the VDR and travel expenses of members attending the marketing events (note these amounts do not include the costs of the Receiver attending the same);



- (k) Operating Expenses – operating expenses relating to maintaining the Assets;
  - (l) Interim Receivership Payables – amounts paid by the Receiver for approved expenses from the Interim Receivership period;
  - (m) Insurance – amounts paid to maintain the Company’s insurance policy;
  - (n) MLD Royalty Interest – amounts paid to MLD pursuant to the quarterly payments owing under the MLD Agreement;
  - (o) Miscellaneous Disbursements – amounts including bank charges, filing fees paid to the official receiver, payroll services charges and other miscellaneous disbursements; and
  - (p) Legal Fees and Disbursements – amounts paid to the Receiver’s Counsel for fees and disbursements provided in these Receivership Proceedings to date.
19. As at August 13, 2016, the Receiver holds \$168,712 in cash on hand as summarized in the Schedule of Receipts and Disbursements above.
20. Through previous Orders of this Honourable Court the Receiver has secured financing in the amount of \$3,000,000 secured by the Receiver’s Borrowing Charge.

## BUDGET TO ACTUAL RESULTS

21. A summary of the budget to actual results to August 13, 2016 (the “Forecast Period”) against the forecast provided to this Honourable Court in the Second Report and explanations of the material variances is presented in the table below.

Cash Flow Statement	Forecast	Actual	Variance	Notes
<b>Receipts</b>				
Receiver Certificate	2,200,000	1,800,000	(400,000)	a
Opening Cash	521,529	521,529	-	b
Other Receipts	44,826	510	(44,316)	c
Cologic Cash Receipts	13,500	-	(13,500)	d
<b>Total - Receipts</b>	<b>2,779,855</b>	<b>2,322,039</b>	<b>(457,816)</b>	
<b>Disbursements</b>				
Receiver Fees and Costs	903,752	774,891	128,861	e
Employee Related Obligations	437,932	396,735	41,197	f
Occupation Rent	367,025	290,924	76,100	g
Asset Marketing Expenses	273,702	119,885	153,817	h
Consultants	182,388	173,062	9,326	i
Legal Fees and Disbursements	121,781	118,374	3,408	j
Operating Expenses	101,703	91,136	10,567	k
Patent & Trademark Preprofessional Fees	89,152	115,742	(26,590)	l
Receiver Certificate Interest	65,450	-	65,450	m
GST Paid / Remitted	11,612	72,579	(60,967)	
<b>Total - Disbursements</b>	<b>2,554,497</b>	<b>2,153,327</b>	<b>401,170</b>	
<b>Ending Cash</b>	<b>225,358</b>	<b>168,712</b>	<b>(56,646)</b>	

- (a) Receiver’s Certificate – timing variance expected to reverse in future periods, primarily related to deferred payment of professional fees as described below;
- (b) Opening Cash – no variance in cash on hand on the date of the Forecast;
- (c) Other Receipts – timing variance expected to reverse in future periods, GST refunds have not been received to date;

- (d) Collogic Cash Receipts – timing variance expected to reverse in future periods, customers have continued to deposit funds in the Company’s accounts and these amounts have not been transferred into Receiver’s account to date;
- (e) Receiver’s Fees and Disbursements – timing variance expected to reverse in future periods, the Receiver’s fees and disbursements for July, 2016 are currently outstanding;
- (f) Employee Related Obligations – employee related obligation have been in line with forecast to date;
- (g) Occupation Rent – timing variance expected to reverse in future periods, August rent is currently outstanding;
- (h) Asset Marketing Expense – permanent variance, the amounts paid by the Receiver relating to the Sales Procedures including, amounts paid to public relations firms, attending conferences, maintaining the VDR and travel expenses of members attending the marketing events were lower than forecast, however these amounts do not include the costs of the Receiver attending the same;
- (i) Consultants – amounts paid to consultants have been in line with forecast including, management consulting services provided by the president and CEO, the Company’s representative providing business and contract research services in Japan and the consultant engaged by the Receiver to assist with the Sales Procedures;
- (j) Legal Fees and Disbursements – timing variance, the Receiver’s Counsel fees and disbursements for the month of July are currently outstanding;
- (k) Operating Expenses – operating expenses have been lower than forecast to date;

- (l) Patent and Trademark Professional fees – permanent variance, the amounts paid to the Company’s external legal counsel to maintain and protect its intellectual property have been higher than forecast to date; and
  - (m) Receiver’s Certificate Interest – timing variance expected to reverse in future periods, amounts owing pursuant to the terms of the Receiver’s Borrowing Charge are expected to be paid at the completion of the Receivership Proceedings.
22. The Forecast has been prepared solely for the purposes of determining the liquidity requirements of the Company during the Receivership Proceedings, using probable and hypothetical assumptions, and readers are cautioned that it may not be appropriate for other purposes.
23. The Receiver does not anticipate any material events to occur that are expected to affect the liquidity needs of the Company for the Revised Forecast Period.

#### **WIND-DOWN BUDGET**

24. The Company, with the assistance of the Receiver, prepared the Wind-down Budget for the purposes of determining the Company’s liquidity requirements for the Wind-down Period. A copy of the Wind-down Budget is attached hereto as Appendix “A”.
25. The Wind-down Budget indicates the following for the Wind-down Period:
- (a) total cash receipts excluding advances under the Receiver’s Borrowings of \$106,117;
  - (b) total operating disbursements of \$497,510;

- (c) total disbursements relating to the professional fees (including amounts payable to the Company's patent and trademark lawyers) and the Sales Procedures of \$762,136; and
  - (d) cumulative borrowings under the Receiver's Borrowing Charges of \$2.6 million prior to commencement of the Wind-down Period.
26. In connection with the foregoing the Receiver is requesting an increase in the Receiver's Borrowing Charge from \$3.0 million to \$3.6 million in accordance with the Wind-down Budget

#### **SALES PROCEDURES**

27. A summary of the steps taken by the Receiver in connection with the Sales Procedures is summarized as follows:
- (a) the Sales Procedures commenced on or around April 26, 2016, with the completion of the teaser and confidential information memorandum;
  - (b) on April 29, 2016, the teaser summarizing the Assets was e-mailed to approximately fifty-three (53) targeted diagnostic companies in North America;
  - (c) a copy of the teaser along with corresponding summary information regarding the Sales Procedures was placed on the Receiver's Website;
  - (d) on June 1, 2016, an advertisement was placed in the Globe and Mail (National Edition) announcing the Sales Procedures;

- (e) targeted phone calls to industry contacts were made throughout the entire period of the Sale Procedures which included a list compiled by the Receiver, management and other sources of over 100 North American, 10 Asian and 30 European companies. The Receiver also contacted over 50 Private Equity firms.
- (f) throughout the Sales Procedures, fifteen (15) prospective purchasers signed confidentiality agreements and accessed the virtual data room;
- (g) the Receiver and management met with and gave presentations to thirteen (13) prospective purchasers in person and via teleconference to review the opportunity; and
- (h) on July 21, 2016, the Receiver sent a reminder to parties that had expressed interest in the Sales Procedures that the Bid Deadline to submit a Qualified Bid was July 29, 2016.

#### **MLD SPA**

- 28. On July 29, 2016, MLD submitted a Qualified Bid in accordance with the Sales Procedures by the Bid Deadline.
- 29. The Receiver has entered into a sale purchase agreement with MLD (the “**MLD SPA**”) dated as of August 22, 2016. A redacted copy of the MLD SPA is attached hereto as Appendix “B”, excluding Schedules. A full copy of the MLD SPA is provided to this Honourable Court along with details of the purchase price in the confidential supplement (the “**Confidential Supplement**”), but is not attached to this Third Report due to the confidential and commercially sensitive nature of its contents. A summary of the key non-commercial terms of the MLD SPA are follows:
  - (a) subject to the approval of, and the granting of a vesting Order by this Honourable Court;

- (b) non-refundable deposit of 10% of the purchase price subject only to Court Approval; and
- (c) target closing date three (3) days after the date upon which the Approval and Vesting Order is obtained which target closing date is anticipated to be September 2, 2106.

**Dr. Davan Goodenowe and Yolbolsum Canada Inc.**

- 30. On July 5, 2016, Dr. Goodenowe, the Company's president and CEO, submitted his resignation to the Receiver citing the potential conflict of continuing in his capacity as President and CEO and the ability of a related party Yolbolsum Canada Inc. ("YBCI"), which he controls, to participate in the Sales Procedures.
- 31. On July 13, 2016, counsel to YBCI sent a letter (the "YBCI Letter") to the Receiver alleging that PDI was in breach of its contractual obligations with respect to a license agreement YBCI entered into with PDI on December 15, 2001. The agreement was subsequently amended April 3, 2002, July 23, 2002, April 22, 2003, July 19, 2007, and July 23, 2007 (the license agreement and all amendments thereto are collectively referred to herein as the "License"). A copy of the License is attached as Appendix "C" and a copy of the YBCI Letter is attached as Appendix "D".
- 32. The YBCI Letter requested that the annual payment due under the License and all materials requested therein be provided to YBCI by PDI no later than August 15, 2016.
- 33. In response to the YBCI Letter the Receiver's Counsel delivered a letter (the "YBCI Response Letter") wherein the Receiver's Counsel responded to the requests made therein. A copy of the YBCI Response Letter is attached as Appendix "E".

34. The Receiver notes that the MLD SPA does not contemplate the assignment of the License as part of the transaction. The Receiver has been informed by MLD that the License is not necessary for the operations of the purchased assets and that the License has not been used by PDI for the past two years.
35. Subsequent to Dr. Goodenowe's resignation, the Receiver became aware that while still acting in his capacity as President and CEO, and against the express instructions of the Receiver instructing him not to do so, Dr. Goodenowe visited with at least one prospective purchaser that was actively involved in the Sales Procedures and travelled to Asia to do so.
36. During meetings with the prospective purchaser, Dr. Goodenowe expressed the position set out in the YBCI Letter that YBCI has an interest in Assets being sold by the Receiver through the License.
37. The Receiver was made aware by the prospective purchaser that it had entered into a confidentiality agreement with YBCI and had subsequently received a proposal from YBCI with respect to the Assets.
38. As a result of Dr. Goodenowe's visit to the prospective purchaser prior to his resignation, and subsequent proposal, the prospective purchaser advised the Receiver it would not continue its participation in the Sales Procedures.

**Receiver's Analysis of the Offers to Purchase**

39. The Receiver has concluded that the MLD SPA (the "**Transaction**") represents the best realizable value that could reasonably be obtained for the Assets in the present circumstances for all stakeholders based on the following:
  - (a) the Assets have been adequately exposed to the market through the Sales Procedures; and
  - (b) the Transaction is fair and commercially reasonable in the circumstances.




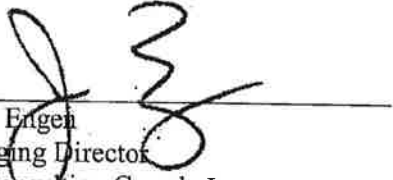
## CONCLUSIONS AND RECOMMENDATIONS

40. The Receiver respectfully requests that this Honourable Court grant the following relief:
- (a) approve the activities of the Receiver since the date of the Second Report including its receipts and disbursements;
  - (b) in connection with the Wind-down Budget approve an increase to the Receiver's Borrowing Charge to \$3.6 million;
  - (c) approve the MLD SPA; and
  - (d) granting a sealing order over the Confidential Supplement.

All of which is respectfully submitted this 22<sup>nd</sup> day of August, 2016.

FTI Consulting Canada Inc. in its capacity as Receiver of the assets, undertakings and properties of Phenomenome Discoveries Inc. and Phenomenome Laboratory Services Inc.

  
Name: Deryck Helkaa  
Title: Senior Managing Director,  
FTI Consulting Canada Inc.

  
Name: Jamie Engen  
Title: Managing Director  
FTI Consulting Canada Inc.

# **APPENDIX A**



## **APPENDIX B**

**FTI CONSULTING CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC. and not in its personal or corporate capacity  
- and -**

**MED-LIFE DISCOVERIES LP, by its general partner MED-LIFE DISCOVERIES GP INC., a limited partnership formed under the laws of Saskatchewan**

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**PURCHASE AND SALE AGREEMENT**

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**DATED AS OF AUGUST 22, 2016**

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## PURCHASE AND SALE AGREEMENT

This Asset Purchase Agreement dated as of August 22, 2016 is made by and between:

**FTI CONSULTING CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC. and not in its personal or corporate capacity**

(the "Vendor")

- and -

**MED-LIFE DISCOVERIES LP, by its general partner MED-LIFE DISCOVERIES GP INC., a limited partnership formed under the laws of Saskatchewan**  
(the "Purchaser")

### RECITALS:

- A. Pursuant to an Order of the Honourable Justice B.J. Scherman of the Court of Queen's Bench of Saskatchewan (the "Court") granted February 25, 2016 (as may be amended, restated, supplemented or modified from time to time, "Receivership Order") in the proceedings bearing Court File No. Q.B. 1639 of 2015 (the "Receivership Proceedings"), FTI Consulting Canada Inc. was appointed as court-appointed receiver and manager of all the assets, undertakings and properties of Phenomenome Discoveries Inc. ("PDI") and Phenomenome Laboratory Services Inc. ("PLSI" and together with PDI, the "PDI Entities"), including all proceeds thereof, pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3 (the "BIA"), and the *Personal Property Security Act*, 1993, S.S. 1993, c. P-6.2 (the "PPSA").
- B. Pursuant to an Order of the Court dated April 26, 2016 (as may be amended, restated, supplemented or modified from time to time, the "Sales Process Order"), the Vendor was authorized to conduct a sales process for the property and business of each of the PDI Entities in accordance with the procedures approved by the Court in the Sales Process Order (the "Sales Process").
- C. The PDI Entities operate the following businesses (collectively, the "Business") of: (a) the development of technologies (including diagnostic tests) to (i) investigate the manner in which certain diseases arise, and (ii) identify persons most likely to develop such diseases, (b) the design of therapies to treat the causes of certain diseases, and (c) the operation of a licensed medical Laboratory (defined below).
- D. The Vendor therefore desires to sell, transfer and assign to the Purchaser, and the Purchaser desires to acquire and assume from the Vendor, all of the right, title and interest of the Vendor and the PDI Entities in and to the Purchased Assets and the Assumed Liabilities, on the terms and subject to the conditions contained in this Agreement.
- E. The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated pursuant to the Approval and Vesting Order to be entered by the Court in the Receivership Proceedings.

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions. In this Agreement:

"**2015 PSA**" means the Purchase and Sale Agreement between PDI and the Purchaser dated June 30, 2015.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity and by or before a Governmental Authority.

"**Affiliate**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to "**control**" another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term "**controlled**" shall have a similar meaning.

"**Agreement**" means this purchase and sale agreement and all the Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, (a) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, including, any Privacy Law, the Clinical Laboratory Improvement Amendments, *The Medical Laboratory Licensing Act*, *The Medical Laboratory Licensing Regulations*, the *Health and Information Protection Act* (Saskatchewan), and the *Food and Drugs Act*, (b) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law, including the Laboratory Quality Assurance (QA) Program (collectively, in the foregoing clauses (a) and (b), "**Law**"), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

"**Approval and Vesting Order**" means an order of the Court issued in the Receivership Proceedings, substantially in the form of Schedule "A", approving the transactions contemplated by this Agreement and vesting in the Purchaser all of the right, title and interest of the Vendor and the PDI Entities in and to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances).

"**Assigned Contracts**" means the Contracts listed on Schedule "B".

"**Assignment and Assumption Agreement**" means an assignment and assumption agreement, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the rights, benefits and interests of the Vendor and the PDI Entities in, to and under the Assigned Contracts and the assumption

by the Purchaser of all of the Assumed Liabilities including under or in respect of the Assigned Contracts.

**"Assumed Liabilities"** means only the Liabilities of the PDI Entities listed on Schedule "C".

**"BIA"** has the meaning set out in Recital A.

**"Books and Records"** means all books, records, files, papers, books of account and other financial data Related to the Business or related to the Purchased Assets in the possession of and reasonably available to the Vendor, including drawings, technical reports and medical studies and reports, manuals and data, sales and advertising materials, sales and purchase data, trade association files, research and development records, lists of present and former customers and suppliers, personnel, employment and other records, and all records, data and information stored electronically, digitally or on computer-related media.

**"Business"** has the meaning set out in Recital C.

**"Business Day"** means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Saskatoon, Saskatchewan, or the City of Calgary, Alberta.

**"Cash Purchase Price"** has the meaning set out in Section 3.1(1).

**"Closing"** means the completion of the purchase and sale of the right, title and interest of the Vendor and the PDI Entities in and to the Purchased Assets and the assignment and assumption of the Assumed Liabilities by the Purchaser in accordance with the provisions of this Agreement.

**"Closing Date"** means the date on which Closing occurs, which date shall be the Target Closing Date or such other date as may be agreed to in writing by the Parties.

**"Closing Time"** has the meaning set out in Section 7.1.

**"Contracts"** means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) Related to the Business to which any one or more of the PDI Entities are a party or by which any one or more of the PDI Entities or any of the Purchased Assets is bound or under which any one or more of the PDI Entities have rights, including any Personal Property Leases.

**"Court"** has the meaning set out in Recital A.

**"Credit Bid Amount"** means the aggregate amount of:

- (i) the Debenture Credit Bid Amount;
- (ii) the Receivership Obligations; and
- (iii) the Interim Receivership Obligations.

**"Cure Costs"** means with respect to any Assigned Contracts, all amounts required to be paid to cure any monetary defaults thereunder, if any, to effect an assignment thereof

from the Vendor and/or any of the PDI Entities to the Purchaser.

**"Damages"** means any loss, cost, Liability, claim, interest, fine, penalty, assessment, Taxes, damages available at law or in equity (including incidental, consequential, special, aggravated, exemplary or punitive damages), expense (including consultant's and expert's fees and expenses and reasonable costs, fees and expenses of legal counsel on a full indemnity basis, without reduction for tariff rates or similar reductions and reasonable costs, fees and expenses of investigation, defence or settlement) or diminution in value.

**"Debenture"** means the Debenture granted by PDI to GOFI effective as of March 29, 2010, in the principal amount [redacted] which Debenture has been assigned by GOFI to the Purchaser pursuant to the GOFI Assignment and Assumption Agreement.

**"Debenture Credit Bid Amount"** means all liabilities and obligations owing by PDI to the Purchaser as at Closing respecting the Debenture which are secured by the security granted by PDI thereunder, which amounts are estimated, as of September 2, 2016, to be [redacted]

**"Deposit"** has the meaning set out in Section 3.2(1).

**"Employees"** means all individuals who, as of the Closing Date, are employed by any of the PDI Entities in the Business, whether on a full-time or part-time basis, including all individuals who are on an approved and unexpired leave of absence, and all individuals who have been placed on temporary lay-off which has not expired, and **"Employee"** means any one of them.

**"Encumbrances"** means all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

**"Excluded Assets"** means (i) all accounts receivable, trade accounts, bank accounts, book debts, insurance claims, bills, credits, rebates, deposits, prepayments, holdbacks, funds, cash and cash equivalents, short-term investments, Intercompany Claims, Tax credits, including without limitation, credits in connection with the Scientific Research and Experimental Development Tax Incentive Program, Tax Returns, Tax installments paid by or on behalf of any of the PDI Entities, and all rights to receive a refund of, and/or credit in respect of Taxes paid by or on behalf of any of the PDI Entities, and (ii) all Personal Property subject to a Personal Property Lease, (iii) the Mass Spectrometer 4000 Q TRAP with Serial Number U03170412, (iv) all Excluded Contracts, (v) all minute books and other corporate records of the PDI Entities and any Books and Records that the PDI Entities or the Vendor are required by Applicable Law to retain in their possession, (vi) the rights of the Vendor under this Agreement or any other agreement, certificate or instrument executed and delivered pursuant to this Agreement, and (vii) all causes of action which arise from loss, damage or facts occurring prior to the Closing Date and any insurance proceeds or claims payable for losses or damages incurred prior to the Closing Date, other than insurance proceeds or rights thereto assigned to the Purchaser in accordance with Section 6.5(2).

**"Excluded Contracts"** means all Contracts other than the Assigned Contracts.

**"Excluded Liabilities"** means all Liabilities of the PDI Entities other than the Assumed Liabilities.

**"Food and Drugs Act"** means the *Food and Drugs Act (Canada)* R.S.C., 1985, c. F-27 and regulations promulgated thereunder.

**"General Conveyance"** means a general conveyance and assumption of liabilities, in form and substance satisfactory to the Parties, acting reasonably, evidencing the conveyance to the Purchaser of the right, title and interest of the Vendor and the PDI Entities in and to the Purchased Assets and the assumption by the Purchaser of the Assumed Liabilities.

**"GOFI"** means Golden Opportunities Fund Inc.

**"GOFI Assignment and Assumption Agreement"** means the assignment and assumption agreement dated as of July 28, 2016, between GOFI as assignor, and the Purchaser, as assignee.

**"Governmental Authority"** means:

- (1) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (2) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government, including, the Saskatchewan Ministry of Health, Health Canada and the Canadian Agency for Drugs and Technology in Health;
- (3) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions, including, the College of American Pathologists and the College of Physicians and Surgeons of Saskatchewan; and
- (4) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

**"GST/HST"** means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act (Canada)*.

**"Hardware"** has the meaning set forth in Section 6.9.

**"Health Canada"** means the Canadian federal government department established pursuant to the *Department of Health Act (Canada)* responsible for the administration of various statutes, including, the *Food and Drugs Act*.

**"ICA"** means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1<sup>st</sup> Supplement).

**"Intellectual Property"** means all intellectual property and industrial property Related to

the Business, throughout the world, whether or not registerable, patentable or otherwise formally protectable, and whether or not registered, patented, otherwise formally protected or the subject of a pending application for registration, patent or any other formal protection, including all (a) trade-marks, corporate names and business names, (b) inventions, (c) works and subject matter in which copyright, neighbouring rights or moral rights subsist, (d) industrial designs, (e) patents, know-how, trade secrets, proprietary information, confidential information and information of a sensitive nature that have value to the Business or relate to business opportunities for the Business, in whatever form communicated, maintained or stored, (f) telephone numbers and facsimile numbers, (g) registered domain names, email addresses, and websites, (h) social media accounts and usernames and other internet identities and all account information relating thereto; (i) standard operating procedures; and (j) diagnostic and disease specific samples, data, models, records, and databases in any format or media whatsoever;

**"Intercompany Claims"** means all present and future claims of any nature or kind whatsoever of any of the PDI Entities against an Affiliate thereof, whether such Affiliate is a party to this Agreement or otherwise.

**"Interim Period"** means the period from the date that this Agreement is entered into by the Parties to the Closing Time.

**"Interim Receiver"** has the meaning set out in the Order of the Honourable Mr. Justice B.J. Scherman granted December 3, 2015 in the Receivership Proceedings.

**"Interim Receiver's Certificates"** means collectively, the interim receiver certificates issued by the Interim Receiver to GOFI on December 18, 2015, January 11, 2016, January 25, 2016 and February 5, 2016.

**"Interim Receivership Obligations"** means all liabilities and obligations of any kind owing by PDI to the Purchaser as at Closing respecting the borrowings of the Interim Receiver and/or the letter agreements dated December 18, 2015 and January 8, 2016, as evidenced by the Interim Receiver's Certificates and secured by a charge over all of the assets, undertakings and properties of PDI, which liabilities and obligations have been assigned by GOFI to the Purchaser pursuant to the GOFI Assignment and Assumption Agreement and which amounts are estimated, as of September 2, 2016, to be

**"IP Assignment and Assumption Agreement"** means an assignment agreement, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the Intellectual Property.

**"ITA"** means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supplement).

**"KERP"** has the meaning set out in the Order of the Honourable Mr. Justice B.J. Scherman granted April 15, 2016 in the Receivership Proceedings.

**"Laboratory"** means the laboratory owned and operated by PLSI and located at 204-407 Downey Road, Saskatoon, Saskatchewan.

**"Laboratory Licenses"** means the Class IX medical laboratory license from the College of Physicians and Surgeons of Saskatchewan and the provincial medical laboratory

testing license issued to PLSI by the Saskatchewan Ministry of Health in accordance with the *Medical Laboratory Licensing Act* (Saskatchewan) and the *Medical Laboratory Licensing Regulations* (Saskatchewan).

"**Law**" has the meaning set out in the definition of "**Applicable Law**".

"**Legal Proceeding**" means any litigation, Action, application, demand, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review.

"**Lending Syndicate**" means, collectively, GOFI, Concorde Centres Inc., and PIC Flight Services Inc.

"**Lending Syndicate Assignment and Assumption Agreement**" means the assignment and assumption agreement dated as of July 28, 2016, between each member of the Lending Syndicate, as assignor, and the Purchaser, as assignee.

"**Liability**" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"**Medical Laboratory Licensing Act**" means the *Medical Laboratory Licensing Act*, 1994, S.S. 1994, c. M-9.2.

"**Medical Laboratory Licensing Regulations**" means the *Medical Laboratory Licensing Regulations*, 1995, R.R.S., c.M-9.2, Reg 1.

"**Order**" means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

"**Outside Date**" means September 9, 2016.

"**Party**" means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and "**Parties**" means more than one of them.

"**PDI**" has the meaning set out in Recital A.

"**PDI Entities**" has the meaning set out in Recital A.

"**Permits and Licenses**" means the permits, licenses, authorizations, approvals or other evidence of authority Related to the Business issued to, granted to, conferred upon, or otherwise created for, any of the PDI Entities and listed on Schedule "D".

"**Permitted Encumbrances**" means the Encumbrances related to the Purchased Assets listed on Schedule "E".

"**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the

executors, administrators or other legal representatives of an individual in such capacity.

**"Personal Information"** means information about an identifiable individual as defined in Privacy Law.

**"Personal Property"** means all machinery, equipment, furniture, motor vehicles and other chattels Related to the Business, wherever located (including those in possession of suppliers, customers and other third parties).

**"Personal Property Lease"** means a chattel lease, equipment lease, financing lease, conditional sales contract and other similar agreement relating to Personal Property to which any of the PDI Entities are a party or under which it has rights to use Personal Property.

**"PLSI"** has the meaning set out in Recital A.

**"Post-Closing Receiver's Borrowings"** means any additional loans advanced to the Receiver by the Purchaser (in addition to the Receivership Obligations) subsequent to the Court granting the Approval and Vesting Order and which are approved by the Court in the Receivership Proceedings.

**"PPSA"** has the meaning set out in Recital A.

**"Privacy Law"** means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Health Information Protection Act* (Saskatchewan), the *Freedom of Information and Health and Information Protection Act* (Saskatchewan) and any comparable and applicable Law of any other province or territory of Canada.

**"Promissory Note"** means a demand promissory note in the amount of form and content satisfactory to the Parties, acting reasonably.

**"Promissory Note Amount"** means \_\_\_\_\_ which amount represents the entire amount outstanding under the Promissory Note.

**"Provincial Sales Tax Act"** means *The Provincial Sales Tax Act* (Saskatchewan), Chapter P-34.1, as amended.

**"PST"** means all provincial sales tax imposed pursuant to the *Provincial Sales Tax Act*.

**"Purchase Price"** has the meaning set out in Section 3.1.

**"Purchased Assets"** means the assets, properties and undertaking listed on Schedule "E", but does not include any of the Excluded Assets.

**"Purchased Intellectual Property"** means the Intellectual Property, including the Intellectual Property listed on Schedule "G".

**"Purchaser"** has the meaning set out in the preamble hereto, and includes any successor or permitted assignee thereof in accordance with Section 10.16.

**"Receiver"** has the meaning set out in the Receivership Order.

**"Receiver's Borrowing Certificates"** means collectively, the receiver certificates issued



by the Receiver on March 2, 2016, April 19, 2016, May 6, 2016, June 16, 2016 and July 22, 2016.

**"Receiver's Certificate"** means the certificate, substantially in the form attached as Schedule "A" to the Approval and Vesting Order which is set out as Schedule "A" to this Agreement, to be delivered by the Vendor to the Purchaser on Closing and thereafter filed by the Vendor with the Court certifying that the conditions to Closing have been satisfied and/or waived by the Vendor and the Purchaser (as applicable) and that the transaction has been completed to the satisfaction of the Vendor.

**"Receivership Obligations"** means all liabilities and obligations of any kind owing by PDI to the Purchaser as at Closing respecting the borrowings of the Receiver approved in the Receivership Proceedings and/or the letter agreements dated March 1, 2016, April 6, 2016, May 4, 2016, June 14, 2016 and July 22, 2016, as evidenced by the Receiver's Borrowing Certificates and secured by a charge over all of the assets, undertakings and properties of PDI, which liabilities and obligations have been assigned by the Lending Syndicate to the Purchaser pursuant to the Lending Syndicate Assignment and Assumption Agreement, and which amounts are estimated, as of September 2, 2016, to be

**"Receivership Order"** has the meaning set out in Recital A.

**"Receivership Proceedings"** has the meaning set out in Recital A.

**"Related to the Business"** means used in, arising from or otherwise related to the Business or any part thereof.

**"Replacement Permit and License"** means a new permit, license, authorization, approval or other similar item providing substantially equivalent rights to the Purchaser as any of the PDI Entities are entitled to as of the Closing Date pursuant to the applicable Permit and License.

**"Representative"** when used with respect to a Person means each director, officer, employee, consultant, financial adviser, legal counsel, accountant and other agent, adviser or representative of that Person.

**"Sales Process"** has the meaning set out in Recital B.

**"Sales Process Order"** has the meaning set out in Recital B.

**"Sales Process Team"** means the Vendor and the PDI Entities.

**"Statutory Plans"** means statutory benefit plans which any of the PDI Entities are required to participate in or comply with, including plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation.

**"Target Closing Date"** means the day that is fourteen (14) days after the date upon which the Approval and Vesting Order is obtained which Target Closing Date is anticipated to be September 2, 2016.

**"Tax Returns"** means all returns, reports, declarations, elections, notices, filings, information returns, and statements in respect of Taxes that are required to be filed with any applicable Governmental Authority, including all amendments, schedules,

attachments or supplements thereto and whether in tangible or electronic form.

**"Taxes"** means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, PST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties.

**"Transaction Personal Information"** means any Personal Information in the possession, custody or control of the Vendor or any of the PDI Entities at the Closing Time, including Personal Information about Employees, patients, suppliers, customers, directors, officers or shareholders that is:

- (1) disclosed to the Purchaser or any Representative of the Purchaser prior to the Closing Time by any member of the Sales Process Team or any of their Representatives or otherwise; or
- (2) collected by the Purchaser or any Representative of the Purchaser prior to the Closing Time from any member of the Sales Process Team or any of their Representatives or otherwise,

in either case in connection with the transactions contemplated by the Agreement.

**"Transfer Taxes"** means all applicable Taxes payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording or transfer fees payable in connection with the Instruments of transfer provided for in this Agreement, including GST/HST and PST.

**"Transferred Employees"** means all Employees who accept the Purchaser's offer of employment.

**"Trust Funds"** means the Promissory Note Amount in the within purchase and sale transaction to be paid and held in trust by the Vendor for the Purchaser pursuant to the 2015 PSA and the terms of this Agreement.

**"Unresolved Claims"** means:

- (1) any claims by the Purchaser for Damages or Liability owing by Yolbolsum Canada Inc. or Dayan Goodenowe, or any Affiliate of either of them, to the Purchaser; and
- (2) any claims by the Purchaser for Damages or Liability owing by any PDI Entity to the Purchaser, including claims advanced pursuant to 2015 PSA including, for greater certainty, any claims for Damages, Liability, or costs respecting any

litigation or arbitration proceedings in relation to the 2015 PSA.

"Vendor" has the meaning set out in the preamble hereto.

**1.2 Actions on Non-Business Days.** If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

**1.3 Currency and Payment Obligations.** Except as otherwise expressly provided in this Agreement: (a) all dollar amounts referred to in this Agreement are stated in the lawful currency of Canada; and (b) any payment by the Purchaser contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account of the Vendor specified by the Vendor, by cash, by certified cheque or by any other method that provides immediately available funds as agreed to between the Parties.

**1.4 Calculation of Time.** In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. Saskatchewan time on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. Saskatchewan time on the next succeeding Business Day.

**1.5 Tender.** Any tender of documents or money hereunder may be made upon the Parties or, if so indicated, their respective counsel.

**1.6 Additional Rules of Interpretation.**

(1) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.

(2) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(3) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.

(4) *Words of Inclusion.* Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

(5) *References to this Agreement.* The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(6) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-

enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(7) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

**1.7 Schedules.** The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

**SCHEDULES**

<u>Schedule "A"</u>	Form of Approval and Vesting Order
<u>Schedule "B"</u>	Assigned Contracts
<u>Schedule "C"</u>	Assumed Liabilities
<u>Schedule "D"</u>	Permits and Licenses
<u>Schedule "E"</u>	Permitted Encumbrances
<u>Schedule "F"</u>	Purchased Assets
<u>Schedule "G"</u>	Purchased Intellectual Property
<u>Schedule "H"</u>	Allocation of Purchase Price

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

**ARTICLE 2  
PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES**

**2.1 Purchase and Sale of Purchased Assets.** At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Vendor shall sell, transfer and assign to the Purchaser, and the Purchaser shall purchase from the Vendor, all of the right, title and interest, if any, of the Vendor and the PDI Entities in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order. For greater certainty, notwithstanding any other provision of this Agreement, this Agreement does not constitute an agreement by the Purchaser to purchase, or by the Vendor to sell any Excluded Asset.

**2.2 Assumed Liabilities.** At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Excluded Liability.

**2.3 Assignment of Contracts.**

(1) *Obtaining Consents.* Prior to Closing, the Purchaser, with the assistance of the

Vendor, shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchaser.

(2) *Cure Costs.* To the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall pay all such Cure Costs, which shall be payable either directly to the applicable counterparty or to the Vendor at or prior to Closing (which Cure Costs shall be in addition to the Purchase Price).

(3) *Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement (including paragraph (5) below) and the Approval and Vesting Order, all of the rights, benefits and interests of the Vendor and the PDI Entities in, to and under the Assigned Contracts shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(4) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract to the extent such Assigned Contract is not assignable under Applicable Law or the terms of the applicable Assigned Contract provide that it is not assignable without the consent of another Person, unless and until such consent has been obtained.

(5) *No Adjustment.* For greater certainty, in respect of any Assigned Contract, if the consent of any Person is required to assign such Contract but such consent is not obtained prior to Closing, such Contract shall not form part of the Purchased Assets and (i) neither Party shall be considered to be in breach of this Agreement, (ii) the failure to assign or otherwise transfer such Assigned Contract shall not be a condition to Closing, (iii) the Purchase Price shall not be subject to any adjustment, and (iv) the Closing shall not be delayed.

#### **2.4 Transfer and Assignment of Permits and Licenses.**

(1) *Obtaining Consents.* Prior to Closing, to the extent that a Permit and License is assignable or otherwise transferable by the Vendor or any of the PDI Entities to the Purchaser, the Purchaser, with the assistance of the Vendor and such PDI Entity, shall use commercially reasonable efforts to obtain all necessary consents or approvals to assign or otherwise transfer such Permits and Licenses to the Purchaser. The Purchaser shall pay all costs required in connection with the assignment or transfer of any Permit and License (which costs shall be in addition to the Purchase Price).

(2) *Transfer and Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, all of the rights, benefits and interest of the Vendor and PDI Entities in, to and under the Permits and Licenses, to the extent assignable, shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(3) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or otherwise transfer any Permit and License to the extent: (i) such Permit and License is not assignable or transferable under Applicable Law, or (ii) the terms of the applicable Permit and License provide that it is not assignable without the consent of another Person, unless and until such consent has been obtained.

(4) *Post-Closing Assignment.* Notwithstanding anything in this Agreement to the contrary, if the consent or approval of any Person is required to assign or otherwise transfer a

Permit and License but such consent or approval is not obtained prior to Closing, (i) the Purchaser, with the assistance of the Vendor, shall use its commercially reasonable efforts to obtain the necessary consents or approvals to the assignment or transfer of such Permit and License to the Purchaser as soon as practicable following Closing, (ii) neither Party shall be considered to be in breach of this Agreement, (iii) the failure to assign or otherwise transfer such Permit and License shall not be a condition to Closing, (iv) the Purchase Price shall not be subject to adjustment, and (v) the Closing shall not be delayed.

(5) *Obtaining Replacement Permits and Licenses.* To the extent that a Permit and License is not assignable or otherwise transferrable by the PDI Entities and/or the Vendor to the Purchaser, the Purchaser, with the assistance of the Vendor, shall use commercially reasonable efforts to obtain a Replacement Permit and License, including the approval of the Saskatchewan Ministry of Health as required by the *Medical Laboratory Licensing Act* in connection with the purchase and sale of the Purchased Assets. The Purchaser shall pay all costs required in connection with obtaining any Replacement Permit and License (which shall be in addition to the Purchase Price).

### ARTICLE 3 PURCHASE PRICE & TAXES

**3.1 Purchase Price.** The consideration payable by the Purchaser to the Vendor for the right, title and interest of the Vendor and the PDI Entities in and to the Purchased Assets (the "**Purchase Price**") shall be the aggregate of the following:

- (1) (the "**Cash Purchase Price**");
- (2) the Promissory Note Amount;
- (3) the Credit Bid Amount; and
- (4) the value of the Assumed Liabilities.

**3.2 Satisfaction of Purchase Price.** The Purchase Price shall be paid and satisfied at Closing as follows:

- (1) a portion of the Purchase Price equal to \_\_\_\_\_ representing \_\_\_\_\_ Purchase Price (the "**Deposit**") shall be satisfied by set-off against a \_\_\_\_\_ PDI's obligations under the Debenture, in accordance with the Sales Process. The Purchaser acknowledges and agrees that there will be no accrued interest earned on the Deposit;
- (2) a portion of the Purchase Price equal to the amount of the balance of the Debenture Credit Bid Amount shall be satisfied by set-off against PDI's obligations under the Debenture;
- (3) a portion of the Purchase Price equal to the amount of the Interim Receivership Obligations shall be satisfied by set-off against the obligations of PDI as evidenced by the Interim Receiver's Certificates;
- (4) a portion of the Purchase Price equal to the amount of the Receivership Obligations shall be satisfied by set-off against the obligations of PDI as evidenced by the Receiver's Borrowing Certificates;

- (5) subject to section 3.2(9) hereof, the Purchaser shall deliver to the Vendor, for and on behalf of the Interim Receiver, the Receiver and PDI, as applicable, fully executed releases and waivers with respect to all amounts outstanding respecting the Debenture, the Interim Receivership Obligations, the Receivership Obligations, the Interim Receiver's Certificates, and the Receiver's Borrowing Certificates (in each case, including any accrued interest thereon and all fees thereunder);
- (6) a portion of the Purchase Price equal to the Promissory Note Amount shall be satisfied by the delivery by the Purchaser of the Promissory Note to the Vendor, which Promissory Note shall, subject to any other arrangements to which the Vendor and the Purchaser may mutually agree in writing, be extinguished immediately after Closing by way of set-off in full and final satisfaction of the Purchaser's claim to the Trust Funds;
- (7) the Cash Purchase Price shall be paid by the Purchaser to the Vendor;
- (8) the assumption by the Purchaser of the Assumed Liabilities by the execution and delivery of the Assignment and Assumption Agreement; and
- (9) for greater clarity, in no event shall any portion of the Purchase Price be satisfied (or deemed to have been satisfied) by way of set-off against Post-Closing Receiver's Borrowings.

**3.3 Allocation of Purchase Price.** The Purchase Price shall be allocated among the Purchased Assets and the PDI Entities as set forth on Schedule "H". The Parties shall report an allocation of the Purchase Price among the Purchased Assets in a manner entirely consistent with Schedule "H", and shall not take any position inconsistent therewith in the filing of any Tax Returns or in the course of any audit by any Governmental Authority, Tax review or Tax proceeding relating to any Tax Returns. In the event that any Transfer Taxes are payable by the Purchaser under Section 3.4, the Parties shall, no later than the Closing Date, agree on an allocation of the Purchase Price payable in respect of the Purchased Assets, including an allocation of such amount to the Purchased Assets and PDI Entities, to be used for calculating the amount(s) of Transfer Taxes to be collected by the Vendor on behalf of the PDI Entities or self-assessed by the Purchaser to the relevant Governmental Authorities.

**3.4 Taxes.** In addition to the Purchase Price, the Purchaser shall be liable for and shall, at Closing, pay all applicable Transfer Taxes. The PDI Entities are registered for GST/HST purposes under Part IX of the Excise Tax Act (Canada) and their registration numbers are:

- (i) Phenomenome Discoveries Inc.:
- (ii) Phenomenome Laboratory Services Inc.:

If any payment made as the result of a breach, modification or termination of this Agreement is deemed by the Excise Tax Act (Canada) to include GST/HST, or is deemed by any applicable provincial or territorial legislation to include a similar value added or multi-staged tax, the amount of such payment shall be increased accordingly. If the Purchaser is required by Applicable Law to deduct or withhold any amount from the Purchase Price payable hereunder, then the Purchase Price shall be increased by an additional amount such that the amount received by the Vendor after such deduction or withholding including deduction or withholding

from such additional amount) is equal to the amount that the Vendor would have received absent any such deduction or withholding.

### **3.5 Tax Elections.**

(1) *GST/HST Elections.* If available, at the Closing, the Vendor on behalf of each of the PDI Entities and the Purchaser shall execute jointly an election under section 167 of the *Excise Tax Act* (Canada) to have the sale of the Purchased Assets take place on a GST-free basis under Part IX of the *Excise Tax Act* (Canada). The Purchaser shall file the elections in the manner and within the time prescribed by Applicable Law.

(2) *Subsection 20(24) Tax Election.* If applicable and requested by the Vendor, at the Closing, the Purchaser and the Vendor on behalf of the PDI Entities shall jointly execute and file an election or elections under subsection 20(24) of the *ITA* in the manner required by subsection 20(25) of the *ITA* and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the *ITA* and under any other applicable provincial or territorial statute, as to such amount paid by the PDI Entities to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by each of the PDI Entities pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the *ITA* and the equivalent provisions of any applicable provincial or territorial statute in the relevant election, is being transferred by the PDI Entity as a payment for the assumption of such future obligations by the Purchaser

(3) *Section 22 Tax Election.* If applicable and requested by the Vendor, the Purchaser and the Vendor on behalf of the PDI Entities shall elect jointly in the prescribed form under section 22 of the *ITA*, if applicable, and the corresponding provisions of any other applicable Tax statute as to the sale of the receivables and designate in such election or elections an amount equal to the portion of the Purchase Price allocated to the applicable receivables pursuant to Section 3.3. This election, or these elections, shall be made within the time prescribed for such elections.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and Warranties of the Purchaser.** As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 4.1, the Purchaser represents and warrants to the Vendor as follows:

(1) *Incorporation and Power.* The Purchaser is a limited partnership organized and subsisting under the laws of the jurisdiction of its incorporation. The Purchaser has the power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments;

(2) *Authorization by Purchaser.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary action on the part of the Purchaser;



(3) *Approvals.* No consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or all other agreements and instruments to be executed by the Purchaser or the performance by the Purchaser of its obligations hereunder or thereunder;

(4) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, winding-up, liquidation, reorganization, arrangement, moratorium and other laws affecting creditors' rights generally and general principles of equity including, without limitation, the obligation to act in a reasonable manner and in good faith and the discretionary nature of any equitable remedies. There is no Legal Proceeding in progress, pending, or threatened against or affecting the Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchaser which, in any such case, affects adversely or might affect adversely the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder;

(5) *ICA.* The Purchaser either is not a "non-Canadian" within the meaning of the ICA, or, if the Purchaser is a "non-Canadian", the Purchaser is a "WTO investor" within the meaning of the ICA;

(6) *Excise Tax Act.* The Purchaser is, or upon Closing shall be, registered for GST/HST purposes under Part IX of the *Excise Tax Act* (Canada) and shall provide its registration number to the Vendor at or prior to Closing;

(7) *Commissions.* The Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Purchaser;

(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or has arranged sufficient financing for it to pay on Closing the Cash Purchase Price, Cure Costs, Transfer Taxes and any and all other amounts payable by the Purchaser hereunder; and

(9) *Trust Funds.* Other than a claim to the Trust Funds in accordance with the terms of the 2015 PSA and this Agreement, and other than any claims in accordance with the terms and conditions of this Agreement, the Purchaser has no other claim for Damages or Liability against the PDI Entities or towards the Purchase Price as a result of the purchase and sale transaction contemplated by this Agreement.

**4.2 Representations and Warranties of the Vendor.** As a material inducement to the Purchaser's entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 4.2, the Vendor represents and warrants to the Purchaser as follows:

(1) *Authorization.* Subject to obtaining the Approval and Vesting Order, the Vendor has the authority to sell all of the right, title and interest of the Vendor and the PDI Entities in and to the Purchased Assets; and

(2) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting

Order, this Agreement constitutes a valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms.

**4.3 As is, Where is.** Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:

(1) except for the representations and warranties of the Vendor set forth in Section 4.2, it is entering into this Agreement, acquiring the Purchased Assets and assuming the Assumed Liabilities on an "as is, where is" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk of the Purchaser;

(2) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets, the Business and the Assumed Liabilities as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement;

(3) except as expressly stated in Section 4.2, neither the Vendor, any member of the Sales Process Team, nor any other Person is making, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the right, title or interest of the Vendor and the PDI Entities in or to the Purchased Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purposes, suitability for development, title, description, use or zoning, environmental condition, existence of latent defects, quality, quantity or any other thing affecting any of the Purchased Assets, or the Assumed Liabilities or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;

(4) without limiting the generality of the foregoing, no representation, warranty or covenant is given by any member of the Sales Process Team or any of their Representatives that any of the Purchased Assets are or can be developed, approved by Health Canada, the U.S. Food & Drug Administration or any other applicable Governmental Authority, or made operational within a specified time frame or will achieve any particular result, level of service, use, production capacity or actual production if made operational;

(5) without limiting the generality of the foregoing, except as expressly stated in Section 4.2, neither the Vendor, members of the Sales Process Team nor any other Person have made no representation or warranty as to any regulatory approvals, licenses, permits, consents or authorizations, including the Permits and Licenses, that may be needed to complete the transactions contemplated by this Agreement or to operate or carry on the Business or any portion thereof, and the Purchaser is relying entirely on its own investigation, due diligence and inquiries in connection with such matters;

(6) all written and oral information obtained from any member of the Sales Process Team or any of the Sales Process Team's Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchaser (including in certain "data rooms", management presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets, the Business and the Assumed Liabilities has been obtained for the convenience of the Purchaser only, and no

member of the Sales Process Team nor any of the Sales Process Team's Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information;

(7) any information regarding or describing the Purchased Assets, the Business, or the Assumed Liabilities in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by any member of the Sales Process Team or any of the Sales Process Team's Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions; and

(8) except as otherwise expressly provided in this Agreement, and except for any Unresolved Claims, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or claims the Purchaser might have against the Vendor or any members of the Sales Process Team or any of their Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties expressly set forth in Section 4.2. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights.

This Section 4.3 shall not merge on Closing and is deemed incorporated by reference in all closing documents and deliveries. The Purchaser shall have no recourse or claim of any kind against the proceeds of the transactions contemplated by this Agreement following Closing.

## **ARTICLE 5 EMPLOYEES AND EMPLOYEE BENEFITS**

**5.1 Offers of Employment to Employees.** At least 5 Business Days prior to the Closing Date, the Purchaser shall (i) offer employment, conditional on Closing and effective as of the Closing Date, to all Employees that the Purchaser intends to employ on the Closing Date on terms and conditions which are no less favourable in the aggregate to those under which such Employees are currently employed by the applicable PDI Entity, and (ii) provide copies to the Vendor of any such offers of employment. Notwithstanding the foregoing, with respect to any Employees on approved short-term or long-term disability leave of absence on the Closing Date, the effective date of employment may not be the Closing Date but rather the offer of employment to any such Employee shall specify that the offer is conditional upon the Employee being capable of returning to work and that the date on which such Employee returns to work shall be the effective date of employment. The Vendor shall cooperate in the Purchaser's efforts to make offers of employment as contemplated by this Section 5.1.

**5.2 Past Service & Ongoing Terms.** The Purchaser shall recognize the past service of Transferred Employees with the PDI Entities for all purposes, including any required notice of termination, termination or severance pay (contractual, statutory, at common-law or otherwise under Applicable Law). The Purchaser shall ensure that the terms and conditions of employment for Transferred Employees shall not be changed except in accordance with Applicable Law, including any Law requiring that notice of such changes be given. The Purchaser agrees that following the Closing Date it will comply with all Applicable Laws with respect to severance of any Transferred Employee.

**5.3 Vendor to Pay Pre-Closing Wages and Vacation Pay.** The Vendor shall pay all wages, bonuses, retention amounts, earned vacations, sick leave, pensions, amounts owed pursuant to the KERP and source deductions and other remuneration benefits owed to Transferred Employees in respect of the period prior to the Closing Date, including any such amounts that have accrued prior to the Closing Date but have not become due and payable until on or after the Closing Date.

**5.4 Provision of Information.** The Vendor shall provide the Purchaser with information relating to the Transferred Employees in the possession of and reasonably available to the Vendor to establish a record of earnings for each Transferred Employee.

## **ARTICLE 6 COVENANTS**

**6.1 Target Closing Date.** The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on the Target Closing Date.

**6.2 Motion for Approval and Vesting Order.** Pursuant to and subject to the terms of the Sales Process, the Vendor shall file with the Court, as soon as practicable after its execution and delivery of this Agreement, a motion seeking the Court's issuance of the Approval and Vesting Order. The Vendor shall diligently use its commercially reasonable efforts to seek the issuance and entry of the Approval and Vesting Order. The Purchaser shall cooperate with the Vendor in its efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Vendor all such information within its possession or under its control as the Vendor may reasonably require to obtain the Approval and Vesting Order.

**6.3 Access During Interim Period.** During the Interim Period, the Vendor shall, subject to any confidentiality, privacy or safety restrictions, give, or cause to be given, to the Purchaser and its Representatives reasonable access during normal business hours and the Purchased Assets, including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business and the Purchased Assets as the Purchaser deems reasonably necessary or desirable to further familiarize itself with the Business and the Purchased Assets. Without limiting the generality of the foregoing, the Purchaser shall be permitted reasonable access during normal business hours to all documents relating to information scheduled or required to be disclosed under this Agreement and to the Employees. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk, during normal business hours, and without undue interference with the operations of the Business and the Vendor shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser.

**6.4 Transaction Personal Information.** The Purchaser acknowledges that the Transaction Personal Information may contain information of a highly personal nature and the Purchaser shall:

(1) comply with applicable Privacy Law in the course of collecting, using and disclosing Transaction Personal Information;

(2) collect Transaction Personal Information prior to Closing only for purposes related to the transactions contemplated by this Agreement and following the Closing, the

Purchaser shall not, without the consent of the individuals to whom such Personal Information relates, use or disclose Transaction Personal Information (i) for purposes other than those for which such Transaction Personal Information was collected by the PDI Entities or the Vendor prior to the Closing, and (ii) which does not relate directly to the carrying on of the Business or to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented, and in each case, such use or disclosure shall be as permitted by Privacy Law;

(3) protect and safeguard the Transaction Personal Information against unauthorized collection, use or disclosure, as provided by Privacy Law;

(4) cause its Representatives to observe the terms of this Section 6.4 and to protect and safeguard Transaction Personal Information in their possession in accordance with Privacy Law; and

(5) if either the Vendor or the Purchaser terminates this Agreement as provided herein, the Purchaser shall promptly deliver to the Vendor all Transaction Personal Information in its possession or in the possession of any of its Representatives, including all copies, reproductions, summaries or extracts thereof and the Purchaser shall, unless prohibited by Applicable Law, promptly destroy all (i) electronic copies of the Transaction Personal Information and (ii) all notes prepared by the Purchaser or any of its Representatives, including electronic back-ups of the foregoing in a manner that, to a commercially reasonable standard, ensures that such notes may not be retrieved or undeleted by the Purchaser or any of the Purchaser's Representatives. Any Transaction Personal Information or notes not destroyed pursuant to the preceding sentence shall remain subject to the confidentiality provisions of this Section 6.4.

**6.5 Risk of Loss.** The Purchased Assets shall be at the risk of the PDI Entities until Closing. If before the Closing all or substantially all of the Purchased Assets are lost, damaged or destroyed, the Purchaser, in its discretion, acting reasonably, shall have the option, exercisable by notice to the Vendor given prior to the Closing Time:

- (1) to terminate this Agreement, as provided in Section 9.1; or
- (2) to complete the transactions contemplated by this Agreement without any adjustments to the Purchase Price and require the Vendor to assign to the Purchaser the proceeds of any insurance payable, or the rights of the Vendor and the PDI Entities in and to any awards or other proceeds payable, as a result of the occurrence of such loss, damage or destruction.

**6.6 Conduct of Business during Interim Period.** During the Interim Period, the Vendor shall use commercially reasonable efforts to conduct the Business in the ordinary course in substantially the same manner as conducted on the date of this Agreement, except to the extent required to allow the Vendor to comply with its obligations under this Agreement, subject to any limitation imposed by being subject to the Receivership Proceedings and any Order of the Court.

**6.7 Indemnity.** The Purchaser hereby indemnifies the Vendor and the PDI Entities and their respective Representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (1) any Taxes including Transfer Taxes (including penalties and interest) which may be assessed against the Vendor or the PDI Entities, in the event that any election made pursuant to Section 3.5 is challenged by the relevant Tax authority as being inapplicable to the transactions under this Agreement, or as a result of the Purchaser's failure to file such elections within the prescribed time;
- (2) the Purchaser's access in accordance with Section 6.3;
- (3) the Purchaser's collection, use or disclosure of Transaction Personal Information; and
- (4) the Purchaser's failure to pay when due and perform and discharge the Assumed Liabilities in accordance with their terms.

**6.8 Books and Records.** The Purchaser shall preserve and keep the Books and Records acquired by it pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such books and records (to the extent reasonably feasible), available to the Vendor, its successors, and any trustee in bankruptcy of the PDI Entities or any other party entitled to such Books and Records under the PPSA or BIA, and shall, at such party's expense, permit any of the foregoing persons to take copies of such Books and Records as they may require.

**6.9 Certain Information Technology Assets.** With respect to any information technology assets relating primarily to the Business to be acquired by the Purchaser hereunder (such as desktops, laptops, mobile phones, servers and related hardware) (collectively, "**Hardware**"), the Purchaser will co-operate with the Vendor, at the Purchaser's cost and expense, in causing data contained or stored in such Hardware not relating primarily to the Business, the Purchased Assets or the Assumed Liabilities to be removed from such Hardware in a manner reasonably satisfactory to the Vendor prior to the Closing Date or within a reasonable period of time thereafter, provided that such removal shall be carried out in a manner that does not damage or otherwise interfere with any data contained or stored in such Hardware relating to the Business or the Purchased Assets. Any third party provider selected by the Purchaser and the Vendor to provide such services shall be agreed upon by the Purchaser and the Vendor, acting reasonably.

**6.10 Regulatory Approvals.** The Purchaser, with the assistance of the Vendor shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions (including those under the *Medical Laboratory Licensing Act* and the *Medical Laboratory Licensing Regulations*), as applicable, required under any Law applicable to such Party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. The Vendor shall cooperate reasonably with the Purchaser and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders, approvals and clearance certificates. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

**6.11 Cooperation and Consultation with Governmental Authorities.** All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or

regulators of any Governmental Authority, in connection with the consummation of the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Vendor or the Purchaser with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact (except where such Governmental Authority expressly requests that such Party not attend or participate in such meeting, discussion, appearance or contact).

**6.12 Change of Name.** Each of the PDI Entities shall, immediately following the Closing Date, file articles of amendment to change their corporate names to a different name. Each of the PDI Entities shall, at all times after the Closing, sign such transfers, consents, undertakings and other documents as may be required to allow the Purchaser to:

- (1) register the corporate names "Phenomenome Discoveries Inc." and/or "Phenomenome Laboratory Services Inc." or any variation thereof (including, for greater certainty, any corporate name that may be considered sufficiently similar to a name formerly owned by either of the PDI Entities so as to require the consent of the PDI Entities prior to registration of the same);
- (2) register any business names that may be considered sufficiently similar to a name formerly owned by either of the PDI Entities so as to require the consent of the PDI Entities prior to registration of the same; or
- (3) cancel the corporate names "Phenomenome Discoveries Inc." and/or "Phenomenome Laboratory Services Inc." and/or any other corporate names, business names or trade names which either of the PDI Entities owned or operated under.

## **ARTICLE 7 CLOSING ARRANGEMENTS**

**7.1 Closing.** The Closing shall take place at 10:00 a.m. Saskatchewan time (the "**Closing Time**") on the Closing Date at the offices of the Vendor's counsel in Calgary, Alberta or at such other time on the Closing Date or such other place as may be agreed orally or in writing by the Vendor and the Purchaser.

**7.2 Vendor's Closing Deliveries.** At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following:

- (1) the Purchased Assets, provided that delivery shall occur *in situ* wheresoever such Purchased Assets are located at the Closing Time;
- (2) a copy of the Approval and Vesting Order;
- (3) the General Conveyance, duly executed by the Vendor;

- (4) all consents to the assignment of the Assigned Contracts and Permits and Licenses, to the extent obtained by the Vendor prior to Closing;
- (5) the Assignment and Assumption Agreement, duly executed by the Vendor;
- (6) the IP Assignment and Assumption Agreement, duly executed by the Vendor;
- (7) a receipt issued to the Purchaser confirming that all amounts owing pursuant to the Promissory Note have been paid in full by way of set-off, together with a notation on the Promissory Note marking it as paid in full in accordance with section 3.2(6);
- (8) a bring-down certificate dated as of the Closing Date, in form and substance satisfactory to the Purchaser, acting reasonably, certifying that (i) all of the representations and warranties of the Vendor hereunder remain true and correct in all material respects as of the Closing Date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Vendor at or prior to Closing have been complied with or performed by the Vendor in all material respects;
- (9) the tax elections referred to in Section 3.5; and
- (10) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

**7.3 Purchaser's Closing Deliveries.** At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor, the following:

- (1) the payment referred to in Section 3.2(7);
- (2) the payment of all Transfer Taxes (if any) required to be paid on Closing;
- (3) the payment of all Cure Costs or evidence that the Cure Costs have been paid directly to the applicable counterparty shall be delivered;
- (4) the General Conveyance, duly executed by the Purchaser;
- (5) the releases and waivers referred to in Section 3.2(5) of this Agreement, duly executed by the Purchaser, in a form satisfactory to the Vendor, acting reasonably;
- (6) the Promissory Note;
- (7) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (8) the IP Assignment and Assumption Agreement, duly executed by the Purchaser;
- (9) a bring-down certificate executed by a senior officer of the Purchaser dated as of the Closing Date, in form and substance satisfactory to the Vendor, acting reasonably, certifying that (a) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the



Closing Date, and (b) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects;

- (10) the tax elections referred to in Section 3.5; and
- (11) such other agreements, documents and instruments as may be reasonably required by the Vendor to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

## ARTICLE 8 CONDITIONS OF CLOSING

**8.1 Purchaser's Conditions.** The Purchaser shall not be obligated to complete the transactions contemplated by this Agreement, unless, at or before the Closing Time, each of the conditions listed below in this Section 8.1 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. The Vendor shall take such actions, steps and proceedings as are reasonably within its control as may be necessary to ensure that the conditions listed below in this Section 8.1 are fulfilled at or before the Closing Time.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court and shall not have been vacated, set aside or stayed.

(2) *Vendor's Deliverables.* The Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 7.2 and elsewhere in this Agreement.

(3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (a) making any of the transactions contemplated by this Agreement illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(4) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.2 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(5) *No Breach of Covenants.* The Vendor shall have performed in all material respects all material covenants, obligations and agreements contained in this Agreement required to be performed by the Vendor on or before the Closing.

**8.2 Vendor's Conditions.** The Vendor shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 8.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendor, and may be waived by the Vendor, in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. The Purchaser shall take all such actions, steps and proceedings as are reasonably

within the Purchaser's control as may be necessary to ensure that the conditions listed below in this Section 8.2 are fulfilled at or before the Closing Time.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court and shall not have been vacated, set aside or stayed.

(2) *Purchaser's Deliverables.* The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents and payments contemplated in Section 7.3 and elsewhere in this Agreement.

(3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (a) making any of the transactions contemplated by this Agreement illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(4) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.1 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(5) *No Breach of Covenants.* The Purchaser shall each have performed in all material respects all material covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

**8.3 Receiver's Certificate.** When the conditions to Closing set out in Section 8.1 and Section 8.2, have been satisfied and/or waived by the Vendor or the Purchaser, as applicable, the Vendor shall (i) issue its Receiver's Certificate to the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Receiver's Certificate with the Court (and shall provide a copy of such filed certificate to the Purchaser).

## **ARTICLE 9 TERMINATION**

**9.1 Grounds for Termination.** This Agreement may be terminated on or prior to the Closing Date:

- (1) by the mutual written agreement of the Vendor and the Purchaser;
- (2) by written notice from the Purchaser to the Vendor in accordance with Section 6.5;
- (3) by the Purchaser, on the one hand, or by the Vendor, on the other hand, upon written notice to the other Parties if (i) the Approval and Vesting Order has not been obtained by August 31, 2016 (or such later date as the Parties may agree), or (ii) the Court declines at any time to grant the Approval and Vesting Order, in each case for reasons other than a breach of this Agreement by either the Purchaser, on the one hand, or the Vendor, on the other hand;
- (4) by written notice from the Purchaser to the Vendor if there has been a material breach by the Vendor of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and (i) such breach is not curable and has rendered the satisfaction of any condition

in Section 8.1 impossible by the Outside Date, or (ii) if such breach is curable, the Purchaser has provided prior written notice of such breach to the Vendor, and such breach has not been cured within ten (10) Business Days following the date upon which the Vendor received such notice;

- (5) by written notice from the Purchaser to the Vendor any time after the Outside Date, if the Closing has not occurred by the Outside Date for reasons other than as set out in Section 9.1(3), and such failure to close was not caused by or as a result of the Purchaser's breach of this Agreement;
- (6) by written notice from the Vendor to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendor, and (i) such breach is not curable and has rendered the satisfaction of any condition in Section 8.2 impossible by the Outside Date, or (ii) if such breach is curable, the Vendor has provided prior written notice of such breach to the Purchaser, and such breach has not been cured within ten (10) Business Days following the date upon which the Purchaser received such notice; or
- (7) by written notice from the Vendor to the Purchaser any time after the Outside Date, if the Closing has not occurred by the Outside Date for reasons other than as set out in Section 9.1(3), and such failure to close is not caused by or as a result of the Vendor's breach of this Agreement.

**9.2 Effect of Termination.** If this Agreement is terminated pursuant to Section 9.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections 4.3 (*As is, Where is*), 6.4 (*Transaction Personal Information*), 9.3 (*Treatment of Deposit*), 10.2 (*Expenses*), 10.3 (*Public Announcements*), 10.4 (*Notices*), 10.8 (*Amendment*), 10.12 (*Governing Law*), 10.13 (*Dispute Resolution*), 10.14 (*Attornment*), 10.15 (*Successors and Assigns*), 10.16 (*Assignment*), 10.17 (*Vendor's Capacity*) and 10.18 (*Third Party Beneficiaries*), which shall survive such termination. For the avoidance of doubt, any liability incurred by a Party prior to the termination of this Agreement shall survive such termination.

### **9.3 Treatment of Deposit.**

(1) *Retention of Deposit.* In the event that this Agreement is terminated by the Vendor pursuant to Section 9.1(6) or 9.1(7), the Deposit shall be forfeited by the Purchaser and irrevocably credited against PDI's obligations under the Debenture as a genuine estimate of liquidated damages, and not as a penalty, and the amount of the retained Deposit shall be set-off against the amount of Damages, which may be payable by the Purchaser as a result thereof.

(2) *Return of Deposit.* In the event that this Agreement is terminated pursuant to Section 9.1(1), 9.1(2), 9.1(3), 9.1(4) or 9.1(5) the Deposit shall not be credited against PDI's obligations under the Debenture and shall be returned to the Purchaser within five (5) Business Days of the date of such termination. The return of the Deposit shall be the Purchaser's sole and exclusive remedy for any termination of this Agreement.

## **ARTICLE 10 GENERAL**

**10.1 Survival.** All representations, warranties, covenants and agreements of the Vendor or

the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall merge and shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement. For greater certainty, Sections 2.2 (*Assumed Liabilities*), 2.4(4) (*Post-Closing Assignment*), 4.3 (*As is, Where is*), 6.4 (*Transaction Personal Information*), 6.7 (*Indemnity*), 6.8 (*Books and Records*), 10.2 (*Expenses*), 10.3 (*Public Announcements*), 10.4 (*Notices*), 10.8 (*Amendment*), 10.9 (*Waiver*), 10.12 (*Governing Law*), 10.13 (*Dispute Resolution*), 10.14 (*Attornment*), 10.15 (*Successors and Assigns*), 10.16 (*Assignment*), 10.17 (*Vendor's Capacity*) and 10.18 (*Third Party Beneficiaries*), shall survive Closing.

**10.2 Expenses.** Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers).

**10.3 Public Announcements.** The Vendor shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court and parties in interest in the Receivership Proceedings, and this Agreement may be posted on the Vendor's website maintained in connection with the Receivership Proceedings. Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein), the Vendor and the Purchaser shall not issue (prior to or after the Closing) any press release or make any public statement or public communication with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Parties, which shall not be unreasonably withheld or delayed, provided, however, that a Party may, without the prior consent of the other Party, issue such press release or make such public statement as may, upon the advice of counsel, be required by Applicable Law or by any Governmental Authority with competent jurisdiction including any applicable securities Laws. Notwithstanding any other provision of this Agreement, the Purchaser shall not disclose the quantum of the Purchase Price, Debenture Credit Bid Amount, Interim Receivership Obligations, Receivership Obligations or Deposit to any Person prior to the Closing without the prior written consent of the Vendor, except as required by any Applicable Law.

**10.4 Notices.**

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service, or (iii) sent by e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

(1) if to the Vendor, to:

FTI Consulting Canada Inc.  
Suite 720, 440- 2<sup>nd</sup> Avenue SW  
Calgary, AB T2P 5E9  
Attention: Jamie Engen / Brett Wilson  
Email: [jamie.engen@fticonsulting.com](mailto:jamie.engen@fticonsulting.com) / [brett.wilson@fticonsulting.com](mailto:brett.wilson@fticonsulting.com)

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

Blake, Cassels & Graydon LLP  
3500, 855 – 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4J8  
Attention: Ryan Zahara / Aryo Shalviri  
Email: [ryan.zahara@blakes.com](mailto:ryan.zahara@blakes.com) / [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

(2) if to the Purchaser, to:

Med-Life Discoveries LP  
Suite 700, 230 – 22 Street East  
Saskatoon, Saskatchewan S7K 0E9  
Attention: Doug Banzet  
Email: [d.banzet@westcapmgt.ca](mailto:d.banzet@westcapmgt.ca)

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

MacPherson Leslie & Tyerman LLP  
1500 - 410 22nd Street East  
Saskatoon SK S7K 5T6  
Attention: Todd Rosenberg  
Email: [trosenberg@mlt.com](mailto:trosenberg@mlt.com)

(2) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 5:00 p.m. Saskatchewan time on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(3) *Change of Address.* Any Party may from time to time change its address under this Section 10.4 by notice to the other Party given in the manner provided by this Section 10.4.

**10.5 Time of Essence.** Time shall be of the essence of this Agreement in all respects.

**10.6 Further Assurances.** The Vendor and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

**10.7 Entire Agreement.** Other than any confidentiality agreement, non-disclosure agreement or similar undertaking or agreement signed by the Purchaser in favour of the Vendor which remain in full force and effect, unamended by this Agreement, this Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, (including any letter of intent submitted by the Purchaser pursuant to the Sales Process). There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement. Notwithstanding the foregoing, the

2015 PSA shall remain in full force and effect and shall be unamended by this Agreement.

**10.8 Amendment.** No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

**10.9 Waiver.** A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

**10.10 Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**10.11 Remedies Cumulative.** The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

**10.12 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein.

**10.13 Dispute Resolution.** If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 9, such dispute shall be determined by the Court within the Receivership Proceedings, or by such other Person or in such other manner as the Court may direct. Without prejudice to the ability of the Vendor to enforce this Agreement in any other proper jurisdiction, the Purchaser and the Vendor irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of Saskatchewan.

**10.14 Attornment.** Each Party agrees (a) that any Legal Proceeding relating to this Agreement may (but need not) be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (b) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Court on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 10.14. Each Party agrees that service of process on such Party as provided in Section 10.4 shall be deemed effective service of process on such Party.

**10.15 Successors and Assigns.** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

**10.16 Assignment.** Prior to the issuance of the Approval and Vesting Order, the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that (a) the Purchaser shall remain liable to perform all of its obligations hereunder, and (b) the Purchaser and its assignee execute and deliver to the Vendor an assignment and assumption

agreement, in form and substance satisfactory to the Vendor, acting reasonably, evidencing such assignment. Other than in accordance with the preceding sentence, neither the Purchaser nor the Vendor may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

**10.17 Vendor's Capacity.** The Purchaser acknowledges and agrees that the Vendor, acting in its capacity as the court-appointed receiver and manager of the PDI Entities in the Receivership Proceedings, will have no Liability in connection with this Agreement whatsoever in its personal or corporate capacity or otherwise.

**10.18 Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**10.19 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

*[Remainder of page internationally left blank]*

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

**FTI CONSULTING CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC. and not in its personal or corporate capacity**

By: \_\_\_\_\_  
Name: Jamie T. Engen  
Title: Managing Director

**MED-LIFE DISCOVERIES LP, by its general partner MED-LIFE DISCOVERIES GP INC.**

By:  \_\_\_\_\_  
Name: DOUG BANZET  
Title: DIRECTOR

I have authority to bind Med-Life Discoveries GP Inc.



IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

**FTI CONSULTING CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC. and not in its personal or corporate capacity**

By:   
Name: Brett Wilson  
Title: Senior Consultant

**MED-LIFE DISCOVERIES LP, by its general partner MED-LIFE DISCOVERIES GP INC.**

By: \_\_\_\_\_  
Name:  
Title:

I have authority to bind Med-Life Discoveries GP Inc.

# **APPENDIX C**

**THIS AGREEMENT** made as of the 15<sup>th</sup> day of December A.D.  
2001.

**BETWEEN:**

**YOL BOLSUM CANADA INC.**  
P.O. Box 27005  
Saskatoon, Saskatchewan  
S7K 2B2  
(hereinafter referred to as  
the "Licensor")

OF THE FIRST PART,

- and -

**PHENOMENOME DISCOVERIES INC.**  
600 - 105 Twenty-First Street East  
Saskatoon, Saskatchewan  
S7K 0B3  
(hereinafter referred to as  
the "Licensee")

OF THE SECOND PART.

**LICENCE AGREEMENT**

**NARRATIVE**

Whereas the Licensor has developed a **Non-Targeted Complex Sample Analysis** (hereinafter "the Invention") which is presently the subject of Canadian Patent Application 2,298,181 and Patent Cooperation Treaty Patent Application PCT/CA01/00111 respectively (hereinafter referred to as "the Patents") and the Licensee wishes to acquire exclusive rights to practise the invention.

1 **LICENCE**

1.1 Licensor hereby grants to the Licensee an exclusive license to practise the Invention by providing a service of non-targeted complex sample analysis. (hereinafter the "Service").

1.2 The Licensed rights shall include the right to grant sublicenses, with the prior written consent of the Licensor, which consent may not be unreasonably withheld.

1.3 The right for the Licensee to provide the Service shall extend throughout the World for the term of the Patents.

2 PAYMENTS

2.1 In consideration for the rights granted hereunder, the Licensee shall pay to the Licensor a one time lump sum payment of two hundred thousand dollars (\$200,000.00) on or before January 31<sup>st</sup> 2002, and an annual payment payable on or before January 31 of each calendar year commencing January 31<sup>st</sup>, 2003, of one hundred thousand dollars (\$100,000.00)

2.2 The Licensee shall pay all costs associated with prosecuting the Patents and maintenance fees necessary to maintain the Patents in good standing.

2.3 The Licensee may assign its interest to a third party upon obtaining the prior written consent of Licensor (such consent may be unreasonably withheld) and upon such third party executing such documents as may be acceptable to the Licensor' legal advisors to make such third party a party to this agreement.

3 EXPLOITATION

3.1 Licensee shall during the term hereof use diligence in exploiting the Invention ensuring that adequate plant, equipment, skilled labour, and materials are devoted to the provision of the Service; provided that if there is no commercial activity by the Licensee for six months, the Licensor may, at it's option, terminate this agreement upon 60 days notice or convert this agreement to a non-exclusive license.

4 PROTECTION AND EXTENSION OF PATENT RIGHTS

4.1 The Licensor shall promptly notify the Licensee of any improvement which it has devised to the Service and the Licensee shall have an exclusive right to use the same with respect to the Service subject to the provisions contained herein.

4.2 The Licensee shall promptly notify the Licensee of any improvement which it has devised to the Service and shall, upon request, assign all rights in the improvement to the Licensor; the Licensee shall have an exclusive right to use the same with respect to the Service subject to the provisions contained herein.

4.3 In the event of any infringement of patents occurring by unauthorized persons, the Licensee shall notify the Licensor thereof, and the parties shall mutually agree upon the action to be taken. Provided that, if the parties are unable to agree, the Licensee shall be entitled to take whatever steps it deems necessary to protect its commercial interests. The Licensor shall cooperate and assist with whatever legal proceedings are ultimately commenced with respect to such infringement.

5 TERMS AND TERMINATION

5.1 This Agreement shall endure for the above mentioned term, subject to the right of termination herein set forth.

5.2 In the event that the Licensee commits a breach of any of the provisions hereof and the same is not remedied (where remediable) within the period allowed by a notice given calling on the Licensee to effect remedy (such period being specified in the notice and not being less than thirty (30) days) the Licensor may by a further notice peremptorily terminate this Agreement and the licence or licences granted thereunder.

5.3 In the event that the Licensee is wound up whether voluntarily or compulsorily or has a receiver appointed of its assets or a substantial part thereof or enters into a composition with creditors, the Licensor may terminate this Agreement forthwith.

5.4 Notwithstanding any other term of this Agreement, the Licensor shall have no right to terminate this Agreement where Dayan Goodenowe:

(a) directly or indirectly is the controlling shareholder of the licensee; and

(b) has the authority, as such controlling shareholder, and unrestricted by any shareholder agreement to the contrary, to elect the majority of directors to the board of directors; and

(c) using such authority, deliberately causes a breach of this Agreement not in good faith.

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6 NOTICES

6.1 Any notice required to be given hereunder which is sent by prepaid letter post at first class rate addressed to the last known address of the intended recipient shall be deemed to have been properly given two working days after posting in accordance with Post Office Regulations. A notice addressed to a person appointed by the intended recipient to receive notices, or addressed to a person, including a Receiver or Liquidator, judicially appointed to the intended recipient, shall be deemed to have been properly addressed.

7 ENTIRE AGREEMENT

7.1 This Agreement constitutes the entire agreement between the parties hereto and any and all previous agreements, written or oral, express or implied between the parties hereto are hereby terminated and cancelled and each of the parties hereto hereby releases and forever discharges the other of and from all manner of actions, causes of action, claims, demands whatsoever under or in respect of such agreement.

8 GOVERNING LAW

8.1 This agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

YOL BOLSUM CANADA INC.  
(Licensor)

per: DBG  
DAYAN GOODNOUGH,  
(also known as DAYAN GOODENOWE)  
President

PHENOMENOME DISCOVERIES INC.  
(Licensee)

per: JL Hyslop  
DBG

**AMENDMENT OF LICENCE AGREEMENT**

**BETWEEN:**

**YOL BOLSUM CANADA INC. (called the "Licensor")**

**AND**

**PHENOMENOME DISCOVERIES INC. (called the "Licensee")**

**WHEREAS:**

- A. The Licensor and the Licensee entered into a licence agreement dated December 15, 2001, for the licence of an invention referred to as **Non-Targeted Complex Sample Analysis** (the "Licence Agreement").
- B. The Licensor and the Licensee wish to amend the Licence Agreement in the manner set out in this Agreement.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Section 1.3 of the Licence Agreement is deleted and replaced with the following:

" 1.3 The right for the Licensee to provide the Service shall extend throughout the World for a term as follows:

(a) Where any patent is issued pursuant to either patent application described as the Patents, for the term of the patent in any country in which any such patent is issued; or

(b) Where no patents are issued pursuant to either of the patent applications described as the Patents, for a term ending December 14, 2021."

- 2. All other terms and conditions of the Licence Agreement shall remain the same.

**IN WITNESS WHEREOF** the parties hereto have duly executed and delivered this Agreement this 3<sup>rd</sup> day of April, 2002.

**YOL BOLSUM CANADA INC.**

Per: \_\_\_\_\_

*DBC*

**PHENOMENOME DISCOVERIES INC.**

Per: \_\_\_\_\_

*[Handwritten Signature]*



**SECOND AMENDMENT OF LICENCE AGREEMENT**

**BETWEEN:**

**YOL BOLSUM CANADA INC. (called the "Licensor")**

**AND**

**PHENOMENOME DISCOVERIES INC. (called the "Licensee")**

**WHEREAS:**

- A. The Licensor and the Licensee entered into a licence agreement dated December 15, 2001, for the licence of an invention referred to as **Non-Targeted Complex Sample Analysis**, which was amended in writing April 3, 2002 (the "Licence Agreement").
- B. The Licensor and the Licensee wish to further amend the Licence Agreement in the manner set out in this Agreement.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. The first paragraph in the Narrative of the Licence Agreement is deleted and replaced with the following:

" Whereas the Licensor has developed a **Non-Targeted Complex Sample Analysis** (hereinafter "the Invention") which is presently the subject of Canadian Patent Application 2,298,181, Patent Cooperation Treaty Patent Application PCT/CA01/00111, and Canadian Patent Application No. 2,381,685 (which, together with any divisions, continuations, continuations-in-part, patents issuing thereon or reissues thereof and all foreign patents and patent applications corresponding thereto, are referred to collectively as "the Patents") and the Licensee wishes to acquire exclusive rights to practise the Invention."

- 2. All other terms and conditions of the Licence Agreement shall remain the same.

**IN WITNESS WHEREOF** the parties hereto have duly executed and delivered this Agreement this 23rd day of July, 2002.

**YOL BOLSUM CANADA INC.**

Per: DBG

**PHENOMENOME DISCOVERIES INC.**

Per: [Signature]

**THIRD AMENDMENT OF LICENCE AGREEMENT**

**BETWEEN:**

**YOL BOLSUM CANADA INC.** (called the "Licensor")

**AND**

**PHENOMENOME DISCOVERIES INC.** (called the "Licensee")

**WHEREAS:**

- A. The Licensor and the Licensee entered into a licence agreement dated December 15, 2001, for the licence of an invention referred to as **Non-Targeted Complex Sample Analysis**, which was amended in writing April 3, 2002 (the "Licence Agreement").
- B. The Licensor and the Licensee wish to further amend the Licence Agreement in the manner set out in this Agreement.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Section 2.3 of the Licence Agreement is deleted and replaced with the following:

"2.3 The Licensee may assign its interest to a third party upon obtaining the prior written consent of the Licensor (such consent not to be unreasonably withheld) and upon such third party executing such documents as may be acceptable to the Licensor's legal advisors to make such third party a party to this Agreement."

- 2. Section 4.2 of the Licence Agreement is deleted and replaced with the following:

"4.2 The Licensee shall promptly notify the Licensor of any improvement which it has devised to the Service, which subject to the terms of this Agreement shall belong absolutely to the Licensee. The Licensor is hereby granted a non-exclusive, royalty-free, world-wide license to practice all such improvements for a period of 99 years. The licensed rights shall include the right to grant sublicenses, with the prior written consent of the Licensee, which consent may not be unreasonably withheld."

- 3. Section 5.3 of the Licence Agreement is deleted and replaced with the following:

"5.3 In the event that the Licensee is wound up whether voluntarily or compulsorily or has a receiver appointed of its assets or a substantial part thereof or enters into a composition with creditors, the Licensor may terminate this Agreement, and may additionally demand and receive a transfer and assignment of all improvements described in section 4.2 for the total price of \$1.00 (which right shall survive termination of this Agreement)."

4. All other terms and conditions of the Licence Agreement shall remain the same.

IN WITNESS WHEREOF the parties hereto have duly executed and delivered this Agreement this 22nd day of April, 2003.

YOL BOLSUM CANADA INC.

Per: \_\_\_\_\_

DFG

PHENOMENOME DISCOVERIES INC.

Per: \_\_\_\_\_

[Handwritten Signature]

#### FOURTH AMENDMENT OF LICENCE AGREEMENT

**BETWEEN:**

**YOL BOLSUM CANADA INC.** (called the "Licensor")

**AND**

**PHENOMENOME DISCOVERIES INC.** (called the "Licensee")

**WHEREAS:**

- A. The Licensor and the Licensee entered into a licence agreement dated December 15, 2001, for the licence of an invention referred to as **Non-Targeted Complex Sample Analysis**, which license agreement was amended in writing April 3, 2002, July 23, 2002 and April 22, 2003 (the "Licence Agreement").
- B. The Licensor and Licensee have agreed that there is a certain ambiguity in the scope of the licenses originally granted in the original licence agreement that require further clarification, as to the original intent with respect to the same.
- C. The Licensor and the Licensee wish to further amend the Licence Agreement in the manner set out in this Agreement.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Section 1.1 of the License Agreement is deleted and replaced with the following:

"1.1 Licensor hereby grants to the Licensee an exclusive license to:

- (a) use the Invention and the Patents, including, without limitation, the right to make discoveries from the Invention and the Patents, , and
  - (b) market and sell a service involving the use of the Invention and the Patents,
- (the "Service")."

- 2. Section 1.2 of the License Agreement is deleted and replaced with the following:

"1.2 Without limiting the generality of Section 1.1, the Licensed Rights shall include the grant of the exclusive right to the Licensee to grant sublicenses to third parties of all or any portion of the Licensed Rights, including the right to grant sublicenses, in relation to the Invention and the Patents to:

- (a) entities that are controlled by the Licensee within the meaning of *The Business Corporations Act* of Saskatchewan, for the purpose of using and making discoveries from the Invention; and,
- (b) entities that are not controlled by the Licensee within the meaning of *The Business Corporations Act* of Saskatchewan, with the prior written consent of the Licensor, which consent may not be unreasonably withheld.

3. A new Section 1.4 is added, as follows:

1.4 Licensor acknowledges and agrees that all data, discoveries and inventions made by Licensee by virtue of Licensee's use of, or access to, the Invention and/or the Patents shall be the sole and exclusive property of Licensee.

4. Subsection 5.4 (b) of the License Agreement is deleted and replaced with the following:

(b) has the authority, as such controlling shareholder, and unrestricted by any shareholder agreement to the contrary, to elect not less than fifty (50%) percent of the directors to the board of directors; and

5. A new Section 9 is added, as follows:

9 FURTHER ASSURANCES

9.1 Licensor and Licensee each agree that they shall execute and deliver such further documents and instruments and do all such acts and things as may be reasonably necessary or requisite to carry out the full intent and meaning of this Agreement.

6. All other terms and conditions of the Licence Agreement shall remain the same.
7. All of the within amendments are for the purposes of clarification, and accordingly are effective as of December 15, 2001.

**IN WITNESS WHEREOF** the parties hereto have duly executed and delivered this Agreement this 19th day of July, 2007.

**YOL BOLSUM CANADA INC.**

Per: DBG

**PHENOMENE DISCOVERIES INC.**

Per: [Signature]

FIFTH AMENDMENT OF LICENCE AGREEMENT

**BETWEEN:**

**YOL BOLSUM CANADA INC.** (called the "Licensor")

**AND**

**PHENOMENOME DISCOVERIES INC.** (called the "Licensee")

**WHEREAS:**

- A. The Licensor and the Licensee entered into a licence agreement dated December 16, 2001, for the licence of an invention referred to as **Non-Targeted Complex Sample Analysis**, which was amended in writing April 3, 2002, July 23, 2002, April 22, 2003, and July 19, 2007 (the "Licence Agreement").
- B. The Licensor and the Licensee wish to further amend the Licence Agreement in the manner set out in this Agreement.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Section 2.1 of the Licence Agreement is deleted and replaced with the following:

"2.1 In consideration of the rights granted hereunder, the Licensee shall pay to the Licensor a one time lump sum payment of two hundred thousand dollars (\$200,000.00) on or before January 31<sup>st</sup> 2002, and an annual payment, payable on or before January 31<sup>st</sup> of each year commencing January 31, 2003, of one hundred thousand dollars (\$100,000), to be paid in the manner set forth in Schedule A."

- 2. All other terms and conditions of the Licence Agreement shall remain the same.

**IN WITNESS WHEREOF** the parties hereto have duly executed and delivered this Agreement effective this 23rd day of July, 2007.

**YOL BOLSUM CANADA INC.**

Per: \_\_\_\_\_

*YBG*

**PHENOMENOME DISCOVERIES INC.**

Per: \_\_\_\_\_

*[Signature]*

**SCHEDULE "A" TO THE LICENCE AGREEMENT**

**PAYMENT PROVISIONS FOR LICENCE FEES**

1. In this Schedule, the following terms shall have the following meanings:
  - (a) "Class A Shares" shall refer to the Class A Shares in the capital stock of the Licensee; and
  - (b) "CRA Prescribed Rate" shall mean the prescribed interest rates payable on amounts owed to the Canada Revenue Agency.
2. The following payment provisions shall apply to the licence fees payable by the Licensee to the Licensor under the terms of section 2.1:
  - (a) With respect to the licence fees that are due and owing as of February 1, 2007, in the amount of \$650,000 (the "Outstanding Fees"):
    - (i) The Licensor shall have the right, from the date hereof until January 31, 2013, from time to time and on more than one occasion, to convert the whole or any part of the Outstanding Fees into fully paid and non-assessable Class A Shares at the conversion price(s) equal to the lowest price at which Class A Shares had been issued during the periods of time during which the debt was incurred or as otherwise specifically noted below, as follows:
      - (A) For the debt incurred in the period ending January 31, 2002 in the amount of \$200,000 the conversion price shall be the sum of \$11.68 per Class A Share using the first available issue price granted to an outside investor;
      - (B) For the debt incurred in the year ending January 31, 2003 in the amount of \$100,000, the conversion price shall be the sum of \$11.68 per Class A Share;
      - (C) For the debt incurred in the year ending January 31, 2004 in the amount of \$100,000, the conversion price shall be the sum of \$11.68 per Class A Share;
      - (D) For the debt incurred in the year ending January 31, 2005 in the amount of \$100,000, the conversion price shall be the sum of \$11.68 per Class A Share;
      - (E) For the debt incurred in the year ending January 31, 2006 in the amount of \$100,000, the conversion price shall be the sum of \$15.26 per Class A Share;
      - (F) For the debt incurred in the year ending January 31, 2007, less the amount of \$50,000 during the year equalling a net debt of \$50,000, the conversion price shall be the sum of \$22.90 per Class A Share;
    - (ii) In the event the Licensor exercises its right to convert only a portion of the Outstanding Fees, then it shall be deemed to have converted the oldest debt then still outstanding, first.
    - (iii) Until such time as the Outstanding Fees are fully converted to Class A Shares or January 31, 2013, whichever first occurs, the Outstanding Fees shall be considered to be a debt owing by the Licensee to the Licensor, without interest payable thereon, and with no right to demand payment thereon other than as described above. The licences granted under this Licence Agreement shall not be considered to be in default by reason of such outstanding debt.

- (iv) Where the Licensor does not exercise its right to convert all or any portion of the Outstanding Fees to Class A Shares as described above, on or before January 31, 2013, then the then remaining Outstanding Fees shall forthwith be paid by the Licensee to the Licensor, with no interest thereon to and including January 31, 2013.
  - (v) If the Licensee fails to pay the Licensor any part of the Outstanding Fees due and owing as of January 31, 2013, then interest shall be payable thereon calculated based on the CRA Prescribed Rate applicable to the period outstanding, (both before and after maturity, default, and judgment) calculated semi-annually, in arrears, from and including January 31, 2013 until the date of payment thereof.
- (b) With respect to the annual fees that hereafter become due and owing on January 31<sup>st</sup> of each year, beginning January 31, 2008:
- (i) The Licensor may, within 30 days of to the due date thereof, advise the Licensee as to whether it wishes to convert all or any portion of the then outstanding amount to Class A Shares.
  - (ii) Where the Licensor elects to convert all or any portion of the then outstanding amount to Class A Shares, the Licensee shall issue to the Licensor fully paid and non-assessable Class A Shares in payment of such debt at a conversion price which is the price at which Class A Shares have been last issued.
  - (iii) Any of the debt that is not converted to Class A Shares shall be payable on demand, with no interest thereon to the date of demand. The licences granted under this Licence Agreement shall not be considered to be in default by reason of such outstanding debt, unless and until a demand for payment is made.
  - (iv) If the Licensee fails to pay the Licensor any part of the debt upon demand, then interest shall be payable thereon calculated based on the CRA Prescribed Rate applicable to the period outstanding, (both before and after maturity, default, and judgment) calculated semi-annually, in arrears, from and including the date upon which payment was first due until the date of payment thereof.



# **APPENDIX D**



Bennett Jones LLP  
3400 One First Canadian Place, PO Box 130  
Toronto, Ontario, Canada M5X 1A4  
Tel: 416.863.1200 Fax: 416.863.1716

Raj S. Sahni  
Partner  
Direct Line: 416.777.4804  
e-mail: sahnir@bennettjones.com

July 13, 2016

VIA EMAIL

Phenomenome Discoveries Inc.  
204-407 Downey Road  
Saskatoon SK

C/O: FTI Consulting Canada Inc., as Court-appointed Receiver

Attn: Jamle Engen  
Jamle.engen@fticonsulting.com

and

Brett Wilson  
brett.wilson@fticonsulting.com

Dear Sirs:

We are counsel for Yolbolsum Canada Inc. ("YBCI") in respect of the receivership proceedings of Phenomenome Discoveries Inc. ("PDI"). This letter is to formally notify PDI and its Court-appointed receiver, FTI Consulting Canada Inc. (the "Receiver") that PDI is in breach of its contractual obligations with YBCI and to demand that these breaches be remedied by no later than August 15, 2016.

YBCI entered into a license agreement with PDI on December 15, 2001. The agreement was amended on April 3, 2002, July 23, 2002, April 22, 2003, July 19, 2007 and July 23, 2007 (the license agreement and all amendments thereto are collectively referred to herein as the "License"). Pursuant to section 5.2 of the License, notice is hereby given that PDI is in breach of its obligations to:

1. Pay YBCI an annual payment of \$100,000.00 on or before January 31 of each calendar year (Section 2.1). The annual payment that was due on January 31, 2016 has not been paid. YBCI hereby demands that it be paid immediately.
2. Notify YBCI of any improvement which it has devised to the Service (Section 4.2). Numerous improvements to the Service have been made. YBCI hereby demands that PDI provide YBCI with all techniques, software, databases, standard operating procedures and manuals related to these improvements as further particularized below.

### **Obligation to Pay**

There should be no dispute that the annual payment that was due on January 31, 2016 has not been paid. That payment came due after the commencement of the Interim Receivership pursuant to the Order of the Saskatchewan Court of Queen's Bench (the "Court") Issued on December 4, 2015 (the "Interim Receivership Order"). The Interim Receivership was continued as a Receivership pursuant to the Order of the Court issued on February 26, 2016 (the "Receivership Order"). Accordingly, it is YBCI's position that it is a post-filing claim that must be paid pursuant to the License and which is not stayed by the Interim Receivership Order or the Receivership Order. It would be inequitable and contrary to insolvency law and principles for PDI and its Receiver to have the continuing use and benefit of the License after the commencement of the Receivership without payment therefor.

### **Improvements**

The rights that were licensed from YBCI to PDI were defined in the License as "the Invention". In the second amendment to the License dated July 23, 2002 the narrative of the agreement was amended to include:

Whereas the Licensor has developed a **Non-Targeted Complex Sample Analysis** (hereinafter "the Invention") which is presently the subject of Canadian Patent Application 2,298,181, Patent Cooperation Treaty Patent Application PCT/CA01/00111, and Canadian Patent Application No. 2,381,685 (which, together with any divisions, continuations, continuations-in-part, patents issued thereon or reissues thereof and all foreign patents and patent applications corresponding thereto, are referred to collectively as "the Patents") and the Licensee wishes to acquire exclusive rights to practice the Invention.

The grant of the license is set out in section 1.1, as set out in the fourth amendment to the agreement dated July 19, 2007:

- 1.1 Licensor hereby grants to the Licensee an exclusive license to:
- a) Use the Invention and the Patents, including, without limitation, the right to make discoveries from the Invention and the Patents, and
  - b) Market and sell a service involving the use of the Invention and the Patents,
- (the "Service")

Section 4.2 of the License placed a positive obligation on PDI to notify YBCI of any Improvements to the Service. As set out in the third amendment to the agreement:

4.2 The Licensee shall promptly notify the Licensor of any Improvements which it has devised to the Service, which subject to the terms of this Agreement shall belong exclusively to the Licensee. The Licensor is hereby granted a non-exclusive, royalty-free, world-wide license to practice all such improvements for a period of 99 years. The licensed rights shall include the right to grant

sublicenses, with the prior written consent of the Licensee, which consent may not be unreasonably withheld.

On its face, "improvements" has a broad meaning. This would include, but not be limited to, all techniques, software, databases, standard operating procedures and manuals arising from PDI's exploitation of the Patents and the Invention.

In general terms, the Invention relates to analysis of biological samples using mass spectroscopy. The technology is applicable to the study of human disease. It was and remained the intent of both YBCI and PDI that the Invention would be improved for application to the study of human diseases. Under the terms of the License, YBCI was to be notified of and have a license to all of these improvements.

The "improvements" made by PDI, which require notice to YBCI and are subject to a non-exclusive license, include at least the following:

1. Various improvements to the original extraction conditions. These improvements can be found in the various Standard Operating Procedures (SOPs) that are used by PDI to extract samples.

ACTION: Please provide YBCI with all SOPs related to the sample preparation techniques used by PDI to process complex samples including blood, plasma, serum, and various tissues.

2. Various improvements to the operational parameters of the Fourier Transform Ion Cyclotron Mass Spectrometers ("FTMS") as warranted by changes to the manufacturer's hardware and software.

ACTION: Please provide YBCI with all SOPs related to the operational techniques used by PDI to operate the FTMS.

3. Various improvements to the collection and storage of data derived by FTMS instruments. Specialized software programs have been developed by PDI to improve the efficiency and accuracy of collecting and storing FTMS data.

ACTION: Please provide YBCI with all software codes, software repositories, executable files, SOPs, and user manuals related to the collection and storage of data generated from the FTMS.

4. Various Improvements to the Interpretation and use of data generated from the Invention. Specifically,
  - a. Method of Visualizing Non-Targeted Metabolomic Data Generated From Fourier Transform Ion Cyclotron Resonance Mass Spectrometers. This improvement is the subject of PCT application PCT/CA 03/00389 and describes an automated way to organize the data generated from FTMS and other mass spectrometers.
  - b. DiscovaMetrics. This is a software program that was developed to improve the ability and efficiency of scientists to identify the metabolomics differences between various groups of biological samples that are specific to a particular variable. For example, when comparing colon cancer patients versus healthy controls, what metabolic differences are associated with

sex, or age, or drug treatment and what metabolic differences are associated with colon cancer.

ACTION: Please provide YBCI with all software codes, software repositories, executable files, SOPs, and user manuals related to the Interpretation of data generated from the FTMS and the generation of metabolomics databases from the data generated from the Invention.

5. Diagnosis of disease by FTMS. PDI improved upon the use of the FTMS technology and data to develop disease-specific databases from the FTMS data generated using the Invention. Diseases or the risk of disease could then be diagnosed by using one or more of the metabolites described in the database. The uses of these FTMS databases to diagnose disease are the subject of various internal research projects and patents filed by PDI. All of these projects and patents require the use of the invention and the cumulative improvements to the Service as described above to execute.

ACTION: Please provide YBCI with all disease-specific databases created by PDI through the use of the Invention.

6. Diagnosis of disease by triple-quad mass spectrometry (TQMS). The disease specific databases developed using the Invention were further improved by determining the smallest number of metabolites required to be within a disease-specific database for the differential diagnosis of human disease. The use of this reduced subset of metabolites to diagnose disease was further improved by developing alternative mass spectrometry methods to detect and quantify the metabolites as described in the Invention. Such improvements enabled use of a mass spectrometer that is less expensive than a FTMS. In addition, PDI was able to identify specific MS/MS transitions that behaved equivalently to the FTMS data. These improvements to the FTMS detection methods are the subject of various internal research projects and patents. All of these projects and patents require the use of the sample preparation technology utilized by the FTMS technology.

ACTION: Please provide YBCI with all improvements related to the use of the disease-specific databases including MS/MS data for key metabolites, alternative mass spectrometry methods (such as LC-MS/MS methods) used to analyze metabolites contained within the FTMS databases created by PDI through the use of the Invention. In addition, please provide all software codes, software repositories, executable files, SOPs, and user manuals related to the Interpretation of data generated from alternative mass spectrometry technologies.

7. Improvements on market acceptability of the Service. The market acceptability of certain metabolomics tests offered by PDI as part of the Service is improved by the development of therapies designed to complement the diagnosis of disease risk, most notably the diagnosis of the risk of dementia by using the Service. The utility of the Service is greatly improved by being able to offer therapeutic restoration technologies that can restore the metabolic imbalance detected by the Service.

ACTION: Please provide YBCI with all therapeutic restoration technologies developed by PDI to be used in conjunction with the Service. Specifically, please provide YBCI with all data related to the synthesis,

formulation, route of administration, pharmacokinetic and pharmacodynamics studies, biological activity studies in animal models and proposed clinical trial protocols

YBCI requests that the annual payment and above materials be provided to it by PDI by no later than August 15, 2016.

#### **Sale Process**

In the Sale Process Information Memorandum posted on the Receiver's website, we note that no reference is made to the License and YBCI's interests in the assets that are being sold by the Receiver, including the improvements. As you are aware, section 2.3 of the License requires YBCI's prior written consent for the assignment by PDI of its interests to a third party. In addition, pursuant to section 5.3 of the License, YBCI is currently in a position to terminate the License and demand and receive a transfer and assignment to YBCI of all improvements described in section 4.2 of the License. YBCI has been cooperating with the Receiver to assist it in trying to maximize value for all stakeholders, including PDI's creditors; however YBCI expressly reserves all of its rights and remedies with respect to the License and otherwise. To ensure no misunderstanding by bidders as to the nature of the interests they are bidding on and avoid future conflicts on these issues, YBCI is of the view that the Receiver should make bidders aware of YBCI's rights under the License.

Yours truly,



*for*: Raj S. Sahni

# **APPENDIX E**



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
865 - 2nd Street S.W.  
Suite 3500, Bankers Hall East Tower  
Calgary AB T2P 4J8 Canada  
Tel: 403-260-9600 Fax: 403-260-9700

August 15, 2016

Ryan Zahara  
Dir: 403-260-9628  
ryan.zahara@blakes.com

VIA E-MAIL  
PRIVILEGED & CONFIDENTIAL

Reference: 79294/11

Raj Sahni  
Bennett Jones LLP  
3400, One First Canadian Place,  
Toronto, ON, M5X 1A4

**RE: Response to Correspondence dated July 13, 2016 regarding Yolbosum Licence Agreement**

Dear Mr. Sahni:

As you are aware, we act for FTI Consulting Canada Inc., the court-appointed receiver (the "**Receiver**") of the property of Phenomenome Discoveries Inc. ("**PDI**") and Phenomenome Laboratory Services Inc. We write in respect of Yolbosum Canada Inc.'s ("**YBCI**") correspondence dated July 13, 2016 (the "**Letter**") regarding the licence agreement between YBCI and PDI dated December 15, 2001 and amended on April 3, 2002, July 23, 2002, April 22, 2003, July 19, 2007 and July 23, 2007 (collectively, the "**Licence**").

**One of the Patent Applications has become abandoned**

It has come to the Receiver's attention that Canadian patent application no. 2381685 referred to in the Licence has become abandoned (the "**Dead Application**"). Accordingly, it is the position of the Receiver that the abandonment of the Dead Application effectively terminated any obligation on PDI to notify YBCI of any "improvements" made thereafter to the invention described and claimed in the Dead Application.

Additionally, YBCI's demand that the Receiver provide it with all techniques, software, databases, standard operating procedures and manuals related to PDI's "improvements" to the Service, as particularized in the Letter, is a clear attempt by YBCI to exercise its rights under section 4.2 of the Licence. It is the Receiver's position that paragraphs 11 and 13 of the receivership order dated February 26, 2016 (the "**Receivership Order**") expressly prevents YBCI from exercising its rights under the Licence in respect of PDI, its Property (as defined in the Receivership Order) or the Receiver. As a result, the Receiver will not comply with YBCI's demand to produce the materials under section 4.2 of the Licence.

**YBCI's definition of improvements is too broad**

The Receiver is also of the opinion that YBCI's interpretation of the undefined term "improvement" in section 4.2 and 5.3 of the Licence is too broad and is not supported by the circumstances surrounding the entering into of the Licence or the terms of the Licence. In fact, YBCI seems to include any data, discoveries and inventions derived from the Patent or Invention (the "**Discoveries**") by PDI into the term "improvement".

As particularized in the Letter, YBCI has effectively alleged that PDI has made improvements to: (i) things used by the Invention (e.g. sample preparation techniques to improve the preparation of complex samples

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that are used by the Invention), (ii) things used in the Invention (e.g. operational parameters for improved operation of the mass spectrometer), and (ii) things generated from the Invention (e.g. improved techniques to interpret and store data generated from the Invention).

The Receiver is of the view that the alleged definition of "improvements" set out in the Letter by YBCI is actually more accurately referencing "Discoveries". The definition of "improvements" in the Licence is narrow and limited to direct improvements to the Service rather than any of the Discoveries made or developed by PDI as a result of its use, or access to, the Patents or the Invention. The Licence does not put any obligation on PDI to provide notice or information pertaining to any Discoveries to YBCI and the Receiver does not intend to do so.

#### **The Licence is not being assigned**

The purchaser of PDI's assets has advised that it is not seeking an assignment of the Licence. The Receiver has been advised that the Licence is not necessary for the operation of the purchased assets and has not been used by PDI for the past two years.

Pursuant to section 1.4 of the Licence, all Discoveries made by PDI by virtue of the use of, or access to, the Invention and/or Patents are the exclusive property of PDI. Further, under section 4.2 of the Licence, any improvements made to the Service are also the exclusive property of PDI (collectively, the "IP Property").

It is Receiver's position that title to, and ownership of, the IP Property vested in PDI at the time of discovery or creation and it is the Receiver's intention to seek a vesting order to convey certain of PDI's property, including its interest in the IP Property, to the purchaser free and clear of the contractual rights granted to YBCI under section 4.2 of the Licence.

Since the Receiver is not seeking to convey PDI's interest in the Licence, it is the Receiver's position that it does not need to secure the consent of YBCI under section 2.3 of the Licence to convey PDI's interest in the IP Property or the remaining assets to the purchaser.

#### **The payment of the annual fee**

Any amounts outstanding to YBCI under the Licence that arose prior to the date of the Receivership Order will be dealt with on any application by the Receiver for a distribution of funds in accordance with the priority of creditors to those funds that are received from the sale of the property.

#### **YBCI is stayed from terminating the Licence**

Any attempt by YBCI to terminate the Licence under section 5.3 of the Licence is expressly stayed by virtue of paragraph 11, 13 and 14 of the Receivership Order. YBCI may advance a claim against any sale proceeds of the assets of PDI for any damages it suffers as a result of the stay of its rights under the Licence or it may bring an application to lift the stay of proceedings.



We trust that the foregoing has addressed the concerns raised in the Letter.

Yours truly,

Ryan Zahara

CHNG

Cc: Client

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