

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS'*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

APPLICANTS

**MOTION RECORD OF THE APPLICANTS  
(Motion for Approval of Asset Purchase Agreement with  
Confort Expert Inc. in respect of Home Improvements Business Assets),  
returnable October 4, 2017)**

September 29, 2017

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923

Tracy Sandler LSUC# 32443N  
Tel: 416.862.5890

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949

Lawyers for the Applicants

**TO: SERVICE LIST**

**TABLE  
OF  
CONTENTS**

## TABLE OF CONTENTS

### **Tab Document**

- 1 Notice of Motion dated September 29, 2017
- 2 Affidavit of Billy Wong, sworn September 28, 2017
  - Exhibit "A" Branded Concession Agreement
  - Exhibit "B" Amendment #1 to the Branded Concession Agreement
  - Exhibit "C" Amendment #2 to the Branded Concession Agreement
  - Exhibit "D" Sample Lease Agreement
  - Exhibit "E" Redacted Copy of the APA Agreement
  - Exhibit "F" Website Notice
  - Exhibit "G" Customer Notice
- 3 Draft Approval and Vesting Order
- 4 Proposed Assignment Order

**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

Applicants

**NOTICE OF MOTION  
(Motion for Approval of Asset Purchase Agreement with  
Confort Expert Inc. in respect of Home Improvements Business Assets)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 4, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order (the “**Approval and Vesting Order**”) substantially in the form attached to the Motion Record, *inter alia*:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

- (b) approving the Asset Purchase Agreement (the “**APA**”) entered into as of September 28, 2017 between Sears Canada Inc. (“**Sears Canada**”) and Confort Expert Inc. (“**Confort**”), and vesting Sears Canada’s right, title and interest in and to the Purchased Assets (as defined in the APA) in Confort; and
  - (c) sealing from the public record certain commercially-sensitive information and documents in respect of the APA (as described below).
2. An Order (the “**Assignment Order**”) substantially in the form attached to the Motion Record, *inter alia*, authorizing and approving the assignment to Confort of the Assumed Contracts (as defined in the APA); and
  3. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated;
2. FTI Consulting Canada Inc. was appointed to act as the Monitor (the “**Monitor**”) in the CCAA proceeding;

**Approval and Vesting Order**

3. On July 13, 2017, the Court approved a process (the “**SISP**”) by which BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor sought bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;

4. On September 28, 2017, Sears Canada entered into the APA, in which Sears Canada has agreed to sell to Confort substantially all of the assets associated with three businesses currently provided under various Sears Canada Home Improvements brands, namely the Sears Oil Services business, the Sears Heating and Cooling business, and the Sears Duct Cleaning Services business (the “**Home Improvements Business**”), in certain Designated Markets.

5. Confort has been operating the Home Improvements Business on Sears Canada’s behalf in the Designated Markets for the past several years.

6. The assets that Confort is acquiring consist principally of the customer list and contracts for the Home Improvements Business in these Designated Markets, and related rental equipment. The transaction is intended to result in a seamless continuation of service for Home Improvements Business customers, while maximizing the value of these assets for the benefit of Sears Canada’s stakeholders;

7. The consideration to be received in the transaction is fair and reasonable;

8. The process leading to the APA was fair and reasonable in the circumstances and was approved by the Monitor;

9. The APA is in the best interests of the Applicants and their stakeholders;

10. The relief sought on this motion is supported by the Monitor;

11. The debtor-in-possession credit agreements (“**DIP Agreements**”) require that the Net Proceeds of any Disposition (both as defined in the DIP Agreements) shall be applied promptly, and in any event no later than three business days after receipt thereof, to prepay the Obligations (as defined in the DIP Agreements) in the priority provided for in the DIP Agreements;

**Assignment Order**

12. Under the terms of the APA, it is a condition of closing that the Court grant an order authorizing and approving the assignment to Confort of the Assumed Contracts (as defined in the APA);

13. The Assumed Contacts consist, in effect, of Sears Canada's contracts with customers in respect of the Home Improvements Business in the Designated Markets, including lease agreements and maintenance servicing agreements, which agreements Confort has been administering and servicing on Sears Canada's behalf;

14. The customer contracts do not contain any limitation on Sears Canada's ability to transfer or assign the agreement to a third-party;

15. There over 50,000 customers of the Home Improvements Business;

16. Given the number of customers, Sears Canada did not believe it would be feasible or economical to notify each of these customers individually;

17. In conjunction with serving motion materials on the service list, Sears Canada will post a notice on its website at [www.searshomeimprovements.ca](http://www.searshomeimprovements.ca), providing notice to customers of the motion to approve the APA and the Assignment Order. The notice will also be posted on the Monitor's website for the Sears Canada CCAA proceedings;

18. The Monitor has indicated that, based on its understanding that customer consent to assignment of these contracts is not required, and as Confort has been operating the Home Improvements Business on Sears Canada's behalf (including customer communications), the



posting of notice on the Sears Home Improvements website and on the Monitor's website is a reasonable approach to notifying customers of the proposed transaction in the circumstances;

19. The parties have agreed that Confort shall also send, or cause to be sent, as part of Confort's first invoice delivery to customers following the closing of the transaction, or by a specific mailing (in any event not later than 75 days after the issuance of the Approval and Vesting Order), a customer notice, notifying customers of the transaction;

20. The notice confirms that customer contracts will remain in full force and effect and that all services will continue to be provided to the customer in the normal course;

#### **Sealing Order**

21. The APA contains confidential and commercially sensitive information, including the Purchase Price, which, if made public, would be materially prejudicial to Sears Canada and detrimental to the SISP if the proposed transaction is not completed and the Home Improvements Business assets must be the subject of further marketing efforts;

22. The Monitor will include the Purchase Price in a Confidential Appendix to the Monitor's Report;

23. There are no reasonable alternative measures to sealing this information from the public record;

24. The salutary effects of sealing this information outweigh the deleterious effects of doing so;

25. It is in the best interests of the Applicants and their stakeholders that the requested relief be granted;

26. The provisions of the CCAA, including sections 11.3 and 36 thereof, and the inherent and equitable jurisdiction of this Honourable Court;

27. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

28. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

1. The Affidavit of Mark Caiger sworn September 28, 2017 and the exhibits attached thereto;
2. The Affidavit of Billy Wong sworn September 28, 2017 and the exhibits attached thereto;
3. The Third Report of the Monitor (to be filed); and
4. Such further and other evidence as counsel may advise and this Court may permit.

September 29, 2017

**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman (LSUC# 44066M)  
Jeremy Dacks (LSUC# 41851R)  
Tracy Sandler (LSUC# 32443N)  
Karin Sachar (LSUC# 59944E)

Tel: (416) 362-2111  
Fax: (416) 862-6666

Lawyers for the Applicants

**TO: SERVICE LIST**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**NOTICE OF MOTION**

(Motion for Approval of Asset Purchase Agreement with Confort Expert Inc.  
in respect of Home Improvements Business Assets)

**OSLER, HOSKIN & HARCOURT, LLP**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923

Tracy Sandler LSUC# 32443N  
Tel: 416.862.5890

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Fax: 416.862.6666

Lawyers for the Applicants

**TAB 2**

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

APPLICANTS

**AFFIDAVIT OF BILLY WONG**  
(Sworn September 28, 2017)

**(Motion for Approval of Asset Purchase Agreement with Confort Expert Inc.)**

I, Billy Wong, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Executive Vice President and Chief Financial Officer of the Applicant Sears Canada Inc. ("**Sears Canada**"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with members of the Sears Canada's senior management team, Sears Canada's legal, financial and other advisors, and representatives of FTI Consulting Canada Inc. (the "**Monitor**").
2. This affidavit is being sworn in support of a motion seeking, among other things:

- (a) an Approval and Vesting Order, substantially in the form attached to the Motion Record, approving the Asset Purchase Agreement (the “**APA**”) dated September 28, 2017 between Sears Canada Inc. (“**Sears Canada**”) and Confort Expert Inc. (“**Confort**”), and vesting in Confort all right, title and interest of Sears Canada in and to the Purchased Assets (as defined in the APA), and
- (b) an Assignment Order, substantially in the form attached to the Motion Record, authorizing and approving the assignment to Confort of the Assumed Contracts (as defined in the APA).

3. This Affidavit should be read in conjunction with the Affidavit of Mark Caiger sworn September 28, 2017, which describes in more detail the sales efforts undertaken by Sears Canada and BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) pursuant to the Court-approved Sale and Investment Solicitation Process (the “**Sale Process**” or “**SISP**”), which efforts resulted in, among other things, the APA which is the subject of this motion.

4. Capitalized terms not otherwise defined in this affidavit have the meaning provided in the APA.

### **Background Regarding the Transaction**

5. This motion seeks the approval of a transaction whereby Confort will acquire substantially all of the assets associated with three businesses currently provided under various Sears Canada Home Improvements brands, namely the Sears Oil Services business, the Sears Heating and Cooling business, and the Sears Duct Cleaning Services business (together, the “**Home Improvements Business**”), in certain “Designated Markets” (as described further below). Confort has been operating the Home Improvements Business on Sears Canada’s behalf in the Designated Markets for the past several years through its own workforce. The assets that it is acquiring consist

principally of the customer list and contracts for this business, and related rental equipment. Accordingly, the transaction is intended to result in a seamless continuation of service for Home Improvements Business customers, while maximizing the value of these assets for the benefit of Sears Canada's stakeholders.

6. More particularly, effective as of September 9, 2013, Confort and Sears Canada entered into a Branded Concession Agreement (as amended from time-to-time, the "BCA"), whereby Confort acquired an exclusive license to operate the Sears Oil Services business (being part of the Home Improvements Business) and to sell products and services to customers under the brand name "Sears Oil Services/Produits et services de chauffage au mazout Sears" in the "Designated Markets" of Quebec, Ontario, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador. In exchange for these rights, Confort provides Sears Canada with monthly commission payments. Confort also receives various maintenance services and administrative fees from Sears Canada. A copy of the BCA is attached as Exhibit "A."

7. The products and services provided under the Sears Oil Services business by Confort on Sears Canada's behalf pursuant to the BCA include: (i) the sale or rental of residential heating furnaces, heat pumps and hot-water tanks and heaters powered in whole or in part by fuel-oil (the "Oil Equipment"); (ii) installation of Oil Equipment; (iii) services to maintain Oil Equipment (including parts and labour, cleaning and tune-up services) ("Oil Equipment Maintenance Services"), and (iv) contracts with customers for Oil Equipment Maintenance Services. In addition, with respect to Sears customers who own, lease or rent Oil Equipment, the Sears Oil Services business provides conversion to "Non-Oil Equipment" (residential heating equipment powered entirely by non fuel-oil energy), including installation, servicing and maintenance, and customer contracts in respect of the same.

8. On August 15, 2014, the BCA was amended to provide Confort with the right to operate the Sears Heating and Cooling business (being part of the Home Improvements Business), on Sears Canada's behalf under the brand name "Sears Heating and Cooling/Produits de chauffage et de climatisation Sears" in the "Designated Markets" of Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador. The effect of the amendment was to provide Confort with the right to provide sale, rental, installation, maintenance and contractual services in respect of stand-alone air conditioners to Sears Oil customers or Sears Heating and Cooling customers, as well as sale, rental, installation, maintenance and contractual services in respect of branded, residential heating and cooling equipment (including furnaces and heaters fueled by either natural gas, propane or electricity and heat pumps, central and mini-split air conditioning systems, plus non-branded hot water heater storage tanks and tankless water heating) purchased from Sears-approved manufactures, to any customer who was interested in such a purchase. A copy of Amendment #1 to the Branded Concession Agreement is attached as Exhibit "B".

9. On December 8, 2014, the BCA was further amended to provide Confort with the right to operate the Sears Duct Cleaning business on Sears Canada's behalf under the brand name "Sears Duct Cleaning Services/Services de nettoyage de conduits Sears", which includes providing duct cleaning and ductless air conditioning cleaning services to residential customers and duct cleaning services to commercial customers, in each case in certain "Designated Territory" in Quebec. A copy of Amendment #2 to the Branded Concession Agreement is attached as Exhibit "C".

10. There are over 50,000 customers of the Home Improvements Business in Canada who lease equipment or otherwise avail themselves of products or services (for example, maintenance services) offered by Confort pursuant to the BCA. A sample lease agreement is attached as Exhibit "D". Although the agreement is made with Sears Canada, Confort administers the agreement



(including billing), provides services thereunder and, pursuant to the fee structure set forth in the BCA, receives the majority of the economic benefits associated with the contract. There is no restriction in the lease agreement on Sears Canada's ability to transfer or assign the agreement to a third-party.

### **Background Regarding the Sale Process**

11. On July 13, 2017, the CCAA Court granted the Applicant's request for an order approving the Sale Process that would be conducted by Sears Canada's Sale Advisor under the supervision of the Monitor and the Special Committee.

12. The purpose of the Sale Process was to seek out proposals for the acquisition of, or an investment in, Sears Canada's business, property and/or leases, and to implement one or a combination of such proposals with the object of maximizing value for the benefit of Sears Canada's stakeholders.

13. The Caiger Affidavit provides details regarding the steps that were taken to market and solicit interest in Sears Canada's assets pursuant to the SISP, including the Home Improvements Business.

14. I understand from Mr. Caiger and believe that as part of that Sale Process, Confort submitted a bid for the Home Improvements Business in advance of the bid deadline. I am advised by Mr. Caiger and believe that negotiations ensued with Confort in respect of the financial and legal aspects of its bid, draft documents were exchanged by the parties, and follow up discussions were held as necessary. As a result of these negotiations, and after considering Confort's offer and alternatives available, the Sale Advisor recommended to the Special Committee, and the Special Committee subsequently recommended to the Board, that Sears Canada enter into a transaction with Confort in respect of the Home Improvements Business assets. After carefully considering

Confort's offer, including being satisfied that the Purchase Price being offered is fair and reasonable, the Board determined that Confort's offer was in the best interests of the Applicants and their stakeholders.

15. It is my understanding that the Monitor approved the process leading up to the proposed transaction and the terms of the APA, and supports the Applicants' motion seeking approval of the Approval and Vesting Order and the Assignment Order.

### **The Asset Purchase Agreement**

16. A redacted copy of the APA is attached as Exhibit "E". I understand from the Monitor that the Purchase Price is included with the Confidential Appendix to the Monitor's Report that will be filed separately in connection with this motion. In the view of the Applicants and the Sale Advisor, the Purchase Price constitutes confidential information and general disclosure of such information could be materially prejudicial to the Applicants in connection with the SISP generally, and in connection with any further marketing of the Home Improvements Business assets in particular, in the event the proposed transaction does not proceed to close as anticipated. As such, this information has been redacted in the version of the APA that is attached as Exhibit "E" to this Affidavit, and the Applicants are requesting that a sealing order be granted with respect to the Confidential Appendix.

17. Among other things, the APA provides for the following:

- (a) Confort will pay the Purchase Price in cash and by the assumption of the Accrued Liabilities.
- (b) Confort has paid a Deposit equal to 10% of the Purchase Price to the Monitor to be held in trust in an interest-bearing account in accordance with the terms of the Sale

Process. On Closing, the Deposit and all earnings thereon will be paid to Sears Canada and applied to the Purchase Price. If the Closing does not occur because of any reason pertaining to Confort, the Deposit will be forfeited to Sears Canada for the expenses incurred in connection with the transaction and the delay caused to Sears Canada's efforts to sell the Purchased Assets;

- (c) Confort has represented that it has the financial ability to close the transaction, including having undrawn committed revolving credit facilities which are and will be sufficient to allow it to pay the Purchase Price;
- (d) on the Closing Date, Confort will acquire all of Sears Canada's rights, title and interest in and to the Purchased Assets on the terms and conditions set out in the APA. The Purchased Assets are defined, in effect, as all of the assets, property and undertaking owned or used or held for use by Sears Canada exclusively in connection with the Home Improvements Businesses and consist, in principal, of Assumed Contracts, Rented Equipment, Accounts Receivable, prepaid expenses, goodwill, customer and supplier lists, and other business records;
- (e) Confort will not acquire certain Excluded Assets, which include, among other assets, Cash and Cash Equivalents, fixed assets and equipment, contracts other than the Assumed Contracts, corporate records, and Intellectual Property;
- (f) Confort agrees that it will, as and from the Closing Time, pay, discharge, and perform certain obligations and liabilities of Sears Canada with respect to the Acquired Business or the Purchased Assets (other than the Excluded Liabilities) (the "**Assumed Liabilities**"), including, among other things, all obligations under

Assumed Contracts (to the extent first arising on or after the Closing Time) and all Cure Costs (relating to the Assumed Contracts);

- (g) subject to the terms of the APA, Confort is purchasing, accepting and assuming the Purchased Assets on an “as is, where is” basis;
- (h) the BCA will be terminated and of no further force or effect as of the Closing Time, provided however that certain provisions thereof, namely Articles 1 (Interpretation) and 18 (Indemnity and Limitation of Liability), and Sections 22.1 (Surrender), 22.2 (Withholding of Remittance) and 22.3 (Disengagement Costs) shall survive indefinitely and Article 15 of the BCA (Trademark License) will survive for a period of 75 days from and after the Closing Date;
- (i) the APA and transaction contemplated therein is subject to the Court issuing the proposed Approval and Vesting Order and the Assignment Order; and
- (j) the Closing will take place no later than five business days after the conditions provided by Article 6 of the APA have been satisfied or such later date as provided by the APA.

18. Sears Canada’s agreements with customers in respect of the Home Improvements Business do not contain any limitation on Sears Canada’s ability to transfer or assign the agreements. However, given that the proposed Assignment Order will approve the assignment to Confort of all of Sears Canada’s contracts with customers in respect of the Home Improvements Business in the Designated Markets, including lease agreements and maintenance and servicing agreements, the parties, in consultation with the Monitor, are proposing to take a number of steps to notify customers of the transaction. More particularly, in conjunction with serving motion materials on

the service list, Sears Canada will post a notice on its website at [www.searshomeimprovements.ca](http://www.searshomeimprovements.ca), in the form attached as Exhibit “F”, providing notice to customers of the motion to approve the proposed transaction and providing a link to the motion materials. This notice will also be posted on the Monitor’s website for the Sears Canada CCAA proceedings under the section “Sale and Investment Solicitation Process”. As there over 50,000 customers for the Home Improvements Business, Sears Canada did not believe it would be feasible or economical to notify each of these customers individually. The Monitor has indicated that, based on its understanding that customer consent to assignment of these contracts is not required, and as Confort has been operating the Home Improvements Business on Sears Canada’s behalf (including customer communication), the posting of notice on the Sears Home Improvements website and on the Monitor’s website is a reasonable approach to notifying customers of the proposed transaction in the circumstances.

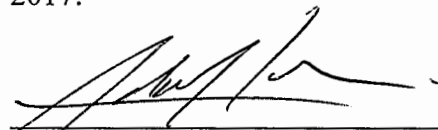
19. Further, the parties have agreed that the form of Approval and Vesting Order shall provide that Confort shall send, or cause to be sent, as part of Confort’s first invoice delivery to customers following the Closing or by specific mailing (in any event not later than 75 days after the issuance of the Approval and Vesting Order) a customer notice, in the form attached as Exhibit “G”, notifying customers of the transaction. The notice confirms that customer contracts will remain in full force and effect and that all services will continue to be provided to the customer in the normal course. Given that Confort has been operating the Home Improvements Business for several years on Sears Canada’s behalf, the only change to the customer will be that his or her contract will now be exclusively with Confort, and there will be no interruption in service. Further, the notice confirms that customers may terminate their agreements in accordance with the termination provisions therein.

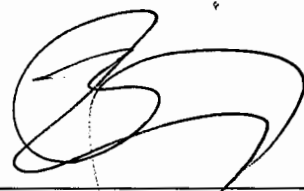
20. The proposed Approval and Vesting Order provides that the Monitor will distribute any net proceeds from the Transaction (“**Net Proceeds**”) to repay amounts owing under the DIP ABL Credit Agreement or the DIP Term Credit Agreement after filing the Monitor’s Certificate (a “**Distribution**”). Any Distribution will be made free and clear of all Claims and Encumbrances. If all amounts owing under the DIP Credit Agreements have been repaid, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court.

**Conclusion**

21. For all the foregoing reasons, the Applicants believe that the approval of the APA is in the best interests of the Applicants and their stakeholders.

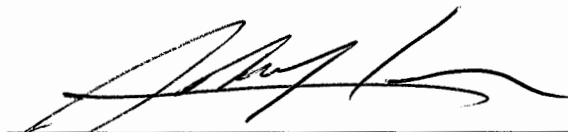
SWORN BEFORE ME at the City of Toronto,  
in the Province of Ontario, on September 28,  
2017.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
Adam Hirsh.

  
\_\_\_\_\_  
Billy Wong

**TAB A**

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**



---

A Commissioner for taking Affidavits



# Branded Concession Agreement

---

[Sears Oil Services]

|   |    |
|---|----|
| ARTICLE 1. INTERPRETATION .....                             | 7  |
| 1.1 Definitions.....  | 7  |
| 1.2 Schedules.....  | 14 |
| 1.3 Interpretation .....                                    | 14 |
| ARTICLE 2. TERM .....                                       | 15 |
| 2.1 Initial Term.....                                       | 15 |
| 2.2 Renewal Terms .....                                     | 16 |
| 2.3 Overholding .....                                       | 16 |
| ARTICLE 3. GRANT OF CONCESSION .....                        | 16 |
| 3.1 Grant of Concession.....                                | 16 |
| 3.2 Use of Brand Name .....                                 | 16 |
| 3.3 Other Services: Maintenance Services .....              | 16 |
| ARTICLE 4. PRODUCTS AND SERVICES.....                       | 17 |
| 4.1 Assortment of Products and Services .....               | 17 |
| 4.2 Quality of Products and Services .....                  | 17 |
| 4.3 Pricing of Products and Services.....                   | 17 |
| ARTICLE 5. ADVERTISING, MARKETING AND PROMOTIONS .....      | 17 |
| 5.1 Licensee's Marketing Commitment .....                   | 17 |
| 5.2 Promotion of Brand Name and Sears Credit Services ..... | 18 |
| 5.3 Joint Marketing .....                                   | 18 |
| 5.4 Sears Rewards Program .....                             | 18 |
| 5.5 Participation in Sears Advertising Vehicles .....       | 18 |
| 5.6 Telemarketing Solicitation .....                        | 18 |
| 5.7 Internet Solicitation.....                              | 19 |
| 5.8 Concession Website.....                                 | 19 |
| 5.9 Marketing Plan .....                                    | 19 |
| 5.10 Marketing Agencies.....                                | 19 |
| 5.11 Advertising Approval .....                             | 20 |
| ARTICLE 6. CUSTOMER PAYMENTS AND CREDIT.....                | 20 |
| 6.1 Tender.....   | 20 |
| 6.2 Promotion of Sears Card .....                           | 20 |
| 6.3 Cash.....   | 20 |
| 6.4 Gift Cards and Merchandise Certificates .....           | 20 |
| 6.5 Sears Rewards Program Redemption.....                   | 21 |
| 6.6 Credit Sales.....                                       | 21 |
| 6.7 Merchant Fee .....                                      | 21 |
| 6.8 Sears Card Revenues .....                               | 21 |
| 6.9 Licensee to Collect Sales Tax .....                     | 22 |
| ARTICLE 7. CUSTOMER RELATIONS AND ADJUSTMENTS .....         | 22 |

|   |  |    |
|---|--|----|
| 7.1   | Customer Satisfaction Policy.....                          | 22 |
| 7.2   | Customer Complaints.....                                   | 22 |
| 7.3   | Customer Contact Centre.....                               | 22 |
| ARTICLE 8. OPERATIONS AND STAFFING.....           |  | 22 |
| 8.1   | Normal Business Hours.....                                 | 22 |
| 8.2   | Operational Supervision.....                               | 23 |
| 8.3   | Policies and Practices.....                                | 23 |
| 8.4   | Conduct of Business.....                                   | 23 |
| 8.5   | Compliance With Applicable Law.....                        | 23 |
| 8.6   | Compliance With Sears Guidelines and Service Levels.....   | 23 |
| 8.7   | Sears Training.....  | 23 |
| 8.8   | Protection of Personal Information.....                    | 23 |
| 8.9   | Permits and Licenses.....                                  | 24 |
| 8.10  | Business License.....                                      | 24 |
| 8.11  | Staffing and Background Checks.....                        | 24 |
| 8.12  | Sub-Contracting.....                                       | 25 |
| 8.13  | Supervision of Employees.....                              | 25 |
| 8.14  | Labour and Employment Standards.....                       | 25 |
| 8.15  | Compensation & Benefits.....                               | 25 |
| 8.16  | No Connection to Sears.....                                | 25 |
| 8.17  | Sears Employee Discount.....                               | 26 |
| 8.18  | Sears Identification Cards.....                            | 26 |
| 8.19  | Licensee Identification Cards.....                         | 26 |
| 8.20  | Appearance and Uniforms.....                               | 26 |
| 8.21  | Removal of Employees.....                                  | 27 |
| ARTICLE 9. LICENSEE'S PURCHASES AND PAYMENTS..... |  | 27 |
| 9.1   | Purchase in the Name of Licensee.....                      | 27 |
| 9.2   | Notification to Supplier.....                              | 27 |
| 9.3   | Invoices Issued in Error.....                              | 28 |
| 9.4   | Prompt Payment of Invoices.....                            | 28 |
| 9.5   | Accounts Payable Report.....                               | 28 |
| 9.6   | Withholding and Payment.....                               | 28 |
| 9.7   | Business Fees and Taxes.....                               | 28 |
| ARTICLE 10. INSURANCE.....                        |  | 29 |
| 10.1  | Licensee's Property and Liability Insurance.....           | 29 |
| 10.2  | Additional Insured.....                                    | 31 |
| 10.3  | Waiver of Subrogation.....                                 | 31 |
| 10.4  | Evidence of Insurance.....                                 | 31 |
| 10.5  | Sears Approval.....  | 31 |
| 10.6  | Failure to Insure, Cancellation.....                       | 31 |
| ARTICLE 11. COMMISSION AND REMITTANCE.....        |  | 32 |
| 11.1  | Sears Commission.....                                      | 32 |
| 11.2  | Licensee's Maintenance Service and Administration Fee..... | 32 |

|  |   |    |
|--|---|----|
| 11.3   | Sales Tax .....   | 32 |
| 11.4   | Payment Settlement Process .....                            | 32 |
| 11.5   | Annual Reconciliation Report .....                          | 33 |
| 11.6   | Five Year Commission Review.....                            | 33 |
| ARTICLE 12. SECURITY FOR PAYMENT .....                             |   | 33 |
| 12.1   | Setoff.....   | 33 |
| 12.2   | Lien .....  | 33 |
| 12.3   | No Lien on Sears Assets .....                               | 34 |
| 12.4   | Financial Covenants.....                                    | 34 |
| ARTICLE 13. GOVERNANCE, COMMITTEES AND SUPPORT.....                |   | 34 |
| 13.1   | Executive Committee .....                                   | 34 |
| 13.2   | Sears Support .....   | 35 |
| ARTICLE 14. RECORD KEEPING, REPORTING, MONITORING & AUDITING ..... |   | 35 |
| 14.1   | Point of Sale System .....                                  | 35 |
| 14.2   | Licensee Reporting .....                                    | 35 |
| 14.3   | Accounting Records .....                                    | 35 |
| 14.4   | No Waiver or Prejudice .....                                | 36 |
| 14.5   | Audit .....   | 36 |
| 14.6   | Notice of Incident or Spill.....                            | 36 |
| 14.7   | Notice of Collective Agreements and Negotiations.....       | 36 |
| ARTICLE 15. TRADEMARK LICENSE .....                                |   | 37 |
| 15.1   | Grant of Trademark License.....                             | 37 |
| 15.2   | Use of Trademark.....                                       | 37 |
| 15.3   | Prior Approval on Use of Sears Trademark.....               | 37 |
| 15.4   | Advertising of Sears Trademark.....                         | 37 |
| 15.5   | Restrictions on Use of the Sears Trademark by Licensee..... | 38 |
| 15.6   | Ownership of Trademarks .....                               | 38 |
| 15.7   | Remedies for Unauthorized Use .....                         | 38 |
| 15.8   | Trademark Owner's Remedies.....                             | 38 |
| 15.9   | Changes to Sears Trademark .....                            | 39 |
| ARTICLE 16. INTELLECTUAL PROPERTY.....                             |   | 39 |
| 16.1   | Goodwill Generated by the Operation of the Concession.....  | 39 |
| 16.2   | Sears Intellectual Property .....                           | 39 |
| 16.3   | Licensee Intellectual Property .....                        | 40 |
| 16.4   | Establishment of New Intellectual Property Rights .....     | 40 |
| 16.5   | Protection of Intellectual Property.....                    | 41 |
| 16.6   | Residual Rights .....                                       | 41 |
| ARTICLE 17. CONFIDENTIAL INFORMATION .....                         |   | 41 |
| 17.1   | Customer Lists and Customer Information .....               | 41 |
| 17.2   | Sears Confidential Information .....                        | 42 |
| 17.3   | Licensee's Confidential Information.....                    | 42 |

|   |  |    |
|---|--|----|
| 17.4  | No Disclosure of Confidential Information .....              | 42 |
| 17.5  | Protection of Confidential Information .....                 | 42 |
| 17.6  | Restricted Use of Confidential Information .....             | 43 |
| 17.7  | Licensee Maintenance of Sears Confidential Information ..... | 43 |
| 17.8  | Return of Confidential Information.....                      | 43 |
| ARTICLE 18. INDEMNITY AND LIMITATION OF LIABILITY .....               |  | 43 |
| 18.1  | Sears's Indemnity.....                                       | 43 |
| 18.2  | Licensee's Indemnity.....                                    | 44 |
| 18.3  | Notification of Third-Party Claims .....                     | 45 |
| 18.4  | Limitation of Liability .....                                | 45 |
| ARTICLE 19. NON-SOLICITATION AND NON-COMPETITION DURING THE TERM..... |  | 46 |
| 19.1  | Non-Solicitation of Customers .....                          | 46 |
| 19.2  | Non-Solicitation of Employees by Sears.....                  | 46 |
| 19.3  | Non-Solicitation of Employees by Licensee.....               | 46 |
| 19.4  | Non-Competition During the Term.....                         | 46 |
| ARTICLE 20. ASSIGNMENT .....  |  | 47 |
| 20.1  | Assignment.....  | 47 |
| 20.2  | Change of Control .....                                      | 47 |
| 20.3  | Assignment by Sears .....                                    | 47 |
| ARTICLE 21. TERMINATION .....   |  | 48 |
| 21.1  | Termination By Sears Due to Events of Default .....          | 48 |
| 21.2  | Events of Bankruptcy .....                                   | 50 |
| 21.3  | Termination By Licensee .....                                | 51 |
| 21.4  | Termination After Review of Commissions.....                 | 51 |
| ARTICLE 22. AFTER TERMINATION .....                                   |  | 52 |
| 22.1  | Surrender .....  | 52 |
| 22.2  | Withholding of Remittance.....                               | 52 |
| 22.3  | Disengagement Costs .....                                    | 52 |
| 22.4  | Transition Assistance .....                                  | 53 |
| 22.5  | Sears Business After Termination .....                       | 53 |
| 22.6  | Non-Solicitation of Customers .....                          | 53 |
| 22.7  | Non-Solicitation of Employees by Sears.....                  | 54 |
| 22.8  | Non-Solicitation of Employees by Licensee.....               | 54 |
| ARTICLE 23. REPRESENTATIONS AND WARRANTIES .....                      |  | 54 |
| 23.1  | Representations and Warranties of Licensee .....             | 54 |
| 23.2  | Representations and Warranties of Sears .....                | 55 |
| 23.3  | Nature and Survival.....                                     | 56 |
| ARTICLE 24. CONDITIONS PRECEDENT .....                                |  | 56 |
| 24.1  | Conditions Precedent .....                                   | 56 |

|                                     |    |
|-------------------------------------|----|
| ARTICLE 25. GENERAL MATTERS .....   | 56 |
| 25.1 Enurement.....                 | 56 |
| 25.2 Notices .....                  | 57 |
| 25.3 Time of Essence.....           | 57 |
| 25.4 Failure to Give Notice.....    | 58 |
| 25.5 Independent Contractor.....    | 58 |
| 25.6 Not a Lease.....               | 58 |
| 25.7 Independent Legal Advice.....  | 58 |
| 25.8 Further Assurances.....        | 58 |
| 25.9 Approvals and Consents .....   | 58 |
| 25.10 Announcements .....           | 59 |
| 25.11 Currency.....                 | 59 |
| 25.12 Invalidity of Provisions..... | 59 |
| 25.13 Entire Agreement .....        | 59 |
| 25.14 Survival.....                 | 59 |
| 25.15 Previous Agreements .....     | 60 |
| 25.16 No Representations.....       | 60 |
| 25.17 Waiver, Amendment.....        | 60 |
| 25.18 Governing Law .....           | 60 |
| 25.19 Cumulative Remedies .....     | 60 |
| 25.20 Injunctive Relief.....        | 60 |
| 25.21 Counterparts/Facsimile .....  | 60 |
| 25.22 Language .....                | 61 |

## SEARS BRANDED CONCESSION AGREEMENT

**BRAND NAME:** Sears Oil Services / Produits et services de chauffage au mazout Sears

**EFFECTIVE DATE:** September 9, 2013

**THIS AGREEMENT** is made as of this 12<sup>th</sup> day of August, 2013,

**BETWEEN:**

**SEARS CANADA INC.**, a corporation incorporated under the laws of Canada, having its head office in the city of Toronto, Province of Ontario

("Sears")

- and -

**CONFORT EXPERT INC.**, a corporation incorporated under the laws of Quebec, having its head office in Montreal, Quebec

("Licensee").

**RECITALS:**

Sears is a national retailer offering products and services to its Customers through various channels including retail stores, free standing speciality stores, catalogues, direct marketing media and the internet.

Licensee has represented to Sears that it is fully qualified, experienced, licensed, capitalized, staffed and equipped to successfully establish and operate a business for the purpose of procurement, presentation, merchandising, marketing, provision and sale of the products and services contemplated by this Agreement.

Sears has approved Licensee to operate the Concession selling Products and Services using the Sears Trademark under the Brand Name.

In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties have entered into this Agreement.

### **ARTICLE 1.** **INTERPRETATION**

#### **1.1 Definitions**

The following words and phrases used in this Agreement (including, for greater certainty, the Schedules attached hereto) shall have the following meanings:

- (a) **"Accounting Principles"** means accounting principles generally accepted in Canada as contemplated by the handbook of the Canadian Institute of Chartered Accountants (the "Handbook"), as amended from time to time, applied on a consistent basis and which incorporates International Financial Reporting Standards under Part 1 of the Handbook for periods beginning on and after January 1, 2011; and Canadian generally accepted accounting principles under Part V of the Handbook prior to January 1, 2011; if the Handbook contains more than one recommendation as to treatment of a matter, the recommendation that shall constitute Accounting Principles shall be the one most appropriate in the context to the Licensee or Sears, as the case may be.
- (b) **"Agreement"** means this agreement and all schedules attached to this agreement, in each case as they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this agreement and unless otherwise indicated, references to articles and sections are to articles and sections in this agreement.
- (c) **"Affiliate"** has the following meaning: a Person is an Affiliate of another Person where (i) one of them is a Subsidiary of the other; or (ii) each of them is Controlled by the same Person.
- (d) **"Annual Reconciliation Report"** has the meaning given to it in section 11.5.
- (e) **"Annual Service Level Guarantees"** has the meaning given to it in Schedule "J".
- (f) **"Applicable Law"** means, with respect to any Person, property, transaction, event or course of conduct, all applicable laws, statutes, rules, by-laws and regulations, regulatory policies and all applicable official directives, orders, judgments and decrees of Governmental Authorities.
- (g) **"Bankruptcy Event"** has the meaning given to it in Section 21.2.
- (h) **"Brand Name"** means the name indicated above, under which the Concession will be operated.
- (i) **"Business Day"** means a day other than a Saturday or Sunday or any other day that is not a business day for Sears headquarters staff.
- (j) **"Change of Control"** means, with respect to Licensee,
- (i) that a Person or group becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the total voting power of the Licensee;
  - (ii) the Licensee merges, amalgamates, consolidates, acquires, is acquired by, or otherwise combines with any other Person other than an Affiliate; or
  - (iii) the Licensee sells all or substantially all of its assets to a Person that is not an Affiliate of the Licensee.



- (k) **"Claim"** means claim, action, lawsuit, demand, cause of action, judgment, fine, penalty, Loss, or proceeding, whether actual or alleged.
- (l) **"Commission"** has the meaning given to it in section 11.1.
- (m) **"Competitor"** means a business operating in Canada that sells products and services, any of which is substantially the same as any of the Products and Services, to retail customers and that has any of the following characteristics: (i) is present in three or more provinces; (ii) has annual sales of Products and Services of more than \$100 million; (iii) has securities listed on a recognized securities exchange; or (iv) is an Affiliate of any business that has any of the characteristics set out in (i), (ii) or (iii). For greater certainty and without limitation, "Competitor" includes retailers operating under the following banners: Best Buy, Brault & Martineau, The Brick, Canadian Tire, Costco, Future Shop, Hudson's Bay, Home Depot, Home Hardware, Target, Leon's, Lowe's, Rona, Walmart.
- (n) **"Concession"** means the business operated by the Licensee selling the Products and Services through the Designated Channels, under the Brand Name, in accordance with the terms and conditions of this Agreement.
- (o) **"Concession Website"** has the meaning given to it in section 5.8.
- (p) **"Control"** means the following: a Person is controlled by another Person (or group of Persons) if such other Person (i) directly or indirectly beneficially owns or exercises control or direction over securities of that Person carrying votes which, if exercised, would entitle the second Person to elect a majority of the directors of the first Person, unless that second Person holds the securities only to secure an obligation; (ii) the first Person is a partnership, other than a limited partnership, and the second Person holds more than 50% of the interests of the partnership; or (iii) the first Person is a limited partnership and the general partner of the limited partnership is the second Person.
- (q) **"Customer Base"** has the meaning given to it in section 11.6.
- (r) **"Customers"** means any person or persons who avail themselves of any product and/or service offered by the Licensee pursuant to this Agreement.
- (s) **"Designated Channels"** means the channels designated by Sears, as set forth in the attached Schedule "A", within which the Licensee is permitted to operate the Concession.
- (t) **"Designated Market"** means the geographical location of a retail market designated by Sears, as set forth in the attached Schedule "A", in which the Licensee is permitted to operate the Concession.
- (u) **"Effective Date"** means the date first written above.
- (v) **"Event of Default"** has the meaning given to it in section 21.1.
- (w) **"Executive Committee"** has the meaning given to it in section 13.1.

- (x) **"Final Monthly Remittance"** has the meaning given to it in section 11.4.
- (y) **"Financial Covenants"** means the financial covenants referenced in section 12.4.
- (z) **"Fiscal Month"** means a period of time, being a month of either four weeks or five weeks as determined in accordance with the "4-5-4 Calendar" guidelines established by the National Retail Federation of the United States. The first Fiscal Month of the Term shall commence on the Effective Date and end on the last day of the month established according to such 4-5-4 Calendar, and the last Fiscal Month of the Term shall end on the last day of the Term.
- (aa) **"Fiscal Year"** means a period of time, the first Fiscal Year commencing on the first day of the Term, and ending on the Saturday falling closest to January 31 in each year immediately following the first day of the Term. Each Fiscal Year thereafter shall consist of consecutive periods of twelve (12) Fiscal Months, but the last Fiscal Year of the Term, whether or not it is twelve (12) Fiscal Months, shall terminate on the expiry or earlier termination of this Agreement. If, however, Sears considers it necessary or convenient for Sears purposes, Sears may at any time and from time to time, by written notice to the Licensee, specify a date from which each subsequent Fiscal Year is to commence, and in such event, the then current Fiscal Year shall terminate on the day immediately preceding the commencement of such new Fiscal Year, and the appropriate adjustments shall be made between the parties.
- (bb) **"Force Majeure"** means any occurrence which delays, hinders or prevents either party hereto from the performance of any term, covenant or act required hereunder which is not the fault of the party delayed in performing work or doing ~~acts required under the terms of this Agreement~~, including: strikes; walkouts; not caused by Sears or Licensee's intentional act; labour troubles; industrial disturbances; inability to procure materials or services; failures, fluctuations or non-availability of electric power, heat, light, ventilation or air-conditioning; governmental laws, regulations or controls; riots; civil commotions; insurrections; anarchy; acts of a foreign enemy; revolution; acts of sabotage; acts of terrorism, bioterrorism, or cyber-terrorism; invasion; rebellion; military or usurped power; war (whether declared or not) or warlike operations; blockades; epidemics; washouts; nuclear and radiation activity or fallout; explosions; fires; acts of God (including without limitation, earthquakes, blizzards, floods, hurricanes, lightning, storms and other natural disasters); and damage caused by any aircraft.
- (cc) **"Governmental Authority"** means any government, parliament, legislature, or any regulatory authority, agency, commission, board or rulemaking entity of any government, parliament or legislature, or any court of law, regulatory or rulemaking entity having or purporting to have jurisdiction in the relevant circumstances, or any person acting or purporting to act under the authority of any of the foregoing.
- (dd) **"Gross Revenue"** means the total revenue generated from all sales, services and other business conducted by any means in, on, at, from or through the Designated Channels by the Licensee.

- (ee) **"Guarantee Agreement"** means the Guarantee Agreement made by the majority shareholder of the Licensee in favour of Sears, substantially in the form attached hereto as Schedule "K".
- (ff) **"Information"** means material, information or data in any form or notation and however stored, fixed, expressed or embodied, if embodied in a material, tangible or electronic form, including all material, information and data of a scientific, technical or business nature including all trade secrets and other proprietary or confidential information; non-proprietary know-how; standards and specifications; techniques, methods, process and know-how technical and statistical data; compilations of information and data and computer databases; computer software; trade-marks; research, developmental, demonstration and engineering work; designs, formulas, procedures, ideals, innovations, discoveries, inventions, processes, technological developments, methods, techniques and systems; information relating to computer hardware, information technology, infrastructure and requirements and unpublished patent information; systems management and performance data; and all information and data of a business nature including information and data related to past, present and prospective: businesses, products and services, internal management and finances, marketing plans and techniques, price lists, customers, employees, operations, facilities, assets and programs; and all confidential information. Information will be considered as such whether or not it is protected by or embodies any Intellectual Property Right and whether or not it is in human or machine readable form.
- (gg) **"Infringement"** means any unauthorized use, advertising, imitation or dilution of the Sears Trademark or any trademark or name of Sears.
- (hh) **"Initial Term"** has the meaning given to it in section 2.1.
- (ii) **"Intellectual Property Rights"** means:
- (i) any and all proprietary rights anywhere in the world provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work or integrated circuit topography law; or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide a right in either hardware, proprietary software, content, documentation, confidential information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such hardware, proprietary software, content, documentation, confidential information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how;
  - (ii) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing; and

- (iii) all the licenses and waivers and benefits of waivers of the intellectual property rights set out in (i) and (ii) above, all future income and proceeds from the intellectual property rights set out in (i) and (ii) above, and all rights to damages and profits by reason of the infringement or violation of any of the intellectual property rights set out in (i) and (ii) above.
- (jj) **"Legacy Parts Plans"** has the meaning given to it in Schedule "D".
- (kk) **"Licensee Intellectual Property"** has the meaning given to it in section 16.3.
- (ll) **"Licensee Obligations"** has the meaning given to it in section 12.6.
- (mm) **"Licensee's Confidential Information"** has the meaning given to it in section 17.3.
- (nn) **"Licensee's Representatives"** means Licensee's agents, assigns, contractors, designees, representatives, servants and sub-contractors.
- (oo) **"Losses"** means all out-of-pocket costs, damages, judgments, penalties, fines, losses and expenses, including reasonable legal fees, disbursements and court costs.
- (pp) **"Maintenance Service and Administration Fee"** has the meaning given to it in section 11.2.
- (qq) **"Maintenance Services"** has the meaning given to it in section 3.3.
- (rr) **"Merchant Fee"** has the meaning given to it in section 6.7.
- (ss) **"Monthly Sales Report"** has the meaning given to it in Schedule "F".
- (tt) **"Net Sales"** means Gross Revenue less Sales Tax, returns, refunds, credits and allowances paid or allowed by Licensee which are necessary in connection with the operation of the Concession.
- (uu) **"New Intellectual Property"** has the meaning attributed to that term in section 16.4.
- (vv) **"Non-Oil Equipment"** has the meaning attributed to that term in Schedule "B".
- (ww) **"Normal Business Hours"** has the meaning attributed to that term in section 8.1.
- (xx) **"Notices"** has the meaning attributed to that term in section 25.2.
- (yy) **"Oil Equipment"** has the meaning attributed to that term in Schedule "B".
- (zz) **"Person"** means an individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted.

- (aaa) **"Personal Information"** has the meaning attributed to that term in section 8.8.
- (bbb) **"POS"** means the point of sale register system to record the sales of Products and Services through the Concession.
- (ccc) **"Products and Services"** means the products and services that are set out in Schedule "B" and such related products and services that may reasonably be inferred by the Brand Name.
- (ddd) **"Protected Customer"** means any Customer as well as any customer of Sears who, as at the Effective Date, either (i) rents or leases Oil Equipment from Sears; (ii) is a party to a service contract with Sears regarding Oil Equipment; (iii) in the previous five years, purchased, leased or rented Oil Equipment from Sears or was a party to a service contract with Sears regarding Oil Equipment.
- (eee) **"Renewal Term"** has the meaning given to it in section 2.1.
- (fff) **"Sales Tax"** means any goods and services taxes, harmonized sales taxes, business transfer taxes, value-added taxes, multi-stage sales taxes, sales, use or consumption taxes and any like taxes on goods or services provided by or on behalf of Sears, including, without limitation, any goods and services tax and harmonized sales tax exigible under Part IX of the *Excise Tax Act* (Canada).
- (ggg) **"Sears Advertising Expenses"** has the meaning given to it in section 5.5;
- (hhh) **"Sears Card"** means any credit card issued to Sears Customers which is branded with a trade-mark owned by or licensed to Sears.
- (iii) **"Sears Confidential Information"** has the meaning attributed to that term in section 17.2.
- (jjj) **"Sears Intellectual Property"** has the meaning given to it in section 16.2.
- (kkk) **"Sears Oil Customer"** has the meaning given to it in Schedule "B".
- (lll) **"Sears Parts Plan"** means a contract between Sears and a Sears Oil Customer for Oil Equipment Maintenance Services.
- (mmm) **"Sears Parts Plan Customer Equipment"** means Oil Equipment that is owned by Sears Customers who are Sears Oil Customers as at the Effective Date, and that is the subject of Sears Parts Plans.
- (nnn) **"Sears Rental Equipment"** means Oil Equipment that is owned by Sears and rented or leased by Sears Customers.
- (ooo) **"Sears Rewards Program"** means the customer loyalty and other related programs related to the Sears Card, as the same may be amended or revised from time to time by Sears.
- (ppp) **"Sears Trademark"** means the trademark SEARS and any other or additional trademarks as set forth in the attached Schedule "C", or any other trademark or

name of Sears which may be authorized, in writing, for use from time to time, together with such type styles, colour schemes and design matter as Sears may designate in writing from time to time, including the Brand Name.

- (qqq) **"Secured Assets"** has the meaning given to it in section 12.2.
- (rrr) **"Subsidiary"** means a Person that is Controlled directly or indirectly by another Person and includes a Subsidiary of that Subsidiary.
- (sss) **"Term"** means the Initial Term together with all Renewal Terms.
- (ttt) **"Third-Party Claim"** has the meaning given to it in section 18.3.
- (uuu) **"Trademark Owner"** means the owner of a Sears Trademark.
- (vvv) **"Transition Period"** means the period of time starting on the Effective Date and ending eight weeks after the Effective Date, or ending such earlier or later date as agreed to by the parties in writing.

## 1.2 Schedules

The following are the schedules attached to this Agreement:

|              |   |  |
|--------------|---|--|
| Schedule "A" | - | Designated Channels and Markets                  |
| Schedule "B" | - | Products and Services                            |
| Schedule "C" | - | Sears Trademarks                                 |
| Schedule "D" | - | Financial Commitments                            |
| Schedule "E" | - | Understanding of Employment/Engagement           |
| Schedule "F" | - | Licensee Reporting                               |
| Schedule "G" | - | Privacy Acknowledgment                           |
| Schedule "H" | - | Form of Financial Covenants Certificate          |
| Schedule "I" | - | Guidelines For Licensed Business on the Internet |
| Schedule "J" | - | Service Level Standards                          |
| Schedule "K" | - | Form of Guarantee Agreement                      |

## 1.3 Interpretation

- (a) **Headings.** The division of this Agreement into articles, sections, and schedules and the insertion of headings are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement.
- (b) **Section References.** Unless the context otherwise requires, references in this Agreement to an article, section or schedule, by number or letter, refer to the article, section or schedule, respectively, bearing that designation in this Agreement.
- (c) **Inclusive Terms.** 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. The words "hereof", "herein", "hereto", "hereinafter", "hereunder", "hereby" and similar expressions

shall be construed as referring to this Agreement in its entirety and not to any particular section or other portion of it.

- (d) **Singular, Plural, Gender and Derivations.** In this Agreement words importing the singular number include the plural and vice versa and words importing gender include the masculine and feminine genders and the neuter. If a term is defined in this Agreement, a derivative of that term shall have the corresponding meaning.
- (e) **Date for any Action.** In the event that any date on which any action is required to be taken under this Agreement by any of the Parties hereto is not a Business Day in the place where the action is to be taken, such action shall be required to be taken on the next succeeding day which is a Business Day in such place.
- (f) **Deemed Currency.** In the absence of an express designation of any currency or dollar amount in any provision hereof, any undescribed currency or dollar amount herein shall be deemed to refer to Canadian dollars.
- (g) **Statute References.** Any reference in this Agreement to a statute or any provision thereof shall include any and all rules, regulations and published policies promulgated thereunder affecting or relating to such statute or provision and any and all amendments or substitutions made to such statute, rule, regulation or published policy prior to the date hereof and hereafter from time to time.
- (h) **Interpretation Not Affected by Party Drafting.** The Parties hereto acknowledge that their respective legal counsel have participated in settling or have reviewed the terms of this Agreement, and the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party will not be applicable in the interpretation of this Agreement.
- (i) **Accounting References.** All accounting definitions, provisions and procedures shall, for all purposes of this Agreement, have the meanings ascribed to them by and shall be consistent with Accounting Principles.
- (j) **Rules of Construction.** In the event of any conflict between provisions in this Agreement, the more specific provisions shall prevail and govern over more general provisions.

## ARTICLE 2. TERM

### 2.1 Initial Term

Subject to the terms and conditions of this Agreement, the term of this Agreement shall begin on the Effective Date and shall end on August 31, 2023 (the "**Initial Term**").

## 2.2 Renewal Terms

The term of this Agreement shall be automatically renewed for additional terms of three years each (each, a "**Renewal Term**") unless, no earlier than two years prior to the end of the current Term and no later than one year prior to the end of the current Term, either party provides to the other a notice that it desires for the term not to be renewed.

## 2.3 Overholding

If the Parties have not renewed the Agreement in accordance with section 2.2 and the Concession continues to be operated by the Licensee, in whole or in part, and neither Party has acknowledged to the other that the Agreement has expired, then the Agreement will be deemed to operate on a month-to-month basis and no deemed renewal may be imputed from the conduct of the Parties.

### ARTICLE 3.

#### GRANT OF CONCESSION & PROVISION OF SERVICES

### 3.1 Grant of Concession

Sears hereby grants to Licensee the exclusive non-transferable right to operate the Concession through the Designated Channels, in the Designated Markets, on the terms and conditions set out in this Agreement.

### 3.2 Use of Brand Name

In connection with the presentation and marketing of the Concession to Customers, the Licensee shall use the Brand Name and only the Brand Name and shall not change, alter or in any way modify the Brand Name without the prior written consent of Sears, which consent may be withheld in the sole discretion of Sears.

### 3.3 Other Services

In addition to operating the Concession, the Licensee shall, on behalf of Sears and as an authorized contractor of Sears, provide the following services:

- a) **Parts Plan Maintenance Services.** Services to fix Sears Parts Plan Customer Equipment (including the parts and labour therefor and including cleaning and tune-up services) in accordance with Sears Parts Plans. Such services shall include the receipt and administration of calls from Sears Customers for Parts Plan Maintenance Services.
- b) **Rental Equipment Maintenance Services.** Services to fix Sears Rental Equipment not in working order or otherwise to effect the good operating condition of Sears Rental Equipment or, where required by the terms of the relevant rental agreements, arrange for the replacement of the Sears Rental Equipment with similar equipment (provided Sears pays for the cost of procuring and installing such replacement equipment, but no other costs relating to the replacement and installation of such equipment). Such services shall include the receipt and administration of calls from Sears Customers for Rental Agreement Maintenance Services.



- c) **Rental Agreement Billing.** Beginning on the day after the Transition Period, Services to invoice, collect and process payments from renters and lessees pursuant to Sears Rental Equipment rental and lease agreements, including maintaining a contact centre for customer inquiries related to billing, systems to track and reconcile payments and receivables, reporting as required, segregated bank accounts to receive funds, and following collections procedures established by Sears. For greater certainty, any fees or other amounts due to third parties as a result of such services, including with respect to the processing of payments or maintenance of accounts, shall be borne by Licensee.
- d) **Legacy Parts Plan Billing.** Beginning on the day after the Transition Period, Services to invoice, collect and process payments from counterparties to Legacy Parts Plans, including maintaining a contact centre for customer inquiries related to billing, systems to track and reconcile payments and receivables, reporting as required, segregated bank accounts to receive funds, and following collections procedures established by Sears. For greater certainty, any fees or other amounts due to third parties as a result of such services, including with respect to the processing of payments or maintenance of accounts, shall be borne by Licensee.

## **ARTICLE 4.** **PRODUCTS AND SERVICES**

### **4.1 Assortment of Products and Services**

The assortment of Products and Services offered for sale by Licensee through the Concession shall be similar in breadth and depth to those offered by other retail businesses of a similar nature to the Concession, and shall reflect the needs of the Customers.

### **4.2 Quality of Products and Services**

The Products and Services offered for sale by Licensee through the Concession shall be in compliance with Applicable Law, shall be of a high quality, and shall be in compliance with the Service Level Standards.

### **4.3 Pricing of Products and Services**

The pricing of Products and Services offered for sale by the Licensee through the Concession shall be established by Licensee (i) in compliance with Applicable Law; and (ii) so that Products and Services are priced competitively to other retail businesses of a similar nature to the Concession.

## **ARTICLE 5.** **ADVERTISING, MARKETING AND PROMOTIONS**

### **5.1 Licensee's Marketing Commitment**

Licensee shall, subject to the terms and conditions of this Agreement, actively advertise and promote the sale of the Products and Services authorized by this Agreement to attempt to maximize the full sales potential of the Concession through each Designated Channel.

Licensee shall pay all marketing and advertising expenses incurred to promote the Products and Services in accordance with the provisions of this Agreement.

## **5.2 Promotion of Brand Name and Sears Credit Services**

The Brand Name shall be used in all advertisements for the Products and Services available through the Designated Channels. Except where impractical on signage, Licensee shall make reference in any advertising of the Products and Services available through the Designated Channels, that Sears Card credit services are available for purchases through the Concession.

## **5.3 Joint Marketing**

The Parties shall cooperate in good faith to develop joint marketing opportunities to market the Products and Services.

## **5.4 Sears Rewards Program**

Sears shall be responsible for and control the Sears Rewards Program, including paying all base point related costs for the base standard offer (that is, the offer generally made to all Sears customers in Sears department generally) incurred related specifically to the sales through the Concession. Licensee shall not operate or participate in any loyalty or similar program to the Sears Rewards Program. Licensee may from time to time request additional specific Sears Rewards Program offers to be made to sell Products and Services in the Concession. If Sears so agrees, Licensee shall fund the cost of such points, which shall be charged to Licensee at the rate provided by Sears, which rate shall not be more than the redeemable value of the points (for greater clarity, where a point has a redeemable value of \$0.01, Licensee shall not pay to Sears more than \$0.01 for such points). Sears shall invoice Licensee for the costs of Sears Rewards Program promotions (in excess of the base standard offer) and Licensee shall pay such invoices no later than 30 days after the dates of such invoices.

## **5.5 Participation in Sears Advertising Vehicles**

Sears may, at its sole option, offer to Licensee the opportunity, at its sole option and expense, to participate in Sears regularly scheduled advertising media to promote the Products and Services, on an "if and as available" basis. Licensee shall reimburse Sears, within thirty (30) days of receiving an invoice, for all reasonable expenses related thereto incurred by Sears at the request of Licensee (the "**Sears Advertising Expenses**"). Sears will offer the Licensee prices for the Sears Advertising Expenses on par with prices offered to other licensees with concession agreements.

## **5.6 Telemarketing Solicitation**

Licensee shall not utilize any unsolicited telemarketing solicitation for the sale of the Products and Services without obtaining prior written approval from Sears. Such approval may be withheld in Sears's entire discretion. If approved, telemarketing solicitation shall be conducted only in accordance with Applicable Law and Sears policies and procedures in effect from time to time (including, without limitation, with respect to non-solicitation lists and contact management policies).

## **5.7 Internet Solicitation**

Licensee shall not utilize or participate in any unsolicited internet solicitation advertising the Products and Services without obtaining prior written approval from Sears. Such approval may be withheld in Sears's entire discretion. Internet solicitation activity, if approved, shall be conducted only in accordance with Applicable Law and Sears policies and procedures and all Customer solicitation and communication presentations for the Products and Services utilizing the internet shall become part of or be linked to the Sears corporate website or, with the prior written approval of Sears, to a Licensee's authorized website with no facility for the Customer to exit from either of these websites into any other website.

## **5.8 Concession Website**

Licensee shall not establish an internet website using the Sears Trademark as part of its domain name, marketing, advertising, promotional programs or to conduct sales or any other business transaction. A website to support the Licensee's Concession ("**Concession Website**") can be obtained and linked to [www.sears.ca](http://www.sears.ca) only after obtaining written approval from Sears. Such approval may be withheld by Sears in its entire discretion. If approved, Licensee may establish the Concession Website using the Sears Trademark for communication with Customers only. The Concession Website shall not be used to communicate with suppliers or any other business partners of Licensee. The Concession Website shall only be used for communication with Customers regarding the operation of the Concession and must reside on the Sears website infrastructure or on a third party hosted infrastructure with the prior written approval of Sears Information, Technology, Security and Audit Departments. The design of the website and its security architecture shall conform to the internet requirements for licensed business and shall comply with all Sears guidelines respecting licensed business internet websites, including the Guidelines For Licensed Business on the Internet attached hereto as Schedule "I". The implementation, content and maintenance of the Concession Website shall be the responsibility of the Licensee and all changes implemented by the Licensee must have the prior approval of Sears, which approval may be withheld in its entire discretion.

## **5.9 Marketing Plan**

No later than September 1 of each year, Licensee shall prepare and submit to the Marketing Liaison (or such other Person as designated by Sears) a plan to market and promote the Products and Services during the next Fiscal Year. Such plan shall contain a strategy for marketing initiatives, including projected costs. Sears shall provide feedback and the proposed plan shall be discussed until such time as Sears approves the plan. If Sears has not responded to the proposed plan before November 1 following submission of the proposed plan, the plan as proposed shall be deemed approved.

## **5.10 Marketing Agencies**

Sears shall have the right to appoint one or more advertising agencies for any work related to advertising and marketing in which the Concession is participating, at Licensee's cost. Such advertising agency work shall be competitively priced, and any related discounts or other rebates obtained from such agency shall accrue to the benefit of Licensee. Upon Sears' consent, Licensee may use other advertising agencies.

### **5.11 Advertising Approval**

Licensee shall submit to the Marketing Liaison (or such other Person as designated by Sears) via facsimile or electronic mail for Sears's prior approval, all signs and advertising copy and plans, including sales brochures, newspaper and telephone directory advertisements, radio and television commercials, sales promotional plans and devices (including coupons and contests) intended for any promotion of the Products and Services. Sears shall have the right, without limiting the generality of the foregoing, to withhold its approval of such activity based on:

- (a) improper use of Sears Trademark;
- (b) failure to comply with Sears's branding guidelines for the Brand Name;
- (c) concerns surrounding liability, loss of goodwill and damage to Sears reputation or Customer or government relations;
- (d) failure to comply with Applicable Law;
- (e) failure to conform to community or Sears reasonable standards of good taste and honest dealing; or,
- (f) failure to comply with Sears advertising and pricing policies.

## **ARTICLE 6. CUSTOMER PAYMENTS AND CREDIT**

### **6.1 Tender**

All sales generated from the operation of the Concession shall be made only on Sears Cards, Sears-approved third-party credit cards, debit cards, personal cheques, Sears gift cards and Sears merchandise certificates, and third party direct deposits.

### **6.2 Promotion of Sears Card**

Licensee shall always make an initial suggestion to Customers that they pay for their purchases of Products and Services using the Sears Card. Licensee's sales associates, at the beginning of every transaction, shall always ask the Customer if they would like to make the purchase on their Sears Card and for such Customers that respond that they do not have one, Licensee shall offer to such Customers to apply for one instantly and shall so help such Customers that agree.

### **6.3 Cash**

Licensee shall not accept cash as payment for Products and Services.

### **6.4 Gift Cards and Merchandise Certificates**

Licensee shall accept all Sears gift cards and merchandise certificates as accepted by all other Sears merchandise departments as payment for Products and Services. Sears shall reimburse Licensee for all such cards and certificates.

## 6.5 Sears Rewards Program Redemption

Licensee shall accept redemption of Sears Rewards Program points as payment for Products and Services. Sears shall pay Licensee the redemption value of the points redeemed by Customers who use their points to pay for Products and Services.

## 6.6 Credit Sales

Licensee shall do all that is necessary to become a merchant capable of accepting such credit cards and offer such credit plans as requested by Sears from time to time and shall comply with all requirements established by the issuers of such credit cards and credit plans and by Sears with respect to the Sears Card.

Without limiting the generality of the foregoing, when accepting payments from Customers on credit cards, Sears regularly established credit plans or on Sears-approved third-party credit plans, Licensee shall:

(a) obtain authorization for each individual credit sale on a Sears regularly-established credit plan, such approval to be granted at the sole discretion of the appropriate authorization location;

(b) obtain authorization for each individual credit sale on a Sears-approved third-party credit plan and the authorization number, Customer's full account number, expiry date and Customer's name shall be shown.

No part of the carrying or interest charge which may be levied by Sears or the issuer of the Sears Card in connection with any credit sale on a Sears regularly-established credit plan, or by any third party on any Sears-approved third-party credit plan shall be payable to or credited in any way to Licensee.

Licensee acknowledges and agrees that it shall be responsible for and charged with any Losses on any credit sale using a credit card for which the proper approval procedures have not been followed by the Licensee.

Licensee shall comply with all Applicable Laws governing credit sales and their solicitation, including provisions dealing with disclosure to Customers, finance charges and privacy.

## 6.7 Merchant Fee

Licensee shall pay to Sears a fee based on a percentage of Gross Sales and Sales Tax processed through a Sears POS using credit cards (including the Sears Card) (the "**Merchant Fee**"). The Merchant Fee charged shall be as set out in Schedule "D". The Merchant Fee shall be subject to increase or decrease on mutual agreement of the parties. The Merchant Fee shall apply only to the portion of the Gross Revenue that is directly charged to a Sears Card or other credit card.

## 6.8 Sears Card Revenues

Licensee acknowledges and agrees that any revenue generated by the use of the Sears Card or financing programs, including the Merchant Fee, will be for the benefit of Sears and shall not be included in the calculation of Gross Revenue.

## **6.9 Licensee to Collect Sales Tax**

Licensee shall collect from Customers all taxes applicable to the sale of the Products and Services, including Sales Tax and other equivalent or similar taxes. Licensee represents and warrants that it is a registrant under the Excise Tax Act (Canada) for federal Goods and Services Tax and Harmonized Sales Tax ("GST/HST") purposes and, as applicable, is a registrant under Title I of the Quebec Sales Tax Act for Quebec Sales Tax purposes. As applicable, Licensee represents and warrants that it is a registrant for the provincial sales tax in the provinces comprising the Designated Market.

## **ARTICLE 7. CUSTOMER RELATIONS AND ADJUSTMENTS**

### **7.1 Customer Satisfaction Policy**

Licensee shall at all times treat all Customers fairly and courteously and shall adhere to any applicable Sears policies regarding customer service and/or customer satisfaction as such policies may be amended by Sears in its sole discretion from time to time (provided such policies are first communicated to Licensee).

### **7.2 Customer Complaints**

Licensee shall resolve all complaints and controversies with Customers in a manner consistent with Sears customer relations policies and practices. In any case in which the resolution of any complaint or controversy is unsatisfactory to Customers, Sears shall have the right, after discussing the complaint or controversy with Licensee, to make such adjustment or compensation as Sears may deem desirable in the circumstances, in each case at Licensee's expense.

### **7.3 Customer Contact Centre**

Licensee shall maintain a contact centre with recording capability and shall record all calls from Customers. Such recordings shall be maintained for 24 months. Sears shall at all times have unfettered access to such recordings.

## **ARTICLE 8. OPERATIONS AND STAFFING**

### **8.1 Normal Business Hours**

The Concession shall be open for business and the Products and Services will be offered to Customers during such hours as set out in Schedule "A" ("**Normal Business Hours**"), except to the extent of force majeure, or as Sears and Licensee may otherwise agree upon in advance in writing.

## **8.2 Operational Supervision**

Licensee shall supervise the performance of its employees, agents, assigns, contractors, designees, representatives, servants and sub-contractors to ensure that the operation of the Concession, including the provision of exemplary customer service, meets or exceeds the requirements of this Agreement.

## **8.3 Policies and Practices**

Licensee shall develop and implement policies and practices to be used in the operation of the Concession that serve to promote the full and faithful performance of the Licensee's obligations under this Agreement and that serve to ensure that the Licensee's obligations set out in this Agreement are met.

## **8.4 Conduct of Business**

Licensee shall not conduct any business, conduct or practice which in Sears's reasonable opinion is likely to have an adverse effect on the positioning of the Sears brand. Any such business, conduct or practise shall be immediately discontinued by the Licensee at the request of Sears, and the Licensee shall thereafter refrain from any such business, conduct or practice.

## **8.5 Compliance With Applicable Law**

Licensee shall comply with any and all Applicable Law and industry standards applicable to operation of the Concession including those relevant to protection of privacy and personal information, consumer protection, use of the French language in Quebec, environmental matters, rules governing credit sales and their solicitation (including disclosure to Customers and application of finance charges), employment and labour standards matters (including compensation, hours of work, overtime and equal opportunities for employment) and accessibility for persons with disabilities.

## **8.6 Compliance With Sears Guidelines and Service Levels**

Licensee shall comply with any and all applicable Sears general rules and regulations which are in effect from time to time relating to the conduct of employees (including appearance and dress code) and have been disclosed to Licensee. Licensee shall meet or exceed the Service Level Standards set out at Schedule "J".

## **8.7 Sears Training**

Sears may from time to time organize seminars, meetings, conventions or other forms of training for the Licensee and/or Licensee's Representatives. When required by Sears, attendance at such training shall be mandatory.

## **8.8 Protection of Personal Information**

Licensee shall collect, use, store, disclose, dispose of and otherwise handle information about identifiable individuals ("**Personal Information**") solely for the purposes permitted by this Agreement and in accordance with (i) the Sears privacy policy as such policy is amended from time to time and provided to Licensee; (ii) the Payment Card Industry Standards Council; and (iii) Applicable Laws relating to the collection, use, storage and/or disclosure of Personal

Information. Licensee shall store Personal Information and protect Personal Information from loss, theft, unauthorized access, copying, modification, use or disclosure during utilization, transmission and storage using technology, physical protection measures, processes and standards of practise that meet or exceed industry standard commercially reasonable practices. In the event any loss, theft or unauthorized access, copying, modification, use or disclosure occurs, Licensee shall notify Sears in writing and the parties shall act reasonably to develop appropriate remedial processes. Licensee shall execute the Privacy Acknowledgment attached hereto at Schedule "G" on the Effective Date and shall thereafter execute an acknowledgment substantially similar to such Privacy Acknowledgment whenever requested to do so by Sears.

### **8.9 Permits and Licenses**

Licensee shall, at its sole expense, obtain all permits and licenses that may be required under any Applicable Law in connection with the operation of the Concession.

Licensee hereby represents and warrants that it has all required permits and authorizations required of any governmental entity that may be required in order to conduct the business of the Concession.

### **8.10 Business License**

Licensee shall prominently display its business license and, upon the request of Sears, shall prominently display and do all things as Sears in its sole discretion may deem necessary to inform Customers that the Concession is operated by the Licensee in association with the Sears Trademark under a license from Sears.

### **8.11 Staffing and Background Checks**

Licensee shall at all times staff the Concession with sufficient, fully qualified, competent, well trained, professional personnel, who shall demonstrate the morals, safe work habits and attitudes necessary to produce and maintain good relations with Customers.

Licensee shall conduct, at its own cost and expense and using the services of Sears approved service providers, the necessary reference checks, including comprehensive criminal background checks, for all employees as of the Effective Date and for all potential employees during the Term.

In the event that a negative criminal background check is obtained on a potential or current employee and Licensee wishes to, as the case may be, engage or continue with the employment of the individual in question, Licensee must promptly notify Sears of the results of the background check and obtain Sears's approval for such engagement or continued employment, which approval may be withheld at Sears's sole discretion.

If at any time during the Term of this Agreement, the Licensee's employee voluntarily terminates his or her position at the Concession and subsequently returns for employment at the Concession, a reference check, including a comprehensive criminal background check, must be conducted prior to the re-employment of that individual.



### **8.12 Sub-Contracting**

Except in accordance with this Agreement, Licensee shall not authorize any Person other than its own employees to perform any of Licensee's obligations under this Agreement on Licensee's behalf without the prior written consent of Sears, which consent may be withheld in its entire discretion. Licensee may use sub-contractors to perform sales and installation services provided such sub-contractors are under written agreement with Licensee and are not Competitors.

### **8.13 Supervision of Employees**

Licensee shall diligently supervise its employees and Licensee's Representatives in order to operate the Concession in accordance with this Agreement. Licensee shall be solely responsible for the acts of its employees and Licensee's Representatives in the performance and operation of the Concession during the Term.

### **8.14 Labour and Employment Standards**

Licensee shall have the sole and exclusive control over all its employees' and Licensee's Representative's labour relations and policies relating to wages, compensation, hours of work and working conditions. Licensee shall have the sole and exclusive right to hire, transfer, suspend, lay off, recall, promote, assign, discipline, adjust grievances and discharge said employees and/or Licensee's Representatives, provided, however, that at any time, if Sears so requests, Licensee shall remove from the operation of the Concession in any Designated Channels, any of its employees and/or any Licensee's Representatives as contemplated in this Agreement.

### **8.15 Compensation & Benefits**

Licensee shall have complete responsibility for all salaries, wages, compensation and benefits for all of its employees and Licensee's Representatives and shall make all necessary payroll deductions and withholdings from said employees and Licensee's Representatives' salaries, wages and any other compensation. Licensee shall have full responsibility for the payment of any and all contributions, taxes and assessments including any applicable workers' compensation or workplace safety and insurance legislation and shall meet all requirements of the employment insurance and federal and provincial or territorial income tax and pension plan laws. Licensee shall, at Sears's reasonable request, provide evidence to Sears that all payroll and/or compensation obligations to its employees and Licensee's Representatives have been met in a timely and appropriate manner and that all deductions, withholdings and payments of taxes, contributions and assessments have been duly made by Licensee as required by Applicable Law.

### **8.16 No Connection to Sears**

No employees of Licensee or Licensee's Representatives shall be considered to be employees or agents, assigns, designees, representatives, contractors, sub-contractors or sub-licensees of Sears. None of Licensee's employees, Licensee's Representatives, directors, officers or shareholders are entitled to any of the benefits that Sears provides for Sears employees, including disability insurance, group insurance, pension plan, holiday pay, paid vacation, or other benefit plans. Licensee shall have all its employees and Licensee's Representatives, engaged in the operation of the Concession under this Agreement, sign an Understanding of Employment/Engagement Form in a form substantially in the form attached as Schedule "E"

hereto. Licensee shall retain such completed forms and shall make available to Sears, and shall provide copies to Sears as Sears requests, at all times during the Term and the two year period following the end of the Term.

### **8.17 Sears Employee Discount**

Licensee shall grant a discount of ten percent (10%) or greater to all Sears employees and retirees, in addition to all price reductions, promotions and/or discounts offered to Customers who are not Sears employees, on all the Products and Services purchased by Sears employees and retirees from the Concession.

### **8.18 Sears Identification Cards**

When dealing with Customers, Licensee's employees and Licensee's Representatives shall have available on their person and offer as identification when requested by Customers, an identification card issued by Sears. Licensee shall have and hereby accepts responsibility for the control and distribution of such identification cards to ensure they are only held by current employees of Licensee and Licensee's Representatives active in the operation of the Concession. Such control shall include the repossession and return to Sears of identification cards from persons who are no longer active in the operation of the Concession including those who are no longer engaged by Licensee. Upon termination or expiration for any reason of this Agreement, Licensee shall repossess and return to Sears all identification cards issued by Sears to its employees and/or Licensee's Representatives. In the event the identification cards not repossessed by the Licensee are used to obtain a discount from Sears, Licensee shall be responsible for the amount of any such discount granted by Sears in the course of honouring such un-repossessed identification cards.

### **8.19 Licensee Identification Cards**

When dealing with Customers, Licensee's employees and Licensee's Representatives shall have available on their person, and offer as identification when requested by Customers, an identification card issued by Licensee identifying the holder thereof as being authorized to provide services on behalf of Licensee under the Brand Name. Such identification cards shall provide such information as is required by, and shall otherwise comply with, Applicable Law. Such identification cards will be issued to all Licensee's employees and Licensee's Representatives, at no cost to Sears.

Licensee shall have and hereby accepts responsibility for the control and distribution of such identification cards to ensure they are only held by current employees of Licensee and Licensee's Representatives active in the operation of the Concession. Such control shall include the repossession and destruction of identification cards from persons who are no longer active in the operation of the Concession including those who are no longer engaged by Licensee.

Upon termination or expiration of this Agreement for any reason Licensee shall repossess and destroy all identification cards issued by Licensee pursuant to this provision.

### **8.20 Appearance and Uniforms**

Licensee shall ensure that its Licensee's Representatives adhere to any dress code required by Sears, including where applicable the wearing of uniforms, and shall at all times appear well-groomed and project a professional image. When dealing with Sears Customers, Licensee's

Representatives providing Products and Services shall be clearly identifiable as Sears service providers by means of appropriate uniform or mode of dress as directed by Sears. Licensee shall be responsible for obtaining such uniforms or paying to Sears the cost of such uniforms, as the case may be.

#### **8.21 Removal of Employees**

Sears, acting reasonably and in accordance with its own employment practices and Applicable Law, may request Licensee to remove from the operation of the Concession any Licensee's employee or Licensee's Representatives who is objectionable to Sears for reasons of safety or security of Customers, employees or merchandise, or whose manner, in Sears's sole judgement, impairs Sears goodwill or Customer relations. In such cases where:

(a) Licensee has the right under Applicable Law to remove its employee and/or the Licensee's Representative for cause, Licensee shall do so immediately and if Licensee refuses to remove such Licensee's employee and/or Licensee's Representative, Sears shall have the right, at its sole option, to terminate this Agreement or to amend Schedule "A" to terminate the right to operate the Concession in the Designated Market and/or Designated Channels in which such Licensee's employee or Licensee's Representative is involved; or

(b) Licensee is required by Applicable Law to provide said Licensee's employees and/or Licensee's Representative an opportunity to remedy his or her conduct through a process and over a specified reasonable period of time, Licensee shall do so and monitor the situation and in the event the situation which caused Sears to request the removal of the Licensee's employee and/or Licensee's Representative from the operation of the Concession is not remedied to Sears sole satisfaction, acting reasonably, within the specified period of time and Licensee refuses to remove such Licensee's employee and/or Licensee's Representative, Sears shall have the right, at its sole option, to terminate this Agreement or to amend Schedule "A" to terminate the right to operate the Concession in the Designated Market and/or Designated Channel in which such Licensee's employee and/or Licensee's Representative is involved.

### **ARTICLE 9. LICENSEE'S PURCHASES AND PAYMENTS**

#### **9.1 Purchase in the Name of Licensee**

Licensee agrees that all purchases, contracts and obligations made or incurred by Licensee in connection with the operation of the Concession shall be made solely in the name of Licensee and under no circumstances shall any legal document, purchase order, letterhead, invoice or any other document, expense or obligation of any kind whatsoever be identified with Sears, the Brand Name or a Sears Trademark. For greater certainty, under no circumstances will Licensee make any purchase or incur any obligation or expense of any kind whatsoever in the name of Sears or on its behalf.

#### **9.2 Notification to Supplier**

Prior to making any initial purchase involving the operation of the Concession, Licensee shall inform the supplier, in writing, that Sears is not obligated in any way for, or as a result of, said purchase.

### **9.3 Invoices Issued in Error**

Upon receipt by Licensee of an invoice from a supplier identified as an invoice to Sears, the Brand Name, or identified in any manner with the Sears Trademark, Licensee shall immediately advise the supplier in writing, with a copy to Sears, that the supplier has not invoiced correctly and advise the supplier to reissue the invoice to Licensee exclusively in Licensee's own name.

### **9.4 Prompt Payment of Invoices**

Licensee shall promptly pay all obligations incurred in connection with the operation of the Concession and shall hold Sears free and harmless from any and all claims, costs or liabilities incurred in connection with purchases or other monetary obligations incurred in relation to the operation of the Concession.

### **9.5 Accounts Payable Report**

In the event Licensee fails to comply, in whole or in part, with any or all of this Article 9, Sears, in addition to any other remedies afforded it under this Agreement, may request in writing and Licensee shall furnish a detailed accounts payable report to Sears including the individual amounts owing and the names and addresses of all suppliers and creditors from whom it purchased merchandise and/or services for sale or use under this Agreement, as well as the names and addresses of all other parties with whom it has any business or contractual relations and/or obligations in connection with the operation of the Concession.

### **9.6 Withholding and Payment**

Licensee agrees that in the event a supplier and/or creditor of Licensee makes representation, and/or provides copies of invoices and shipping and receiving documentation to Sears, as to amounts owing to the said supplier and/or creditor by Licensee which was incurred by Licensee in connection with the operation of the Concession (the "**Licensee Obligations**"), and Licensee has not met the terms of the payment agreed, Sears, after discussion with Licensee, may withhold the amount of such Licensee Obligations from any settlement of monies due to Licensee until such time as Licensee provides to Sears proof of payment, or Licensee provides documentation from the supplier and/or creditor that verifies that the supplier and/or creditor waives any claim against Sears for payment of such unpaid invoices, or until such time as Sears is legally absolved of any responsibility for payment of such Licensee Obligations.

In the event Licensee or Sears is found legally responsible for the payment of the Licensee Obligations, and Licensee is unwilling or unable to pay the Licensee Obligations, Licensee agrees that Sears may make such payments on Licensee's behalf and deduct the entire amount of such payments from monies due to Licensee by Sears and/or from any monies withheld by Sears from Licensee's settlement.

### **9.7 Business Fees and Taxes**

Licensee shall be responsible for bearing the cost of and paying any and all license fees and taxes, whether presently existing or created during the Term, including, without limiting the generality of the foregoing, business and corporate, use, sales, goods and services, gross receipts, income, separately assessed property, realty or other similar or different taxes including provincial or territorial sales taxes, Goods and Services Tax, and Harmonized Sales Tax or assessments which may be charged, levied or payable in connection with the operation

of the Concession, excluding however, all taxes and assessments applicable to Sears income from Commissions payable to Sears hereunder or applicable to Sears property. In the event that any such taxes are billed to Sears, then the Licensee covenants and agrees to pay the same to Sears forthwith following receipt of a written demand therefor from Sears. Sears shall be entitled to set off any monies owing to it pursuant to this provision which are not paid in accordance with this provision against any monies it may then or in the future owe to the Licensee.

## **ARTICLE 10. INSURANCE**

### **10.1 Licensee's Property and Liability Insurance**

Licensee hereby agrees and covenants that it shall, at its sole expense, obtain and maintain, during the Term of this Agreement, the following policies of insurance from a company or companies satisfactory to Sears and adequate to fully protect Sears and Licensee from and against all expenses, claims, actions, liabilities and Losses arising out of subjects covered by said policies of insurance:

- (a) **Workers' Compensation Insurance or Workplace Safety Insurance:** coverage with the applicable provincial or territorial workplace safety & insurance board and/or employer's liability insurance covering all persons employed, engaged or working in connection with the operation of the Concession with the limits of such insurance not less than \$1,000,000 for bodily injury, death, and property damage. The Licensee shall provide to Sears semi-annual proof of paid up coverage for workers' compensation insurance or workplace safety and insurance coverage, or similar coverage under the legislative requirements of the applicable province or territory and any replacement or successor thereof, in the form of a provincial or territorial certificate of good standing, or a provincial or territorial financial statement showing the Licensee has paid amounts owing in full in each province and/or territory in which the Concession is operated. In addition, upon expiry or other termination of this Agreement, the Licensee shall provide to Sears evidence of compliance with workers' compensation insurance or workplace safety and insurance or equivalent or similar coverage under the legislative requirements of the applicable province or territory and any replacement or successor thereof.
- (b) **Comprehensive General Liability Insurance**, including but not limited to Products and Services and completed operations coverage with a twenty-four (24) month indemnity period which shall include and shall so state on the certificate of insurance:
  - (i) a contractual liability endorsement specifically covering the Licensee's indemnification of Sears under this Agreement;
  - (ii) Cross Liability and Severability of Interests Clauses, which such insurance being considered primary and not call into contribution any other insurance available to Sears;

- (iii) must not have any exclusions for work done by Licensee's Representatives, sub-contractors and/or sub-trades;
- (iv) the provision of coverage for Non-Owned Automobile Liability;
- (v) the provision of Tenant's legal liability coverage;

The limits of liability must not be less than five million dollars (\$5,000,000.00) for bodily injury, death and property damage, or such higher amount as Sears shall from time to time require; and such shall be stated on the Certificate of Insurance;

- (c) **Motor Vehicle Liability Insurance** covering all vehicles used by the Licensee in connection with the operation of the Concession with limits of not less than two million dollars (\$2,000,000.00), and with a combined single limit for bodily injury, death and property damage per accident or such higher amount as Sears shall from time to time require and shall so state on the Certificate of Insurance;
- (d) **All Risk Property Insurance**, including, but not limited to coverage for:
  - (i) theft of the Licensee's property, equipment and merchandise utilized in connection with the operation of the Concession and shall so state on the Certificate of Insurance; and
  - (ii) any and all Sears and/or Customer assets in the care, custody and/or control of the Licensee in an amount not less than the full replacement cost thereof and shall so state on the Certificate of Insurance;
- (e) **Contractor's Pollution Liability insurance**, which may be written on a claims made form, in an amount of not less than \$500,000 per occurrence and in the aggregate subject to a minimum deductible of \$10,000 per occurrence. Coverage shall include, but not be limited to, third party claims for bodily injury, property damage, clean-up costs and associated legal defence expense arising from pollution conditions caused by any and all services performed by the Licensee. Coverage shall be provided for pollution events sudden and accidental in nature, without time element discovery but reported not later than 120 hours after discovery;
- (f) **Employee Fidelity Coverage** to include the Licensee and all those under its direction involved in the operation of the Concession in an amount not less than five hundred thousand dollars (\$500,000.00);
- (g) **Bailee's Legal Liability Insurance** to the full replacement value of any and all Customer's goods in the possession of Licensee and shall so state on the Certificate of Insurance; and
- (h) (if applicable) **Professional Errors and Omissions Liability** coverage in an amount not less than two million dollars (\$2,000,000.00).

## **10.2 Additional Insured**

All policies of insurance required by Article 10.1 (b), (c), (d), (e), (f), (g) and (h) shall:

- (a) be taken out with insurers acceptable to Sears;
- (b) name Sears Canada Inc. as additional insured and shall so state on the certificate of insurance;
- (c) shall not be subject to material change or cancellation except upon at least thirty (30) days prior written notice to Sears; and
- (d) be prepared in such a form that Sears shall not be liable for any premiums and shall so state on the certificate of insurance;

## **10.3 Waiver of Subrogation**

All policies of insurance required by section 10.1(d) and (f) shall contain a waiver of subrogation in favour of Sears and shall so state on the certificate of insurance.

## **10.4 Evidence of Insurance**

The Licensee shall provide to Sears certificates of insurance or copies of policies as evidence of the insurance required by section 10.1 (b), (c), (d), (e), (f), (g) and (h) both: (i) prior to commencement of the Term of this Agreement or the operation of the Concession in any Designated Channels; and (ii) upon each anniversary date of the policy or policies.

## **10.5 Sears Approval**

No approval by Sears of any of the insurance policies obtained by the Licensee, or any insurance or additional insurance obtained by Sears on the Licensee's behalf shall relieve the Licensee of any of its obligations under this Agreement.

## **10.6 Failure to Insure, Cancellation**

If the Licensee fails to provide evidence of insurance as required by sections 10.1 or 10.4, or if, in Sears's sole discretion, the policies obtained by the Licensee do not afford adequate protection for Sears, the Licensee shall deliver to Sears evidence of insurance or such additional insurance as Sears may require, within fifteen (15) days after notice of same being given by Sears to the Licensee, failing which Sears shall have the right, at its option, to: (i) obtain such insurance or additional insurance at the expense of the Licensee and to invoice the Licensee and offset the same against any monies payable to the Licensee; or (ii) immediately terminate this Agreement.

**ARTICLE 11.**  
**COMMISSION AND REMITTANCE**

**11.1 Sears Commission**

In consideration for the rights granted to Licensee herein, Sears shall be entitled to receive from Licensee and Licensee shall pay to Sears a monthly Commission as set out in Schedule "D" ("**Commission**").

**11.2 Licensee's Maintenance Service and Administration Fee**

In consideration for the Licensee's provision of additional services, Sears shall pay to Licensee a monthly Maintenance Service and Administration Fee as set out in Schedule "D" ("**Maintenance Service and Administration Fee**").

**11.3 Sales Tax**

The Licensee shall also pay to Sears any applicable Sales Tax related to Commission payments. The Sears GST number is 104765698RT0001. Sears shall also pay to the Licensee any applicable Sales Tax related to Maintenance Service and Administration Fee payments. The Licensee GST number is 121819007RT0001.

**11.4 Payment Settlement Process**

*Sears POS is Used*

**Sears POS Monthly Remittance.** If a Sears POS is used, then no later than the later of (i) 12 Business Days following the end of each Fiscal Month; or (ii) 3 Business Days following receipt by Sears of the Monthly Sales Report for such Fiscal Month, Sears shall remit to Licensee a monthly remittance equal to the total of (i) the Maintenance Service and Administration Fee for such Fiscal Month; and (ii) the Net Sales processed through the Sears POS during such Fiscal Month; net of (iii) the Merchant Fee earned during such Fiscal Month; (iv) the Commission earned during such Fiscal Month; and (v) any other money due and payable by Licensee to Sears under this Agreement as of the last day of such Fiscal Month ("**Final Monthly Remittance**"). If final reconciliation results in an amount owing by Licensee to Sears, Licensee shall make such payment to Sears no later than 17 Business Days following the end of such Fiscal Month.

*No Sears POS is Used*

**Licensee Monthly Remittance (No Sears POS).** If no Sears POS is used, then no later than the 13th day following the end of each Fiscal Month, Licensee shall pay to Sears by electronic funds transfer, with respect to such Fiscal Month, the applicable Commission, as well as all applicable Sales Tax thereon, net of the Maintenance Service and Administration Fee for such Fiscal Month. If final reconciliation results in an amount owing by Sears to Licensee, Sears shall make such payment to Licensee no later than 17 Business Days following the end of such Fiscal Month.



### 11.5 Annual Reconciliation Report

No later than 60 days after the end of each Fiscal Year, Sears shall (provided the Licensee has met its reporting obligations) provide to Licensee a report ("**Annual Reconciliation Report**") indicating, with respect to such Fiscal Year, the sums owed and paid by one party to the other, and the reconciled amount owing by one party to the other. The party owing shall pay the reconciled amount to the party owed no later than 90 days after the end of the applicable Fiscal Year.

### 11.6 Five Year Commission Review

If, on the fifth anniversary of the Effective Date, the Customer Base is less than the Customer Base on the Effective Date by more than 20%, then, at the request of the Licensee or Sears, during the sixth year of the Term, Sears and the Licensee shall discuss a change in the level of Commissions, each Party acting in good faith. "**Customer Base**" means, at any given time, the number of Persons who (i) rent or lease Oil Equipment from Sears; (ii) are parties to service contracts with Sears or the Concession regarding Oil Equipment; or (iii) in the previous five years, purchased, leased or rented Oil Equipment from Sears or the Concession, or were parties to service contracts with Sears or the Concession regarding Oil Equipment

## **ARTICLE 12. SECURITY FOR PAYMENT**

### 12.1 Setoff

Where Licensee or an Affiliate of Licensee owes money to Sears under this Agreement or any other agreement with Sears, Sears is authorized to apply and offset such amount owing against an amount owing by Sears to Licensee or to an Affiliate of Licensee.

Where Sears is overdue on a payment of money to Licensee under this Agreement, Licensee is authorized to apply and offset such overdue amount owing against an amount owing to Sears by Licensee.

### 12.2 Lien

Subject to any liens and encumbrances granted to a senior lender of the Licensee (the "**Senior Lender Lien**"), Sears shall at all times have a first charge, lien and hypothec upon all of the Licensee's assets, property and undertaking (the "**Secured Assets**"), without in any manner affecting any other remedies that Sears may have by reason thereof, to take possession of the Secured Assets, and at the Licensee's expense, to take possession of or to sell such Secured Assets as may be necessary in order to pay Sears all of the amounts due, or to become due, to Sears and to cure all other defaults of the Licensee hereunder. In the disposal and/or sale of such Secured Assets, Sears shall have the right to accept any offer it may choose and shall have no liability or responsibility to the Licensee for payment of any perceived, estimated or actual value of such Secured Assets. Prior to the Effective Date, the Licensee shall enter into a security agreement under which it grants a charge over the Secured Assets in a form satisfactory to Sears.

This section 12.2 shall not apply for so long as the Guarantee Agreement is in effect.

### **12.3 No Lien on Sears Assets**

The Licensee shall not allow any liens, claims or encumbrances to attach to any Sears property. In the event any lien so attaches or is threatened, the Licensee shall promptly take all necessary action to cause such lien to be satisfied and released; provided, however, that the Licensee shall have the right to contest the validity or amount of any such lien upon its prior posting of security with Sears, which security in Sears's reasonable judgment must be adequate to pay and discharge any such lien in full plus Sears's reasonable estimate of its legal fees. The Licensee agrees to pay all legal fees and other costs incurred by Sears as a result of any such liens being placed upon any Sears property.

### **12.4 Financial Covenants**

Licensee covenants that it shall at all times during the Term maintain such financial covenants (i) as are required of Licensee pursuant to an agreement with a bank, lender or other provider of financing to the Licensee; and (ii) such financial covenants as set out in Schedule "N" hereto. No later than the 30th day following the end of every Fiscal Month, Licensee shall provide to Sears a certificate substantially in the form set out at Schedule "H", signed by the Chief Financial Officer of Licensee (or such officer of Licensee with the responsibilities commonly carried out by a chief financial officer) certifying that the Financial Covenants have been maintained during such Fiscal Month.

## **ARTICLE 13. GOVERNANCE, COMMITTEES AND SUPPORT**

### **13.1 Executive Committee**

An executive committee will be created which will consist of one or two senior executives, or their designates, of each of Licensee and Sears (the "**Executive Committee**"). Each party shall have the right to remove or replace its appointees to the Executive Committee for any reason and at any time, and to fill any vacancy with respect to its appointees.

The responsibilities of the Executive Committee will be to focus and consult on matters that are of mutual concern to the parties, including shared vision and goals, strategy, growing revenue, marketing plans, the customer experience (including customer complaint management and service levels), product and pricing optimization; and matters related to enhancing and/or material changes to the Concession.

The Executive Committee may review the ongoing financial reports and performance scorecards of the Concession.

The Executive Committee will review and provide input into the operation of the Concession. For greater certainty, the Executive Committee is not mandated to provide operational support to the Licensee.

The parties will attempt to resolve the subject of any matter escalated to the Executive Committee promptly by discussions between the senior officers. The senior officers will meet in person or by telephone within 15 days after the notice of the dispute and attempt in good faith to resolve the subject matter of escalation. In the event the senior officers do not resolve the

dispute within 30 days from receipt of notice of a dispute (which time period may be extended by written agreement of the senior officers), each party may seek remedies in whatever manner they wish, including instituting legal action.

### **13.2 Sears Support**

Sears, at its sole expense, will dedicate employees to provide Licensee with the following support:

- (a) Marketing Liaison – who shall provide Licensee with such assistance as it reasonably requests relating to the development and implementation of marketing and advertising strategies, the monitoring of marketplace trends; Sears Trademark related matters, advertising campaigns (both new and renewed) and solicitation material, sponsorships (both new and renewed), cross marketing and the Sears Rewards Program.
- (b) Online Liaison – who shall provide Licensee with such assistance as it reasonably requests relating to the operation and development of the Concession website, related infrastructure, the monitoring of online trends, and the identification of online suppliers.
- (c) Operations Liaison – who shall provide Licensee with such assistance as it reasonably requests relating to customer service, customer resolution, the customer experience, suggestions regarding the development and monitoring of operation plans, the support of Sears Rewards Program, and service and performance metrics.

## **ARTICLE 14.**

### **RECORD KEEPING, REPORTING, MONITORING & AUDITING**

#### **14.1 Point of Sale System**

Licensee shall use a POS system as mandated by Sears to record each sale of the Products and Services. An account must be kept of all Gross Revenue and Net Sales.

#### **14.2 Licensee Reporting**

Licensee shall provide to Sears such reports at such frequency as set out in Schedule "F".

#### **14.3 Accounting Records**

Licensee shall prepare, keep and maintain full, true and accurate books of account, documents and records that adhere to sound accounting practice in accordance with Accounting Principles and all Applicable Laws (including such books and records as are required by Governmental Authorities), which accurately reflect the Gross Revenue, expenses, deductions and taxes resulting from the operation of the Concession including the marketing expenses and any mandatory investments which the Licensee incurs under this Agreement. The Licensee shall maintain such records at the Licensee's principal office for a period ending no sooner than seven (7) years after the end of the Term.

#### **14.4 No Waiver or Prejudice**

The receipt or use by Sears of any financial statements, statement of Gross Revenue or Net Sales from the Licensee, or any payment of Commission based thereon, or any other information relating to the operation of the Concession and the expenses related thereto, shall not constitute a waiver by Sears of any obligation of the Licensee hereunder and, except where otherwise provided in this Agreement, shall be without prejudice to Sears right to audit the Licensee's books and records as provided for in this Agreement.

#### **14.5 Audit**

Sears may at any time and from time to time cause a complete audit to be made by Sears auditors or chartered accountants (collectively, "**Sears Auditor**") of the Licensee's entire business affairs, records and procedures relating to the operation of the Concession and the calculation of Gross Revenue and Net Sales. If the Sears Auditor performing such audit reports to Sears that the Licensee's records and procedures are insufficient to permit a determination of Gross Revenue and/or Net Sales for any Fiscal Year, or part thereof, or if the Licensee is not complying with any of the provisions of this Agreement, the Licensee shall immediately after notice from Sears take such steps as are necessary to remedy such default. If the Licensee is unable to satisfy forthwith the objections contained in the Sears Auditor's report, Sears may thereafter deliver to the Licensee an estimate (which shall be final and binding on the Licensee) made by Sears of Gross Revenue and/or Net Sales for the period under consideration (which estimate shall be based on any further information or records of the Licensee that have been made available and such other information as Sears considers relevant) and the Licensee shall immediately pay to Sears any amount shown thereby to be owing on account of Commission. If the Sears Auditor reports that the Licensee is in default of this Agreement or if the Licensee's records and procedures are insufficient to permit a determination of the Licensee's Gross Revenue and/or Net Sales or if such audit discloses that Gross Revenue and/or Net Sales for the period in question is understated by two percent (2%) or more, the Licensee shall forthwith after notice from Sears pay to Sears the cost of such audit in addition to the deficiency, which deficiency is payable in any event, and, in addition to any other rights or remedies of Sears under this Agreement or at law, Sears may, at its option, terminate this Agreement upon five (5) days' notice to the Licensee. The report of the Sears Auditor is final and binding on the parties hereto.

#### **14.6 Notice of Incident or Spill**

The Licensee shall immediately notify Sears of any safety or environmental incidents including product spills, product mixes, electrical safety incidents, vehicle accidents, fires, explosions, damage to property, fatalities and lost time injuries, consistent with any procedures communicated to Licensee related to Products and Services provided to Customers..

#### **14.7 Notice of Collective Agreements and Negotiations**

The Licensee acknowledges that the entering into by it of a collective agreement with any trade union, council, trade unions or other employee organization representing or purporting to represent the Licensee's employees may have a profound and far reaching effect on the rights of Sears in respect of the Licensee and on the personal practices of other departments of Sears. Accordingly, the Licensee agrees to notify Sears in writing immediately upon becoming aware of any application for the appointment or certification of any bargaining agent of any of the Licensee's employees.

**ARTICLE 15.**  
**TRADEMARK LICENSE**

**15.1 Grant of Trademark License**

Sears hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicenseable, royalty-free right to use the Sears Trademark in Canada as it appears in the Brand Name, in association with the Concession only, subject to the terms and conditions of this Agreement and only for the Term. For greater certainty, the rights granted in this paragraph shall terminate automatically upon termination of the Concession.

**15.2 Use of Trademark**

The Licensee shall only use the Sears Trademark in connection with the Concession and shall only use the Sears Trademark in accordance with this Agreement. The Licensee shall never use the Sears Trademark in association with any business that is not the Concession nor in association with any products or services that are not Products and Services authorized pursuant to this Agreement. The Licensee shall not include the Sears Trademark as part of its or an Affiliate's name.

Except as otherwise expressly allowed, the Licensee shall only use the Sears Trademark as trade-mark and only in the format in which the Sears Trademark is registered or has been filed for registration. All uses and presentations of a Sears Trademark by the Licensee shall clearly distinguish the Sears Trademark from any other trade-mark, design or text appearing with it. The Licensee shall not use any trade-mark which is similar to, confusing with, or which so nearly resembles as to be likely to cause confusion with the Sears Trademark.

The Licensee shall use its best efforts to preserve the value, validity and distinctiveness of the Sears Trademark. The Licensee shall provide assistance to Sears and any information or other assistance that may be desirable to establish use of a Sears Trademark which Sears or the Trademark Owner may require to assist in registering, enforcing or maintaining a Sears Trademark or any other name or Trademark of Sears or the Trademark Owner.

**15.3 Prior Approval on Use of Sears Trademark**

All uses and presentations of the Sears Trademark whether on signs, in literature, in advertising or otherwise, shall be submitted by Licensee to Sears, or to such person as Sears may designate, for written approval prior to any use or presentation of the same.

**15.4 Advertising of Sears Trademark**

Licensee shall display on all signs, literature and advertising on which the Sears Trademark appears, and in such other manner as Sears may direct from time to time, a notice similar to the following notice:

Sears®  
® Registered Trademark of Sears licensed for use in Canada

### **15.5 Restrictions on Use of the Sears Trademark by Licensee**

The Licensee shall promptly notify Sears of any infringement, unauthorized use, advertising, imitation, dilution or other infringement of the Sears Trademarks which comes to its attention. Sears and the Trademark Owner shall each have the sole right, at its own expense, to take such action as it determines, in its sole discretion, to be appropriate to enforce its rights to the Trademarks. The Licensee waives the provisions of subsection 50(3) of the Trademarks Act R.S.C. 1985 Chap. T-13 as amended.

The Licensee shall co-operate and assist in any protest or legal action undertaken by Sears or the Trademark Owner, at Sears's or the Trademark Owner's expense, to enforce its rights to the Trademarks. If requested by Sears or the Trademark Owner, the Licensee shall join in such protest or legal action, at Sears's or the Trademark Owner's expense. The Licensee shall not undertake such protest or legal action on its own behalf.

### **15.6 Ownership of Trademarks**

Sears represents and warrants that the Sears Trademark is valid and enforceable and that Sears has the exclusive right to use the Sears Trademark in Canada and that Sears has the right to license the Sears Trademark to Licensee. Licensee acknowledges that Sears will be involved in the supervision and control of the use of the Sears Trademark in Canada by Licensee.

The Licensee acknowledges that the Sears Trademark and the goodwill attached thereto are and shall remain the exclusive property of its owner. All use of the Sears Trademark by the Licensee and all goodwill resulting therefrom shall inure to the sole and exclusive benefit of the Trademark Owner. The Licensee shall not have any right, title or interest in the Sears Trademark or any goodwill associated therewith and shall not in any way use the Sears Trademark in such a way as to suggest or induce others into believing that the Licensee has any such right, title or interest. The Licensee shall never challenge the ownership of the Sears Trademark nor shall the Licensee oppose any application to register any trade-mark incorporating the word "Sears".

### **15.7 Remedies for Unauthorized Use**

The parties agree that in the event of any use of the Sears Trademarks by the Licensee in breach of the conditions of such use as set out in accordance with this Agreement, Sears and/or the Trademark Owner may suffer irreparable harm for which damages might be an inadequate remedy. Accordingly, the parties consent to the granting of an order of specific performance or injunctive relief by a court to remedy such breach (such consent not intending to limit in any way any other remedies available Sears and the Trademark Owner).

### **15.8 Trademark Owner's Remedies**

Sears represents and warrants that some or all of the Sears Trademarks are owned by one or more of its Affiliates and that the rights granted herein to use such Sears Trademarks were granted by Sears under authority from the Trademark Owner. The Licensee acknowledges that the Trademark Owner has an interest in ensuring the proper use of and enforcing its rights to such Sears Trademarks. The parties agree that the covenants, representations, warranties, conditions and provisions of this Agreement respecting the Sears Trademarks owned by the Trademark Owner (collectively, the "Trademark Terms") are being entered into for and on behalf

of the Trademark Owner, and Sears agrees to hold the Trademark Terms as agent for the Trademark Owner with the intent and purpose that the Trademark Owner shall have the benefit of the Trademark Terms and will be entitled to enforce the Trademark Terms, or any of them, in any action brought by or against the Trademark Owner.

### **15.9 Changes to Sears Trademark**

Sears reserves the exclusive right to change the Sears Trademark (for greater certainty, including changing the trade-mark "Sears") and designate, upon notice to Licensee, such other or additional trademarks that are the subject of the license and use under this Agreement. Licensee shall have a period of three (3) months from the date of such notice within which to change uses and advertising of the Sears Trademark to refer only to the trademark as modified by such notice.

## **ARTICLE 16. INTELLECTUAL PROPERTY**

### **16.1 Goodwill Generated by the Operation of the Concession**

All goodwill in, or which may be generated by the operation of the Concession shall enure to the sole and exclusive benefit of Sears. Licensee shall not have any right, title or interest in said goodwill. Licensee hereby unconditionally and irrevocably transfers and assigns to Sears any and all rights it may have or may claim to have, now and in the future, to said goodwill.

### **16.2 Sears Intellectual Property**

Sears is and will be the exclusive owner of all of the following Information and all Intellectual Property Rights therein (collectively, the "**Sears Intellectual Property**"):

- (a) an undivided joint interest in all Customer information;
- (b) any and all rights to hardware, software, systems, documentation, Sears Trade-Marks, Sears Confidential Information or other Information or Intellectual Property Rights (including any Sears website and Sears business rules and business processes): (i) that were owned by Sears on the Effective Date; (ii) that are procured or created by Sears (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession); (iii) that are created or developed for, or licensed to, Sears by another Person (other than the Licensee) (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession), including, without limitation, technical, functional, operational, performance or other relevant specifications or requirements therefor; (iv) all modifications to the property described in (i), (ii) and (iii) above created or developed at any time and for any reason by Sears or by another Person (other than the Licensee) for or on behalf of Sears; and
- (c) an undivided joint interest with Licensee in all reports and other Information created, generated, output or displayed by or as a result of the performance or receipt of the Licensee's obligations except to the extent such information contains Licensee's Confidential Information or Licensee Intellectual Property.

Licensee will acquire no rights to any Sears Intellectual Property other than the license rights expressly granted in writing by Sears to the Licensee or as provided for in this Agreement or another agreement with Sears.

Licensee will not assert any lien right or other encumbrance on Sears Intellectual Property, even if there is a dispute between the parties.

### **16.3 Licensee Intellectual Property**

Licensee is and will be the exclusive owner of all of the following information and all Intellectual Property Rights therein (collectively, the "**Licensee Intellectual Property**"): (a) any and all rights to hardware, software, systems, documentation, trade-marks, Licensee Confidential Information or other information or Intellectual Property Rights (including Licensee's business rules and business processes): (i) that were owned by Licensee on the Effective Date; (ii) that are procured or created by Licensee (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession); (iii) that are created or developed for, or licensed to, Licensee by another Person (other than Sears) (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession), including, without limitation, technical, functional, operational, performance or other relevant specifications or requirements therefor; (iv) all modifications to the property described in (i), (ii) and (iii) above created or developed at any time and for any reason by Licensee or by another Person (other than the Sears) for or on behalf of Licensee. Sears will acquire no rights to any Licensee Intellectual Property other than the license rights expressly granted in writing by Licensee to Sears or as provided for in this Agreement or another agreement with Licensee.

### **16.4 Establishment of New Intellectual Property Rights**

Each of the parties acknowledges that the other party may create and establish (or have created and established for it) new Intellectual Property Rights in connection with the operation of the Concession and provision of the Products and Services ("**New Intellectual Property**"), and agree as follows:

- (a) To the extent that Sears creates New Intellectual Property, Sears shall own all rights established during the Term, shall be responsible for making all filings and taking all other actions necessary to protect such New Intellectual Property and shall be deemed to have granted to the Licensee a non-exclusive, royalty-free license in Canada to use such New Intellectual Property solely in connection with the operation of the Concession and the marketing and sale of the Products and Services for the duration of the Term.
- (b) To the extent that Licensee creates New Intellectual Property, Licensee shall own all rights established during the Term, shall be responsible for making all filings and taking all other actions necessary to protect such New Intellectual Property and shall be deemed to have granted to Sears a non-exclusive, royalty-free license in Canada to use such New Intellectual Property solely in connection with the marketing and sale of the Products and Services indefinitely, provided that such New Intellectual Property does not refer to Licensee or any of its trade-marks.



## **16.5 Protection of Intellectual Property**

Each party will use commercially reasonable efforts to cause its employees and representatives to waive, for the benefit of the other party and their respective successors, assigns, licensees and contractors, their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to any New Intellectual Property and existing Intellectual Property Rights of the other party. Each party will maintain an up-to-date copy of the source code materials for the New Intellectual Property and any Sears Intellectual Property or Licensee Intellectual Property, as the case may be, created or developed, in whole or in part, in a secure location and will promptly deliver such source code materials required by the other party to the extent required to satisfy its obligations under this Agreement upon the other party's request.

Each party agrees to reasonably co-operate, and to use commercially reasonable efforts to cause its employees representatives to reasonably co-operate with respect to signing such documents and doing such acts and other things reasonably requested by the other party to confirm the assignment of ownership and waiver of moral and similar rights referred to herein and to obtain registrations of Intellectual Property Rights relating to the Sears Intellectual Property, Licensee Intellectual Property and New Intellectual Property, as the case may be. Without limiting the generality of the foregoing, each party agrees that it will, and will cause the employees and representatives to, execute any assignment requested by the other party related to the Sears Intellectual Property, the Licensee Intellectual Property or the New Intellectual Property, as the case may be.

## **16.6 Residual Rights**

Subject to the terms and conditions of this Agreement, the parties agree that either party may use and exploit any information developed or created in the course of operating the Concession which relates to the Products and Services and/or the Concession (including general knowledge, skills, experience, know-how and techniques) and which may be retained in the unaided memory of such party's personnel, provided that in doing so such party does not breach its obligations with respect to confidential information or infringe, violate or constitute a misappropriation of any Intellectual Property Right of the other party or any third party.

Neither party will be precluded from independently developing for itself, or for others, anything which is competitive with, or similar to, the other party's Intellectual Property Rights, provided that in so doing no use is made of the other party's intellectual property or confidential information.

## **ARTICLE 17. CONFIDENTIAL INFORMATION**

### **17.1 Customer Lists and Customer Information**

Customer information, including Customer lists and Customer information (including, for greater certainty, lists developed or purchased by the Licensee, its employees or agents and any other information relating to such customers) shall be jointly owned by Licensee and Sears. The Licensee, on behalf of its employees and Affiliates agrees that they will not make use of said lists and information other than for the purpose of the business conducted by them in the Concession, which lists and information shall be immediately transferred in its entirety by Licensee to Sears upon expiration or termination, for any reason, of this Agreement. The

Licensee shall keep Customer lists and other customer information separate from any customer lists or other information that the Licensee may maintain that do not relate to this Agreement. The Licensee further agrees that all sales figures of the Concession and all sales figures of all other departments and any and all other information obtained at or from any meeting of departments of Sears department stores shall be deemed confidential and exclusively within the control of Sears. The obligations of the Licensee under this clause shall be subject to any provisions to the contrary under Applicable Law. Licensee shall not use Customer lists and customer information to solicit Customers unless such solicitation is allowed pursuant to this Agreement.

### **17.2 Sears Confidential Information**

Sears policies, processes, operating methods, source relationships, computer software and all tangible items on which there is recorded information related to Sears business, are deemed to be the exclusive property of Sears. In addition all information relating to the presentation, merchandising, marketing, provision and sale of the Products and Services, including all Customer lists and Customer information developed by Licensee and/or the Licensee's Representatives from the operation of the Concession either during the Term, or after termination of this Agreement is also deemed to be the exclusive property of Sears (collectively, the "**Sears Confidential Information**"). Licensee shall have no right, title or interest in the Sears Confidential Information.

### **17.3 Licensee's Confidential Information**

All the policies and processes of Licensee, Licensee's operating methods, Licensee's source relationships, any Licensee computer software and information relating to the operation of the Concession and the procurement of the Products and Services are, where such information is not Sears Confidential Information, deemed to be the exclusive property of Licensee (collectively, the "**Licensee's Confidential Information**"). Sears shall have no right, title or interest in such Licensee's Confidential Information. For greater clarity Licensee's Confidential Information shall not include any information relating to the presentation, merchandising, marketing and sales of the Products and Services or any Customer information and Customer lists derived from the operation of the Concession.

### **17.4 No Disclosure of Confidential Information**

All Sears Confidential Information and Licensee's Confidential Information shall be treated by the parties as confidential and neither party shall reproduce, disclose nor in any way make available, either directly or indirectly, any of the other parties' confidential information to any other Person at any time without the prior written consent of the party whose confidential information is being disclosed. Licensee shall ensure that all employment and engagement contracts with Licensee's Representatives working for the Concession contain an express written provision to this effect.

### **17.5 Protection of Confidential Information**

Licensee shall take all necessary steps, including commercially reasonable efforts, to protect all of Sears Confidential Information from destruction, loss, theft, misuse or disclosure during the Term, and Sears shall take all necessary steps, including commercially reasonable efforts, to protect all of Licensee's Confidential Information from destruction, loss, theft, misuse or disclosure during the Term. Such efforts shall in any event be no less stringent than the efforts a

Party exerts to ensure the protection of its own confidential information. Furthermore, Licensee's obligations respecting Sears Confidential Information and Sears' obligations respecting Licensee's Confidential Information shall survive and continue for seven (7) years following the end of the Term.

#### **17.6 Restricted Use of Confidential Information**

Licensee agrees not to use or permit others to use any of Sears Confidential Information in any manner except in connection with the operation of the Concession during the Term, and Sears agrees not to use or permit others to use any of Licensee's Confidential Information in any manner except in connection with the operation of the Concession during the Term.

#### **17.7 Licensee Maintenance of Sears Confidential Information**

Licensee shall at all times maintain all Sears Confidential Information physically separate and distinct from any Customer lists and information Licensee may maintain that is unrelated to this Agreement and the operation of the Concession.

#### **17.8 Return of Confidential Information**

Upon expiry or termination of this Agreement for any reason, (a) Licensee shall immediately deliver to Sears all copies of any Sears Confidential Information including all copies of Customer lists, potential Customer lists and all other copies of information concerning Customers, whether written, computerized or otherwise; and (b) Sears shall immediately deliver to Licensee all copies of any Licensee's Confidential Information.

### **ARTICLE 18. INDEMNITY AND LIMITATION OF LIABILITY**

#### **18.1 Sears's Indemnity**

Sears covenants and agrees that it will, at its own cost and expense (including but not limited to legal fees and disbursements), protect, defend, hold harmless, and indemnify Licensee, its Affiliates, and any of its present and former directors, officers, employees, authorized representatives, agents, dealers, distributors, designees, contractors, sub-contractors, successors and assigns from and against all allegations (even though such allegations may be false, fraudulent or groundless) asserted in any, arising out of or relating to any Claims relating to the following:

(a) death or injury to persons and damage to property resulting from or connected with a Sears department store and the purchase and use by anyone of products and services purchased in a Sears department store, other than Products and Services (such purchase including without limitation, goods sold, work done, services rendered or products utilized);

(b) the infringement, misuse, dilution, misappropriation, or other violation by Sears or an Affiliate of Sears of any patent, trademark, service mark, trade name, trade dress, copyright, trade secret, confidential relationship, domain name, right of publicity or other intellectual property right, or any unfair competition;

(c) any violation of any Applicable Law by Sears (or its officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives whether or not such act is within the scope of the engagement and/or employment or responsibilities of such officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives);

(d) failure to promptly warn Licensee and/or Customers of any defective products and services (other than Products or Services) or any failure to provide adequate warnings and/or instructions in the use, assembly, service or installation of products and services sold by Sears;

(e) the packaging, labelling, advertising or performance claims made by Sears;

(f) any breach by Sears of a covenant, representation or warranty to a Person other than Licensee;

(g) the display, assembly or installation by Sears of products and services other than the Products and Services;

(h) any and all claims, actions or costs (including legal costs, retroactive wages, awards, damages and penalties) made against any of the parties by any of Sears's officers, directors, employees or representatives:

- (I) for salary and wages, fringe benefits, compensation, arbitration, severance or relocation costs;
- (II) under the Workplace Safety and Insurance Act, 1997 (Ontario) or equivalent or similar legislation in any province or territory and any successor legislation thereof;
- (III) arising out of any alleged negligence, acts or omissions of any person other than Licensee; and
- (IV) arising out of employment, engagement or termination of employment or engagement for any reason whatsoever with Sears;

(i) the assertion by a third party of a security interest or other legal interest created by a factoring arrangement in any amount due by Sears to Licensee; and

(j) any claims by Sears's current or former employees, representatives, suppliers, licensees, and any third parties or Customers, for failure to pay suppliers, the operation of, or defects in, any machinery, vehicles, or equipment used in Sears's business (other than in connection with the operation of the Concession), previous license agreements for the Concession (other than with Licensee or an Affiliate of Licensee) and the use by anyone of products and services obtained in such previous Concession, other than the Products and Services.

Licensee may, at its election and at any time, take control of the defence and investigation of said Claims and employ legal advisers, consultants, investigators and experts of its own choice to manage and defend any such Claims at the cost and expense of Sears.

## **18.2 Licensee's Indemnity**

The Licensee covenants and agrees that it will, at its own cost and expense (including but not limited to legal fees and disbursements), protect, defend, hold harmless, indemnify Sears, its Affiliates, and any of its present and former directors, officers, employees, authorized representatives, agents, dealers, distributors, designees, contractors, sub-contractors, successors and assigns from and against all Claims related to: (a) death or injury to persons

and damage to property resulting from or connected with the operation of the Concession and the purchase and use by anyone of the Products and Services, including without limitation, goods sold, work done, services rendered or products utilized therein; (b) the infringement, misuse, dilution, misappropriation, or other violation by Licensee of any patent, trademark, trade name, trade dress, copyright, trade secret, confidential relationship, domain name, right of publicity or other intellectual property right, or any unfair competition; (c) any violation of any Applicable Law by Licensee (or its officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives whether or not such act is within the scope of the engagement and/or employment or responsibilities of such officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives) in the operation of the Concession or the possession, use or sale of the Products and Services; (d) failure to promptly warn Sears and/or its customers of any defective Products or Services or any failure to provide adequate warnings and/or instructions in the use, assembly, service or installation of the Products and Services; (e) the packaging, labelling, advertising or performance claims made by Licensee; (f) any breach by the Licensee of a covenant, representation or warranty herein; (g) the display, assembly or installation of the Products and Services; (h) any and all claims, actions or costs (including legal costs, retroactive wages, awards, damages and penalties) made against any of the parties by any of the Licensee's officers, directors, employees or representatives: (I) for salary and wages, fringe benefits, compensation, arbitration, severance or relocation costs; (II) under the Workplace Safety and Insurance Act, 1997 (Ontario) or equivalent or similar legislation in any province or territory and any successor legislation thereof; (III) arising out of any alleged negligence, acts or omissions of any person, including Sears, except where said act or omission by Sears is the sole cause of said claim; and (IV) arising out of employment, engagement or termination of employment or engagement for any reason whatsoever; (i) the assertion by a third party of a security interest or other legal interest created by a factoring arrangement in any amount due by Licensee to Sears; and (j) any claims by the Licensee's current or former employees, Licensee's Representatives, suppliers, and any third parties or Customers, for failure to pay suppliers, the operation of, or defects in, any machinery, vehicles, or equipment used in connection with the operation of the Concession, and the use by anyone of the Products and Services. Sears may, at its election and at any time, take control of the defence and investigation of said Claims and employ legal advisers, consultants, investigators and experts of its own choice to manage and defend any such Claims at the cost and expense of Licensee.

### **18.3 Notification of Third-Party Claims**

Upon receipt by a Party of a Claim, audit, demand or assessment made or brought by an unaffiliated third party against the other Party (a "**Third-Party Claim**"), the Party shall notify the other Party, in writing, within fifteen (15) Business Days of receipt of such Third-Party Claim indicating the nature of such Third-Party Claim and the basis therefor.

### **18.4 Limitation of Liability**

Each party acknowledges and agrees that it shall not have any liability to the other for payment of any actual, perceived and/or anticipated loss of revenue or profit or for payment of any actual, perceived and/or anticipated decrease in value of the others' business due to the expiration or termination of this Agreement by any party, for any reason.

**ARTICLE 19.**  
**NON-SOLICITATION AND NON-COMPETITION DURING THE TERM**

**19.1 Non-Solicitation of Customers**

Except as set out in this Agreement, Licensee and any Affiliate of Licensee shall not, during the Term, directly or indirectly solicit, interfere with or endeavour to entice away from Sears any Sears customers, including Protected Customers, other than for the provision of Products and Services in connection with the Concession; provided that nothing herein shall restrict or prevent Licensee or any Affiliate of Licensee from soliciting Sears customers using general advertisement not specifically targeted at Sears customers or Customers or Protected Customers, or from directly soliciting Sears customers who are not Protected Customers and who are also, at the time of such solicitation, customers of Licensee or such Affiliate who: (i) rent or lease equipment from Licensee or such Affiliate; (ii) are parties to a service contract with Licensee or such Affiliate; or (iii) purchased fuel oil or equipment in the previous five years from Licensee or such Affiliate; all provided that such solicitation is not specifically targeted at Sears customers or Protected Customers.

**19.2 Non-Solicitation of Employees by Sears**

Sears shall not, directly or indirectly through another Person, without consent of Licensee, during the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Licensee or an Affiliate of Licensee with whom Sears first had contact as a result of the relationship between Sears and Licensee, to leave the employ of or engagement with Licensee or such Affiliate. A general advertisement not targeted at Licensee's employees or contractors will not be prohibited by this provision.

**19.3 Non-Solicitation of Employees by Licensee**

Licensee shall not, directly or indirectly through another Person, without consent of Sears, during the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Sears or an Affiliate of Sears with whom Licensee first had contact as a result of the relationship between Sears and Licensee, to leave the employ of or engagement with Sears or such Affiliate. A general advertisement not targeted at Sears employees or contractors will not be prohibited by this provision.

**19.4 Non-Competition During the Term**

The Licensee agrees that, during the Term, it will not, in any of the Designated Markets other than Quebec, without the prior written consent of Sears, either individually or in partnership or jointly or in conjunction with any Person, firm, association, syndicate or corporation, as principal, agent, shareholder or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business which is the same or similar to or competitive with any aspect of the business of marketing and selling products and services similar to or competitive with the Products and Services.

The Licensee agrees that, during the Term, no Affiliate of Licensee shall, in any of the Designated Markets other than Quebec, without prior written consent of Sears, either individually or in partnership or jointly or in conjunction with any Person, firm, association, syndicate or corporation, as principal, agent, shareholder or in any manner whatsoever, carry on

or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business of marketing or selling products and services similar to or competitive with the Products and Services.

The foregoing provision shall not restrict Licensee or its Affiliates from continuing any current arrangements with Suncor, Costco, HydroSolution, Joseph Élie, PétroMontestrie, Gaz Métro, or Gas Métropolitain Plus.

## **ARTICLE 20.** **ASSIGNMENT**

### **20.1 Assignment**

Licensee acknowledges that Sears, in granting this license and the rights and interests under this Agreement, has relied upon, among other things, the character, background, qualifications and financial ability of Licensee and, where applicable, its partners, officers, directors, shareholders and managers. Accordingly, this Agreement, Licensee's rights and interests hereunder and the assets owned and used by Licensee in connection with the operation of the Concession shall not be encumbered (subject to the last sentence of this paragraph), sold, assigned or transferred in whole or in part in any manner whatsoever without the prior written consent of Sears, which consent may be withheld at Sears's sole discretion except in the event of a sale, assignment or transfer of all of substantially all of the assets of the Licensee which does not result in a Change of Control, in which event the consent of Sears shall not be unreasonably withheld. Any actual or purported assignment occurring by operation of law or otherwise without Sears's prior written consent shall be a material default of this Agreement and shall be null and void. Nothing in this provision shall prevent Licensee from encumbering its assets in favour of a provider of financing to the Licensee.

### **20.2 Change of Control**

Any Change of Control in the Licensee (other than that occurring as the result of trading in shares listed upon a recognized stock exchange where such trading is not for the purpose of acquiring effective control) shall be deemed to be an assignment of this Agreement.

### **20.3 Assignment by Sears**

Subject to the next paragraph, Sears may, at its sole discretion, assign, encumber or transfer its rights under this Agreement.

Subject to the following sentence, Sears will not, without Licensee's consent, assign this Agreement to a Person if such assignment would result in Licensee or an Affiliate of Licensee being in breach of a contractual non-competition provision by virtue of such Person becoming the licensor under this Agreement. No later than five Business Days following a request from Sears, Licensee shall provide to Sears the names of all Persons with whom Licensee and Affiliates have non-competition contractual provisions that would require Licensee's consent to an assignment in accordance with the previous sentence, and shall show to Sears the contractual provisions in question. If Licensee fails to meet the requirements of the previous sentence, then Licensee shall be deemed to consent to the assignment of this Agreement to any Person whatsoever.

**ARTICLE 21.**  
**TERMINATION**

**21.1 Termination By Sears Due to Events of Default**

Sears may terminate this Agreement upon simple notice upon the occurrence of an Event of Default. An "Event of Default" under this Agreement occurs upon the occurrence of any one or more of the following events or circumstances when such event or circumstance is not a result of Force Majeure:

- (a) **Financial Covenants:** Licensee has breached its Financial Covenants and has failed to remedy such breach within 30 Business Days following receipt of a notice to remedy such breach;
- (b) **Material Misrepresentation:** (i) Licensee has wilfully provided incomplete, false or misleading information of a material nature to Sears, or any representations and warranties provided by Licensee in this Agreement or in any other agreement between the Licensee and Sears, are false, in any material respect; or (ii) Licensee has falsified or intentionally misrepresented any report or other information furnished to Sears pursuant to this Agreement ("**Material Misrepresentation**");
- (c) **Late or Incomplete Reporting:** Licensee has failed to provide a report to Sears with all the information required for such report pursuant to this Agreement and within the deadline provided for such report in this Agreement, provided Sears has first provided Licensee no less than six Business Days' written notice to remedy such breach and Licensee has failed within such time to remedy such breach;
- (d) **Failure to pay:** Licensee has failed to pay any amount owing hereunder on the date or dates appointed for the payment thereof (provided Sears has given no less than ten Business Days' written notice to Licensee of any such failure and Licensee has failed within such time to remedy such breach) ("**Payment Default**");
- (e) **Licensee policy infraction:** Licensee has failed to operate the Concession in accordance with Licensee's or Sears's policies and processes and such failure has not been rectified within 20 Business Days following notice by Sears;
- (f) **Disposition of assets:** Licensee has made a sale in bulk of any of its assets, wherever situated (other than a bulk sale made to a transferee permitted under this Agreement), and such sale was not in the normal course of business;
- (g) **Change of Control:** Licensee has effected or attempted to effect a Change of Control of Licensee that is not permitted by this Agreement;
- (h) **Failure to remove employee:** Licensee has failed to remove from the operation of the Concession a Licensee's Representative or employee of Licensee within five Business Days following a demand by Sears that such Person be removed, in accordance with this Agreement;



- (i) **Insurance:** Licensee has failed to provide evidence of insurance as required by this Agreement within 15 Business Days of notice of same being given by Sears to Licensee;
- (j) **Involuntary insolvency:** a court order has been made for the winding up, dissolution or liquidation of the Licensee;
- (k) **Voluntary insolvency:** the Licensee has
  - (i) undertaken corporate proceedings for the winding-up, dissolution or liquidation of the Licensee; or
  - (ii) lost its corporate charter by expiration, forfeiture or otherwise;
- (l) **Failure to operate Concession:** Licensee has without Sears's prior approval failed to operate and conduct business during Normal Business Hours for more than three consecutive Business Days;
- (m) **Abandonment:** Except as permitted in this Agreement, Licensee has abandoned or ceased to operate the Concession in any Designated Channel;
- (n) **Misappropriation:** Licensee has misappropriated Sears's assets and or any funds, including any shortage in or manipulation of any Customer payments, unless arising from Licensee's employee or Licensee's Representatives' dishonesty and provided such employee or Licensee's Representative is immediately removed from any involvement in the operation of the Concession in any Designated Channels and complete restitution is made by Licensee to Sears's satisfaction;
- (o) **Breach of Sears Confidential Information:** Licensee or any of Licensee's Representatives has disclosed Sears Confidential Information in breach of this Agreement or any other agreement with Sears;
- (p) **Third-party performance:** Without prior approval of Sears, Licensee has authorized Persons other than its employees to perform any of Licensee's obligations under this Agreement;
- (q) **Disorderly conduct:** Licensee has engaged at any time in disorderly conduct that offends moral values or which constitutes moral turpitude, all as determined by Sears in Sears's reasonable discretion;
- (r) **Employee Obligations:** Licensee has failed to meet its employment payroll or engagement obligations in an appropriate and timely manner and has not rectified such failure within three Business Days of the due date;
- (s) **Refusal to Co-operate:** Licensee has failed or refused to co-operate with Sears in the performance of this Agreement;
- (t) **Other Covenants:** Unless agreed to by Sears or permitted under this Agreement, Licensee has failed to observe or perform any other of the terms, covenants (whether affirmative or negative) or conditions of this Agreement to be

observed or performed by Licensee, provided Sears has first given Licensee 15 days' written notice of any such failure to perform, and Licensee within such period has failed to commence diligently and thereafter to proceed diligently and continuously to cure any such failure to perform;

- (u) **Annual Service Level Guarantees:** Licensee has failed to meet an Annual Service Level Guarantee;
- (v) **Material Adverse Change:** There has been a material adverse change in the business or operations of the Licensee which materially impacts the Licensee's ability to perform its obligations under this Agreement.

## 21.2 Events of Bankruptcy

Either party may terminate this Agreement upon the occurrence of a Bankruptcy Event of the other party. A "**Bankruptcy Event**" shall have occurred when, with respect to non-terminating party, there has occurred or there exists any of the following events:

- (i) such party admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (ii) such party institutes any proceeding or takes any corporate action or executes any agreement to authorize its participation in or commencement of any proceeding:
  - (A) assigning all or substantially all of its property for the general benefit of its creditors or seeking to adjudicate it a bankrupt or insolvent; or
  - (B) except as part of a good faith reorganization, seeking liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, winding-up, reorganization or compromise of debts or other similar laws (including any application under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), or the filing of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada)) or any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation;
- (iii) any proceeding is commenced against or affecting it that is not contested in good faith:
  - (A) seeking to adjudicate it a bankrupt or insolvent;
  - (B) seeking liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any Applicable Law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws (including any

reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation);

- (C) seeking appointment of a receiver, trustee, agent, custodian, or other similar official for it or for any substantial part of its properties and assets, and such proceeding is not being contested in good faith by appropriate proceedings or, if so contested remains outstanding, undismissed and unstayed more than 60 days from the institution of such first mentioned proceeding;
- (iv) any creditor privately appointing a receiver, trustee or similar official for any substantial part of such party's properties and assets, and such appointment is not being contested in good faith and by appropriate proceedings or, if so contested, such appointment continues for more than 60 days;
- (v) any proceeding or action by a Governmental Authority to take control of it or its assets;
- (vi) any event occurs with respect to it that, under the Applicable Law of any jurisdiction, has an analogous effect to any of the events specified in paragraphs i to v above; or
- (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts or events specified in paragraphs i to v above.

### **21.3 Termination By Licensee**

Licensee may terminate this Agreement upon simple notice upon the occurrence of the following events and the expiry of the applicable cure period: Sears has failed to pay a remittance to Licensee in accordance with this Agreement on the date or dates appointed for the payment thereof, or has failed to comply with Sections 3.1, 11.5, 18.1, or 19.2, and such failure has not been rectified within 10 Business Days following written notice by Licensee.

### **21.4 Termination After Review of Commissions**

If either Party has requested a review of Commissions pursuant to Section 11.6 and the Parties are not able to agree on a revised level of Commissions before the end of the sixth month of the sixth year of the Term, then either Licensee shall have the option to terminate this Agreement upon no less than six months' notice, provided such notice is not delivered prior to the sixth month of the sixth year of the Term or after the end of the sixth year of the Term, and provided the Party delivering such notice of termination shall first have provided notice of its proposed revised level of Commissions to the other Party, and the other Party shall have rejected such proposal or failed to accept it within 30 days of receiving such proposal.

**ARTICLE 22.**  
**AFTER TERMINATION**

**22.1 Surrender**

Immediately upon expiration or termination of this Agreement, the Licensee shall:

- (a) cease use of the Sears Trademark and remove from Licensee's premises and/or return to Sears, all signs, work orders, invoices and related documentation bearing the Sears Trademark or any other Sears identification, failing which Sears shall have the right to enter any of Licensee's premises to do so, at Licensee's sole cost;
- (b) return to Sears, or as Sears may direct, all Sears property, including but not limited to all Sears Confidential Information, employee identification cards, Sears merchandise, forms, signing, operating guides, sales and distribution reports;
- (c) at the request of Sears, transfer to Sears, or as Sears may direct, all Customer goods and Customer contracts which are outstanding as at the date of expiry or termination; and
- (d) cease to use all listed telephone and facsimile numbers used for the operation of the Concession, transfer such numbers to Sears or as Sears may direct, and notify the telephone company of the transfer. The Licensee hereby appoints Sears as its true and lawful attorney in fact, for it and in its name, place and stead to execute and deliver any and all documents and instruments as may be required to transfer such telephone and facsimile numbers to Sears or as Sears may direct.

**22.2 Withholding of Remittance**

Licensee agrees that, upon expiry or termination of this Agreement, Sears may withhold any monies due and owing to Licensee, including but not limited to monies owing from Sears to Licensee from any outstanding settlement of Licensee's sales to Customers made on Sears credit plans, for a period of 90 days from the said termination or expiry date, in order to ensure the fulfillment of any reasonable adjustments to Customers by Sears. Such adjustments will be detailed by Sears and will be deducted from monies owing to Licensee. A final settlement will be made to Licensee within twelve (12) Business Days of the expiration of the 90 day withholding period.

**22.3 Disengagement Costs**

Licensee acknowledges and agrees that Sears shall not have any liability to Licensee for any disengagement or termination costs. Without limiting the generality of the foregoing, Licensee shall assume, to the complete exoneration of Sears, all costs and expenses relating to legal, administration, overhead, employees' wages, engagement costs and all other costs relating to severance, pensions, employment insurance, employment contracts and contractor engagement contracts and Licensee shall indemnify and hold Sears harmless from any and all claims, actions arising therefrom and all costs and expenses connected therewith.

## **22.4 Transition Assistance**

Following the expiration or termination of this Agreement for any reason whatsoever, Licensee shall, at no cost to Sears (except for out of pockets expenses incurred by the Licensee and approved by Sears), in good faith cooperate with and provide assistance as specified below to Sears and/or such third party as designated by Sears, to allow the Concession to be operated by Sears or by any third party as designated by Sears, with minimal disruption to the Concession and the Customers. Such assistance shall include the provision of information on Customers and suppliers, access to computer software and databases containing such information, work-in-progress (for customers as well as internal marketing and other planning), integration and/or transfer of computer systems, software and data. Licensee shall make available sufficient competent personnel to help with such transition assistance. The assistance contemplated by this provision will be provided for two months or such longer time as reasonably requested by Sears and agreed by Licensee.

## **22.5 Sears Business After Termination**

After the expiration or termination of this Agreement in accordance with the terms herein, it is agreed that Licensee shall not have any right or interest in future contracts entered into by Sears relating to the subject matter of this Agreement or relating to the operation of any business by Sears or a licensee or contractor of Sears which is the same or similar to that contemplated by this Agreement and it is further agreed that Sears may, without incurring any liability to Licensee:

- (a) enter into an agreement with any Person for the operation of a concession that is the same or similar to the Concession and/or the procurement, presentation, merchandising, marketing and/or sale of products and services that are the same or similar to the Products and Services;
- (b) directly procure, present, market and/or sell products and services that are the same or similar to the Products and Services; or
- (c) completely terminate the operation of the Concession and/or the procurement, presentation, merchandising, marketing and/or sale of the Products and Services.

## **22.6 Non-Solicitation of Customers**

Except as set out in this Agreement, after the end of the Term, Licensee and any Affiliate of Licensee shall not, directly or indirectly solicit, interfere with or endeavour to entice away from Sears any Sears customers, including Protected Customers, other than for the provision of Products and Services in connection with the Concession; provided that nothing herein shall restrict or prevent Licensee or any Affiliate of Licensee from soliciting Sears customers using general advertisement not specifically targeted at Sears customers or Customers or Protected Customers, or from directly soliciting Sears customers who are not Protected Customers and who are also, at the time of such solicitation, customers of Licensee or such Affiliate who: (i) rent or lease equipment from Licensee or such Affiliate; (ii) are parties to a service contract with Licensee or such Affiliate; or (iii) purchased fuel oil or equipment in the previous five years from Licensee or such Affiliate; all provided that such solicitation is not specifically targeted at Sears customers or Protected Customers.

## 22.7 Non-Solicitation of Employees by Sears

Sears shall not, directly or indirectly through another Person, without consent of Licensee, during the six month period following the end of the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Licensee or an Affiliate of Licensee with whom Sears first had contact as a result of the relationship between Sears and Licensee, to leave the employ of or engagement with Licensee or such Affiliate. A general advertisement not targeted at Licensee's employees or contractors will not be prohibited by this provision.

## 22.8 Non-Solicitation of Employees by Licensee

Licensee shall not, directly or indirectly through another Person, without consent of Sears, during the six month period following the end of the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Sears or an Affiliate of Sears with whom Licensee first had contact as a result of the relationship between Sears and Licensee, to leave the employ of or engagement with Sears or such Affiliate. A general advertisement not targeted at Sears employees or contractors will not be prohibited by this provision.

## ARTICLE 23. REPRESENTATIONS AND WARRANTIES

### 23.1 Representations and Warranties of Licensee

Licensee hereby represents and warrants as follows and acknowledges that, despite any independent searches or investigations that may be undertaken by or on behalf of Sears and despite any information or document provided to Sears, Sears is relying upon the accuracy of each of such representations and warranties in connection with this Agreement:

- (a) **Corporate Status:** Licensee is a corporation duly incorporated and validly subsisting under the laws of its jurisdiction of incorporation, with the requisite power and authority to enter into this Agreement with Sears in the manner contemplated herein and to perform all of its obligations under this Agreement.
- (b) **Due Authorization:** The execution and delivery of and performance by Licensee of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Licensee.
- (c) **No Contravention:** The execution and delivery of and performance by Licensee of this Agreement:
  - (i) does not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of its constating documents;

- (ii) does not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other Person to exercise any rights under, any of the terms or provisions of any contracts or instruments to which it is a Party; and
- (iii) does not and will not result in the violation of any law.
- (d) **Enforceability of Obligations:** This Agreement has been duly executed and delivered by Licensee and constitutes legal, valid and binding agreements of Licensee enforceable against it in accordance with their respective terms subject only to any limitation under Applicable Law.
- (e) **Litigation:** There are no actions, suits, appeals, claims, applications, investigations, orders, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to Licensee's knowledge, threatened against Licensee, which prohibits, restricts or seeks to enjoin the transactions contemplated by this Agreement.

### 23.2 Representations and Warranties of Sears

Sears hereby represents and warrants as follows and acknowledges that, despite any independent searches or investigations that may be undertaken by or on behalf of Licensee and despite any information or document provided to Licensee, Licensee is relying upon the accuracy of each of such representations and warranties in connection with this Agreement:

- (a) **Corporate Status:** Sears is a corporation duly incorporated and validly subsisting under the laws of Canada, with the requisite power and authority to enter into this Agreement with Licensee in the manner contemplated herein and to perform all of its obligations under this Agreement.
- (b) **Due Authorization:** The execution and delivery of and performance by Sears of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Sears, including any approval necessary from any Trademark Owner, and has the right to grant the rights under the License, including the right to use the Sears Trademark.
- (c) **No Contravention:** The execution and delivery of and performance by Sears of this Agreement:
  - (i) does not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of its constating documents;
  - (ii) does not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other Person to

exercise any rights under, any of the terms or provisions of any contracts or instruments to which it is a Party; and

- (iii) does not and will not result in the violation of any law.
- (d) **Enforceability of Obligations:** This Agreement has been duly executed and delivered by Sears and constitutes legal, valid and binding agreements of Sears enforceable against it in accordance with their respective terms subject only to any limitation under Applicable Law.
- (e) **Litigation:** There are no actions, suits, appeals, claims, applications, investigations, orders, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to Licensee's knowledge, threatened against Sears, which prohibits, restricts or seeks to enjoin the transactions contemplated by this Agreement.

### **23.3 Nature and Survival**

All representations, warranties and covenants contained in this Agreement on the part of each of the Parties survive the Term of this Agreement.

## **ARTICLE 24. CONDITIONS PRECEDENT**

### **24.1 Conditions Precedent**

This Agreement shall not be effective unless and until the following conditions shall have been met:

- a) Unless waived by Sears, an agreement between Sears and Groupe Énergie B.D.L. Inc. ("Joseph Élie") shall have been executed regarding payment of a royalty by Joseph Élie to Sears for Sears Customers purchasing fuel oil from Joseph Élie;
- b) An agreement between Sears and Licensee shall have been executed regarding the transfer of certain employees and contractors of Sears; and
- c) Unless waived by both parties, an agreement between Sears and Licensee shall have been executed regarding transition services to be provided by Sears to Licensee.

## **ARTICLE 25. GENERAL MATTERS**

### **25.1 Enurement**

This Agreement shall be binding upon and enure to the benefit of Licensee and its successors and permitted assigns and shall be binding upon and enure to the benefit of Sears and its successors and assigns, it being expressly stipulated that nothing herein shall authorize an assignment or sub-license under this Agreement or any delegation of any duties hereunder by Licensee without the prior written consent of Sears, which consent may be arbitrarily withheld.



## 25.2 Notices

Any notice, consent, approvals, statements, authorizations, documents or other communications (collectively "Notices") required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered personally, or mailed by registered mail, postage prepaid or by facsimile transmission or other means of electronic communication as hereinafter provided. Any such Notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fifth (5th) business day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the business day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, Notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this section. Notices and other communications shall be addressed as follows:

if to Sears:

Sears Canada Inc.  
290 Yonge Street, suite 700  
Toronto, Ontario M5B 2C3

Attention: Vice-President, Specialty Services  
Facsimile number: (416) 941-4855

With a Copy to:

Sears Canada Inc.  
290 Yonge Street, suite 700  
Toronto, Ontario M5B 2C3

Attention: General Counsel  
Facsimile number: (416) 941-2321

if to the Licensee:

Confort Expert Inc.  
9771 boul. Métropolitain est  
Montreal, Quebec H1J 0A4

Attention: President  
Facsimile number: (514) 640-7180

## 25.3 Time of Essence

Each of the parties acknowledge and agree that time shall be of the essence for the purposes of this Agreement.

#### **25.4 Failure to Give Notice**

Failure by a party to give notice or otherwise object to any default, failure or breach under this Agreement by the other, or any waiver of the same by a party, shall not affect or impair such party's rights in respect of continuous or subsequent default, failure or breach, nor shall any delay or omission by a party in exercising or failing to exercise any right arising from any default, failure or breach hereunder, affect or impair such party's rights in respect of the same or any other default, failure or breach.

#### **25.5 Independent Contractor**

It is intended that Licensee shall operate in the capacity of an independent contractor, and that nothing contained in or done pursuant to this Agreement is to be construed as creating a partnership, agency or joint venture between or among the parties and no party shall become bound by any conduct, representation, act or omission of the other party other than as specified in this Agreement. Licensee shall not do any act or make any statement that may imply that Sears in any manner owns, controls, operates or is a franchisor for the operation of the Concession. The parties acknowledge and agree that this Agreement is not a franchise agreement and does not allow Sears to exert ongoing operational controls over the operations of the Licensee.

#### **25.6 Not a Lease**

This Agreement is not a lease under the laws of Canada or any province, territory or municipality within Canada. This Agreement is not intended to create, nor does it create, and shall not be construed to create, a landlord-tenant relationship.

#### **25.7 Independent Legal Advice**

Licensee acknowledges that Sears has advised Licensee that prior to the execution by Licensee of this Agreement, Licensee has the right to obtain independent legal advice.

#### **25.8 Further Assurances**

Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents, instruments and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to effectively carry out or better evidence or perfect or implement the full intent and meaning of this Agreement.

#### **25.9 Approvals and Consents**

Any approvals or consents required to be obtained pursuant to this Agreement shall be in writing and may be withheld in either party in such party's sole discretion unless otherwise expressly provided for in this Agreement.

### **25.10 Announcements**

Licensee shall not issue any publicity or press release regarding this Agreement, or the operation of the Concession contemplated hereunder without obtaining Sears's prior written approval, which approval may be arbitrarily withheld.

### **25.11 Currency**

Except where otherwise expressly provided, all amounts in this Agreement, are stated and shall be paid in Canadian currency.

### **25.12 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability in respect of any such provision or part thereof by a court of competent jurisdiction shall not affect the legality, validity or enforceability of any other provision, each of which will remain in full force and effect. To the extent permitted by Applicable Law, the parties waive any provision of law which renders any provision of this Agreement illegal, invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared illegal, invalid or unenforceable with a legal, valid and enforceable provision, the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provision which it replaces.

### **25.13 Entire Agreement**

This Agreement, including all Schedules attached hereto, constitutes the entire agreement between the parties pertaining to the subject matter of the Agreement. There are no representations (including negligent misrepresentations), warranties or conditions (including any that may be implied by statute), and there are no promises, covenants or agreements (including collateral contracts) in connection with such subject matter except as specifically set forth or referred to in this Agreement. No reliance is placed by any party to this Agreement on any representation (including negligent misrepresentation), warranty, promise, covenant, agreement, opinion, advice or assertion of fact made either prior to, contemporaneous with, or after entering into this Agreement, or any amendment or supplement thereto, by any party to this Agreement or its directors, officers, employees or agents, to any other party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement, and none of the parties to this Agreement has been induced to enter into this Agreement or any amendment or supplement by reason of any such representation (including negligent misrepresentations), warranty, promise, covenant, agreement, opinion, advice or assertion of fact. Accordingly, there shall be no liability, either in tort (including negligence or negligent misrepresentation) or in contract, assessed in relation to any such representation (including negligent misrepresentation) warranty, promise, covenant, agreement, opinion, advice or assertion of fact, except to the extent contemplated above.

### **25.14 Survival**

The expiry or other termination of this Agreement shall not relieve any party from its obligations which survive the termination of this Agreement, including but not limited to the obligation to pay any amount due hereunder and the obligations and provisions of Articles 1, 2, 8, 13, 15, 16, 17, 18, 19, 20, 24 and 25.

### **25.15 Previous Agreements**

All existing agreements between Licensee and Sears and any prior arrangements, if any concerning the operation of the Concession are hereby cancelled and the terms and provisions hereof are in each case substituted therefore, effective in each case with the opening of business on the first day of the Term of this Agreement provided that any payments required thereunder or any subsequent amendments and any liabilities thereunder shall survive such termination.

### **25.16 No Representations**

Each party acknowledges and confirms that no promises or representations whatsoever have been made to such part, as to the potential amount of business, revenue, profit or otherwise, either party can expect at any time during the Term.

### **25.17 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing (i) by the parties hereto, in the case of any amendment, or (ii) by the party to be bound, in the case of a waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

### **25.18 Governing Law**

This Agreement shall be governed by and construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. The parties to this Agreement hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

### **25.19 Cumulative Remedies**

It is agreed that the remedies provided to Sears for any default, failure or breach in this Agreement are distinct, separate and cumulative and no one of them whether or not exercised by Sears shall be deemed to exclude any other rights or remedies provided to Sears in this Agreement, by law or equity.

### **25.20 Injunctive Relief**

The parties agree that if the non-competition, non-solicitation or confidentiality obligations provided for in this Agreement are breached, the party seeking remedy shall be entitled to specific performance or injunctive relief by a court of competent jurisdiction to remedy such breach, in addition to any other remedies available to such party.

### **25.21 Counterparts/Facsimile**

This Agreement may be executed and delivered in any number of counterparts, by facsimile or by telecopier or other means of electronic communication, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

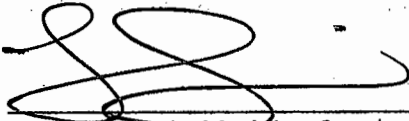
## **25.22 Language**

It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. *Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés en anglais.*

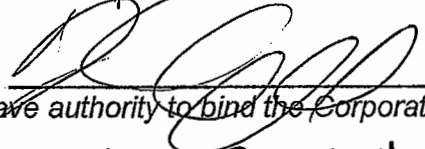
**[signatures follow]**

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**SEARS CANADA INC.**

By:   
(I have authority to bind the Corporation)

Name: Terri Lowe  
Title: Vice-President Home Furnishings & Gift

By:   
(I have authority to bind the Corporation)

Name: Doug Campbell  
Title: EUP & Chief Operating Officer

**CONFORT EXPERT INC.**

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**SEARS CANADA INC.**

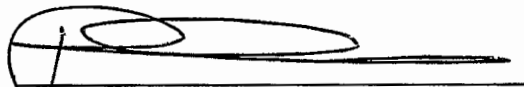
By: \_\_\_\_\_  
(I have authority to bind the Corporation)

**Name:**  
**Title:**

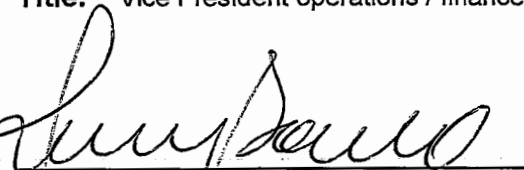
By: \_\_\_\_\_  
(I have authority to bind the Corporation)

**Name:**  
**Title:**

**CONFORT EXPERT INC.**

By:   
(I have authority to bind the Corporation)

**Name:** Pierre Marc Lamoureux  
**Title:** Vice Président operations / finance

By:   
(I have authority to bind the Corporation)

**Name:** Pierre Boulé  
**Title:** Président Directeur Général

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..



## Schedule "A"

### DESIGNATED CHANNELS AND MARKETS

The following is a list of the Designated Channels and Designated Markets where Licensee is permitted to operate the Concession.

**Designated Channels:** Door-to-door sales, Contact Centre and Concession Website

**Designated Markets:** Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador.

**Normal Business Hours:**

- Call Centre: 24 hours a day, every day of the year
- Availability for sales calls: 8 am to 8 pm Monday to Saturday
- Installation Services: 8 am to 6 pm Monday to Friday
- Service Calls: emergency: 24 hours a day, every day of the year; non-emergency: 8 am to 5 pm, Monday to Friday

## Schedule "B"

### LIST OF PRODUCTS AND SERVICES

#### Oil Equipment:

- Residential heating furnaces, heat pumps and hot-water tanks and heaters powered in whole or in part by fuel-oil ("**Oil Equipment**")
- Installation of Oil Equipment
- Services to fix Oil Equipment not in working order or otherwise to effect the good operating condition of Oil Equipment (including parts and labour therefor and including cleaning and tune-up services) ("**Oil Equipment Maintenance Services**")
- Beginning on the day following the end of the Transition Period: Contracts with Customers for Oil Equipment Maintenance Services

#### Non-Oil Equipment (Conversions)\*:

- Residential heating equipment (including hot water tanks, heaters and heat pumps but, for greater certainty, not including stand-alone air conditioners) powered entirely by non fuel-oil energy, provided that such equipment is sold to Sears Oil Customers only ("**Non-Oil Equipment**")
- Installation of Non-Oil Equipment
- Services to fix Non-Oil Equipment not in working order or otherwise to effect the good operating condition of Non-Oil Equipment (including parts and labour therefor and including cleaning and tune-up services) ("**Non-Oil Equipment Maintenance Services**")
- Contracts with Customers for Non-Oil Equipment Maintenance Services

\* The Non-Oil Equipment Products and Services included in the list of Products and Services only includes Non-Oil Equipment that is sold to Sears Oil Customers. For greater certainty this Agreement does not authorize the Licensee to sell, as a Sears licensee, Non-Oil Equipment to any Customer other than a Sears Oil Customer.

Definition of Sears Oil Customer: "**Sears Oil Customer**" means a Sears Customer who owns, leases or rents Oil Equipment (regardless of whether such Oil Equipment is leased or rented from Sears, or was purchased from Sears).

Schedule "C"

SEARS TRADEMARKS

Sears Oil Services

Produits et services de chauffage au mazout Sears

**Sears\***  

---

**Oil Services**  

---

Produits et services  
de chauffage au mazout

---

**Sears\***  

---

Additional Trademarks Authorized for Use:

1.800.4.MY.HOME™

1.800.LE.FOYER<sup>MC</sup>

## Schedule "D"

### FINANCIAL COMMITMENTS

**Commission:** Per Fiscal Month, 16% of Net Sales in such Fiscal Month.

**Merchant Fee:** 0%.

**Maintenance Service and Administration Fee:**

*Sears Rental Equipment:* During the Transition Period: Per Fiscal Month, \$5.00 per Sears Rental Equipment unit that is owned by Sears and rented to Sears Customers; After the Transition Period: Per Fiscal Month, \$8.10 per Sears Rental Equipment unit that is owned by Sears and rented to Sears Customers.

*Leases:* During the Transition Period: Per Fiscal Month, 84% of payments received by Sears from Sears Customers with respect to Sears Rental Equipment that is owned by Sears and leased to Sears Customers; After the Transition Period: Per Fiscal Month, 84% of payments received by Sears from Sears Customers with respect to Sears Rental Equipment that is owned by Sears and leased to Sears Customers and an additional \$3.10 per outstanding lease agreement.

*Parts Plans:* Per Fiscal Month, 84% of payments received by Sears from Sears Customers with respect to contracts between such customers and Sears for Oil Equipment Maintenance Services, including extensions, renewals and replacements of such contracts ("Parts Plans").

*Legacy Parts Plans:* With respect to each of the Parts Plans that began prior to the Effective Date and were already paid in full ("**Legacy Parts Plans**"), until such Legacy Parts Plans are terminated, expire or are renewed, in each Fiscal Month, 84% of the result of the following formula:  $(A/B) \times C$ , where A is the number of whole or partial months remaining in the Legacy Parts Plan, B is the number of months comprising the entire term of such Legacy Parts Plan, and C is the amount of revenue (not including Sales Taxes) generated by the initial sale by Sears of such Legacy Parts Plan.

Schedule "E"

UNDERSTANDING OF EMPLOYMENT AND/OR ENGAGEMENT FORM

THIS SAMPLE STATEMENT MUST BE REPRODUCED ON THE LETTERHEAD OF LICENSEE AND A FULLY EXECUTED COPY MUST BE MAINTAINED IN THE FILES OF THE LICENSEE FOR ALL LICENSEE'S EMPLOYEES AND LICENSEE'S REPRESENTATIVES ENGAGED IN THE OPERATION OF THE CONCESSION.

Statement of Understanding of Employment and/or Engagement Form

I, \_\_\_\_\_, understand that Confort Expert Inc.  
(print employee or Licensee's Representatives name)

is a Licensee of Sears Canada Inc. authorized to operate as **Sears Oil Services / Produits et services de chauffage au mazout Sears.**

I understand that I am an employee of or engaged by Confort Expert Inc. (the "Licensee")

I further understand that I am not and shall not be deemed to be an employee of Sears Canada Inc. for any purpose whatsoever, including but not limited to, any future claims pursuant to Workers' Compensation, Employment Standards or Human Rights Legislation or any other possible claims, actions or demands.

I further understand that I am not eligible for and will not be considered for employment at Sears Canada Inc. while I am an employee of the Licensee.

I have read the above, I fully understand it and I sign this statement voluntarily.

\_\_\_\_\_  
(signature of employee)                      \_\_\_\_\_                      \_\_\_\_\_  
(or Licensee's Representative)                      (print name of employee)                      (date)  
(or Licensee's Representative)                      (or Licensee's Representative)

I, \_\_\_\_\_ of Confort Expert Inc. confirm that the above named is an employee of or engaged by Confort Expert Inc..

\_\_\_\_\_  
(signature of authorized Licensee signatory)                      \_\_\_\_\_  
(date)

**Schedule "F"**  
**LICENSEE REPORTING**

**Definitions:**

In this Schedule:

"line of business" refers to each of the separately enumerated Products and Services on Schedule B.

"job" means an order for installation of a Product or performance of a Service.

**REPORTING:**

**FORECASTS:**

**Forecast: Weekly Sales Forecast**

Due Date: 12:00 noon each Thursday

Included Data:

With respect to current Fiscal Year, per remainder of Fiscal Year, remainder of Fiscal Quarter, remaining Fiscal Quarters, remainder of Fiscal Month, remaining Fiscal Months, per fiscal week:

Per region and district:

Per line of business:

- Forecasted sales

**REPORTS:**

**Report: Weekly Sales Report**

Due Date: 12:00 noon each Wednesday

Included Data:

Per Fiscal Year-to-date, Fiscal Quarter, Fiscal Quarter-to-date, Fiscal Month, and comparable year over year (Y.O.Y) (Y.O.Y. beginning in second Fiscal Year of the Term)

Per region and district:

Per line of business:

- Sales

**Report: Monthly Lead Summary Report**

Due Date: 12:00 noon on the first Friday following the end of each Fiscal Month

Included Data:

Per Fiscal Year-to-date, Fiscal Quarter, Fiscal Quarter-to-date, Fiscal Month, and comparable year over year (Y.O.Y) (Y.O.Y. beginning in second Fiscal Year of the Term)

Per region and district:

Per line of business and per lead acquisition channel:

- Number of leads
- Number of closed leads
- Close rates
- Dollar value of closed leads

**Report: Monthly Customer Satisfaction Report**

Due Date: 12:00 noon, first Friday following the end of each Fiscal Month

Included Data:

Per Fiscal Month, Fiscal Quarter, and comparable year over year (Y.O.Y.) (Y.O.Y. beginning in second Fiscal Year of the Term):

Per region and district:

Per line of business:

- Customer complaints per reason code (reason codes as determined by Sears)
- Number of jobs about which Customer complaints were received
- Dollar value of jobs about which Customer complaints were received
- Number of completed jobs
- Number of completed jobs about which Customer complaints were received
- Dollar value of completed jobs about which Customer complaints were received
- Customer Complaints Level (as defined in Schedule J) [*percentage of jobs completed about which there were no customer complaints*]
- Customer Complaint Acknowledgment Level
- Customer Complaint Resolution Level

**Report: Monthly Contact Centre Performance Report**

Due Date: 12:00 noon, first Friday following the end of each Fiscal Month

Included Data:

Per Fiscal Month, comparable Fiscal Month in previous Fiscal Year, Fiscal Quarter, and comparable Fiscal Quarter in previous Fiscal Year (beginning in second Fiscal Year of the Term):

- Calls offered (number of calls made to contact centre)
- Calls handled (number of calls answered by contact centre)
- Average speed to answer (average number of seconds it took to answer calls that were answered)

- Abandoned calls (number of calls that were abandoned by caller before being answered by contact centre)
- Average abandoned call time (average number of seconds it took for a call to be abandoned)
- Speed to Answer Service Level (as defined in Service Level Standards Schedule)
- Abandoned Calls Percentage (as defined in Service Level Standards Schedule)

**CERTIFIED REPORTS: Each Certified Report must be certified by a senior officer of the Licensee**

**Certified Report: Certified Monthly Revenue Report**

Due Date: 12:00 on 13<sup>th</sup> day of each Fiscal Month

Included Data:

With respect to previous Fiscal Month:

- Gross Revenue
- Returns
- Compensation Paid to Customers
- Net Sales
- Net Sales in all Previous Fiscal Months during Fiscal Year
- Commission

**Certified Report: Certified Annual Cycle Time Standards Report**

Due Date: 12:00 45th day after Fiscal Year

Included Data:

With respect to Fiscal Year:

For each Product and/or Service:

- Cycle Time

**AD HOC REPORTS:**

Marketing Campaign Reports; for each marketing campaign or event:

Per channel (direct mail, email, outbound calls, etc.):

- Costs by marketing tactic
- Distribution
- Response Rates

**AD HOC REPORTS:**

Real-time access to the following of Licensee's systems:



- Lead management system
- Contact centre
- Customer complaints tracking system

## Schedule "G"

### PRIVACY ACKNOWLEDGEMENT

**THIS ACKNOWLEDGEMENT** is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ ("Licensee") in favour of SEARS CANADA INC. ("Sears"). FOR VALUE RECEIVED, the Licensee agrees as follows:

#### **1. Definitions.**

"Privacy Laws" means any applicable laws relating to the collection, use, storage and/or disclosure of information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act* (Canada) and any substantially similar provincial legislation.

"Sears Data" means any personal information (as that term is used under applicable Privacy Laws) relating to Sears customers or employees.

#### **2. Sears Proprietary Information.**

Licensee shall not obtain any proprietary rights in any proprietary or confidential information of Sears that has been or is disclosed, directly or indirectly, to Licensee by Sears or observed by Licensee, directly or indirectly, from information to which it was provided access by Sears, including, without limitation, any Sears Data.

#### **3. Compliance with Sears Privacy Policy and Privacy Laws.**

- a) Licensee shall not make or permit any collection, use or disclosure of any Sears Data, other than: (i) as required and permitted to provide the products and/or services contemplated in the primary agreement(s) between the parties (collectively, the "Agreement") or (ii) as required by applicable law. Licensee shall be responsible for complying with Privacy Laws applicable to its activities in relation to the Agreement, and Licensee shall bear its own costs of such compliance.
- b) Licensee shall collect, use, store, disclose, dispose of and otherwise handle Sears Data in accordance with the (i) Sears Privacy Policy, (ii) the PCI Standards (as defined below), (iii) Privacy Laws and (iv) solely for the purposes permitted by the Agreement.
- c) Licensee shall comply with Sears "do not solicit" policies and procedures for Sears customers. All outbound marketing by Licensee in connection with the Agreement shall exclude any Sears customers who have requested that their account be flagged as "do not solicit". Any inbound requests by Sears customers to have their account flagged as "do not solicit" shall be referred to Sears in accordance with Sears policies and procedures.
- d) Licensee shall comply with all applicable telemarketing laws, regulations and rules in connection with the activities contemplated in the Agreement including, without limitation, Telecom Decision CRTC 2007-48.
- e) If Licensee is required to disclose Sears Data in connection with any judicial proceeding or government investigation, then the party required to make the disclosure will, to the

extent permitted by applicable laws, promptly notify the other party and allow it a reasonable time before such disclosure is required to seek a protective order from the appropriate governmental authority.

- f) Licensee shall restrict access to Sears Data to its employees or subcontractors who have a legitimate business need for such data for the purposes permitted by the Agreement, and who have agreed to handle such data in accordance with the terms of this Acknowledgement.
- g) Licensee shall store and protect Sears Data from loss, theft, unauthorized access, copying, modification, use or disclosure during utilization, transmission and storage using technology, physical protection measures, processes and standards of practice that meet or exceed industry standard commercially reasonable practices. Without limiting the preceding sentence, Licensee shall comply with all applicable data security standards established by the Payment Card Industry Security Standards Council (as may be amended from time to time), including, without limitation, the Payment Card Industry Data Security Standard (the "PCI Standards"). In the event any loss, theft or unauthorized access, copying, modification, use or disclosure occurs, the Licensee shall notify Sears in writing and the parties shall agree, acting reasonably, upon an appropriate remedial process.
- h) Upon completion of Licensee's required use of Sears Data, Licensee will return or destroy all Sears Data in accordance with Sears instructions.
- i) Licensee shall designate an employee who will be responsible for safekeeping all Sears Data in Licensee's possession or under its control and for ensuring that Licensee complies with the terms of this Acknowledgement.

#### **4. Certification of Compliance/Audit.**

- a) Upon request by Sears, but not more than once in any calendar year during the term of the Agreement, Licensee shall deliver to Sears a statement signed by an appropriate senior officer certifying in writing that, in respect of the previous twelve month period: (i) it has developed privacy compliance processes designed to ensure its compliance with this Acknowledgement; (ii) it has implemented the processes referred to in this Acknowledgement; and (iii) to the best of its knowledge, after reasonable inquiry, it has complied in all material respects with the requirements set forth in this Acknowledgement.
- b) From time to time during the term of the Agreement, upon reasonable notice by Sears, Licensee will allow Sears or a third party, selected by Sears and reasonably acceptable to Licensee, to perform, at times and in a manner that does not unreasonably disrupt the operations of Licensee, an audit to review the Licensee's compliance with the terms of this Acknowledgement.

The Licensee has executed this Acknowledgement.

by: \_\_\_\_\_, as Licensee

Name:

Title:

I have the authority to bind the corporation.

**Schedule "H"**

**FORM OF FINANCIAL COVENANTS CERTIFICATE**

Financial Covenants Certificate

To: Sears Canada Inc.

From: Confort Expert Inc. ("Licensee")

This certificate is being provided pursuant to the Branded Concession Agreement between Sears Canada Inc. and Licensee. This certificate is being provided with respect to the following Fiscal Year: [enter Fiscal Year]

In this certificate,

"Current Ratio" means total current assets divided by total current liabilities.

"Tangible Net Worth" means the aggregate of paid in capital, retained earnings, and postponed loans less any intangible assets which includes, without limitation, goodwill and investments in related companies.

"Debt Service Coverage Ratio" means the combined sum of net income after taxes plus interest expense and any non-cash expense, less dividends, divided by the required aggregate debt servicing obligations with any counterparty to a loan to the Licensee, both principal and interest, in the given year.

The undersigned, being either the President or Chief Financial Officer or other equivalent officer of the Licensee hereby certifies that the following is true:

1. The Licensee is obligated to adhere to financial covenants with the following institutions (each, a "Lender"): [enter names of Lenders]
2. The Licensee has not failed to adhere to the financial covenants it is obligated to maintain with the Lenders.
3. The Licensee currently adheres to the following financial covenants:
  - a) The Current Ratio is greater than 1:1
  - b) The Tangible Net Worth exceeds \$1,000,000
  - c) The ratio of debt to Tangible Net Worth is below 4:1
  - d) The Debt Service Coverage Ratio as at the end of the previous year exceeds 1.15:1.

On behalf of Licensee, the undersigned hereby gives express consent and authorizes Sears to request from any Lender confirmation that Licensee is or is not in compliance with its applicable financial covenants. This authorization is non-revocable and shall remain in effect for the term of the Branded Concession Agreement and for a period of five years thereafter.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

## Schedule "I"

### GUIDELINES FOR LICENSED BUSINESSES ON THE INTERNET

1. **Location and Support:**

Licensee may be permitted to host an internet website on Licensee's web servers that represents and promotes the Concession's Products and Services ("**Concession Website**"). Such approval may be arbitrarily withheld by Sears.

In the event Licensee is permitted in writing by Sears to host this website, Licensee agrees that this site will be available 24 hours per day, 7 days per week.

Licensee shall provide a technical contact who is available 24 hours per day, 7 days per week to resolve any technical issues that arise with the website. Sears shall monitor the website through its system monitoring and alert system and shall notify Licensee in case of failure.

2. **Website Naming:**

The Concession Website's domain name will not include the use of a Sears Trademark, and the domain name must be previously verified that within internet search it does not produce results that could be linked to pornographic material or illegal activity.

3. **Creating Content:**

Design of the Concession Website shall be done in accordance with the look and feel of the sears.ca internet website page design which is intended to represent the over-all Sears brand on the internet in a consistent manner with all other Sears marketing/advertising media in circulation. All content on the Concession Website must be created and presented in English and French and in the case of regionalized offers, (i.e.: a different offer in Quebec) all of the offers must be presented in both official languages.

Sears Electronic Commerce department (728E) will provide a style guide for the Concession Website developers and sample HTML to assist with the design and development of the site.

The Concession Website must have a link to the sears.ca homepage as well as links to the Concession Website's terms and conditions and privacy policy and abide by the policies set forth in those statements which terms and conditions and privacy policy must have the express written approval of Sears prior to being placed on the Concession Website.

All design and content built by the Licensee for exposure on the Concession Website, including but not limited to design criteria, commentary, offers, terms and conditions and privacy policies must be submitted to Sears Marketing Compliance Department (D/728SE) through Sears Specialty Services Marketing Manager (D/895A) for Sears review and express written approval prior to being placed on the Concession Website.

4. **Advertising:**

All Internet based advertising of the Products and Services must be approved by Sears Specialty Services Department (D/895A), Sears Marketing Compliance Department (D/728SE) and Sears E-Commerce Department (D/728E).

No advertisements of third party merchandise or services or references to other companies or organizations may be placed on the Concession Website without the prior written approval from Sears Specialty Services Department (D/895A), Sears Editorial Service Department (D/728SE) and Sears E-Commerce Department (D/728E).

No e-mail marketing campaigns may be conducted for the Products and Services offered under this Agreement without the prior written approval from Sears Specialty Services Department (D/895A), Sears Marketing Compliance Department (D/728SE) and Sears E-Commerce Department (D/728E) on a campaign by campaign basis.

**Licensee is not permitted to engage in any paid search marketing and unsolicited Internet e-mail marketing of the Products and Services under this Agreement without the prior written approval by Sears E-Commerce Department (D/728E).**

5. **Customer servicing:**

Licensee shall provide a link to [home@sears.ca](mailto:home@sears.ca) or to a customer service e-mail address @\_\_\_\_\_ca for customer inquiries and service. In the event that the link is to [home@sears.ca](mailto:home@sears.ca), Licensee shall provide to Sears a contact e-mail address for the forwarding of customer service inquiries handled by Sears customer service department.

Licensee will make every effort to respond to customer queries in a timely manner (30 minutes for acknowledgement, 24 hours for resolution).

Licensee will provide a methodology for capturing customer complaints and inquiries and will report such information to Sears on a monthly basis.

**If the Licensee is to use the website for e-commerce purposes, and Sears has granted approval, this Agreement will be amended to include such agreed upon business obligations of both parties.**

Licensee has reviewed these guidelines, and agrees to abide by them. Licensee understands and agrees that any breach of these procedures and guidelines by itself, its employees or Licensee's Representatives may result in the termination of this Agreement.



**Schedule "J"**

**SERVICE LEVEL STANDARDS**

**CUSTOMER EXPERIENCE STANDARDS:**

The following service levels comprise the "**Customer Experience Standards**". Licensee agrees to perform each service as described in the "Service Description" column at the level set out in the "**Service Level**" column.

Where a Service Description describes the keeping of an appointment (or other scheduled date), such appointment shall not be considered missed if the Customer in question has agreed to reschedule the appointment, but such appointment shall be considered missed if the Customer did not agree to such rescheduling, even if such Customer was told in advance that the appointment would not be kept.

| <b>Service Description</b>   | <b>Service Level</b> |
|--|----------------------|
| <b><u>Speed to Answer Service Level:</u></b> percentage of telephone calls into the Licensee's contact centre in a Fiscal Quarter that are answered within 20 seconds  | 80% or more          |
| <b><u>Abandoned Calls:</u></b> percentage of telephone calls into the Licensee's contact centre in a Fiscal Quarter that are abandoned by the caller before being answered   | 3% or less           |
| <b><u>Lead Acknowledgment:</u></b> in a Fiscal Quarter, percentage of Leads dispatched by Licensee's contact centre to Licensee's Representatives that are acknowledged back to Licensee's contact centre by the receiving Licensee's Representative within 4 hours of receipt | 95% or more          |
| <b><u>Appointment Scheduling:</u></b> in a Fiscal Quarter, percentage of Customers who have called Licensee's contact centre and are called by a Licensee's Representative within 24 hours of such Customer's call, for the purposes of scheduling a sales call appointment.   | 95% or more          |
| <b><u>Sales Call Attendance:</u></b> in a Fiscal Quarter, percentage of sales call appointments that are not kept by Licensee's Representative   | Less than 3%         |
| <b><u>Installation Appointment Attendance:</u></b> in a Fiscal Quarter, percentage of installation or service appointments that are not kept by Licensee's Representative  | Less than 5%         |
| <b><u>Installation Completion:</u></b> In a Fiscal Quarter, percentage of installations or service delivery that are not completed within 7 days of the time scheduled with the Customer for completion of the installation or service   | Less than 10 %       |

**Annual Customer Experience Guarantee:** The Licensee shall have failed to meet the "Annual Customer Experience Guarantee" in every Fiscal Year in which a Customer Experience Standards Service Level has not been met 2 or more times.

**CUSTOMER SATISFACTION STANDARDS:**

The following service levels comprise the "Customer Satisfaction Standards". Licensee agrees that the standard described in the "Standards Description" column will be met at the level set out in the "Standards Level" column.

| <b>Standards Description</b>   | <b>Standards Level</b> |
|--|------------------------|
| <b>Customer Complaints Level:</b> in a Fiscal Quarter, percentage of installations completed during such Fiscal Quarter about which there were no Customer complaints received by Licensee or Sears  | 85%                    |
| <b>Customer Complaint Acknowledgment:</b> in a Fiscal Quarter, percentage of Customer complaints received during such Fiscal Quarter in response to which Licensee has contacted the Customer to discuss the complaint   | 95%                    |
| <b>Customer Complaint Resolution:</b> In a Fiscal Quarter, percentage of complaints received during such Fiscal Quarter about which agreement was reached with the Customer regarding resolution of the complaint within 72 hours of receipt of Customer's complaint | 90%                    |

**Annual Customer Satisfaction Guarantee:** The Licensee shall have failed to meet the "Annual Customer Satisfaction Guarantee" in every Fiscal Year in which a Customer Satisfaction Standards Service Level has not been met 2 or more times.

**DEFINITION OF ANNUAL SERVICE LEVEL GUARANTEES:** "Annual Service Level Guarantees" means the Annual Customer Experience Guarantee and the Annual Customer Satisfaction Guarantee.

## Schedule "K"

### FORM OF GUARANTEE AGREEMENT

#### GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT (this "**Agreement**") is made and entered into as of September 9, 2013 by and between Groupe Confort Inc., a corporation incorporated under the laws of Québec ("**Guarantor**") and Sears Canada Inc., a corporation incorporated under the laws of Canada ("**Sears**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Branded Concession Agreement, as defined below.

WHEREAS Licensee and Sears entered into a Branded Concession Agreement effective September 9, 2013 (as in effect from time to time, the "**Branded Concession Agreement**");

WHEREAS Guarantor is the majority shareholder of Licensee;

WHEREAS as an inducement to Sears to consummate the transactions contemplated by the Branded Concession Agreement, Guarantor has agreed to provide a Guarantee of Licensee's obligations under the Branded Concession Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### Article 1: Guarantee

**1.1 Guarantee.** Subject to the terms and conditions hereof, Guarantor hereby unconditionally and irrevocably guarantees the payment in full of the Guaranteed Obligations (as defined below) to a maximum of \$200,000 not including interest. This Guarantee is a guarantee of payment of each and every Guaranteed Obligation. Guarantor shall be liable for each of the Guaranteed Obligations as a primary obligor, not merely as surety. Furthermore, for the avoidance of doubt, Sears shall be entitled to bring a claim against Guarantor in a court of law for the satisfaction of any Guaranteed Obligations at the same time as Sears brings a claim against Licensee. It is clearly intended that the assets on which the Guarantor will be bound to fulfill its obligations as Guarantor will exclude any shares the Guarantor holds in any Affiliate other than the Licensee.

**1.2 Guaranteed Obligations.** For purposes hereof, the term "Guaranteed Obligations" means: (i) any and all obligations of payment of Licensee pursuant to the Branded Concession Agreement that arise as a result of the operation of the Concession (including, without limitation, payment of any Financial Commitments), regardless of when such obligations of payment are due; and (ii) any financial damages resulting from the default of the Licensee to comply with any of Licensee's obligations under the Branded Concession Agreement.

**1.3 Obligation to Pay.** Guarantor shall be obligated to pay the Guaranteed Obligations after Sears has requested payment of such amount thereof from Licensee. For the avoidance of doubt, Sears is not required to seek or enforce any remedies against Licensee or any other party before Sears will be entitled to performance or payment by Guarantor of the Guaranteed Obligations and nothing contained herein shall be construed to suggest that a court or other

governmental authority must have ruled that any damages are payable by Licensee before Sears may exercise its rights hereunder.

1.4 Continuing Guarantee. This Guarantee is a continuing guarantee and shall extend (i) to the ultimate performance of the Guaranteed Obligations; and (ii) to the ultimate balance of sums payable by Licensee with respect to the stated Guaranteed Obligations, regardless of any payment by Licensee that does not fully satisfy its Guaranteed Obligations or any partial discharge or waiver of such obligations by Sears.

1.5 Subrogation. Until the final payment and performance in full of all of the Guaranteed Obligations, Guarantor shall not exercise and Guarantor hereby waives (until such final payment and performance) any rights against Licensee arising as a result of payment by Guarantor hereunder, by way of subrogation, reimbursement, restitution, contribution, discussion, division or otherwise, and will not prove any claim in competition with Sears in respect of any payment hereunder in any bankruptcy, insolvency or reorganization case or proceedings of any nature (nothing contained herein shall prevent the filing of such a claim provided that payments made with respect thereto are turned over to Sears for application to the payment of the Guaranteed Obligations until the final payment of the Guaranteed Obligations). Guarantor will not claim any setoff, recoupment or counterclaim against Licensee in respect of any liability of Guarantor to Licensee.

1.6 Waivers by Guarantor. Guarantor hereby waives promptness, diligences, presentment, demand, protest, notice of acceptance, notice of any Guaranteed Obligations incurred, notice of any default, and all other notices of any kind, all defences which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshaling of assets of Licensee, or any other entity or other person primarily or secondarily liable with respect to any of the Guaranteed Obligations, and all suretyship defences generally. Without limiting the generality of the foregoing, Guarantor agrees to the provisions of any instrument evidencing, securing or otherwise executed in connection with any Guaranteed Obligation and agrees that the obligations of Guarantor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (i) the failure of Sears to assert any claim or demand or to enforce any right or remedy against Licensee or any other entity or other person primarily or secondarily liable with respect to any of the Guaranteed Obligations; (ii) any extensions, compromise, refinancing, consolidation or renewals of any Guaranteed Obligation; (iii) any change in the time, place or manner of payment of any of the Guaranteed Obligations or any rescissions, waivers, compromise, refinancing, consolidation or other amendments or modifications or changes of any of the terms or provisions of the Branded Concession Agreement or any document or agreement evidencing, securing or otherwise executed in connection with any of the Guaranteed Obligations, (iv) the addition, substitution, discharge or release of any other entity or other person primarily or secondarily liable for any Guaranteed Obligation; or (v) any other act or omission (other than the irrevocable, final payment and performance in full of all of the Guaranteed Obligations) which might in any manner or to any extent vary the risk of Guarantor or otherwise operate as a release or discharge of Guarantor, all of which may be done without notice to Guarantor. To the fullest extent permitted by law, Guarantor hereby expressly waives any and all rights or defences arising by reason of any law which in any way would require any election of remedies by Sears.

1.7 Recovery. Guarantor agrees that, if at any time all or any part of any payment previously applied by Licensee to any of the Guaranteed Obligations is or must be rescinded or returned by Sears for any reason (including without limitation the bankruptcy of Licensee), whether by court order, administrative order, or settlement, Guarantor will remain liable for the full amount

so rescinded or returned as if such amount had never been received by Sears, notwithstanding any termination of this Guarantee or cancellation or termination of the Branded Concession Agreement or any other agreement or document evidencing the Guaranteed Obligations.

## Article II: General

2.1. This Agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, beneficiaries, legal representatives, successors and assigns; provided, however, that Sears may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates, (ii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases Sears nonetheless shall remain responsible for the performance of all of its obligations hereunder), (iii) assign any or all of its rights and interests hereunder as collateral to one or more lenders of Sears, and (iv) assign its rights hereunder in connection with the sale of all or substantially all of its business or assets (whether by merger, sale of stock or assets, recapitalization or otherwise); provided, however, in the case of clauses (i) and (iv), such assignee must agree in writing with Guarantor to assume the obligations of Sears hereunder. Subject to section 2.2, Guarantor may not assign this Guarantee Agreement or any of its obligations hereunder.

2.2. If Guarantor is no longer an Affiliate of Licensee, Guarantor may, effective no earlier than such time that Guarantor ceases to be an Affiliate of Licensee, assign its obligations hereunder to a "Permitted Assignee" (as defined below), provided Permitted Assignee assumes all the obligations of Guarantor hereunder pursuant to a written assignment and assumption agreement, a copy of which is provided to Sears no later than the effective date of such assignment and assumption. A Permitted Assignee, with respect to Licensee, is an Affiliate of Licensee that is (i) not insolvent; (ii) actively engaged in operating a business; and (iii) has no fewer than 25 full-time employees.

2.3 The parties agree that this Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the federal laws of Canada applicable therein, excluding any rule or principle that might refer the governance or the construction of this Agreement to the laws of another jurisdiction.

2.4. All notices, requests, instructions or other documents to be given under this Agreement shall be in writing and shall be deemed effectively given only when personally delivered, when received by facsimile, scanned e-mail or other electronic means or when delivered via a reputable courier service. Notices to Sears or Guarantor shall be sent to the addresses provided below; or, in either case, to such other address as the person to whom notice is given may have previously furnished to the other in writing in the manner set forth above. Notice given by a party's counsel shall be considered notice given by that party.

Notices to Guarantor shall be delivered to:

Groupe Confort Inc.  
9771 boul. Métropolitain est.  
Montreal, Quebec H1J 0A4  
Fax: (514) 640-7180  
Attention: President

Notices to Sears shall be delivered to:

Sears Canada Inc.  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3  
Fax: (416) 941-2321  
Attention: General Counsel

2.5. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

2.6. This Agreement is intended by the Parties as a final expression of the guarantee agreement of Guarantor with respect to obligations under the Branded Concession Agreement, and is intended as a complete and exclusive statement of the terms of such agreement.

2.7. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile, or scanned e-mail transmission or other electronic means shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile, e-mail or other electronic means shall be deemed to be their original signatures for any purposes whatsoever.

IN WITNESS WHEREOF, the Parties have executed this Guarantee Agreement as of the day and year first above written.

\_\_\_\_\_  
GROUPE CONFORT INC.

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

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

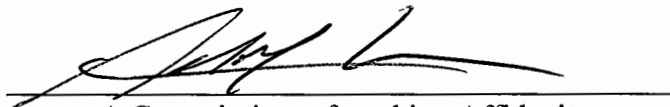
\_\_\_\_\_  
SEARS CANADA INC.

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

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

**TAB B**

**THIS IS EXHIBIT "B" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**



A Commissioner for taking Affidavits





## AMENDMENT # 1 TO THE BRANDED CONCESSION AGREEMENT

THIS AMENDMENT # 1 ("Amendment") is made as of the 15 day of August, 2014 (the "Effective Date") between **Confort Expert Inc.**, a corporation incorporated under the laws of Quebec and having its head office at Montreal, Quebec ("Licensee") and **SEARS CANADA INC.**, a corporation incorporated under the laws of Canada, having its offices at 290 Yonge Street, Suite 700, Toronto, Ontario, M5B 2C3, Canada ("Sears").

**WHEREAS** the parties entered into that certain Branded Concession Agreement effective as of 9<sup>th</sup> day of September, 2013 (the "Agreement") for provision of services and operation of the Concession by Licensee on the terms and conditions more particularly described in the Agreement;

**AND WHEREAS** Licensee and Sears desire to make certain amendments to the Agreement;

**AND WHEREAS** the capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

1. The "Brand Name" shall be amended adding the following to the existing definition: "Sears Heating and Cooling/Produits de chauffage et de climatisation Sears".
2. The term of this Amendment shall be co-terminous with the Agreement.
3. Section 14.1 shall be amended to include the following sentence at the end of the paragraph:

"Separate accounts must be kept and maintained by the Licensee for each of the Oil Services and Heating and Cooling parts of the Concession."

4. A new Section 21.5 shall be added to the end of Article 21 as follows:

### **21.5 Termination for Convenience**

With respect to the Sears Heating and Cooling business, beginning on the sixth anniversary of the Effective Date, either party may at any time during the remainder of the Term, without cause, and without cost, penalty or liability whatsoever, terminate this Agreement upon not less than one hundred twenty (120) days written notice to the other party. Termination of this Agreement shall be without prejudice to either party's right to recover damages from the other, or to any other rights and remedies of either party under this Agreement or available at law or equity.

5. Schedule "A" shall be amended to include the following at the end:

**Sears Heating and Cooling Designated Market:** Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador.

6. Schedule "B" shall be amended by deleting the first bullet under the heading "**Non-Oil Equipment (Conversions):**" in its entirety and replacing it with the following:

- Residential heating and cooling equipment (including hot water tanks, heaters and heat pumps, and stand-alone air conditioners) powered entirely by non fuel-oil energy, provided that such equipment is sold to Sears Oil customers or Sears Heating and Cooling customers only ("**Non-Oil Equipment**").

7. Schedule "B" is further amended by adding the following to the end of the Schedule:

### **Sears Heating and Cooling Non-Oil HVAC Equipment**

- Branded, residential heating and cooling equipment (including furnaces and heaters fueled by either natural gas, propane or electricity and heat pumps, central and mini-split air conditioning systems; plus non-branded hot water heater storage tanks and tankless water heaters) purchased from a Sears-approved manufacturer, to any customer who may be interested in such a purchase.
- Installation of the above-identified equipment.
- Services to fix the above-identified equipment not in working order or otherwise to effect the good operating condition of such equipment (including parts and labour, and cleaning and tune-up services). This service extends as required to products previously purchased by customer from Sears.

8. Schedule "C" is amended to include the following trademark:

Sears Heating and Cooling/Produits de chauffage et de climatisation Sears

# Sears

9. Schedule "D" is amended by deleting the first sentence in its entirety and replacing it with the following:

**Commission for Oil Services:** Per Fiscal Month, 16% of Net Sales in such Fiscal Month.

**Commission for Heating and Cooling Services:** Per Fiscal Month, 14% of Net Sales in such Fiscal Month. Payment Terms: Net 1.

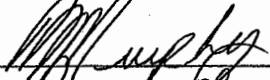
10. Schedule "E" is amended by adding the words: "and Sears Heating and Cooling/Produits de chauffage et de climatisation Sears" after the words: "Sears Oil Services/Produits et services de chauffage au mazout Sears."


This Amendment may be executed in counterpart, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

This Amendment and the Agreement, constitute the complete and entire understanding of the parties relative to their subject matter and supersede all previous communications, proposals, representations, or agreements, whether written or oral, between Licensee and Sears in this regard. Except as expressly modified above, all other terms and conditions of the Agreement will remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will govern.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed by their authorized representatives as of the Effective Date.


SEARS CANADA INC.

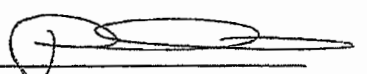
By:   
Name: Pamela Muly  
Title: VP, SS, Travel, HIPS

By:   
Name: Tim Flemming  
Title: SUP Strategic Initiatives

(We have the authority to bind the corporation.)

CONFORT/EXPERT INC.

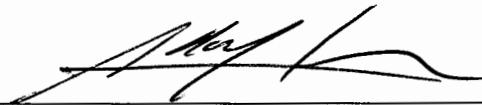
By:   
Name: Pierre Boulé  
Title: Président directeur général

By:   
Name: Pierre-Marc Lamoureux  
Title: Vice Président opérations finances

(We have the authority to bind the corporation.)

**TAB C**

**THIS IS EXHIBIT "C" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**



---

A Commissioner for taking Affidavits

**AMENDMENT #2  
TO THE BRANDED CONCESSION AGREEMENT**

THIS AMENDMENT # 2 ("Amendment #2") is made as of the 8 day of December, 2014 (the "Effective Date") between **Confort Expert Inc.**, a corporation incorporated under the laws of Quebec and having its head office at Montreal, Quebec ("Licensee") and **SEARS CANADA INC.**, a corporation incorporated under the laws of Canada, having its offices at 290 Yonge Street, Suite 700, Toronto, Ontario, M5B 2C3, Canada ("Sears").

**WHEREAS** the parties entered into that certain Branded Concession Agreement effective as of 9<sup>th</sup> day of September, 2013 (the "Agreement") for provision of services and operation of the Concession by Licensee on the terms and conditions more particularly described in the Agreement;

**AND WHEREAS** the parties entered into an Amendment ("Amendment #1") of the Agreement effective as of the 15<sup>th</sup> day of August, 2014.

**AND WHEREAS** Licensee and Sears desire to further amend the Agreement;

**AND WHEREAS** in all other respects, the Agreement (as amended via Amendment #1) shall remain unmodified and in full force and effect in accordance with its terms.

**AND WHEREAS** the capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

1. The "Brand Name" shall be amended adding the following to the existing definition: "Sears Duct Cleaning Services/Services de nettoyage de conduits Sears".
2. The term of this Amendment shall be co-terminus with the Agreement.
3. Section 14.1 shall be amended to include the following sentence at the end of the paragraph:

"Separate accounts must be kept and maintained by the Licensee for each of the Oil Services and Heating and Cooling and Duct Cleaning Services parts of the Concession."

4. A new Section 21.5 shall be added to the end of Article 21 as follows:

**21.5 Termination for Convenience**

With respect to the Sears Duct Cleaning Services business, beginning on the sixth anniversary of the Effective Date, either party may at any time during the remainder of the Term, without cause, and without cost, penalty or liability whatsoever, terminate this Agreement upon not less than one hundred twenty (120) days written notice to the other party. Termination of this Agreement shall be without prejudice to either party's right to recover damages from the other, or to any other rights and remedies of either party under this Agreement or available at law or equity.

5. Schedule "A" shall be amended to include the following at the end:

**Sears Duct Cleaning Service Designated Market**

Quebec Duct Cleaning Services Market FSA List (Schedule "A" attached)

6. Schedule "B" is further amended by adding the following to the end of the Schedule:

**Sears Duct Cleaning Services**

**RESIDENTIAL:**

- Duct Cleaning Services
- Ductless Air Conditioning Cleaning Services

**COMMERCIAL**

- Duct Cleaning Services

7. Schedule "C" is amended to include the following trademark:



**Sears Duct Cleaning Services / Services de nettoyage de conduits Sears**

8. Schedule "D" is amended by adding the following:

**Commission for Duct Cleaning Service: Per Remittance, 12% of such Remittance**

**Commission for Ductless Air Conditioning Cleaning Services: Per Remittance, 12% of such Remittance**

9. Schedule "E" is amended by adding the words: "**and Sears Duct Cleaning Services/Services de nettoyage de conduits Sears**" after the words: "**and Sears Heating and Cooling/Produits de chauffage et de climatisation Sears**"

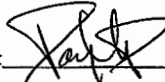
This Amendment may be executed in counterpart, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

This Amendment and the Agreement (as amended via Amendment #1), constitute the complete and entire understanding of the parties relative to their subject matter and supersede all previous communications, proposals, representations, or agreements, whether written or oral, between Licensee and Sears in this regard. Except as expressly modified above, all other terms and conditions of the Agreement will remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will govern.

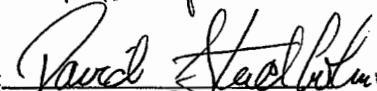
In all other respects, the Agreement (as amended via Amendment #1) shall remain unmodified and in full force and effect in accordance with its terms

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be duly executed by their authorized representatives as of the Effective Date.

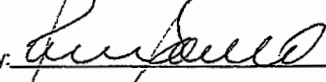
**SEARS CANADA INC.**

By:   
Name: RAY YIP

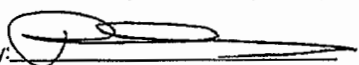
Title: AIR - HOME IMPROVEMENTS

By:   
Name: DAVID STROHME  
Title: DIRECTOR, SEARS SUK  
OL, CCL, DCL

**CONFORT EXPERT INC.**

By:   
Name: Pierre Boulé

Title: Président Directeur Général  
*(I have the authority to bind the corporation.)*

By:   
Name: Pierre-Marc Lamoureux  
Title: Vice -Président Opérations / Finances  
*(I have the authority to bind the corporation.)*

SCHEDULE "A"

DESIGNATED TERRITORY

This is Schedule A to the Sears Duct Cleaning Services License Agreement between SEARS CANADA INC and Licensee

Territorial Listing: The Designated Territory referred to in the Agreement is defined as the geographic area that corresponds to the following Forward Sortation Area listings and Postal Codes as used by Canada Post Corporation.

QUEBEC FSA LIST FOR DCL

Confort Expert Inc.

|                |        |             |        |
|----------------|--------|-------------|--------|
| BEACONSFIELD   | H9W    | LAVALTRIE   | J5T    |
| BEAUHARNOIS    | J6N    | L'ÉPIPHANIE | J5X    |
| BÉLOEIL        | J3G    | LONGUEUIL   | J4G    |
| BÉLOEIL        | J3H    | LONGUEUIL   | J4H    |
| BOUCHERVILLE   | J4B    | LONGUEUIL   | J4J    |
| CHAMBLY        | J3L    | LONGUEUIL   | J4K    |
| CHATEAUGUAY    | J6J    | LONGUEUIL   | J4L    |
| CHATEAUGUAY    | J6K    | LONGUEUIL   | J4M    |
| CÔTEAU-DU-LAC  | J0P1B0 | LONGUEUIL   | J4N    |
| DÉLSON         | J5B    | LONGUEUIL   | J4P    |
| HUDSON         | J0P1H0 | LONGUEUIL   | J4R    |
| HUDSON HEIGHTS | J0P1J0 | LONGUEUIL   | J4S    |
| ÎLE-PERROT-SUD | J0P1K0 | LONGUEUIL   | J4V    |
| JOLIETTE       | J6E    | LONGUEUIL   | J4W    |
| KAHNAWAKE      | J0L1B0 | LONGUEUIL   | J4X    |
| LA PRAIRIE     | J5R    | LONGUEUIL   | J4Y    |
| LACHUTE        | J8H    | LONGUEUIL   | J4Z    |
| LAFLÈCHE       | J4T    | MASCOUCHE   | J7K    |
| LASALLE        | H8N    | MASCOUCHE   | J7L    |
| LASALLE        | H8P    | MERCIER     | J6R    |
| LASALLE        | H8R    | MILLE-ISLES | J0R1A0 |
| LASALLE        | H8S    | MIRABEL     | J7J    |
| L'ASSOMPTION   | J5W    | MIRABEL     | J7N    |
| LÀVAL          | H7A    | MONTREAL    | H1A    |
| LÀVAL          | H7B    | MONTREAL    | H1B    |
| LÀVAL          | H7C    | MONTREAL    | H1C    |
| LÀVAL          | H7E    | MONTREAL    | H1E    |
| LÀVAL          | H7G    | MONTREAL    | H1G    |
| LÀVAL          | H7H    | MONTREAL    | H1H    |
| LÀVAL          | H7J    | MONTREAL    | H1J    |
| LÀVAL          | H7K    | MONTREAL    | H1K    |
| LÀVAL          | H7L    | MONTREAL    | H1L    |
| LÀVAL          | H7M    | MONTREAL    | H1M    |
| LÀVAL          | H7N    | MONTREAL    | H1N    |
| LÀVAL          | H7P    | MONTREAL    | H1P    |
| LÀVAL          | H7R    | MONTREAL    | H1R    |
| LÀVAL          | H7S    | MONTREAL    | H1S    |
| LÀVAL          | H7T    | MONTREAL    | H1T    |
| LÀVAL          | H7V    | MONTREAL    | H1V    |
| LÀVAL          | H7W    | MONTREAL    | H1W    |
| LÀVAL          | H7X    | MONTREAL    | H1X    |
| LÀVAL          | H7Y    | MONTREAL    | H1Y    |

SCHEDULE "A" Continued

DESIGNATED TERRITORY

|          |     |                          |        |
|----------|-----|--------------------------|--------|
| MONTREAL | H1Z | MONTREAL                 | H4V    |
| MONTREAL | H2A | MONTREAL                 | H4W    |
| MONTREAL | H2B | MONTREAL                 | H4X    |
| MONTREAL | H2C | MONTREAL                 | H4Z    |
| MONTREAL | H2E | MONTREAL                 | H5A    |
| MONTREAL | H2G | MONTREAL                 | H5B    |
| MONTREAL | H2H | OKA                      | J0N1E0 |
| MONTREAL | H2J | PIEDMONT                 | J0R1K0 |
| MONTREAL | H2K | PIERREFONDS              | H9A    |
| MONTREAL | H2L | PIERREFONDS              | H9C    |
| MONTREAL | H2M | PIERREFONDS              | H9E    |
| MONTREAL | H2N | PIERREFONDS              | H9G    |
| MONTREAL | H2P | PIERREFONDS              | H9H    |
| MONTREAL | H2R | PIERREFONDS              | H9J    |
| MONTREAL | H2S | PIERREFONDS              | H9K    |
| MONTREAL | H2T | POINTE-CALUMET           | J0N1G0 |
| MONTREAL | H2V | POINTE-CLAIRE-DORVAL     | H4Y    |
| MONTREAL | H2W | POINTE-CLAIRE-DORVAL     | H8T    |
| MONTREAL | H2X | POINTE-CLAIRE-DORVAL     | H9P    |
| MONTREAL | H2Y | POINTE-CLAIRE-DORVAL     | H9R    |
| MONTREAL | H2Z | POINTE-CLAIRE-DORVAL     | H9S    |
| MONTREAL | H3A | POINTE-DES-CASCADES      | J0P1M0 |
| MONTREAL | H3B | PREVOST                  | J0R1T0 |
| MONTREAL | H3C | REPENTIGNY               | J5Y    |
| MONTREAL | H3E | REPENTIGNY               | J5Z    |
| MONTREAL | H3G | REPENTIGNY               | J6A    |
| MONTREAL | H3H | RIGAUD                   | J0P1P0 |
| MONTREAL | H3J | ROXBORO                  | H8Y    |
| MONTREAL | H3K | ROXBORO                  | H8Z    |
| MONTREAL | H3L | ROXBORO                  | H9B    |
| MONTREAL | H3M | SAINT-AMABLE             | J0L1N0 |
| MONTREAL | H3N | SAINT-ANDRE-D'ARGENTEUIL | J0V1X0 |
| MONTREAL | H3P | SAINT-BASILE-LE-GRANDE   | J3N    |
| MONTREAL | H3R | SAINT-BRUNO-DE-MONTARVIL | J3V    |
| MONTREAL | H3S | SAINT-COLOMBAN           | J5K    |
| MONTREAL | H3T | SAINT-CONSTANT           | J5A    |
| MONTREAL | H3V | SAINTE-ANNE-DE-BELLEVUE  | H9X    |
| MONTREAL | H3W | SAINTE-ANNE-DES-LACS     | J0R1B0 |
| MONTREAL | H3X | SAINTE-ANNE-DES-PLAINES  | J0N1H0 |
| MONTREAL | H3Y | SAINTE-CATHERINE         | J5C    |
| MONTREAL | H3Z | SAINTE-JULIE             | J3E    |
| MONTREAL | H4A | SAINTE-MARTHE-SUR-LE-LAC | J0N1P0 |
| MONTREAL | H4B | SAINTE-SOPHIE            | J5J    |
| MONTREAL | H4C | SAINTE-THERESE           | J6Z    |
| MONTREAL | H4E | SAINTE-THERESE           | J7A    |
| MONTREAL | H4J | SAINTE-THERESE           | J7B    |
| MONTREAL | H4K | SAINTE-THERESE           | J7C    |
| MONTREAL | H4N | SAINTE-THERESE           | J7E    |
| MONTREAL | H4P | SAINTE-THERESE           | J7G    |
| MONTREAL | H4R | SAINTE-THERESE           | J7H    |
| MONTREAL | H4S | SAINTE-EUSTACHE          | J7P    |



SCHEDULE "A" Continued

DESIGNATED TERRITORY

|                          |        |                          |        |
|--------------------------|--------|--------------------------|--------|
| SAINT-EUSTACHE           | J7R    | SAINT-POLYCARPE          | J0P1X0 |
| SAINT-HIPPOLYTE          | J8A    | SAINT-TELESPHORE         | J0P1Y0 |
| SAINT-HUBERT             | J3Y    | SAINT-ZOTIQUE            | J0P1Z0 |
| SAINT-HUBERT             | J3Z    | SALABERRY-DE-VALLEYFIELD | J6S    |
| SAINT-JEAN-SUR-RICHELIEU | J2W    | SALABERRY-DE-VALLEYFIELD | J6T    |
| SAINT-JEAN-SUR-RICHELIEU | J2X    | SALABERRY-DE-VALLEYFIELD | J7X    |
| SAINT-JEAN-SUR-RICHELIEU | J2Y    | TERREBONNE               | J6V    |
| SAINT-JEAN-SUR-RICHELIEU | J3A    | TERREBONNE               | J6W    |
| SAINT-JEAN-SUR-RICHELIEU | J3B    | TERREBONNE               | J6X    |
| SAINT-JEROME             | J5L    | TERREBONNE               | J6Y    |
| SAINT-JEROME             | J7Y    | TERREBONNE               | J7M    |
| SAINT-JEROME             | J7Z    | VARENNES                 | J3X    |
| SAINT-JOSEPH-DU-LAC      | J0N1M0 | VAUDREUIL-DORION         | J7T    |
| SAINT-LAURENT            | H4L    | VAUDREUIL-DORION         | J7V    |
| SAINT-LAURENT            | H4M    | VERCHERES                | J0L2R0 |
| SAINT-LAURENT            | H4T    | VERDUN                   | H4G    |
| SAINT-LIN-LAURENTIDES    | J5M    | VERDUN                   | H4H    |

**TAB D**

**THIS IS EXHIBIT "D" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**



---

A Commissioner for taking Affidavits



# Equipment Lease/Rental Agreement

THIS RENTAL AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, between Sears Canada Inc., hereinafter called "Sears" having a place of business at \_\_\_\_\_ and \_\_\_\_\_

(hereinafter called "Customer"), of \_\_\_\_\_ (Street) \_\_\_\_\_ (City) \_\_\_\_\_ (Province) \_\_\_\_\_ (Postal Code) (hereinafter called the "Premises")

WITNESSETH: \_\_\_\_\_

**Grant**  
1. Sears hereby Rents to the Customer the equipment identified on Schedule "A" indicated below and made part of this Rental Agreement, for use on the Premises.

**Term**  
2. This Rental Agreement will be in effect for a minimum period of three (3) years commencing from the date of the installation of the appliance. It thereafter will continue in effect from year to year subject however, to the right of either partner to terminate this Rental Agreement at the expiry of the said minimum period, or of any subsequent year thereafter by giving two (2) months prior written notice to the other party.

**Rent**  
3. By virtue thereof, Customer shall pay Sears a monthly rent of \$ \_\_\_\_\_, starting at the date the equipment is put at the disposal of the customer, and thereafter on the first day of each and every month of the term provided herein. In addition to the monthly Rental Agreement, Customer shall also pay Sears, on the dates such rent is due during the term hereof, the applicable tax(es) in effect at the date of each invoicing. Any Rental Agreement arrears will be subject to the charges calculated at a rate of 1.5% per month, compounded monthly, on the average daily balance outstanding from time to time, after default. Effective on the first day of any month after the expiration of the first year term of the three (3) years, Sears may from time to time increase the monthly rental payable hereunder by giving not less than sixty (60) days notice of such increase to the Customer.

**Ownership**  
4. By virtue thereof, Sears shall be and remain the indisputable owner of the rented equipment at all times. Customer covenants that he is the owner of the building and agrees to refrain from encumbering, mortgaging, securing, selling or otherwise disposing of the rented equipment in any manner. Before selling or mortgaging the property on which the equipment is installed, Customer shall inform its eventual purchaser or creditor of the existence of this Rental Agreement and supply him with a copy thereof. Customer declares that the property is presently burdened by a mortgage in favour of: \_\_\_\_\_

**Redemption**  
5. Should Sears terminate Rental Agreement before the expiration of the above-mentioned term because Customer has not fulfilled the obligations ensuing from this Rental Agreement, or should Customer terminate such Rental Agreement for any other reason than default from Sears, the said Renter shall remit to Sears, in addition to the rent due and that of the next three (3) months, the full amount of the equipment removal costs, including any damage thereto, as well as a portion of the installation costs of said equipment, which amounts to \$ \_\_\_\_\_, less 1/36th of that amount for each and every full month during which the Rental Agreement was effective until the date at which it was terminated. In the event the Customer chooses to retain the appliance, the Customer shall immediately purchase the appliance and pay to Sears the sum of: (i) The book value of the appliance, according to Sears, and if the Rental Agreement has been in effect for less than 36 months, the cost of installing the appliance less 1/36th of such amount for each calendar month the Rental Agreement has been in effect. The Customer acknowledges that the equipment has been installed by means of adapters and, such as, not withstanding its treatment for sales tax purposes, is removable; and is not considered a permanent fixture of Customer's leasehold.

**Installation**  
6. The full maintenance and installation of the Rented equipment shall be executed solely and by none other than Sears. Notwithstanding the contents hereof, Sears reserves the right to refuse to install such equipment if, in its opinion, the installation costs are higher than the normal costs, unless the Customer agrees to pay the additional cost of such installation as determined by Sears.

**Use of Equipment**  
7. Customer agrees to use the equipment for residential purposes only and not to move it without Sears' prior written consent. If the equipment fails to operate satisfactorily, the Customer shall not have any claim against Sears for damage as a result of such failure and so often as such failure may have occurred.

**Repairs**  
8. Sears' maintenance obligations do not include repairs made by it following any loss or damage directly or indirectly arising from an act or omission on the part of the Customer, which repairs shall be paid for by the Customer. The Customer shall not perform nor commission the performance of any repairs, alterations, additions or other modifications to the equipment at any time.

**Damages**  
9. The Customer agrees to assume all risks of loss or damage to the equipment, as well as all risks of loss of or to the premises or to his property or that of others.

**Indemnification**  
10. Customer agrees that Sears shall not be held directly or indirectly responsible for any material or bodily loss or damage caused by the delivery, installation, operation or repossession of the rented equipment or by any defect thereof, or for any other cause or reason whatsoever, except if due to Sears, its representatives, employees, contractors or their respective agents, and further agrees to indemnify Sears against any such loss, damage or claim resulting therefrom.

**Fallure**  
11. Should Customer fail to pay the rent as per the conditions herein, and/or to comply with each and every clause hereof, or should Customer become bankrupt or make any proposition or conciliation with his creditors should he become insolvent, or should the property be sold and its new owner not assume this Rental Agreement, or should Customer fail to pay Sears, when due, any sum owed, Sears shall then have the right without any limitation or derogation to any other recourse, to repossess the equipment upon written notice without having to arrange for the reinstallation, of any equipment.

**Assignment - Sub-Tenancy**  
12. Customer can only transfer this Rental Agreement to any buyer of the premises deemed acceptable by Sears, provided such buyer assumes all of the Customer's obligations. In any other case, this Rental Agreement shall not be transferred by Customer nor by virtue of the application of law without written consent from Sears. Customer shall not sublet equipment nor authorize any other person, company or corporation to operate or use it.

**Notice**  
13. Any notice concerning this Rental Agreement must be given in writing, delivered to the Customer or Sears by mail, and sent to the receiving party at the aforementioned address or any other address in substitute thereof.

**Works**  
14. It is understood and agreed that any equipment replaced by the rented equipment, or removed or disconnected during the installation thereof, will be taken from the premises when the installation is to take place and Sears shall not be held responsible for any loss or damage to such equipment nor for any reinstallation or for the subsequent operating condition thereof; furthermore, it is understood that the Customer shall hold Sears harmless from any claim by the owner or owners of such equipment or any other person. It is also understood and agreed upon that Sears shall not be liable for any rebuilding or restoration resulting from the installation or removal of the equipment.

**Warranty**  
15. Sears shall not be liable for any failure to perform by virtue of this Rental Agreement if it is beyond its control. No condition, warranty and/or representation expressed or implied concerning the leased equipment shall be specifically or absolutely made by Sears, unless expressly stated herein.

**Maintenance**  
16. (A) Sears shall, at its expense maintain the appliance in efficient operating condition provided, however, the Customer shall, at all times report promptly to Sears each and every indication of defective operation of the appliance. The Customer agrees not to remove, transfer, tamper with, adjust, repair or otherwise in any way interfere with the appliance without Sears' prior written

consent. Sears shall have the right to enter the premises for the purposes of exercising its rights and performing its obligations under this Rental Agreement.

(B) The Customer hereby undertakes to notify Sears promptly in writing of any loss or damage to the appliance arising from any cause whatsoever, and of any seizure of the appliance or of the premises during the term of this Rental Agreement. The Customer assumes all risk of loss or damage of or to the appliance during the term of this Rental Agreement, and will during such term keep the same insured against fire and all other perils, and the Customer agrees to indemnify Sears against any and all loss or damage whatsoever to the appliance howsoever such loss or damage may arise, excepting only loss or damage arising out of the negligence of Sears, its agents, employees or contractors.

(C) Except only in the case of negligence on the part of Sears, its agents, employees or contractors, the Customer agrees to exonerate, release, hold harmless and indemnify Sears from and against any and all claims, demands, actions, suits and liabilities whatsoever from any and all damage, loss or injury suffered by or caused to the Customer or any other person or persons whatsoever at any time and howsoever the same may arise due to or as a result of the installation, removal, maintenance, existence, operation (deficient or otherwise), use of or defect in the appliance or removal of the water (in the case of a water heater).

(D) The appliance is and shall remain the personal property of Sears notwithstanding any attachment thereof to the premises, and upon termination of this Rental Agreement, Sears shall have the option to disconnect and remove the appliance from the premises and shall not be responsible for the re-installation or installation or connecting of either the former or any replacement appliance upon termination of this Rental Agreement. The Customer shall surrender the appliance to Sears in the same condition as it was at the time of installation thereof, ordinary wear and tear only accepted. In addition, Sears may recover any damages for injury to the appliance and all expenses incurred in repossessing and returning the appliance, including all legal, shares, court and workmen's costs.

(E) The Customer agrees to notify Sears promptly in writing of any change of his place of residence or of his billing address. Any change of location of the appliance shall be carried out solely by Sears and at the expense of the Customer.

**Joint and Several Liability**  
17. If two or more persons are designated above as Customer, their liability hereunder will be joint and several without any benefit of division or discussion.

**Option to Purchase**  
18. The Customer may purchase the appliance at any time that he has complied and is complying with the terms of this Agreement at a fraction of the original installed cost of which the denominator is one hundred and twenty and the numerator is the difference between the number of months which have expired since the appliance was installed and rental paid and one hundred and twenty.  
E.g.  $\frac{\text{Installed Cost of Appliance} \times (\text{120} - \text{No. of months elapsed since installation})}{120 \text{ Months}} = \text{Purchase Price}$

**Liability**  
19. Sears shall not be held responsible for the faulty operation of the Rented equipment if it results from any defect in the chimney structure, or any obstruction therein, or if such does not comply to the capacity or dimensions required; and Customer hereby agrees to maintain said chimney in good working condition.  
20. This Rental Agreement is not a credit contract or an agreement of sale. Amounts owing will be billed monthly and will be due on receipt of statement; any amounts not paid by Customer when due and owing to Sears, will incur an overdue charge as set out in the monthly statement.  
21. This Rental Agreement will not be binding for Sears until and unless it is signed and accepted by an authorized officer.  
22. This Rental Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assignees.  
23. The schedules hereto constitute part of this Rental Agreement.

**CONSENT OF LANDLORD AND/OR MORTGAGEE:**  
"Each of the undersigned (being landlord and/or mortgagee of the premises referred to in the above Rental Agreement) hereby acknowledges that he has read and understood the same and hereby consents to the full operation and performance thereof including the removal from the premises of the appliance (including any equipment replaced by or replacing the appliance) as in the said Rental Agreement provided, notwithstanding that the said appliance or any parts thereof is attached to or constitutes part of the real property."  
Witness \_\_\_\_\_ Landlord \_\_\_\_\_  
Witness \_\_\_\_\_ Mortgagee \_\_\_\_\_  
Appliance Rental No. \_\_\_\_\_ Serial No. \_\_\_\_\_

**CERTIFICATE OF COMPLETION**  
TO: Sears Canada Inc.  
The lessee certifies that the appliance has been furnished and installed on the premises as indicated in the above Rental Agreement and said installation has been completed to my satisfaction.

The installer certifies and warrants that the work has been satisfactorily completed and that this certificate was signed after completion of work.  
Appliance Serial No. \_\_\_\_\_ Date of Installation \_\_\_\_\_  
Witness \_\_\_\_\_ Lessee \_\_\_\_\_  
Witness \_\_\_\_\_ Installer \_\_\_\_\_

This is Schedule "A" to an Equipment Lease/Rental Agreement Between Sears Canada Inc. and \_\_\_\_\_  
Dated \_\_\_\_\_ Day of \_\_\_\_\_

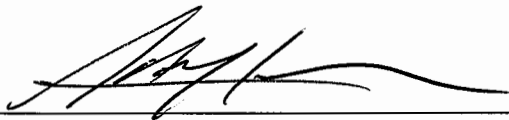
| Equipment       | Model No. | Serial No. | Monthly lease cost |
|-----------------|-----------|------------|--------------------|
| Equipment       |           |            |                    |
| Other equipment |           |            |                    |

Total monthly lease cost (PST included, GST extra, HST extra) \$ \_\_\_\_\_/mo.  
GST REG. #104765698

**Please sign each copy of this form with an original signature.**  
Customer \_\_\_\_\_ Accepted by \_\_\_\_\_  
Sears Canada Inc. \_\_\_\_\_  
By \_\_\_\_\_  
Witness \_\_\_\_\_ Prepared by \_\_\_\_\_  
Date \_\_\_\_\_ Date \_\_\_\_\_

# TAB E

**THIS IS EXHIBIT "E" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**



---

A Commissioner for taking Affidavits

# **ASSET PURCHASE AGREEMENT**

**Sears Canada Inc.**

**as Seller**

**- and -**

**Confort Expert Inc.**

**as Buyer**

# TABLE OF CONTENTS

|   | Page |
|---|------|
| ARTICLE 1 INTERPRETATION.....                                   | 1    |
| 1.1 Definitions.....  | 1    |
| 1.2 Statutes.....   | 11   |
| 1.3 Headings and Table of Contents.....                         | 11   |
| 1.4 Gender and Number.....                                      | 12   |
| 1.5 Currency.....   | 12   |
| 1.6 Invalidity of Provisions.....                               | 12   |
| 1.7 Knowledge.....  | 12   |
| 1.8 Entire Agreement.....                                       | 12   |
| 1.9 Waiver, Amendment.....                                      | 12   |
| 1.10 Governing Law; Jurisdiction and Venue.....                 | 13   |
| 1.11 Schedules.....   | 13   |
| ARTICLE 2 PURCHASE AND SALE.....                                | 13   |
| 2.1 Agreement to Purchase and Sell Purchased Assets.....        | 13   |
| 2.2 Excluded Assets.....  | 15   |
| 2.3 Assumption of Liabilities.....                              | 17   |
| 2.4 Excluded Liabilities.....                                   | 18   |
| 2.5 Assignment of Purchased Assets.....                         | 19   |
| ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS.....               | 20   |
| 3.1 Purchase Price.....   | 20   |
| 3.2 Payment of Purchase Price and Treatment of Deposit.....     | 21   |
| ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER.....     | 22   |
| 4.1 Corporate Existence.....                                    | 22   |
| 4.2 Due Authorization and Enforceability of Obligations.....    | 22   |
| 4.3 Residence of the Seller.....                                | 22   |
| 4.4 Taxes.....  | 22   |
| 4.5 No Other Representations, Warranties or Covenants.....      | 23   |
| ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER.....      | 23   |
| 5.1 Corporate Existence.....                                    | 23   |
| 5.2 Financial Ability.....                                      | 23   |
| 5.3 Absence of Conflicts.....                                   | 24   |
| 5.4 Due Authorization and Enforceability of Obligations.....    | 24   |
| 5.5 Approvals and Consents.....                                 | 24   |
| 5.6 GST, HST and QST Registration.....                          | 24   |
| 5.7 Litigation.....   | 24   |
| 5.8 Personal Information.....                                   | 25   |
| 5.9 As Is, Where Is.....  | 25   |
| 5.10 Investment Canada Act.....                                 | 27   |
| ARTICLE 6 CONDITIONS.....                                       | 27   |
| 6.1 Conditions for the Benefit of the Buyer and the Seller..... | 27   |
| 6.2 Conditions for the Benefit of the Buyer.....                | 27   |
| 6.3 Conditions for the Benefit of the Seller.....               | 28   |



# TABLE OF CONTENTS

(continued)

|  | Page |
|--|------|
| ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES .....                 | 28   |
| 7.1 Access to Information .....                                      | 28   |
| 7.2 Conduct of Business Until Closing Time .....                     | 29   |
| 7.3 Approvals and Consents .....                                     | 29   |
| 7.4 Covenants Relating to this Agreement .....                       | 30   |
| 7.5 Release; Acknowledgements; Indemnity.....                        | 31   |
| 7.6 Tax Matters .....  | 31   |
| 7.7 Certain Payments or Instruments Received from Third Persons..... | 33   |
| 7.8 Notice of Certain Events.....                                    | 34   |
| 7.9 Risk of Loss .....   | 34   |
| ARTICLE 8 COURT ORDERS .....   | 34   |
| 8.1 Court Orders.....  | 34   |
| 8.2 CCAA Process .....   | 35   |
| ARTICLE 9 TERMINATION .....  | 35   |
| 9.1 Termination.....   | 35   |
| 9.2 Effect of Termination.....                                       | 36   |
| ARTICLE 10 CLOSING .....   | 36   |
| 10.1 Location and Time of the Closing .....                          | 36   |
| 10.2 Seller's Deliveries at Closing.....                             | 36   |
| 10.3 Buyer's Deliveries at Closing .....                             | 37   |
| 10.4 Termination of Branded Concession Agreement.....                | 37   |
| 10.5 Possession of Assets .....                                      | 37   |
| 10.6 Monitor .....   | 38   |
| 10.7 Simultaneous Transactions .....                                 | 38   |
| ARTICLE 11 GENERAL MATTERS .....                                     | 38   |
| 11.1 Confidentiality .....   | 38   |
| 11.2 Public Notices .....  | 38   |
| 11.3 Survival .....  | 39   |
| 11.4 Expenses .....  | 39   |
| 11.5 Non-Recourse .....  | 39   |
| 11.6 Assignment; Binding Effect.....                                 | 39   |
| 11.7 Notices .....   | 40   |
| 11.8 Counterparts; Facsimile Signatures .....                        | 41   |
| 11.9 Language.....   | 42   |

## ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** is made as of September 28, 2017

### AMONG:

Sears Canada Inc., a corporation governed by the laws of Canada (“**SCI**” or “the **“Seller”**”)

- and -

Confort Expert Inc., a corporation governed by the *Business Corporations Act* (Quebec) R.S.Q., c. S-31.1 (the **“Buyer”**)

### RECITALS:

- A. On the Filing Date, Sears Canada Inc. (“**SCI**”) and certain of its affiliates and subsidiaries (the **“Sears Group”**) applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the CCAA Court. Pursuant to the Initial Order, the CCAA Court appointed FTI Consulting Canada Inc. as “Monitor” in connection with the CCAA Proceedings.
- B. On July 13, 2017, the CCAA Court granted an order which, among other things, approved the sale and investment solicitation process (“**SISP**”), which governs the process for soliciting and selecting bids for the sale of the Business, Assets and/or Leases (each as defined in the SISP) of the Sears Group. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- C. The Buyer operates three Seller businesses known as Sears Oil Services / Produits et services de chauffage au mazout Sears; Sears Heating and Cooling / Produits de chauffage et de climatisation Sears; and Sears Duct Cleaning Services / Services de nettoyage de conduits Sears; pursuant to the BCA (as defined below).
- D. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets, and the Buyer further wishes to assume from the Seller the Assumed Liabilities, and the Buyer and Seller further wish to terminate the BCA subject to the survival for 75 days after the Closing Date (as defined below) of the license granted by the Seller to the Buyer pursuant to the BCA, subject to the terms and conditions of this Agreement.

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement,

- (a) “**Accounts Receivable**” means accounts receivable, bills receivable, trade accounts, book debts and insurance claims relating to the Acquired Business, recorded as receivables in the books and records of the Seller relating to the Acquired Business or the Purchased Assets, and other amounts due or deemed to be due to the Seller relating to the Acquired Business including refunds and rebates receivable relating to the Acquired Business or the Purchased Assets;
- (b) “**Accrued Liabilities**” means liabilities relating to the Acquired Business incurred as of the Closing Time but which are not yet due and payable as of the Closing Time (excluding reserves and contingent amounts) to the extent they are Assumed Liabilities (for example, accounts payable and accrued wages payable).
- (c) “**Acquired Business**” means, collectively, the businesses of the Seller known as Sears Oil Services / Produits et services de chauffage au mazout Sears; Sears Heating and Cooling / Produits de chauffage et de climatisation Sears; and Sears Duct Cleaning Services / Services de nettoyage de conduits Sears as such businesses have been prior to the date of this Agreement and are as of the date of this Agreement operated by the Buyer under the BCA.
- (d) “**affiliate**” of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (e) “**Agreement**” means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (f) “**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the

Seller, the Buyer, the Acquired Business, or any of the Purchased Assets or the Assumed Liabilities.

- (g) **“Approval and Vesting Order”** means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(g) (with only such changes as the Buyer and the Seller approve in their reasonable discretion, but in all cases in form and substance acceptable to the Lenders and the Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
  - (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
  - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and
  - (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances, save for Permitted Encumbrances, upon the delivery of the Monitor’s Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).
- (h) **“Assignment Order”** means an order or orders of the CCAA Court pursuant to applicable provisions of the CCAA, in form and substance acceptable to the Seller, the Buyer, the Lenders and the Monitor, each acting in a commercially reasonable manner, authorizing and approving the assignment to the Buyer of the Assumed Contracts, and preventing any counterparty to each Assumed Contract from exercising any right or remedy under the Assumed Contract by reason of any default(s) arising from the CCAA Proceedings, the insolvency of the Seller, the assignment of the Assumed Contract, or the failure of the Seller to perform a non-monetary obligation under the Assumed Contract.
- (i) **“Assumed Contracts”** has the meaning given to such term in Section 2.1(d).
- (j) **“Assumed Liabilities”** has the meaning given to such term in Section 2.3.
- (k) **“Branded Concession Agreement”** or **“BCA”** means the Branded Concession Agreement [Sears Oil Services], dated as of August 12, 2013 and effective as of September 9, 2013, between SCI and the Buyer including Amendment # 1 dated August 15<sup>th</sup>, 2014 and Amendment # 2 dated December 8<sup>th</sup>, 2014.
- (l) **“Business Day”** means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.
- (m) **“Buyer”** has the meaning given to such term in the preamble to this Agreement.

- (n) **“Cash and Cash Equivalents”** means cash, bank balances, moneys in possession of banks and other depositories, term or time deposits, marketable securities, bankers’ acceptance, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents of, owned or held by or for the account of the Seller (but specifically excluding any cash payable by the Buyer to any Seller pursuant to this Agreement).
- (o) **“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada).
- (p) **“CCAA Court”** means the Ontario Superior Court of Justice (Commercial List).
- (q) **“CCAA Proceedings”** means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. CV-17-11846-00CL).
- (r) **“Claims”** includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.
- (s) **“Closing”** means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.
- (t) **“Closing Date”** means a date no later than five (5) Business Days after the conditions set forth in Article 6 have been satisfied (or such other date agreed to by the Parties in writing), other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing; provided that, the Closing Date shall be no later than October 25, 2017 or such later date (which shall not be later than 60 days following October 25, 2017 without the further consent of the Buyer), as the Seller (with the consent of the Lenders and the Monitor) may advise the Buyer in writing or as otherwise ordered by the CCAA Court.
- (u) **“Closing Documents”** means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.
- (v) **“Closing Time”** means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing shall take place.
- (w) **“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or the Seller’s representatives or the Monitor, including, without limitation, information about

identifiable individuals, any information relating to the Seller and their affiliates, or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Buyer's employees or representatives without access or reference to any Confidential Information.

- (x) “**Contracts**” means any (i) Customer Contracts and (ii) contracts for the rental or lease of Rented Equipment to which the Seller is a party or by which the Seller is bound.
- (y) “**Cure Costs**” means all amounts necessary to cure any monetary defaults as a condition to assuming the Assumed Contracts other than those monetary defaults arising only by reason of the Seller's insolvency, the commencement of the CCAA Proceedings, or the failure to perform a non-monetary obligation.
- (z) “**Customer**” means (A) any Person or Persons who avail themselves of any product and/or service offered by Buyer pursuant to the BCA (including, for the avoidance of doubt, during the period from and after the date hereof and prior to the Closing Date and any Person listed on Schedule 1.1(z) and (B) any customer of SCI who, as at September 9, 2013, either (i) rented or leased Oil Equipment from SCI; or (ii) was a party to a service or maintenance contract with SCI regarding Oil Equipment;
- (aa) “**Customer Contract**” means any maintenance or services contract with a Customer to which the Seller is a party or by which the Seller is bound.
- (bb) “**Deposit**” means the amount of \$● delivered by the Buyer to the Monitor in accordance with the SISF.
- (cc) “**DIP ABL Credit Agreement**” means the senior secured superpriority debtor-in-possession amended and restated credit agreement among SCI (as borrower), Wells Fargo Capital Finance Corporation Canada (as administrative and collateral agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.
- (dd) “**DIP ABL Facility**” means the revolving credit facilities in an aggregate principal amount not to exceed \$300 million under the DIP ABL Credit Agreement.
- (ee) “**DIP Credit Agreement**” means collectively, the DIP ABL Credit Agreement and the DIP Term Credit Agreement.
- (ff) “**DIP Facility**” means collectively, the DIP ABL Facility and the DIP Term Facility.

- (gg) “**DIP Term Credit Agreement**” means the senior secured superpriority debtor-in-possession credit agreement among SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative and syndication agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.
- (hh) “**DIP Term Facility**” means the term loan facilities in an aggregate principal amount not to exceed \$150 million under the DIP Term Credit Agreement.
- (ii) “**Employees**” means all current or former officers, employees, individual consultants and service providers of the Seller or any predecessors of the Seller.
- (jj) “**Encumbrance**” means any security interest, lien (statutory or otherwise), prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, liability, mortgage, right-of-way, easement, lease, restriction, development or similar agreement, title defect, option or adverse claim or encumbrance of any nature or kind including any and all CCAA Court ordered charges granted in the CCAA Proceedings.
- (kk) “**Environmental Law**” means Applicable Laws relating to the protection of human health and the environment, and includes Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances;
- (ll) “**Excluded Assets**” has the meaning given to such term in Section 2.2.
- (mm) “**Excluded Contracts**” has the meaning given to such term in Section 2.2(d).
- (nn) “**Excluded Liabilities**” has the meaning given to such term in Section 2.4.
- (oo) “**Filing Date**” means June 22, 2017.
- (pp) “**Final**” with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and Seller, each acting in a commercially reasonable manner) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (qq) “**GACP Credit Agreement**” means the term loan credit agreement dated March 20, 2017, as amended by amendment no. 1 to credit agreement dated May 5, 2017, between SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative agent and syndication agent), KKR Capital Markets LLC and GACP Finance Co., LLC (as joint lead arrangers), TPG Specialty Lending, Inc. (as documentation agent), and the lenders party thereto, as the same may be amended, restated, supplemented and/or modified from time to time.

- (rr) **“General Assignments and Bills of Sale”** means the general assignments and bills of sale for the Purchased Assets, in a form reasonably satisfactory to each of the Seller and the Buyer.
- (ss) **“Governmental Authority”** means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:
  - (i) having jurisdiction over the Seller, the Buyer, the Acquired Business, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
  - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.
- (tt) **“Governmental Authorizations”** means authorizations, approvals, plans, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Acquired Business or any of the Purchased Assets by or from any Governmental Authority.
- (uu) **“GST”** means goods and services tax payable under the GST and HST Legislation.
- (vv) **“GST/HST and QST Certificate, Undertaking and Indemnity”** has the meaning given to such term in Section 7.6(i).
- (ww) **“GST and HST Legislation”** means Part IX of the *Excise Tax Act* (Canada).
- (xx) **“Hazardous Substances”** means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws;
- (yy) **“HST”** means harmonized sales tax payable under the GST and HST Legislation.
- (zz) **“including”** and **“includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation”.
- (aaa) **“Initial Order”** means the Initial Order granted by the CCAA Court on June 22, 2017 pursuant to which SCI and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (bbb) **“Insolvency Proceedings”** means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution,



liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or United States Bankruptcy Code by, against or in respect of the Seller.

- (ccc) “**Intellectual Property**” means any and all intellectual property or similar proprietary rights used or held by the Seller for use in or relating to the Acquired Business, including all patents, patent applications, trademarks, industrial designs, trade names, service marks (and all goodwill associated with any of the foregoing), copyrights, technology, software, data and database rights, trade secrets, proprietary information, domain names, know-how and processes and other intellectual property, whether registered or not, throughout the world.
- (ddd) “**Lender Claims**” means the aggregate amount owing to the Lenders arising from or related to the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement, which shall include to the maximum extent permissible under applicable documentation and law, without limitation, all accrued and unpaid principal, interest, default interest, premiums, fees and reasonable costs, charges and expenses all as may be due and payable under the aforementioned credit facilities and any ancillary documents.
- (eee) “**Lenders**” means the secured lenders under the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement.
- (fff) “**Material Adverse Effect**” means any change, event, occurrence or circumstance, individually or in the aggregate that: (i) has, or would reasonably be expected to have, a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the Acquired Business, (ii) materially and adversely impairs the Purchased Assets or the Acquired Business or materially and adversely increases the Assumed Liabilities, each taken as a whole, or (iii) materially and adversely impedes the consummation of the transactions contemplated by this Agreement, but excluding, in the case of each of clauses (i), (ii) and (iii) any such change, event, occurrence or circumstance that results from or arises out of (A) changes in general economic conditions (B) changes affecting the industries and markets in which the Acquired Business operates (except to the extent that such changes have a materially disproportionate effect on the Purchased Assets, the Assumed Liabilities or the Acquired Business, in each case, taken as a whole, relative to other comparable companies and entities operating in the industries in which the Seller operates), (C) changes in macroeconomic factors, interest rates, currency exchange rates or general financial or credit market conditions, (D) acts of God, war, terrorism, civil unrest or hostilities, (E) any change in law or its interpretation, administration or application or non-application by any Governmental Authority or in generally acceptable accounting principles, (F) any failure to meet any internal or publicly disclosed projections, forecasts, estimates or budgets of, or guidance relating to, revenue, cash flow, earnings or other

financial metrics for any period, (G) any action taken (or omitted to be taken) by the Seller that is permitted under this Agreement or consented to by the Buyer, (H) any announcement of the transactions contemplated by this Agreement, (I) any change or development in respect of any Excluded Asset, Excluded Liability or any matter disclosed pursuant to the terms of this Agreement, or (J) the pendency of the CCAA Proceedings and any action approved by, or motion made before, the CCAA Courts.

- (ggg) “**Material Contracts**” means, collectively:
- (i) any Contract that is reasonably likely to involve payment to or by the Seller in excess of \$1,000,000 in any fiscal year; and
  - (ii) any Contract, which if terminated, would have a Material Adverse Effect.
- (hhh) “**Monitor**” means FTI Consulting Canada Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.
- (iii) “**Monitor’s Certificate**” means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.
- (jjj) “**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Buyer and SCI dated July 17, 2017.
- (kkk) “**Oil Equipment**” means residential heating furnaces, heat pumps and hot-water tanks and heaters powered in whole or in part by fuel-oil.
- (lll) “**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (mmm) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller or the Buyer, as the context requires.
- (nnn) “**Payment Order**” has the meaning given to such term in Section 3.2(b).
- (ooo) “**Permitted Encumbrances**” means, except to the extent otherwise provided in the Approval and Vesting Order:
- (i) Encumbrances given by the Seller as security to a public utility or any Governmental Authority when required in the ordinary course of business but only insofar as they relate to any amounts not due or being disputed in good faith as at the Closing Date;

- (ii) reservations, limitations, provisos and conditions, if any, expressed in any original grants of land from the Crown and any statutory limitations, exceptions, reservations and qualifications; and
- (iii) statutory liens for current property Taxes, assessments or other governmental charges not yet due and payable or being disputed in good faith.
- (ppp) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (qqq) “**Personal Information**” means information about an identifiable individual in the possession or under the control of the Seller.
- (rrr) “**Post-Closing Tax Period**” has the meaning given to such term in Section 7.6(b).
- (sss) “**Pre-Closing Tax Period**” has the meaning given to such term in Section 7.6(b).
- (ttt) “**Purchase Price**” has the meaning given to such term in Section 3.1.
- (uuu) “**Purchased Assets**” has the meaning given to such term in Section 2.1.
- (vvv) “**QST**” means the Québec sales tax payable under the QST Legislation.
- (www) “**QST Legislation**” means *An Act Respecting the Québec Sales Tax (Québec)*.
- (xxx) “**Real Estate Properties**” means (i) all leases and other agreements to occupy lands and premises entered into by, or assigned in favour of the Seller, including all purchase options, prepaid rents, security deposits, rights to appurtenances and improvements, licenses and permits relating thereto and all leasehold improvements thereon; and (ii) all real or immovable property owned by the Seller, or in which the Seller has a freehold interest, and the Seller’s right, title and interest in all plants, buildings, structures, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment, but excluding any Rented Equipment) thereon, forming part thereof, or benefiting such real or immovable property.
- (yyy) “**Release**” has the meaning prescribed in any Environmental Law and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.
- (zzz) “**Rented Equipment**” means Oil Equipment that is owned by SCI and rented or leased by Customers.
- (aaaa) “**Restricted Rights**” has the meaning given to such term in Section 2.5.

(bbbb) “**Sears Group**” has the meaning given to such term in the preamble to this Agreement.

(cccc) “**Seller Parties**” has the meaning given to such term in Section 7.5(c).

(dddd) “**Seller**” has the meaning given to such term in the preamble to this Agreement.

(eeee) “**SISP**” has the meaning given to such term in the preamble to this Agreement.

(ffff) “**Sunset Date**” has the meaning given to such term in Section 9.1(b).

(gggg) “**Tax**” and “**Taxes**” includes:

- (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions; and
- (ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.

(hhhh) “**Wells Fargo Credit Agreement**” means the revolving credit agreement dated September 10, 2010, as amended by the first amending agreement dated August 2012, the second amending agreement dated May 28, 2014, the third amending agreement dated May 28, 2014, the fourth amending agreement dated August 31, 2015, the fifth amending agreement dated August 18, 2016 and the sixth amending agreement dated March 30, 2017, between SCI (as borrower), Wells Fargo Capital Finance Corporation Canada (as administrative agent and collateral agent) and the lenders party thereto, as the same may be amended, restated, supplemented and/or modified from time to time.

## 1.2 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute and the regulations thereunder as they may be amended, or to any restated or successor legislation of comparable effect.

## 1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

#### **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

#### **1.5 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "\$" are to Canadian dollars. References to "US\$" are to United States dollars.

#### **1.6 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Upon such a determination of invalidity or unenforceability, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

#### **1.7 Knowledge**

Where any representation or warranty, or other provision, contained in this Agreement is expressly qualified by reference to, or otherwise refers to, the knowledge of: (a) the Seller, it will be deemed to refer to the actual knowledge of SCI's Chief Financial Officer; and (b) the Buyer, it will be deemed to refer to the actual knowledge of the Buyer's directors and officers.

#### **1.8 Entire Agreement**

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

#### **1.9 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver

of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

### **1.10 Governing Law; Jurisdiction and Venue**

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the CCAA Court prior to a Final Order of the CCAA Court closing the CCAA Proceedings and thereafter to the Courts of Ontario for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.7 shall be deemed effective service of process on such Party.

### **1.11 Schedules**

The schedules to this Agreement, listed below, are an integral part of this Agreement:

| <u>Schedule</u> | <u>Description</u>                 |
|-----------------|------------------------------------|
| Schedule 1.1(g) | Form of Approval and Vesting Order |
| Schedule 1.1(z) | Customers                          |

## **ARTICLE 2 PURCHASE AND SALE**

### **2.1 Agreement to Purchase and Sell Purchased Assets**

Upon and subject to the terms and conditions of this Agreement (including the provisions of Section 2.5), at the Closing and effective as of the Closing Time, the Seller shall sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and the Buyer shall purchase, free and clear of all Encumbrances other than Permitted Encumbrances, all of the Seller's right, title and interest in, to and under, or relating to, the assets, property and undertaking owned or used or held for use by the Seller exclusively in connection with the Acquired Business, as applicable (collectively, the "**Purchased Assets**"), including without limitation the following properties, assets and rights:

- (a) *Accounts Receivable* – the Accounts Receivable and the benefit of all security (including cash deposits), guarantees and other collateral held by the Seller relating to the Acquired Business;
- (b) *Prepaid Expenses* – all prepaid expenses, including *ad valorem* Taxes, of the Seller, and all deposits of the Seller with any Governmental Authority, in each case, relating to the Acquired Business or the Purchased Assets;

- (c) *Equipment* – all Rented Equipment leased or rented to any Customer, among others rented hot water tanks;
- (d) *Assumed Contracts* – all Contracts to which the Seller is a party, together with any Contracts that are entered into by the Seller in the ordinary course of business from the date of this Agreement to the Closing Date (collectively, the “**Assumed Contracts**”);
- (e) *Goodwill* – the goodwill of the Acquired Business and relating to the Purchased Assets, and information and documents of the Seller relevant thereto, including lists of customers and suppliers, credit information, telephone and facsimile numbers, research materials, research and development files, Confidential Information and the exclusive right of the Buyer to represent itself as carrying on the Acquired Business in succession to the Seller;
- (f) *Business Records* – all business and financial records and files of the Acquired Business, including the general ledger and accounting records relating to the Acquired Business, marketing materials, market research, all customer and former customer lists, including as listed in and with the Seller’s NIO software program, and lists of suppliers, information relating to any Tax imposed on the Purchased Assets, all operating manuals, plans and specifications and all of the right, interest and benefit, if any, thereunder and to and in the telephone numbers and facsimile numbers used by the Seller in the conduct of the Acquired Business, and all records, files and information necessary for the Buyer to conduct or pursue the rights described in Section 2.1(g); provided, however, that the Seller may retain copies of all books and records included in the Purchased Assets to the extent necessary or useful for the administration of the CCAA Proceedings or any Insolvency Proceedings in respect of the Seller or the filing of any Tax return or compliance with any Applicable Law or the terms of this Agreement or related to the Excluded Assets; it being understood that, for the avoidance of doubt, such records and files include any documentation, in paper or electronic form, related to the Purchased Assets, including any invoice for the purchase, warranty, maintenance or repair of any of those or related to operations of the Acquired Business, and including any tender, agreement, contract, invoicing, correspondence or other written communication or note concerning any supplier or customer of the Acquired Business;
- (g) *Actions, etc.* – any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Seller related to the Acquired Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of the Seller in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered prior to the Closing Time (but excluding any of the foregoing in respect of any of the Excluded Assets or Excluded Liabilities), including, for the avoidance of doubt, such rights of SCI with respect to any Rented Equipment belonging to it, including those against their supplier, and in particular the right to enforce any obligations not yet performed in any Contract for the supply of

equipment entered into prior to the date of this Agreement, from and after the Closing Date;

- (h) *Insurance* –
  - (i) the Contracts of insurance, insurance policies and insurance plans of the Seller relating to the Purchased Assets or the Acquired Business, to the extent transferable;
  - (ii) any insurance proceeds net of any deductibles and retention recovered by the Seller under all other Contracts of insurance, insurance policies (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) and insurance plans relating to the Purchased Assets or the Acquired Business between the date of this Agreement and the Closing Date; and
  - (iii) the full benefit of the Seller's rights to insurance claims (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) relating to the Purchased Assets or the Acquired Business and amounts recoverable in respect thereof net of any deductible.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the following assets of the Seller (collectively, the “**Excluded Assets**”):

- (a) *Cash and Cash Equivalents* – all Cash and Cash Equivalents;
- (b) *Fixed Assets and Equipment* – all machinery, equipment, furnishings, furniture, parts, dies, molds, tooling, tools, computer hardware, supplies, accessories, office equipment and other tangible personal and moveable property (other than inventory) owned by the Seller for use in or relating to the Acquired Business, whether located on the Seller's premises or elsewhere, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the equipment, fixed assets and tangible assets referenced herein;
- (c) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals, taxpayer and other identification numbers and other documents, in each case, relating to the organization, maintenance and existence of the Seller as a Person; provided that the Buyer may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;
- (d) *Excluded Contracts* – all contracts of the Seller other than the Assumed Contracts (collectively, the “**Excluded Contracts**”);



- (e) *Intellectual Property* – all Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relate to the Acquired Business, including:
  - (i) the rights of the Seller under all trade-marks, trade names, business names, websites and domain names, certification marks, service marks, and other source indicators, and the goodwill of any business symbolized thereby, patents, copyrights, code, applications, systems, databases, data, website content, know-how, formulae, processes, inventions, technical expertise, research data, trade secrets, industrial designs and other similar property or proprietary rights;
  - (ii) all registrations and applications for registration thereof;
  - (iii) the right to obtain renewals, extensions, substitutions, continuations, continuations-in-part, divisions, re-issues, re-examinations or similar legal protections related thereto; and
  - (iv) the right to bring an action at law or equity for the infringement of the foregoing, including the right to receive all proceeds and damages therefrom;
- (f) *Information Technology Systems* – except, for the avoidance of doubt, for the customer lists as listed in and with the Seller’s NIO software program, all software (including source code and object code form), computer hardware, licenses, and documentation therefor and rights therein owned by the Seller used in the Acquired Business, and any other information technology systems owned by the Seller and used in the Acquired Business, including all electronic data processing systems, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material;
- (g) *Vehicles* – all motor vehicles, including all trucks, vans, cars and forklifts owned by the Seller for use in or relating to the Acquired Business, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the motor vehicles referenced herein;
- (h) *Collateral* – all letters of credit, cash or cash equivalents of the Seller granted by the Seller as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset including, for certainty, any Real Estate Property;
- (i) *Rights under Agreements* – all of the Seller’s rights under this Agreement; the NDA; any confidentiality, non-disclosure or similar agreements entered into in connection with the CCAA Proceedings; the DIP Credit Agreement; the Wells Fargo Credit Agreement; the GACP Credit Agreement; the Excluded Contracts; the Closing Documents and the transactions contemplated hereby and thereby;

- (j) *Real Estate Properties* – the Real Estate Properties;
- (k) *Director and Officer Insurance Policies* – all rights of the Seller and the directors and officers of the Seller under any director and officer insurance policies including any proceeds received or receivable by such Persons thereunder;
- (l) *Certain Securities* – all issued and outstanding shares of the subsidiaries of the Seller;
- (m) *Rights Relating to Employees* – all rights of the Seller relating to the Employees;
- (n) *Licenses and Registrations* – extra-provincial, sales, excise or other licenses or registrations issued to or held by the Seller, whether relating to the Acquired Business or otherwise, to the extent not transferable;
- (o) *Tax Refunds* – the benefit of the Seller to any refundable Taxes payable or paid by the Seller, net of any amounts withheld by any Governmental Authority, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Seller to any claim or right of the Seller to any refund, rebate, or credit of Taxes, to the extent that such refundable Taxes, refund, rebate or credit relates to Taxes paid or payable by the Seller in respect of a period ending on or before the Closing Date or a Pre-Closing Tax Period;
- (p) *Avoidance Claims* – all rights and Claims against any Person for any liability of any kind based on or arising out of the occurrence of any fraudulent conveyance, settlement, reviewable transaction, transfer at undervalue, fraudulent preference or similar claim;
- (q) *Loans* – any loans or debts due prior to the Closing Time from any Person to the Seller; and
- (r) *Ordinary Course Assets* – any asset of the Seller that would otherwise constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business in compliance with Section 7.2 or as obsolete during the period beginning on the date of this Agreement and ending on the Closing Date.

### **2.3 Assumption of Liabilities**

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Seller with respect to the Acquired Business or the Purchased Assets, other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”), which Assumed Liabilities shall only consist of:

- (a) *Obligations under Contracts, etc.* – (i) all liabilities and obligations arising under the Assumed Contracts to the extent first arising on or after the Closing Time, in each case, which are assigned to the Buyer hereunder and (ii) all Cure Costs;

- (b) *Acquired Business and Purchased Assets* – all other liabilities and obligations relating to the Purchased Assets and the operation of the Acquired Business by the Buyer to the extent such liabilities and obligations consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing Time, but not before the date the BCA was entered into;
- (c) *Environmental* – any liabilities to the extent arising out of or relating to the Acquired Business’ or the Purchased Assets’ non-compliance with Environmental Law or a Release, and in either case, except in respect of any facts, conditions or circumstances existing or occurring prior to the Closing Time;
- (d) *Taxes* – real property, personal property, and similar *ad valorem* obligations, in each case, relating to the Purchased Assets for a Tax period (or the portion thereof) beginning on or after the Closing Date, excluding, for the avoidance of doubt, any amounts described in this paragraph that are (i) income Tax or similar liabilities of the Seller for any Tax period, (ii) any Tax or similar liability related to the Excluded Assets;
- (e) *Other Taxes* – all liabilities for any Tax that the Buyer is required to bear pursuant to Section 7.6; and
- (f) *Permitted Encumbrances* – all liabilities, if any, arising from or in relation to the Permitted Encumbrances.

## 2.4 Excluded Liabilities

Except as expressly assumed pursuant to Section 2.3, all pre-Filing Date and post-Filing Date debts, obligations, contracts and liabilities of or relating to the Acquired Business, Purchased Assets, Seller or any predecessors of the Seller, and the Seller’s affiliates, of any kind or nature, shall remain the sole responsibility of the Seller and its affiliates, and the Buyer shall not assume, accept or undertake, any debt, obligation, duty, contract or liability of the Seller and its affiliates of any kind whatsoever, except as expressly assumed pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and specifically excluding (without limitation) the following liabilities or obligations which shall be retained by, and which shall remain the sole responsibility of, the Seller and its affiliates (collectively, the “**Excluded Liabilities**”):

- (a) *General* – except as expressly included in Assumed Liabilities, all liabilities to the extent arising out of the operation of the Acquired Business or the Purchased Assets for periods prior to the Closing Time (including, for the avoidance of doubt, breaches of contract, infringement, violations of law, tortious conduct, Tax liabilities, indebtedness for borrowed money (except as expressly included in Assumed Liabilities) and intercompany liabilities);
- (b) *Contract Liabilities* – all liabilities of the Seller under the Assumed Contracts, excluding the Cure Costs and any trade payables or other liabilities which, in each case, are Assumed Liabilities, incurred prior to the Closing Time;

- (c) *Excluded Assets* – all liabilities and obligations relating to the Excluded Assets (including any Excluded Contracts, any Real Estate Properties, this Agreement and the DIP Credit Agreement);
- (d) *Employee Matters* – all liabilities related to the Employees of the Seller;
- (e) *Trade Debt* – all pre-Filing Date trade payables relating to the Acquired Business or the Purchased Assets;
- (f) *Intercompany Accounts Payable* – any debts due or accruing due prior to the Closing Time from the Seller to any shareholder, director, officer (except amounts owing to any officer for service to the Acquired Business as an employee) or affiliate of the Seller;
- (g) *Intellectual Property Claims* – any claims against the Seller for infringement, misappropriation or other violation of any Intellectual Property of any third Person relating to any period prior to the Closing Time;
- (h) *Pre-Filing Debt* – all liabilities, obligations and related guarantees relating to the Wells Fargo Credit Agreement and the GACP Credit Agreement;
- (i) *Taxes* – all liabilities for Taxes of the Seller; and
- (j) *Other* – Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Time, including without limitation liabilities relating to any breach of law and product liability claims, except, in each case, as specifically defined in Section 2.3 as an Assumed Liability.

## 2.5 Assignment of Purchased Assets

- (a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any right thereunder if an attempted assignment or transfer (i) without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Buyer thereunder or (ii) is not permitted or enforceable under Applicable Law (collectively, “**Restricted Rights**”), unless the assignment is subject to an Assignment Order. The Seller shall use commercially reasonable efforts to take all such action, and do or cause to be done all such things as are reasonably necessary or proper, following the Closing Time, in order that the obligations of the Seller under such Restricted Rights may be performed in such manner that the value of such Restricted Rights is preserved and enures to the benefit of the Buyer, and that any amounts due and payable, or which become due and payable, in and under the Restricted Rights are received by the Buyer and the liabilities are satisfied by the Buyer. Subject to payment of all liabilities in respect thereof by the Buyer, the Seller shall reasonably promptly pay to the Buyer all amounts collected by or paid to the Seller in respect of all such Restricted Rights. Subject to Section 7.2, the Seller shall not, without the prior written consent of the Buyer, agree to any modification of any Restricted Rights.

- (b) If a consent to transfer the Restricted Rights to the Buyer is not obtained by the Closing Time or such assignment is not attainable, the Seller and the Buyer will cooperate and use their respective commercially reasonable efforts, from and after the Closing Time, to implement a mutually agreeable arrangement pursuant to which the Buyer will obtain the benefits, and assume the liabilities and obligations, related to such Restricted Rights in accordance with this Agreement; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 2.5 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion, or require the Seller to take any illegal action or commit fraud on any Person.
- (c) Notwithstanding the foregoing: (i) nothing in this Section 2.5 shall require the Seller to renew any Restricted Rights once they have expired, (ii) any efforts required of the Seller pursuant to this Section 2.5 shall (A) be subject to receipt of adequate compensation in respect of all direct incremental costs and expenses incurred in respect of or related to such arrangement, (B) be strictly on an interim basis and in no event required to continue for more than 90 days following Closing, and (C) to the extent not prohibited, be of an administrative nature only, without any substantive function. The Buyer shall reimburse the Seller for any direct incremental cost incurred and indemnify and hold the Seller harmless from and against all Claims, incurred or asserted, as a result of any actions taken pursuant to this Section 2.5.
- (d) For the avoidance of doubt, the Parties acknowledge that the fact that any Purchased Asset constitutes a Restricted Right shall not (i) constitute a breach of any covenant hereunder, (ii) entitle Buyer to terminate this Agreement or (iii) result in any reduction of the Purchase Price payable hereunder. Any non-Restricted Right assigned pursuant to the terms of this Section 2.5 shall, when assigned, constitute an Assumed Contract hereunder from and after such date.
- (e) Subject to the terms and conditions of this Agreement, the Seller hereby agrees to assign to the Buyer on the Closing Date, effective as of the Closing Time, all of the Seller's rights, benefits and interests in, to and under the Assumed Contracts, in accordance with either this Agreement or an Assignment Order. The Seller shall use its commercially reasonable efforts to obtain any necessary consents or approvals in order to assign the Assumed Contracts. The Seller will use its commercially reasonable efforts to take such other actions necessary to cause the Assumed Contracts to be assigned by the Seller to the Buyer as of the Closing Time at the expense of the Buyer. The Buyer will use its commercially reasonable efforts to assist the Seller in obtaining any such consent.

### **ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS**

#### **3.1 Purchase Price**

The purchase price payable to the Seller for the Purchased Assets (the "**Purchase Price**"), exclusive of all applicable sales and transfer taxes, shall be:

- (a) the amount of ● (\$●) in cash, plus
- (b) the amount of the Accrued Liabilities.

### 3.2 Payment of Purchase Price and Treatment of Deposit

- (a) The Purchase Price will be satisfied as follows:
  - (i) the portion of the Purchase Price equal to the amount of the Deposit and the actual earnings thereon will be satisfied by crediting the Seller, at the Closing Time, with the Buyer's interest in the Deposit (and the actual earnings thereon from the date the Deposit is received by the Monitor in accordance with the SISP to but excluding the Closing Date) that is being held by the Monitor;
  - (ii) the balance of the Purchase Price will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Monitor specified in writing by the Seller not less than two (2) Business Days prior to the Closing Date; and
  - (iii) as to the dollar value of the Accrued Liabilities, by the Buyer assuming the Accrued Liabilities.
- (b) In the event that, prior to the Closing Date, an order (a "**Payment Order**") of the CCAA Court is obtained directing the Seller to pay to the Lenders all or any portion of the proceeds of the Purchase Price to pay the Lender Claims in full or in part, then subject to and in accordance with the terms of the Payment Order, the Seller will deliver to the Buyer and the Monitor a notice and direction, signed by the Seller, directing the Buyer to pay all or the portion of the Purchase Price, as specified by the Payment Order, to the appropriate Lender by wire transfer at the Closing Time of immediately available funds to an account or accounts specified in such notice and direction, such amount to be applied by the appropriate Lender on account of the amounts owing by the Seller under the DIP Credit Agreement, the Wells Fargo Credit Agreement and/or the GACP Credit Agreement, as appropriate.
- (c) The Deposit paid to the Monitor by the Buyer will, together with any actual earnings thereon (from the date the Deposit is received by the Monitor in accordance with the SISP to but excluding the Closing Date), be:
  - (i) credited to the Seller, as applicable, at the Closing Time in accordance with Section 3.2(a)(i), if the sale and purchase of the Purchased Assets provided for herein is completed in accordance with the terms and conditions hereof;
  - (ii) forfeited to the Seller, less any applicable withholding tax, if the Closing does not occur for any reason pertaining to the Buyer in order to compensate the Seller for expenses incurred in connection with the transactions contemplated in this Agreement and the delay caused to the Seller's efforts to sell the Purchased Assets. For avoidance of doubt, the ten (10) business

days cure period already provided for in Section 9.1(h) shall apply to the benefit of the Buyer in connection with any termination of this Agreement by the Seller pursuant to Section 9.1(h). The entitlement of the Seller to the Deposit in such circumstances shall not limit the Seller's right to exercise any other rights which the Seller may have against the Buyer; and

- (iii) returned to the Buyer, less any applicable withholding tax, if the Closing does not occur for any other reason and the Buyer shall have no further recourse against the Seller.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER**

The Seller represents and warrants to the Buyer as follows, and acknowledges that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets:

##### **4.1 Corporate Existence**

The Seller is a corporation duly formed and validly existing under the laws of Canada.

##### **4.2 Due Authorization and Enforceability of Obligations**

Subject to the issuance of the Approval and Vesting Order:

- (a) the Seller has all necessary corporate power, authority and capacity to:
  - (i) enter into and deliver this Agreement and the Closing Documents;
  - (ii) carry out its obligations under this Agreement and the Closing Documents; and
  - (iii) own, operate and use the Purchased Assets and carry on the Acquired Business as now conducted by the Seller;
- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Seller; and
- (c) assuming the accuracy of the representations and warranties of the Buyer in Article 5, this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of the Seller enforceable against it in accordance with its terms.

##### **4.3 Residence of the Seller**

The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

##### **4.4 Taxes**

The Seller is duly registered under Subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and under Division I of Chapter VIII of Title I of the QST Legislation with respect to the QST, and will provide its registration numbers to the Buyer prior to Closing.

#### **4.5 No Other Representations, Warranties or Covenants**

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Acquired Business, the Purchased Assets, the Assumed Liabilities or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.5 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with their sale of the Purchased Assets:

#### **5.1 Corporate Existence**

The Buyer is a corporation duly formed, validly existing and in good standing under the *Business Corporations Act* (Quebec) R.S.Q., c. S-31.1.

Residence of the Buyer

The Buyer is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

#### **5.2 Financial Ability**

As of the date of this Agreement, the Buyer has undrawn committed revolving credit facilities which are, and at Closing, will be sufficient to allow it to pay the Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, the Buyer's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Buyer.



### **5.3 Absence of Conflicts**

Except for the BCA, the Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter or by-law provision; (b) any Applicable Law or governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations, breaches or defaults or any Applicable Law or any governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

### **5.4 Due Authorization and Enforceability of Obligations**

The Buyer has all necessary corporate power, authority and capacity to enter into and deliver this Agreement and the Closing Documents, and to carry out its obligations under this Agreement and the Closing Documents. The execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Buyer. This Agreement does and when executed and delivered by the Buyer the Closing Documents will constitute valid and binding obligations of the Buyer enforceable against it in accordance with its terms.

### **5.5 Approvals and Consents**

Except for (a) the issuance of the Approval and Vesting Order, and (b) any consent that may be required in connection with the assignment of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer, and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

### **5.6 GST, HST and QST Registration**

The Buyer is duly registered under subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and QST Legislation with respect to the QST, and has provided or will prior to Closing provide its registration number to the Seller in accordance with Section 7.6(i).

### **5.7 Litigation**

There are no Claims, investigations or other proceedings, including appeals and applications for review, in progress or, to the knowledge of the Buyer, pending or threatened against or relating to the Buyer which, if determined adversely to the Buyer, would

- (a) prevent the Buyer from paying the Purchase Price to the Seller;
- (b) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or
- (c) prevent the Buyer from or delay the Buyer in fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

## **5.8 Personal Information**

The Buyer's use and disclosure of Personal Information in connection with the conduct of the Acquired Business after Closing will be carried out in compliance with all Applicable Laws.

## **5.9 As Is, Where Is**

- (a) The Buyer acknowledges and agrees that it has waived any investigation and verification of the Acquired Business, the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances), the Assumed Liabilities and all related operations of the Seller, and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in Article 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller or the Acquired Business, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in Article 4, the Seller does not make or provide any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS; AND (B) NEITHER THE SELLER, NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE SELLER, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, THE EXCLUDED

ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, OR THE EXISTENCE OF ANY ENCUMBRANCE AFFECTING THE PURCHASED ASSETS; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE SELLER AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK WITHIN THE MEANING OF ARTICLE 1733 OF THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER THING AFFECTING THE ACQUIRED BUSINESS, 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, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in Article 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.
- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, the Acquired Business, the Purchased Assets, the Assumed Liabilities and all related operations of the Seller or either of them.

- (d) This Section 5.9 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (e) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

### **5.10 Investment Canada Act**

The Buyer is a “Canadian” or a “WTO Investor” within the meaning of the Investment Canada Act, and the regulations thereunder.

## **ARTICLE 6 CONDITIONS**

### **6.1 Conditions for the Benefit of the Buyer and the Seller**

The respective obligations of the Buyer and of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect; and
- (b) *Court Orders* – the Approval and Vesting Order and, where required, the Assignment Order shall have been issued and entered and such orders shall not have been reversed, modified, amended or stayed.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Seller, on the one hand, and the Buyer, on the other hand. Any condition in this Section 6.1 may be waived by the Seller, on the one hand, or by the Buyer, on the other hand, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Seller or the Buyer, as applicable, only if made in writing.

### **6.2 Conditions for the Benefit of the Buyer**

The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Buyer of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Seller at or prior to the Closing Time shall have been performed by the Seller at or prior to the Closing Time, except for non-performance of such covenants that has not resulted in a Material Adverse Effect;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Seller contained in Article 4 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for

representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and

- (c) *Officer's Certificate* – the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Compliance with Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Seller without personal liability by an executive officer of each of the Seller or other Persons acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer.

### **6.3 Conditions for the Benefit of the Seller**

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in Article 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Performance of Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, acting in a commercially reasonable manner.

## **ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES**

### **7.1 Access to Information**

Until the Closing Time, the Seller shall give to the Buyer's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Acquired Business, the Purchased Assets and the Assumed Liabilities and to the Employees (who are actively at work), and shall furnish them with all such information relating to the Acquired Business, the Purchased Assets and the Assumed Liabilities as the Buyer may reasonably request in connection with the transactions contemplated by this Agreement; provided that any such access shall be conducted at the Buyer's expense, in accordance with Applicable Law, under the supervision of the Seller's personnel and in such a manner as to maintain confidentiality and not to unreasonably interfere

with the normal operations of the Acquired Business, and the Seller will not be required to provide access to or copies of any such books and records if (a) the provision thereof would cause the Seller to be in contravention of any Applicable Law, (b) the Seller reasonably considers such information to be commercially sensitive, (c) making such information available would (A) result in the loss of any lawyer-client or other legal privilege, or (B) cause the Seller to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Seller or any of their affiliates is a party), it being understood that the Seller shall cooperate in any reasonable efforts and requests that would enable otherwise required disclosure to the Buyer to occur without so jeopardizing privilege or contravening such Applicable Law, duty or agreement.

## **7.2 Conduct of Business Until Closing Time**

Except: (1) as contemplated or permitted by this Agreement or by the BCA; (2) as contemplated by the budget delivered in accordance with the DIP Facility; (3) as necessary in connection with the CCAA Proceedings; (4) as otherwise provided in the Initial Order and any other court orders, prior to the Closing Time; (5) as required by Applicable Law, to the extent reasonably practicable having regard to the CCAA Proceedings; or (6) as consented to by the Buyer, such consent not to be unreasonably withheld, conditioned or delayed, the Seller shall:

- (a) (i) operate the Acquired Business only in the ordinary course of business in all material respects consistent with past practice and with the BCA; (ii) use commercially reasonable efforts to preserve the Purchased Assets; (iii) use commercially reasonable efforts to preserve its business organization, including the services of its officers and employees, and its business relationships and goodwill with customers, suppliers and others having business dealings with it, as the same relates only to the Acquired Business; (iv) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Credit Agreement; and (v) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to the Acquired Business; and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion) but except as expressly permitted by the BCA: (i) transfer, lease, license, sell, abandon, create any Encumbrance (other than Permitted Encumbrances and Encumbrances associated with or permitted by the DIP Credit Agreement) on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); (ii) (A) materially amend, terminate or assign any Material Contract, (B) enter into any lease, Contract, license or other commitment related to the Acquired Business that would constitute a Material Contract; (iii) enter into any contract which materially restricts the ability of the Acquired Business to engage in any business in any geographic area or channel of distribution; (iv) acquire any material assets related to the Acquired Business outside of the ordinary course of business in all material respects; or (v) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

## **7.3 Approvals and Consents**

The Seller shall use its commercially reasonable efforts to obtain all consents, approvals and Governmental Authorizations with respect to, and provide any notices under, any Contracts required in connection with the completion of the transactions contemplated by this Agreement at or before the Closing Time on terms acceptable to the Buyer, acting reasonably. The Buyer shall use its commercially reasonable efforts to cooperate with the Seller in connection with the foregoing.

#### **7.4 Covenants Relating to this Agreement**

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:
  - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
  - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Buyer hereby agrees, and hereby agrees to cause its representatives to, keep the Seller informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Seller or the Monitor, as to the Buyer's progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement, including, for the avoidance of doubt, the provision by SCI of such additional conveyancing documentation and the taking of such steps as may be required to complete the transfer of any Rented Equipment which is a fixture.

## 7.5 Release; Acknowledgements; Indemnity

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges the Seller and its affiliates, and their respective successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets or to the Assumed Liabilities.
- (b) After the Closing Time and during the 75 day period after the issuance of the Approval and Vesting Order, the Buyer shall, through its first billing or a specific mailing, notify Customers that, effective as of the Closing Time, the Buyer will assume in place of the Seller all of the Seller's obligations under the Assumed Contracts pursuant to the Assignment Order.
- (c) The Buyer hereby agrees to indemnify the Seller, the Monitor, their affiliates and their respective trustees, officers, directors, employees, agents and shareholders (the "**Seller Parties**"), and saves each of them fully harmless from and against, and will reimburse or compensate each of them on demand for, all losses and Claims arising from, in connection with or related in any manner whatsoever to:
  - (i) the Buyer's failure to pay when due, and perform and discharge, the Assumed Liabilities; and
  - (ii) the Buyer's access in accordance with Section 7.1.

## 7.6 Tax Matters

- (a) The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (b) All real property Taxes, personal property Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the Seller and the Buyer based on the number of days of such taxable period up to and including the Closing Date (such portion of such taxable period, the "**Pre-Closing Tax Period**") and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the "**Post-Closing Tax Period**"). Except as otherwise provided herein, the Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period.
- (c) In respect of the purchase and sale of the Purchased Assets under this Agreement, to the extent permitted by Applicable Law, the Buyer shall pay direct to the appropriate Governmental Authority all sales and transfer Taxes, registration charges and transfer fees payable by it and, upon the reasonable request of the Seller, the Buyer shall furnish proof of such payment, and the Buyer shall otherwise



be liable for and shall pay to the Seller an amount equal to any such Tax payable by the Buyer and collectible by the Seller including under the GST and HST Legislation and the QST Legislation and under any similar provincial or territorial legislation imposing a similar value-added or multi-staged Tax. The Buyer shall deliver to Seller any purchase exemption certificates being relied on by the Buyer in accordance with and in the form and manner as required under Applicable Laws governing provincial sales and transfer Taxes.

- (d) To the extent permitted under subsection 167(1) of the GST and HST Legislation, Section 75 of the QST Legislation and any equivalent or corresponding provision under any applicable provincial or territorial legislation imposing a similar value added or multi-staged Tax, the Buyer and the Seller shall jointly elect that no Tax be payable with respect to the purchase and sale of the Purchased Assets under this Agreement. The Buyer and the Seller shall make such election(s) in prescribed form containing prescribed information and the Buyer shall file such election(s) in compliance with the requirements of the applicable legislation. Notwithstanding such election(s), in the event it is determined by the Canada Revenue Agency or Revenue Quebec (or another applicable provincial Governmental Authority) that there is a liability of the Buyer to pay, or of a Seller to collect and remit, any Taxes payable under the GST and HST Legislation or the QST Legislation (or any applicable provincial legislation) in respect of the sale and transfer of the Purchased Assets, such Taxes shall be paid by the Buyer.
- (e) If requested by the Buyer and to the extent permitted thereunder, a Seller and the Buyer will jointly execute, and each of them will file promptly following the Closing Date, an election under Section 22 of the *Income Tax Act* (Canada), and any corresponding provisions of any applicable provincial income Tax legislation. For the purposes of such elections, the Buyer and the Seller will, acting reasonably, jointly determine the amount that the parties will designate as the portion of the Purchase Price allocable to the debts in respect of which such elections are made. For greater certainty, the Seller and the Buyer agree to prepare and file their respective Tax returns in a manner consistent with such election(s).
- (f) The Buyer hereby waives compliance by the Seller with Section 6 of the *Retail Sales Tax Act* (Ontario) and with any similar provision contained in any other Applicable Law in respect of all sales and transfer Taxes, registration charges and transfer fees payable.
- (g) To the extent permitted under Section 221(2) of the GST and HST Legislation and any equivalent or corresponding provision under the QST Legislation and any other applicable provincial or territorial legislation, the Buyer shall self-assess and remit directly to the appropriate Governmental Authority any GST and HST imposed under the GST and HST Legislation and any similar value added or multi-staged tax imposed by the QST Legislation. The Buyer shall make and file a return(s) in accordance with the requirements of Section 228(4) of the GST and HST Legislation and any equivalent or corresponding provision under the QST Legislation and any other applicable provincial or territorial legislation.

- (h) If requested by the Buyer and to the extent permitted thereunder, the Seller and the Buyer will jointly execute an election in the prescribed manner and within the prescribed time limits, to have the rules in subsection 20(24) of the *Income Tax Act* (Canada), and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Seller in respect of undertakings which arise from the operation of the Acquired Business and to which paragraph 12(1) (a) and 12(1)(e) of the *Income Tax Act* (Canada) apply. For the purposes of such election(s), the Buyer, acting reasonably, shall determine the elected amount and the Buyer and the Seller acknowledge that such Seller is transferring assets to the Buyer which have a value equal to such elected amount as consideration for the assumption by the Buyer of such obligations of such Seller.
  
- (i) On Closing, the Buyer shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration numbers issued under the GST and HST Legislation and QST Legislation, and incorporates the provisions of this Section 7.6 (the “**GST/HST and QST Certificate, Undertaking and Indemnity**”). The Buyer shall indemnify and save the Seller harmless from and against any and all Taxes including, transfer Taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the GST and HST Legislation, the QST Legislation and any other value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Seller as a result of any failure by the Seller to collect and remit any goods and services tax or harmonized sales tax payable under the GST and HST Legislation and the QST Legislation or any similar value added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Purchased Assets by the Seller to the Buyer or as a result of any inaccuracy, misstatement, or misrepresentation made by the Buyer in connection with any matter raised in this Section 7.6 or in the GST/HST and QST Certificate, Undertaking and Indemnity or any failure by the Buyer to comply with the provisions of this Section 7.6 or the GST/HST and QST Certificate, Undertaking and Indemnity.

## **7.7 Certain Payments or Instruments Received from Third Persons**

To the extent that, after the Closing Date: (a) Buyer or any of its affiliates receives any payment or instrument that is for the account of the Seller according to the terms of any Closing Document or relates to any Excluded Asset or Excluded Liability, the Buyer shall, and shall cause its affiliates to, promptly deliver such amount or instrument to the Seller; or (b) the Seller or any of its controlled affiliates receives any payment or instrument that is for the account of the Buyer according to the terms of any Closing Document or that relates to the Acquired Business, Purchased Assets or Assumed Liabilities, including for the avoidance of doubt any erroneous payments by Customers directly in any bank account of SCI, namely the Sears RBC bank account (folio ●), the Seller shall, and shall cause its controlled affiliates to, promptly deliver such amount or instrument to the Buyer. All amounts due and payable under this Section 7.7 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each of the Seller, on the one hand, and the Buyer, on the other hand, hereby undertakes to, as reasonably requested and

at the other's expense, direct or forward all bills, invoices or like instruments to the appropriate Party.

### **7.8 Notice of Certain Events**

The Seller, on the one hand, and the Buyer, on the other hand, shall give prompt written notice to the other Party of: (a) the occurrence or non-occurrence of any fact, change, condition or event, the occurrence or non-occurrence of which would render any representation or warranty of such Party contained in this Agreement or any of the Closing Documents untrue or inaccurate in any material respect; (b) any failure of such Party to comply with or satisfy any covenant or agreement to be complied with or satisfied by such Party hereunder in any material respect or any event or condition that would otherwise reasonably be expected to result in the nonfulfillment of any of the conditions to such Party's obligations hereunder; (c) any notice (whether written or oral) from any Person (including any counterparty to a Contract) alleging that the consent of such Person is or may be required in connection with, or that any Contract with any such Person is or may be breached or otherwise violated in connection with, the consummation of the Closing or any of the other transactions contemplated by this Agreement or any of the Closing Documents; or (d) any proceeding pending or, to the knowledge of such Party, threatened, against such Party relating to the Agreement and the other transactions contemplated by this Agreement or any of the Closing Documents.

### **7.9 Risk of Loss**

In the event the Purchased Assets are damaged, destroyed or expropriated by any Person, on or prior to the Closing Date, the Buyer will complete the transactions contemplated by this Agreement without reduction of the Purchase Price, the Buyer to be subrogated in all rights of the Seller for compensation in respect of such damage, destruction or expropriation of the Purchased Assets.

## **ARTICLE 8 COURT ORDERS**

### **8.1 Court Orders**

- (a) The Buyer shall cooperate with the Seller acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order and any Assignment Order.
- (b) Notice of the motion seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by the Seller or the Buyer.
- (c) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that the Approval and Vesting Order has not been issued and entered by the CCAA Court by October 4, 2017 or such later date agreed to in writing by the Buyer and the Seller (with the consent of the Lenders), the Seller

may terminate this Agreement (and for avoidance of doubt, the BCA shall then survive such termination of this Agreement).

## 8.2 CCAA Process

If the Approval and Vesting Order or any other orders of the CCAA Court relating to this Agreement shall be appealed or motion for rehearing or reargument shall be filed with respect thereto, the Seller agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and the Buyer agrees to use its commercially reasonable efforts to cooperate in such efforts.

## ARTICLE 9 TERMINATION

### 9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Lenders and the Monitor) or on further order of the CCAA Court;
- (b) by the Seller (with the consent of the Lenders and the Monitor) if Closing has not occurred on or before the latest possible Closing Date (the “**Sunset Date**”); provided, that the Seller is not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in Article 6 to be satisfied;
- (c) by the Seller pursuant to Section 8.1(c);
- (d) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (e) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (f) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Buyer or the Seller);
- (g) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (h) by the Seller (with the consent of the Lenders and the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after

written notice thereof from the Seller, unless the Seller is in material breach of their obligations under this Agreement; or

- (i) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give written notice of such termination to the other Party, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

## **9.2 Effect of Termination**

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) this Section 9.2 and Sections 3.2(c), 11.1, 11.3, 11.4, 11.5, 11.6 and 11.7 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, and (b) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement.

## **ARTICLE 10 CLOSING**

### **10.1 Location and Time of the Closing**

The Closing shall take place at the Closing Time on the Closing Date at the offices of Osler, Hoskin & Harcourt LLP located at Suite 6300, First Canadian Place, 100 King Street West, Toronto, Ontario, or at such other location as may be agreed upon by the Parties.

### **10.2 Seller's Deliveries at Closing**

At Closing, the Seller shall deliver to the Buyer the following:

- (a) a certified copy of the Approval and Vesting Order;
- (b) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Seller;
- (c) certified copies of any Assignment Order(s) obtained by the Seller pursuant to this Agreement;
- (d) an executed copy of the Monitor's Certificate;
- (e) the certificates contemplated by Section 6.2(c);

- (f) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.6; and
- (g) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

### **10.3 Buyer's Deliveries at Closing**

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price;
- (b) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.6(c) hereof;
- (c) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Buyer;
- (d) an assumption of the Permitted Encumbrances, if any;
- (e) the certificate contemplated by Section 6.3(c);
- (f) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.6;
- (g) the GST/HST and QST Certificate, Undertaking and Indemnity; and
- (h) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

### **10.4 Termination of Branded Concession Agreement**

The Branded Concession Agreement shall be terminated and of no further force or effect as of the Closing Time without regard to Section 25.14 (*Survival*) of the Branded Concession Agreement; provided that Articles 1 (*Interpretation*) and 18 (*Indemnity and Limitation of Liability*), and Sections 22.1 (*Surrender*), 22.2 (*Withholding of Remittance*) and 22.3 (*Disengagement Costs*) of the Branded Concession Agreement shall survive such termination indefinitely and provided that Article 15 ("*Trademark Licence*") of the Branded Concession Agreement shall survive for a period of 75 days from and after the Closing Date; and provided that for purposes of Sections 22.1 and 22.2 of the Branded Concession Agreement, the expiry or termination of the Branded Concession Agreement shall be deemed to occur upon the expiration of such 75 day period from and after the Closing Date.

### **10.5 Possession of Assets**

On Closing, the Buyer will take possession of the Purchased Assets wheresoever situated at Closing. In no event will the Purchased Assets be sold, assigned, transferred or set over to the Buyer until the conditions set out in the Approval and Vesting Order have been satisfied, and the Buyer has satisfied all delivery requirements outlined in Section 10.3.

### **10.6 Monitor**

The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Seller and the Buyer that all conditions to Closing have been satisfied or waived and upon receiving the cash portion of the Purchase Price and any sales or transfer Taxes confirmed in writing by the Seller and the Buyer (on which the Monitor shall be entitled to rely without independent investigation) to be payable on Closing by the Buyer to the Seller pursuant to Section 7.6(c) hereof, and the Monitor will have no liability to the Seller or the Buyer or any other Person as a result of filing the Monitor's Certificate or otherwise in connection with this Agreement or the transactions contemplated hereunder (whether based on contract, tort or any other theory).

### **10.7 Simultaneous Transactions**

All actions taken and transactions consummated at the Closing shall be deemed to have occurred simultaneously, and no such transaction shall be considered consummated unless all are consummated.

## **ARTICLE 11 GENERAL MATTERS**

### **11.1 Confidentiality**

The Buyer shall keep confidential all Confidential Information relating to the Seller, the Acquired Business, the Purchased Assets, the Assumed Liabilities, the Excluded Assets and the Excluded Liabilities in accordance with the terms of the NDA.

### **11.2 Public Notices**

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Seller, on the one hand, or by the Buyer, on the other hand, without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings) or by any stock exchange on which any of the securities of such Party or any of its affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding

the foregoing: (i) this Agreement may be filed by the Seller with the CCAA Court and posted on SEDAR or such other website as may be required pursuant to Applicable Law or the rules of any relevant stock exchange; and (ii) the transactions contemplated in this Agreement may be disclosed by the Seller to the CCAA Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Seller and its professional advisors may prepare and file such reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Wherever possible, the Buyer shall be afforded an opportunity to review and comment on such materials prior to their filing. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by them.

### **11.3 Survival**

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 11 and Sections 7.5, 7.6, 7.7, 11.1 and 11.4 to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

### **11.4 Expenses**

Except as otherwise specifically provided herein, each of the Seller, on the one hand, and the Buyer, on the other hand, shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by each of them, respectively, in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated hereby.

### **11.5 Non-Recourse**

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement, or for any Claim based on, in respect of or by reason of the transactions contemplated hereby.

### **11.6 Assignment; Binding Effect**



No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent any Party may, upon prior notice to the other Parties: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its subsidiaries or affiliates; or (b) the Buyer may direct that title to all or some of the Purchased Assets be transferred to, and the corresponding Assumed Liabilities be assumed by, one or more of its subsidiaries or affiliates; provided, that no such assignment or direction shall relieve such assigning Party of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.5 and Section 7.6(d), nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

### 11.7 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transferred by facsimile or email:

- (a) in the case of a Notice to the Buyer at:

Confort expert Inc.

Attention: Pierre-Marc Lamoureux  
Telephone: 514 640-7711, ext 335  
Facsimile: 514 234-7911  
Email: pmlamoureux@confortexpert.qc.ca

with copies (which shall not in themselves constitute notice) to:

Lacoste Langevin Inc.

Attention: Me Pierre Langevin  
Telephone: 514 284-0426, ext. 307  
Facsimile: 514 284-2319  
Email: plangevin@lacoste-langevin.qc.ca

- (b) in the case of a Notice to the Seller at:

c/o  
Sears Canada Inc.  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3

Attention: Phil Mohtadi  
Telephone: 416-941-4419  
Email: phil.mohtadi@sears.ca

with copies (which shall not in themselves constitute notice) to:

Osler, Hoskin & Harcourt LLP  
Suite 6200  
1 First Canadian Place  
Toronto, ON M5X 1B8

Attention: Marc Wasserman and Tracy Sandler  
Telephone: 416-862-4908 / 416-862-5890  
Facsimile: 416-862-6666  
Email: mwasserman@osler.com / tsandler@osler.com

and the Monitor:

FTI Consulting Canada Inc.  
TD South Tower  
Suite 2010, P.O. Box 104  
Toronto, ON M5K 1G8

Attention: Paul Bishop  
Telephone: 416-649-8053  
Facsimile: 416-649-8101  
Email: paul.bishop@fticonsulting.com

and counsel to the Monitor:

Norton Rose Fulbright Canada LLP  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4

Attention: Orestes Pasparakis and Virginie Gauthier  
Telephone: 416-216-4815 / 416-216-4853  
Facsimile: 416-216-3930  
Email: orestes.pasparakis@nortonrosefulbright.com /  
virginie.gauthier@nortonrosefulbright.com

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

### **11.8 Counterparts; Facsimile Signatures**

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the

same instrument. Execution of this Agreement may be made by facsimile signature or by electronic image scan which, for all purposes, shall be deemed to be an original signature.

### **11.9 Language**

*Les Parties aux présentes ont expressement exigé que le présent convention et tous les documents et avis qui y sont afférents soient rédigés en anglaise.* The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

***[Signature pages follow]***

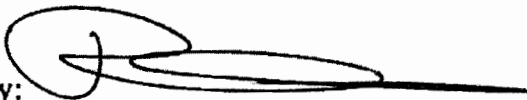
**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.

**SEARS CANADA INC.**

By: P. MONTAGNI  
Name: P. MONTAGNI  
Title: Secretary

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

**CONFORT EXPERT INC.**

By:   
Name: Pierre Marc Lemaireux  
Title: U-D operations / FINANCES

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

**SCHEDULE 1.1(Z)**

**CUSTOMERS**

[See attached]

**SCHEDULE 1.1(G)**

**FORM OF APPROVAL AND VESTING ORDER**

Court File No. CV-17-11846-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) ●, THE ●<sup>TH</sup>  
 )  
JUSTICE HAINEY ) DAY OF ●, 2017  
 )

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**APPROVAL AND VESTING ORDER**

**(Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the sale of the businesses of Sears Canada Inc. (“**Sears Canada**”) known as Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services, together with certain ancillary assets (the “**Transaction**”) contemplated by an Asset Purchase Agreement between ● (the “**Seller**”), as vendor, and ● (the “**Purchaser**”) as purchaser dated ●, 2017 (the “**APA**”) and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of the Seller

in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of ● sworn on ●, 2017 including the exhibits thereto, and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

### **SERVICE AND DEFINITIONS**

2. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

3. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

### **APPROVAL OF THE APA**

4. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Purchaser may agree to in writing. The Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Seller’s right, title and interest in and to the Purchased Assets

shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”); and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (●) or any other personal property registry system;

(all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net Proceeds**”), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by the DIP ABL Agent and DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a “**Distribution**”).



8. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

9. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the distribution permitted by paragraph 7 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

11. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.

12. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;

- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

### **SEALING**

13. THIS COURT ORDERS that Confidential Appendix “X” to the ● Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

### **GENERAL PROVISIONS**

14. THIS COURT ORDERS that the Buyer shall send, or cause to be sent, as part of the Buyer’s first invoice delivery to Customers following the Closing or by specific mailing (such notification not to be later than 75 days after the issuance of this Order), the notice in the form attached as Schedule “B” hereto to each Customer.

15. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor

shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

17. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

---

## SCHEDULE "A"

Court File No. CV-17-11846-00CL

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.  
(each, an "Applicant", and collectively, the "Applicants")

### MONITOR'S CERTIFICATE

#### RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "Approval and Vesting Order") approving the Asset Purchase Agreement between ● (the "Seller"), as vendor, and ● (the "Purchaser") as purchaser dated ●, 2017 (the "APA"), a copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and (ii) the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Purchaser to the Seller have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

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

Name:

Title:

SCHEDULE "B"  
CUSTOMER NOTICE

**SEARS** 

 **CONFORT  
EXPERT** INC

October ●, 2017

**TO THE CUSTOMERS OF SEARS OIL SERVICES, SEARS HEATING  
AND COOLING, AND/OR SEARS DUCT CLEANING SERVICES  
(COLLECTIVELY, THE "ACQUIRED BUSINESSES")**

**Re: Acquisition of Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services by Confort Expert Inc.**

**Re: In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc. *et al* (Court File No. CV-17-11846-00CL)**

As you may know, Sears Canada Inc. and certain of its subsidiaries (collectively, "Sears Canada") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA"), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "Court") on June 22, 2017. As part of these CCAA proceedings, the Court has approved the acquisition by Confort Expert Inc. ("Confort Expert") of the Acquired Businesses, including the assignment of ongoing customer contracts henceforth assumed by Confort Expert.

Accordingly, Confort Expert has assumed all of Sears Canada's rights and obligations under your service, maintenance, rental or leasing equipment contract(s), as appropriate, with Sears Canada effective as of [October 25, 2017]. We confirm that your contract(s) remain(s) in full force and effect, but your contract(s) will now be directly with Confort Expert.

Regarding your next payment, if you have been making payments to Sears Canada directly, you must direct your future payments to Confort Expert. Please contact a representative of Confort Expert at the details below to arrange a transfer of your payment method to Confort Expert. If you are already making payments directly to Confort Expert, you do not need to take any action at this time.

Confort Expert has been operating the Acquired Businesses on behalf of Sears Canada for several years. It is anticipated that there will be no interruption of services as a result of this transaction and services will continue to be provided by Confort Expert in the ordinary course. Confort Expert values the relationship with each of its customers and looks forward to continuing to provide you with the same quality you have relied on for years. Please do not hesitate to contact Confort Expert

at 514-640-7711 ext 599 or 1-866-240-0911 ext 599 during normal business hours (Eastern time) or by e-mail to [credit@confortexpert.com](mailto:credit@confortexpert.com) with any questions you may have about your services. For more information about the transaction between Sears Canada and Confort Expert, you may refer to the website of Sears Canada's Court-appointed Monitor, FTI Consulting Canada Inc., at: <http://cfcanada.fticonsulting.com/searscanada>.

ANNEXE B  
AVIS AUX CLIENTS



Le • octobre 2017

**AUX CLIENTS DES SERVICES D'APPROVISIONNEMENT EN HUILE,  
DES SERVICES DE CHAUFFAGE ET DE CLIMATISATION ET/OU DES  
SERVICES DE NETTOYAGE DE CONDUITS DE SEARS  
(COLLECTIVEMENT, LES « ENTREPRISES ACQUISES »)**

- Objet :** Acquisition des services d'approvisionnement en huile, des services de chauffage et de climatisation et des services de nettoyage de conduits de Sears par Confort Expert Inc.
- Objet :** Dans l'affaire du plan de transaction et d'arrangement de Sears Canada Inc. *et al.* (n° de dossier de la cour CV-17-11846-00CL)

Vous n'êtes probablement pas sans savoir que Sears Canada Inc. et certaines de ses filiales (collectivement, « **Sears Canada** ») se sont placées sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** ») aux termes d'une ordonnance initiale rendue par la Cour supérieure de justice de l'Ontario (rôle commercial) (la « **Cour** ») le 22 juin 2017. Dans le cadre de l'instance en vertu de la LACC, la Cour a approuvé l'acquisition, par Confort Expert Inc. (« **Confort Expert** »), des entreprises acquises, ce qui comprend la cession des contrats en cours avec les clients que Confort Expert honorera à l'avenir.

Par conséquent, Confort Expert prendra en charge l'ensemble des obligations et bénéficiera de l'ensemble des droits de Sears Canada aux termes des contrats de service, d'entretien, de location ou de crédit-bail visant des équipements, selon le cas, que vous avez conclus avec Sears Canada, à compter du [25 octobre 2017]. Nous confirmons que votre/vos contrat(s) conserve(nt) leurs effets, mais que vous faites maintenant affaire avec Confort Expert.

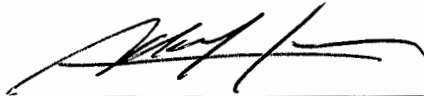
Concernant votre prochain paiement, si vous versiez vos paiements directement à Sears Canada, vous devrez maintenant les verser à Confort Expert. Veuillez communiquer avec un représentant de Confort Expert aux coordonnées ci-après pour organiser le transfert de vos paiements à Confort Expert. Si vous effectuez déjà des paiements directement à Confort Expert, vous n'avez aucune autre mesure à prendre.



Depuis plusieurs années, Confort Expert exploite les entreprises acquises pour le compte de Sears Canada. Cette transaction ne devrait occasionner aucune interruption de services et Confort Expert continuera à fournir ceux-ci dans le cours normal. Confort Expert tient à entretenir de bonnes relations avec chacun de ses clients, et souhaite continuer à leur offrir la même qualité de services que celle qu'ils connaissent depuis des années. N'hésitez pas à communiquer avec Confort Expert au 514 640-7711, poste 599, ou au 1 866 240-0911, poste 599, pendant les heures d'ouverture habituelles (heure de l'Est) ou par courriel à [credit@confortexpert.com](mailto:credit@confortexpert.com) si vous avez des questions à propos de vos services. Pour de plus amples renseignements sur la transaction entre Sears Canada et Confort Expert, vous pouvez consulter le site Web de FTI Consulting Canada Inc., contrôleur de Sears Canada nommé par la Cour, au : <http://cfcanada.fticonsulting.com/searscanada>.

**TAB F**

**THIS IS EXHIBIT "F" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**



---

A Commissioner for taking Affidavits



September 29, 2017

**TO THE CUSTOMERS OF SEARS OIL SERVICES, SEARS HEATING  
AND COOLING, AND/OR SEARS DUCT CLEANING SERVICES  
(COLLECTIVELY, THE "BUSINESSES")**

**Re: Proposed Acquisition of Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services by Confort Expert Inc.**

**Re: In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc. *et al* (Court File No. CV-17-11846-00CL)**

As you may know, Sears Canada Inc. and certain of its subsidiaries (collectively, "**Sears Canada**") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("**CCAA**"), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 22, 2017.

As part of these CCAA proceedings, Sears Canada is seeking Court approval of a transaction with Confort Expert Inc. ("**Confort Expert**") where Confort Expert will acquire the majority of the assets and liabilities of the Businesses. Confort Expert has been operating the Businesses on behalf of Sears Canada for several years.

**This transaction will include the assignment of ongoing customer contracts to Confort Expert in the following designated markets:**

- **Sears Oil Services – Ontario, Quebec, New Brunswick, Nova Scotia, PEI and Newfoundland**
- **Sears Heating & Cooling – Quebec, New Brunswick, Nova Scotia, PEI and Newfoundland**
- **Sears Duct Cleaning – Select markets in Quebec**

If you are a customer in a designated market, your contract will otherwise remain in full force and effect, but will now be directly with Confort Expert. It is anticipated that there will be no interruption of services as a result of this transaction and services will continue to be provided by Confort Expert in the ordinary course. Confort Expert values the relationship with each of its customers and looks forward to continuing to provide the same services customers have relied on for years.

The motion for approval of this transaction is currently scheduled to be heard on October 4, 2017 at 330 University Avenue, Toronto, Ontario at 10:00 a.m. Court materials regarding this motion are available on the Monitor's website at <http://cfcCanada.fticonsulting.com/searscanada>.



Le 29 septembre 2017

**AUX CLIENTS DES SERVICES D'APPROVISIONNEMENT EN HUILE, DES  
SERVICES DE CHAUFFAGE ET DE CLIMATISATION ET/OU DES SERVICES DE  
NETTOYAGE DE CONDUITS DE SEARS  
(COLLECTIVEMENT, LES « ENTREPRISES »)**

**Objet : Acquisition proposée des services d'approvisionnement en huile, des services de chauffage et de climatisation et des services de nettoyage de conduits de Sears par Confort Expert Inc.**

**Objet : Dans l'affaire du plan de transaction et d'arrangement de Sears Canada Inc. *et al.* (n° de dossier de la cour CV-17-11846-00CL)**

Vous n'êtes probablement pas sans savoir que Sears Canada Inc. et certaines de ses filiales (collectivement, « **Sears Canada** ») se sont placées sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** ») aux termes d'une ordonnance initiale rendue par la Cour supérieure de justice de l'Ontario (rôle commercial) (la « **Cour** ») le 22 juin 2017.

Dans le cadre de l'instance en vertu de la LACC, Sears Canada demande à la Cour d'approuver une transaction avec Confort Expert Inc. (« **Confort Expert** ») dans le cadre de laquelle Confort Expert acquerra la majorité des actifs et des passifs des entreprises. Confort Expert exploite les entreprises pour le compte de Sears Canada depuis plusieurs années.

La transaction comprendra la cession à Confort Expert de contrats en cours avec les clients dans les marchés désignés suivants :


- Services d'approvisionnement en huile de Sears – Ontario, Québec, Nouveau Brunswick, Nouvelle-Écosse, I-P-É et Terre-Neuve
- Services de chauffage et de climatisation de Sears - Québec, Nouveau-Brunswick, Nouvelle-Écosse, I-P-É et Terre-Neuve
- Nettoyage de conduits de Sears – des marchés choisis au Québec

Si vous êtes un client dans un marché désigné, votre contrat conservera par ailleurs ses effets, mais vous ferez maintenant affaire directement avec Confort Expert. Cette transaction ne devrait occasionner aucune interruption de services et Confort Expert continuera à fournir ceux-ci dans le cours normal. Confort Expert tient à entretenir de bonnes relations avec chacun de ses clients, et souhaite continuer à leur offrir la même qualité de services que celle qu'ils connaissent depuis des années.

La requête pour approbation de la présente transaction devrait être entendue à 10 h, le 4 octobre 2017, au 330 University Avenue, Toronto (Ontario). Les documents de la Cour au sujet de cette requête se trouvent sur le site Web du contrôleur au <http://cfcanada.fticonsulting.com/searscanada>.

**TAB G**

**THIS IS EXHIBIT "G" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**



---

A Commissioner for taking Affidavits

SCHEDULE "B"  
CUSTOMER NOTICE

**SEARS** 

 **CONFORT  
EXPERT** INC

October ●, 2017

**TO THE CUSTOMERS OF SEARS OIL SERVICES, SEARS HEATING  
AND COOLING, AND/OR SEARS DUCT CLEANING SERVICES  
(COLLECTIVELY, THE "ACQUIRED BUSINESSES")**

**Re: Acquisition of Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services by Confort Expert Inc.**

**Re: In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc. *et al* (Court File No. CV-17-11846-00CL)**

As you may know, Sears Canada Inc. and certain of its subsidiaries (collectively, "**Sears Canada**") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("**CCAA**"), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 22, 2017. As part of these CCAA proceedings, the Court has approved the acquisition by Confort Expert Inc. ("**Confort Expert**") of the Acquired Businesses, including the assignment of ongoing customer contracts henceforth assumed by Confort Expert.

Accordingly, Confort Expert has assumed all of Sears Canada's rights and obligations under your service, maintenance, rental or leasing equipment contract(s), as appropriate, with Sears Canada effective as of [**October 25, 2017**]. We confirm that your contract(s) remain(s) in full force and effect, but your contract(s) will now be directly with Confort Expert.

Regarding your next payment, if you have been making payments to Sears Canada directly, you must direct your future payments to Confort Expert. Please contact a representative of Confort Expert at the details below to arrange a transfer of your payment method to Confort Expert. If you are already making payments directly to Confort Expert, you do not need to take any action at this time.

Confort Expert has been operating the Acquired Businesses on behalf of Sears Canada for several years. It is anticipated that there will be no interruption of services as a result of this transaction and services will continue to be provided by Confort Expert in the ordinary course. Confort Expert values the relationship with each of its customers and looks forward to continuing to provide you with the same quality you have relied on for years. Please do not hesitate to contact Confort Expert



at 514-640-7711 ext 599 or 1-866-240-0911 ext 599 during normal business hours (Eastern time) or by e-mail to [credit@confortexpert.com](mailto:credit@confortexpert.com) with any questions you may have about your services. For more information about the transaction between Sears Canada and Confort Expert, you may refer to the website of Sears Canada's Court-appointed Monitor, FTI Consulting Canada Inc., at: <http://cfcanada.fticonsulting.com/searscanada>.

ANNEXE B  
AVIS AUX CLIENTS

**SEARS** 

 **CONFORT  
EXPERT** INC

Le • octobre 2017

**AUX CLIENTS DES SERVICES D'APPROVISIONNEMENT EN HUILE,  
DES SERVICES DE CHAUFFAGE ET DE CLIMATISATION ET/OU DES  
SERVICES DE NETTOYAGE DE CONDUITS DE SEARS  
(COLLECTIVEMENT, LES « ENTREPRISES ACQUISES »)**

- Objet :** Acquisition des services d'approvisionnement en huile, des services de chauffage et de climatisation et des services de nettoyage de conduits de Sears par Confort Expert Inc.
- Objet :** Dans l'affaire du plan de transaction et d'arrangement de Sears Canada Inc. *et al.* (n° de dossier de la cour CV-17-11846-00CL)

Vous n'êtes probablement pas sans savoir que Sears Canada Inc. et certaines de ses filiales (collectivement, « **Sears Canada** ») se sont placées sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** ») aux termes d'une ordonnance initiale rendue par la Cour supérieure de justice de l'Ontario (rôle commercial) (la « **Cour** ») le 22 juin 2017. Dans le cadre de l'instance en vertu de la LACC, la Cour a approuvé l'acquisition, par Confort Expert Inc. (« **Confort Expert** »), des entreprises acquises, ce qui comprend la cession des contrats en cours avec les clients que Confort Expert honorera à l'avenir.

Par conséquent, Confort Expert prendra en charge l'ensemble des obligations et bénéficiera de l'ensemble des droits de Sears Canada aux termes des contrats de service, d'entretien, de location ou de crédit-bail visant des équipements, selon le cas, que vous avez conclus avec Sears Canada, à compter du **[25 octobre 2017]**. Nous confirmons que votre/vos contrat(s) conserve(nt) leurs effets, mais que vous faites maintenant affaire avec Confort Expert.

Concernant votre prochain paiement, si vous versiez vos paiements directement à Sears Canada, vous devrez maintenant les verser à Confort Expert. Veuillez communiquer avec un représentant de Confort Expert aux coordonnées ci-après pour organiser le transfert de vos paiements à Confort Expert. Si vous effectuez déjà des paiements directement à Confort Expert, vous n'avez aucune autre mesure à prendre.

Depuis plusieurs années, Confort Expert exploite les entreprises acquises pour le compte de Sears Canada. Cette transaction ne devrait occasionner aucune interruption de services et Confort Expert continuera à fournir ceux-ci dans le cours normal. Confort Expert tient à entretenir de bonnes relations avec chacun de ses clients, et souhaite continuer à leur offrir la même qualité de services que celle qu'ils connaissent depuis des années. N'hésitez pas à communiquer avec Confort Expert au 514 640-7711, poste 599, ou au 1 866 240-0911, poste 599, pendant les heures d'ouverture habituelles (heure de l'Est) ou par courriel à [credit@confortexpert.com](mailto:credit@confortexpert.com) si vous avez des questions à propos de vos services. Pour de plus amples renseignements sur la transaction entre Sears Canada et Confort Expert, vous pouvez consulter le site Web de FTI Consulting Canada Inc., contrôleur de Sears Canada nommé par la Cour, au : <http://cfcanada.fticonsulting.com/searscanada>.

**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

|                    |   |                                |
|--------------------|---|--------------------------------|
| THE HONOURABLE MR. | ) | WEDNESDAY, THE 4 <sup>TH</sup> |
|                    | ) |                                |
| JUSTICE HAINEY     | ) | DAY OF OCTOBER, 2017           |

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**APPROVAL AND VESTING ORDER  
(Sears Home Improvements Business)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the sale of the businesses of Sears Canada Inc. (“**Sears Canada**”) known as Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services (the “**Sears Home Improvements Business**”), together with certain ancillary assets (the “**Transaction**”) contemplated by an Asset Purchase Agreement between Sears Canada Inc. (the “**Seller**”), as vendor, and Confort Expert Inc. (the “**Purchaser**”) as purchaser dated September 28, 2017 (the “**APA**”) and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on September 28, 2017 including the exhibits thereto, and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

## **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

## **APPROVAL OF THE APA**

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Purchaser may agree to in writing. The Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Seller’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or

monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”); and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system;

(all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net Proceeds**”), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

6. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by the DIP ABL Agent and DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a “**Distribution**”).

7. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the distribution permitted by paragraph 6 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

10. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.

11. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;



- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

### **SEALING**

12. THIS COURT ORDERS that Confidential Appendix “●” to the ● Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

### **GENERAL PROVISIONS**

13. THIS COURT ORDERS that the Purchaser shall send, or cause to be sent, as part of the Purchaser’s first invoice delivery to Customers (as defined in the APA) following the Closing or by specific mailing (such notification not to be later than 75 days after the issuance of this Order), the notice in the form attached as Schedule “B” hereto to each Customer.

14. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor

shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

16. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

---

## SCHEDULE "A"

Court File No. CV-17-11846-00CL

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "**Applicant**", and collectively, the "**Applicants**")

### MONITOR'S CERTIFICATE

#### RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "**Approval and Vesting Order**") approving the Asset Purchase Agreement between Sears Canada Inc. (the "**Seller**"), as vendor, and Confort Expert Inc. (the "**Purchaser**") as purchaser dated September 28, 2017 (the "**APA**"), a copy of which is attached as Exhibit "A" to the Affidavit of Billy Wong dated September 28, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and (ii) the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Purchaser to the Seller have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE “B”  
ENGLISH FORM OF CUSTOMER NOTICE**

**SEARS** 

 **CONFORT  
EXPERT INC.**

October ●, 2017

**TO THE CUSTOMERS OF SEARS OIL SERVICES, SEARS HEATING  
AND COOLING, AND/OR SEARS DUCT CLEANING SERVICES  
(COLLECTIVELY, THE “ACQUIRED BUSINESSES”)**

- Re: Acquisition of Sears Oil Services, Sears Heating and Cooling and Sears Duct Cleaning Services by Confort Expert Inc.**
- Re: In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc. *et al* (Court File No. CV-17-11846-00CL)**

As you may know, Sears Canada Inc. and certain of its subsidiaries (collectively, “**Sears Canada**”) filed for and were granted creditor protection under the *Companies’ Creditors Arrangement Act* (“**CCAA**”), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 22, 2017. As part of these CCAA proceedings, the Court has approved the acquisition by Confort Expert Inc. (“**Confort Expert**”) of the Acquired Businesses, including the assignment of ongoing customer contracts henceforth assumed by Confort Expert.

Accordingly, Confort Expert has assumed all of Sears Canada’s rights and obligations under your service, maintenance, rental or leasing equipment contract(s), as appropriate, with Sears Canada effective as of ●. We confirm that your contract(s) remain(s) in full force and effect, but your contract(s) will now be directly with Confort Expert.

Regarding your next payment, if you have been making payments to Sears Canada directly, you must direct your future payments to Confort Expert. Please contact a representative of Confort Expert at the details below to arrange a transfer of your payment method to Confort Expert. If you are already making payments directly to Confort Expert, you do not need to take any action at this time.

Confort Expert has been operating the Acquired Businesses on behalf of Sears Canada for several years. It is anticipated that there will be no interruption of services as a result of this transaction and services will continue to be provided by Confort Expert in the ordinary course. Confort Expert values the relationship with each of its customers and looks forward to continuing to provide you with the same quality you have relied on for years. Please do not hesitate to contact Confort Expert at 514-640-7711 ext 599 or 1-866-240-0911 ext 599 during normal business hours (Eastern time)

or by e-mail to [credit@confortexpert.com](mailto:credit@confortexpert.com) with any questions you may have about your services. For more information about the transaction between Sears Canada and Confort Expert, you may refer to the website of Sears Canada's Court-appointed Monitor, FTI Consulting Canada Inc., at: <http://cfcanada.fticonsulting.com/searscanada>.

FRENCH FORM OF CUSTOMER NOTICE

**SEARS** 

 **CONFORT  
EXPERT** INC.

Le • octobre 2017

**AUX CLIENTS DES SERVICES D'APPROVISIONNEMENT EN HUILE,  
DES SERVICES DE CHAUFFAGE ET DE CLIMATISATION ET/OU DES  
SERVICES DE NETTOYAGE DE CONDUITS DE SEARS  
(COLLECTIVEMENT, LES « ENTREPRISES ACQUISES »)**

**Objet : Acquisition des services d'approvisionnement en huile, des services de chauffage et de climatisation et des services de nettoyage de conduits de Sears par Confort Expert Inc.**

**Objet : Dans l'affaire du plan de transaction et d'arrangement de Sears Canada Inc. *et al.* (n° de dossier de la cour CV-17-11846-00CL)**

Vous n'êtes probablement pas sans savoir que Sears Canada Inc. et certaines de ses filiales (collectivement, « **Sears Canada** ») se sont placées sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** ») aux termes d'une ordonnance initiale rendue par la Cour supérieure de justice de l'Ontario (rôle commercial) (la « **Cour** ») le 22 juin 2017. Dans le cadre de l'instance en vertu de la LACC, la Cour a approuvé l'acquisition, par Confort Expert Inc. (« **Confort Expert** »), des entreprises acquises, ce qui comprend la cession des contrats en cours avec les clients que Confort Expert honorera à l'avenir.

Par conséquent, Confort Expert prendra en charge l'ensemble des obligations et bénéficiera de l'ensemble des droits de Sears Canada aux termes des contrats de service, d'entretien, de location ou de crédit-bail visant des équipements, selon le cas, que vous avez conclus avec Sears Canada, à compter du •. Nous confirmons que votre/vos contrat(s) conserve(nt) leurs effets, mais que vous faites maintenant affaire avec Confort Expert.

Concernant votre prochain paiement, si vous versiez vos paiements directement à Sears Canada, vous devrez maintenant les verser à Confort Expert. Veuillez communiquer avec un représentant de Confort Expert aux coordonnées ci-après pour organiser le transfert de vos paiements à Confort Expert. Si vous effectuez déjà des paiements directement à Confort Expert, vous n'avez aucune autre mesure à prendre.

Depuis plusieurs années, Confort Expert exploite les entreprises acquises pour le compte de Sears Canada. Cette transaction ne devrait occasionner aucune interruption de services et Confort Expert continuera à fournir ceux-ci dans le cours normal. Confort Expert tient à entretenir

de bonnes relations avec chacun de ses clients, et souhaite continuer à leur offrir la même qualité de services que celle qu'ils connaissent depuis des années. N'hésitez pas à communiquer avec Confort Expert au 514 640-7711, poste 599, ou au 1 866 240-0911, poste 599, pendant les heures d'ouverture habituelles (heure de l'Est) ou par courriel à [credit@confortexpert.com](mailto:credit@confortexpert.com) si vous avez des questions à propos de vos services. Pour de plus amples renseignements sur la transaction entre Sears Canada et Confort Expert, vous pouvez consulter le site Web de FTI Consulting Canada Inc., contrôleur de Sears Canada nommé par la Cour, au : <http://cfcanada.fticonsulting.com/searscanada>.



**TAB 4**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 4<sup>TH</sup>  
JUSTICE HAINEY ) DAY OF OCTOBER, 2017  
)

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**ORDER APPROVING ASSIGNMENT OF CONTRACTS**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving the assignment of certain contracts (the “**Assignment**”) to the Buyer as contemplated by the Asset Purchase Agreement between Sears Canada Inc. (the “**Seller**”), as seller, and Confort Expert Inc. (the “**Buyer**”), as buyer, dated September 28, 2017 (the “**APA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on September 28, 2017 including the exhibits thereto, and the ● Report of FTI Consulting Canada

Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Buyer, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), the Approval and Vesting Order dated October 4, 2017 (the “**Approval and Vesting Order**”), or in the APA, as applicable.

### **APPROVAL OF ASSIGNMENT OF CONTRACTS**

3. THIS COURT ORDERS that immediately upon the delivery of the Monitor's certificate substantially in the form attached as Schedule A to the Approval and Vesting Order (the “**Monitor’s Certificate**”), all of the rights and obligations of the Seller under all Assumed Contracts (as defined in the APA) shall be assigned to the Buyer pursuant to section 11.3 of the CCAA.
4. THIS COURT ORDERS that the Seller’s right, title and interest in and to the Assumed Contracts shall vest absolutely in the Buyer free and clear of all Encumbrances other than Permitted Encumbrances in accordance with the provisions of the Approval and Vesting Order.
5. THIS COURT ORDERS that the assignment of the Assumed Contracts is valid and binding upon all of the counterparties to the Assumed Contracts, notwithstanding any restriction or prohibition contained in any such Assumed Contract relating to the assignment thereof, including, but not limited to, any provision requiring the consent of any party to the assignment of the Assumed Contracts.

6. THIS COURT ORDERS that no counterparty to any Assumed Contract shall terminate an Assumed Contract as against the Buyer as a result of the Seller's insolvency or the Seller's CCAA proceedings. In addition, no counterparty shall terminate an Assumed Contract as against the Buyer as a result of the Seller having breached a non-monetary obligation unless such non-monetary breach arises or continues after the Assumed Contract is assigned to the Buyer, such non-monetary default is capable of being cured by the Buyer and the Buyer has failed to remedy the default after having received notice of such default pursuant to the terms of the applicable Assumed Contract. For clarification purposes, no counterparty shall rely on a notice of default sent to the Seller to terminate the Assumed Contract as against the Buyer.

THIS COURT ORDERS that all monetary defaults in relation to any of the Assumed Contracts, if applicable, other than those arising by reason only of the Seller's insolvency, the commencement of these CCAA proceedings or failure to perform a non-monetary obligation under any Assumed Contract, incurred or accrued on or before the Closing Date, shall be paid no later than three (3) Business Days following the delivery of the Monitor's Certificate.

7. THIS COURT ORDERS that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Buyer to assume the Assumed Liabilities and to perform its obligations under the Assumed Contracts, as set out in the APA.

8. THIS COURT ORDERS AND DIRECTS that the Monitor is hereby authorized and directed to take such actions as it deems necessary or appropriate in the circumstances to assist the Seller in the assignment and transfer of the Assumed Contracts.

## **GENERAL**

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to

assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

10. THIS COURT ORDERS that the Seller, the Buyer, the Monitor and any counterparty to any Assumed Contract being assigned may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or under this Order, including without limitation, as necessary, to effect the assignment of the Assumed Contracts, the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

---

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS**  
(Motion for Approval of Asset Purchase Agreement with Confort Expert Inc.  
in respect of Home Improvements Business Assets, returnable October 4,  
2017)

**OSLER, HOSKIN & HARCOURT LLP**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908  
Email: mwasserman@osler.com

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923  
Email: jdacks@osler.com

Tracy Sandler LSUC# 32443N  
Tel: 416.862.5890  
Email: tsandler@osler.com

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Email : ksachar@osler.com  
Fax: 416.862.6666

Lawyers for the Applicants