

**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 Approval of Asset Purchase Agreement with Buyers Group of
Mississauga Inc. and DirectBuy Home Improvement Inc. returnable December 21, 2017)**

December 19, 2017

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| 1 | Notice of Motion dated December 19, 2017 |
| 2 | Affidavit of Billy Wong, sworn December 19, 2017 |
| | Exhibit "A" Redacted copy of Asset Purchase Agreement |
| 3 | Draft Approval and Vesting Order |

TAB 1

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.

Applicants

NOTICE OF MOTION

**(Motion for Approval of Asset Purchase Agreement with Buyers Group of Mississauga Inc. and
DirectBuy Home Improvement Inc.)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on December 21, 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 entered into as of December 19, 2017 (“APA”) between Sears Canada Inc. (“**Sears Canada**”), Buyers Group of Mississauga Inc. (“**Buyer**”), DirectBuy Home Improvement Inc. (solely for the purposes of Sections 7.1 and 12.1 of the APA) (“**Parent**”), and FTI Consulting Canada Inc. (solely for the limited purpose of acting as Escrow Agent for purposes of Section 8.2 of the APA) as court-appointed Monitor of Sears Canada (“**Escrow Agent**”), vesting Sears Canada’s right, title and interest in and to the Purchased Assets (as defined in the Approval and Vesting Order) in the Buyer; and
 - (c) sealing from the public record certain commercially-sensitive information and documents (as described below).
2. 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 December 19, 2017, Sears Canada entered into the APA relating to Sears Canada's Major Appliances Protection Agreement Business, in which the Buyer shall purchase all of Sears Canada's right, title and interest in and to parts inventory, certain internet protocol address blocks and customer lists (the "**Purchased Assets**") relating to said business;
5. The consideration to be received in the transaction is fair and reasonable;
6. The process leading to the APA was fair and reasonable in the circumstances and was approved by the Monitor;
7. The APA is in the best interests of the creditors and other stakeholders of the Applicants;
8. The relief sought on this motion is supported by the Monitor and the Sale Advisor;

Sealing Order

9. The Confidential Appendix to the Monitor's Report filed in connection with this motion contains confidential and commercially sensitive information 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 assets must be the subject of further marketing efforts;
10. There are no reasonable alternative measures to sealing this information from the public record;
11. The salutary effects of sealing this information outweigh the deleterious effects of doing so;
12. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;
13. 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
14. 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 December 19, 2017 and the exhibits attached thereto;
3. The Third and Ninth Reports of the Monitor; and
4. Such further and other evidence as counsel may advise and this Court may permit.

December 19, 2017

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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 Buyers Group of Mississauga Inc. and DirectBuy Home Improvement Inc.)

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TAB 2

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.

APPLICANTS

AFFIDAVIT OF BILLY WONG
(Sworn December 19, 2017)

**(Motion for Approval of Asset Purchase Agreement with Buyers Group of Mississauga Inc.
and DirectBuy Home Improvement 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 senior management team of Sears Canada, legal, financial and other advisors of Sears Canada, and representatives of FTI Consulting Canada Inc. (the "**Monitor**").

2. I swear this Affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, approving the Asset Purchase Agreement dated December 19, 2017 (the “**APA**”) between Sears Canada (the “**Seller**”), Buyers Group of Mississauga Inc. (the “**Buyer**”), DirectBuy Home Improvement Inc. (solely for the purposes of Sections 7.1 and 12.1 of the APA) (the “**Parent**”), and FTI Consulting Canada Inc. (solely for the limited purpose of acting as Escrow Agent for purposes of Section 8.2 of the APA) as court-appointed Monitor of Sears Canada (the “**Escrow Agent**”), for certain internet protocol address blocks and certain assets related to Sears Canada’s Major Appliances Protection Agreement Business (described below) (the “**Major Appliance Protection Agreement Business**”), including certain parts inventory and customer lists (i.e., the “**Purchased Assets**” (as defined in the APA)).

3. Specifically, as outlined in Section 2.1 of the APA, the Purchased Assets include:

- (a) the Parts Inventory, which means the inventory owned by Sears Canada listed on Schedule 2.1(a) of the APA that constitutes parts for the Major Appliance Protection Agreement Business located at the Premises (i.e., Sears Canada’s Calgary distribution centre);
- (b) Sears Canada’s interest in the registration right to the following internet protocol address blocks: 142.190.0.0/16, 142.93.0.0/16, 204.225.72.0/21, 204.225.80.0/22, and 204.225.96.0/23 (the “**IP Addresses**”); and
- (c) the Customer Lists, which means, any and all lists of current and past customers of the Major Appliance Protection Agreement Business, including information relating in any way to the use of such lists that can be separated from Sears Canada’s other information without material cost, including, to the extent that Sears Canada is in possession of such information:

- (i) the name, mailing address, e-mail address, phone numbers and any other contact information for such customers;
- (ii) purchase history for such customers at a transaction level (including dollar amounts, dates, and items purchased);
- (iii) the terms of any extended warranties provided or sold to such customers;
- (iv) and any other Personal Information of such customers (excluding any credit card numbers and other information to which disclosure is prohibited by Applicable Law).

4. Capitalized terms used in this Affidavit that are not otherwise defined have the meaning given to them in the APA.

5. This Affidavit should be read in conjunction with the Affidavit of Mark Caiger sworn September 28, 2017 (the “**Caiger Affidavit**”), 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 “**SISP**”), which efforts resulted in, among other things, the Buyer’s bid and the APA which is the subject of this motion.

6. I understand from the Monitor that an unredacted copy of the APA, which sets out the consideration that Sears Canada will receive in this proposed transaction (the “**Purchase Price**”) and a list of the Parts Inventory, is included in a Confidential Appendix to the Monitor’s Report that will be filed in connection with this motion. In the view of the Applicants and the Sale Advisor, the Purchase Price and other financial information contained in the APA is confidential information that could be materially prejudicial to the Applicants in connection with the SISP generally and in connection with any further marketing of the Purchased Assets in particular if the

proposed transaction does not proceed to close as anticipated. As such, the APA, which is attached as Exhibit "A" to this Affidavit, has been redacted to protect the confidential information and the Applicants are requesting that a sealing order be granted with respect to the Confidential Appendix.

7. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders and the consideration to be paid in respect of the transaction is fair and reasonable. Moreover, the Applicants and the Sale Advisor believe that the process leading to the transaction, as described in the Caiger Affidavit and herein, was reasonable in the circumstances.

8. It is my understanding that the Monitor approves the process that has been followed by Sears Canada and the Sale Advisor leading to the transaction, and supports the Applicants' motion seeking approval of the APA.

The Major Appliances Protection Agreement Business

9. Sears Canada's Major Appliances Protection Agreement Business included the sale of protection agreements on major appliances to retail customers of Sears Canada and certain of its affiliates and subsidiaries. Sears Canada sold such protection agreements to customers in-store at the time of the original purchase as well as through call-centres and technician sales.

10. Sears Canada's Major Appliance Protection Agreement Business also stocked a wide-selection of repair and consumable parts for most national appliance brands, which were sold through parts depot locations within Sears Canada full-line stores, call centres, and parts kiosks within major appliance departments in all Sears Canada full-line, home and dealer stores. Parts orders were fulfilled for both sales and services needs through three in-house parts fulfillment centres, located in Toronto, Montreal, and Calgary. As of June 2017, Sears Canada's Major

Appliances Protection Agreement Business employed close to 600 associates (fluctuating slightly based on seasonal demand).

Background To The Bid

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

12. The purpose of the Sale Process was to seek out proposals for the acquisition of the Applicants' 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 the Applicants' 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 Purchased Assets which are subject to the APA.

14. With regard to the Major Appliances Protection Agreement Business, I am advised by Mr. Caiger and believe that pursuant to the SISP, the Sale Advisor marketed the Major Appliances Protection Agreement Business to potentially interested bidders. I am advised by Mr. Caiger and believe that a number of parties showed initial interest, however, no bids were ultimately received by the bid deadline.

15. On August 31, 2017, 1103743 Ontario Inc. (which has amalgamated with the Buyer, and is referred to hereinafter, together with Buyers Group of Mississauga Inc., as the Buyer) submitted an initial non-binding bid to purchase non-specified properties, assets and rights of Sears Canada relating to the operations and activities necessary and related to the sale of goods and services to customers in Canada on the Premises (as defined in the proposed APA), and certain websites

owned by Sears Canada. The bid letter submitted by the Buyer contemplated that the Buyer would continue Sears Canada's e-commerce businesses in Canada as a going-concern, as well as evaluate brick and mortar retail businesses at several locations subject to potentially reaching mutually agreeable terms.

16. Discussions subsequently ensued between the Buyer and the Sale Advisor, and the Buyer and Sears Canada, in respect of the Buyer's initial bid. It was quickly determined that the initial bid was highly conditional, and no executable transaction existed. The Sale Advisor and the Buyer nevertheless continued to engage in discussions to determine whether a possible transaction related to one or more assets of Sears Canada could be completed in the future.

17. I am advised by Mr. Caiger and believe that on the evening of October 13, 2017, following the Phase II Liquidation approval (as defined in the Affidavit of Mr. Caiger sworn October 10, 2017), the Buyer submitted an amended bid, regarding certain assets relating to the Sears Canada Major Appliances Protection Agreement Business. Negotiations ensued with the Buyer in respect of financial and legal aspects of its amended bid, draft documents were exchanged by the parties, and follow up discussions were held as necessary.

18. As a result of those negotiations, and after considering the Buyer'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 the Buyer for the Purchased Assets (as described above, the Purchased Assets include the IP Addresses and certain assets relating to the Major Appliances Protection Business, including the Parts Inventory and the Customer Lists). After carefully considering the Buyer's offer, including being satisfied that the Purchase Price being offered is fair and reasonable, the Board determined that the Buyer's offer was in the best interests of the Applicants and their stakeholders.

19. In coming to this view, Sears Canada and the Special Committee, in consultation with the Sale Advisor, took into account that the Buyer represented that, as of August 31, 2017, the Parent and its subsidiaries had unrestricted cash and cash equivalents recorded on their consolidated balance sheet and, as of the date of the APA, the Buyer had committed equity which, 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 the APA.

The Asset Purchase Agreement

20. On December 19, 2017, Sears Canada, the Buyer, the Parent and the Escrow Agent entered into the APA. The APA provides for, among others things, the following:

- (a) The Buyer has paid a deposit of approximately 3 percent of the Purchase Price to the Monitor to be held in trust in an interest-bearing account.
- (b) On Closing, the Buyer will pay the Purchase Price, exclusive of all applicable sales and transfer taxes. The Deposit and all earnings thereon will be credited to Sears Canada and applied to the Purchase Price, and the Buyer will pay the balance of the Purchase Price by wire transfer of immediately available funds. The Deposit will be forfeited to Sears Canada, less any applicable withholding tax, if the Closing does not occur by reason of the default of the Buyer. The Deposit will be returned to the Buyer, less any applicable withholding tax, if the Closing does not occur for any other reason. The portion of the Purchase Price equal to the Escrow Amounts will be satisfied by the payment of such amounts by wire transfer of immediately available funds at Closing Time from the Buyer to an account of the Escrow Agent (i.e., the Monitor, solely in its capacity as holder of the Escrow Amounts pursuant to the APA), and will be disbursed by the Escrow Agent in accordance with Section

8.2 of the APA. The Escrow Amounts shall be invested by the Escrow Agent, in trust, in an interest bearing account or term deposit or guaranteed investment certificate until released in accordance with Section 8.2 or the earlier termination or non-completion of the APA. 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.

- (c) Sears Canada will 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, all of Sears Canada's right, title and interest in, to and under, or relating to, the Purchased Assets. The Purchased Assets shall not include any of the assets of Sears Canada that are not explicitly included in the definition of Purchased Assets in Section 2.1 of the APA.
- (d) The Parent unconditionally guarantees to Sears Canada the due, punctual and complete performance of all obligations of the Buyer under the APA, including complete payment of the Purchase Price by the Buyer. Such guarantee is provided up to a maximum value of the Purchase Price.
- (e) Sears Canada covenants between the date of the APA and Closing to, among other things, use commercially reasonable efforts to preserve the Purchased Assets and will not, without the prior written consent of the Buyer, otherwise dispose of any of the Purchased Assets.
- (f) Closing will take place on a date no later than two (2) business days after the conditions set forth in Article 6 of the APA 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, however, that the Closing Date shall be no later than December 31, 2017 (or such other date agreed to in writing by the Buyer and Sears Canada (with the consent of the Monitor)).

- (g) Among other conditions to Closing, the Approval and Vesting Order shall have been issued and entered and such orders shall not have been reversed, modified, amended or stayed.
- (h) Except for the issuance of the Approval and Vesting Order, no other authorization, consent or approval is required in connection with the execution, delivery or performance of the APA by the Buyer. The Buyer acknowledges that Sears Canada's right to transfer its interest in and right to use the IP Addresses to the Buyer are subject to the terms and conditions set forth in the transfer policies of the American Registry of Internet Numbers ("ARIN"). Sears Canada and the Buyer shall cooperate to obtain ARIN's approval for the transfer of Sears Canada's interest in the IP Addresses to the Buyer at the Buyer's expense, in accordance with Section 8.2 of the ARIN Number Resource Policy Manual (or any other applicable policies, guidelines or regulations developed by ARIN). Sears Canada will execute any documents necessary to effectuate such transfer, provided that such documents do not impose any liability or further obligation upon Sears Canada.
- (i) In the event that ARIN does not approve the transfer of Sears Canada's interest in the IP Addresses to the Buyer, the Buyer may designate one or more other entities acceptable to ARIN as the transferee of the IP Addresses.

- (j) For greater certainty, closing of the transactions contemplated by the APA are not conditional on ARIN approving the transfer of the IP Addresses to the Buyer or its designee. In the event that ARIN does not approve the transfer of the Seller's interest in the IP Addresses to the Buyer or its designee, the Buyer will complete the transactions contemplated by this Agreement without reduction of the Purchase Price.
- (k) From and after the Closing until the Release Date (defined in the APA as May 15, 2018), Sears Canada shall retain registered ownership in and the right to use the Retained IP Addresses (as defined in the APA). On the Release Date, Sears Canada shall provide the Buyer with the administrative information in Sears Canada's possession that is necessary to change the registration information associated with and transfer registered ownership in the Retained IP Addresses to the Buyer (the "**Retained IP Address Registration Information**").
- (l) Upon receipt of the Retained IP Address Registration Information, the Buyer shall promptly, and in any event within five Business Dates after the Release Date, send a notice to the Escrow Agent and Sears Canada which identifies the Retained IP Addresses for which it has received the Retained IP Address Information, if any. Upon receipt of this notice from the Buyer and a joint direction in writing executed by the Buyer and Sears Canada setting out the amounts of the Escrow Funds to be delivered and the parties to which the Escrow Funds will be delivered (the "**Joint Direction**"), the Escrow Agent shall transfer the Escrow Amount(s) that correspond to the Retained IP Addresses for which the Retained IP Address Registration Information has been provided by wire transfer of immediately

available funds to Sears Canada. All interest earned on the released portion of the Escrow Amount(s) shall be paid to the Buyer. Notwithstanding the foregoing, the Buyer agrees that it shall not take any steps to register the transfer of the Retained IP Addresses until the applicable Escrow Amount(s) is released by the Escrow Agent or the Court to Sears Canada in accordance with Section 8.2 of the APA. The Escrow Agent shall not be required to verify or determine the validity of the Joint Direction or any written confirmation received pursuant to Section 8.2 of the APA.

- (m) If Sears Canada fails to provide the Retained IP Address Registration Information within five Business Days following the Release Date, the Buyer shall promptly, and in any event within a further five Business Days, send a notice to the Escrow Agent and Sears Canada which identifies the Retained IP Addresses for which it has not received the Retained IP Address Registration Information, if any. Upon receipt by the Escrow Agent of such notice and a Joint Direction: (i) the Escrow Amount(s) that correspond to the Retained IP Addresses for which the Retained IP Address Registration Information has not been provided (and all interest accrued thereon) will be returned to the Buyer by the Escrow Agent, (ii) the Purchase Price will be reduced by the amount of the applicable Escrow Amount(s), and (iii) ownership of the applicable Retained IP Addresses will be transferred to Sears Canada.
- (n) In the event of (i) a dispute between the Parties as to the entitlement to the Escrow Amounts and any interest earned thereon, or (ii) the Escrow Agent does not receive a Joint Direction within ten Business Days following the Release Date, the Escrow Agent may in its sole discretion pay the Escrow Amounts (or any part thereof) and

any interest earned thereon into the Court, whereupon the Escrow Agent shall have no further obligations relating to the Escrow Amounts. For greater certainty, in the event of such dispute, registered ownership shall remain with Sears Canada and only transfer upon further Order of the Court, and, notwithstanding the foregoing or anything else contained in the APA, each of Sears Canada and the Buyer acknowledge and agree that the Escrow Agent's obligations are limited to those set out in Section 8.2 of the APA.

- (o) The proposed Approval and Vesting Order provides that pursuant to clause 7(3)(c) of the *Canada Personal Protection and Electronic Documents Act*, or any similar provision of any applicable provincial private-sector privacy legislation, Sears Canada is authorized and ordered to disclose to the Buyer the Disclosed Personal Information in accordance with and subject to the APA.
- (p) Subject to the terms of the APA, the Buyer is purchasing, accepting and assuming the Purchased Assets on an "as is, where is" basis.
- (q) The transaction does not contemplate the continued employment of any associates related to Sears Canada's Major Appliances Protection Agreement Business.
- (r) The APA may be mutually terminated by written consent (with the consent of the Monitor) or on further order of the CCAA Court, or by either the Buyer or Sears Canada (with the consent of the Monitor) if Closing has not occurred on or before December 31, 2017 and the Parties have not agreed in writing to its extension, or by either the Buyer or Sears Canada upon permanent denial of the Approval and Vesting Order, or if there has been a material breach by Sears Canada or the Buyer as laid out in Section 10.1 of the APA.

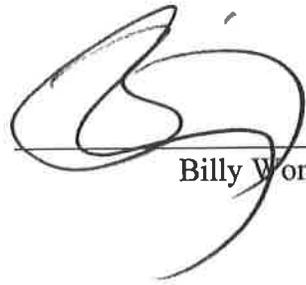
- (s) Within five Business Days of Closing or such later date agreed to by the Parties, the Buyer will take possession of the Purchased Assets wheresoever situated at Closing and shall be responsible for removing the Parts Inventory from the Premises by the end of such period. Sears Canada shall furnish the Buyer and its representatives, at no cost to the Buyer, reasonable access to the Premises and the Parts Inventory at all times during normal business hours which, for greater certainty, shall include access to the Premises after Closing for a period of no less than five (5) Business Days following Closing to permit the Purchaser to remove the Parts Inventory from the Premises. The Buyer's right of access shall be exercised with care and in compliance with all policies and procedures of Sears Canada, and the Buyer shall be responsible for all freight costs associated with removing the Parts Inventory from the Premises. The Buyer acknowledges that Sears Canada is packaging the Parts Inventory for removal by the Buyer and the access rights to the Premises pursuant to Section 8.5(d) of the APA and any rights under Section 8.1 of the APA do not include a right to inspect or count the Parts Inventory prior to Closing and its removal from the Premises. The Buyer shall indemnify Sears Canada for any damage resulting from the removal of the Purchased Assets from the Premises.
- (t) Notwithstanding anything in the APA to the contrary, in the case of damage or loss to the Purchased Assets on or prior to Closing that has reduced the aggregate market value of the Purchased Assets by less than the amount listed in Section 8.9 of the APA, the Buyer will complete the transactions contemplated by the APA without reduction of the Purchase Price.

Conclusion

21. For all of the foregoing reasons, the Applicants believe that 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
December 19, 2017.

Waleed Malik
Commissioner for Taking Affidavits



Billy Wong

TAB A

THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF BILLY WONG
SWORN BEFORE ME ON THIS 19th DAY OF DECEMBER, 2017

Waleed Malik

A Commissioner for Taking Affidavits.

ASSET PURCHASE AGREEMENT

SEARS CANADA INC.

as Seller

- and -

BUYERS GROUP OF MISSISSAUGA INC.

as Buyer

- and -

solely for purposes of Sections 7.1 and 12.1 hereof,

DIRECTBUY HOME IMPROVEMENT INC.

as Parent

- and -

solely for the limited purpose of acting as Escrow Agent for purposes of Section 8.2 hereof,

**FTI CONSULTING CANADA INC., as court-appointed Monitor of Sears
Canada Inc.**

as Escrow Agent

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of December 19, 2017

AMONG:

SEARS CANADA INC., a corporation governed by the laws of Canada (the “**Seller**”)

- and -

BUYERS GROUP OF MISSISSAUGA INC., a corporation governed by the laws of Ontario (the “**Buyer**”)

- and –

solely for purposes of Sections 7.1 and 12.1 hereof, **DIRECTBUY HOME IMPROVEMENT INC.**, a corporation governed by the laws of Delaware (“**Parent**”)

- and –

solely for the limited purpose of acting as Escrow Agent for purposes of Section 8.2 hereof, **FTI CONSULTING CANADA INC.**, as court-appointed Monitor of Sears Canada Inc.

RECITALS:

- A. On the Filing Date, the Seller 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 the SISP Order Date, the CCAA Court granted the SISP Order which, among other things, approved the SISP. The SISP Order and the SISP govern 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.
- C. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- D. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets, 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) **“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.
- (b) **“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.
- (c) **“Allocation Statement”** has the meaning given to such term in Section 3.2.
- (d) **“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 or any of the Purchased Assets.
- (e) **“Approval and Vesting Order”** means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(e) (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 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, 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).
- (f) "**ARIN**" means the American Registry of Internet Numbers.
- (g) "**Business**" means the operations and activities necessary and exclusively related to the Seller's Major Appliances Protection Agreement Business, which for greater certainty includes the sale of protection agreements on major appliances to retail customers of the Sears Group.
- (h) "**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.
- (i) "**Buyer**" has the meaning given to such term in the preamble to this Agreement.
- (j) "**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).
- (k) "**CCAA Court**" means the Ontario Superior Court of Justice (Commercial List).
- (l) "**CCAA Proceedings**" means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. CV-17-11846-00CL).
- (m) "**Claims**" includes all claims, demands, complaints, grievances, actions, applications, suits, notices of violations, 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.
- (n) "**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.
- (o) "**Closing Date**" means a date no later than two (2) 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 the Sunset Date.

- (p) **“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.
- (q) **“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 Time shall take place.
- (r) **“Commitment Letter”** has the meaning given to such term in Section 5.3.
- (s) **“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, Personal Information, any information relating to the Seller and its 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.
- (t) **“Customer Lists”** means any and all lists of current and past customers of the Business, including any and all information relating in any way to the use of such lists that can be separated from the Seller’s other information without material cost, including, to the extent that the Seller is in possession of such information:
- (i) the name, mailing address, e-mail address, phone numbers and any other contact information for such customers;
 - (ii) purchase history for such customers at a transaction level (including dollar amounts, dates, and items purchased);
 - (iii) the terms of any extended warranties provided or sold to such customers; and
 - (iv) any other Personal Information of such customers.
- For greater certainty, excluded from such information will be credit card numbers and other information to the extent disclosure of such information is prohibited by Applicable Law.
- (u) **“Deposit”** means the amount of [REDACTED] delivered by the Buyer to the Monitor on August 31, 2017 in accordance with the SISP.
- (v) **“Disclosed Personal Information”** has the meaning given to such term in Section 5.101(a).

- (w) “**Encumbrance**” means any security interest, lien, deemed trust (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.
- (x) “**Escrow Agent**” means the Monitor, solely in its capacity as holder of the Escrow Amounts pursuant to this Agreement;
- (y) “**Escrow Amount**” means:
- (i) with respect to Retained IP Addresses 142.93.0.0/16, [REDACTED];
 - (ii) with respect to Retained IP Addresses 204.225.80.0/22, [REDACTED]; and
 - (iii) with respect to Retained IP Addresses 204.225.96.0/23, [REDACTED].
- (z) “**Excluded Assets**” has the meaning given to such term in Section 2.2.
- (aa) “**Excluded Liabilities**” has the meaning given to such term in Section 2.3.
- (bb) “**Filing Date**” means June 22, 2017.
- (cc) “**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.
- (dd) “**General Assignments and Bills of Sale**” means the general assignments and bills of sale for the Purchased Assets, in a form reasonably satisfactory to the Seller and the Buyer.
- (ee) “**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 a Seller, the Buyer or the Purchased Assets 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.

- (ff) **“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 any of the Purchased Assets by or from any Governmental Authority.
- (gg) **“GST”** means goods and services tax payable under the GST and HST Legislation.
- (hh) **“GST/HST and QST Certificate, Undertaking and Indemnity”** has the meaning given to such term in Section 8.7(g).
- (ii) **“GST and HST Legislation”** means Part IX of the *Excise Tax Act* (Canada).
- (jj) **“HST”** means harmonized sales tax payable under the GST and HST Legislation.
- (kk) **“including”** and **“includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words **“without limitation”**.
- (ll) **“Initial Order”** means the Initial Order granted by the CCAA Court on June 22, 2017 pursuant to which the Seller 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).
- (mm) **“IP Addresses”** means the following internet protocol address blocks: 142.190.0.0/16; 142.93.0.0/16; 204.225.72.0/21; 204.225.80.0/22; 204.225.96.0/23.
- (nn) **“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.
- (oo) **“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.
- (pp) **“NDA”** means the confidentiality, non-disclosure and non-use agreement between Parent and the Seller dated August 8, 2017.
- (qq) **“Order”** means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (rr) **“Parent”** has the meaning given to such term in the preamble to this Agreement.
- (ss) **“Parties”** means the Seller and the Buyer collectively, and **“Party”** means either the Seller or the Buyer, as the context requires.

- (tt) **"Parts Inventory"** means the inventory owned by the Seller listed on Schedule 2.1(a) that constitutes parts for the Business located at the Premises.
- (uu) **"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.
- (vv) **"Personal Information"** means information about an identified or identifiable natural Person, or information that is otherwise considered personal information under Applicable Laws, in the custody or control of the Seller, including without limitation a natural Person's name, street address, telephone number, e-mail address, social insurance number, driver's license number, passport number, credit card number, or user or account number, or any other piece of information that, individually or when combined with other information, allows the identification of a natural Person.
- (ww) **"Premises"** means the Seller's Calgary distribution centre located at 25 Dufferin Pl SE, Calgary, AB T2C 4W3.
- (xx) **"Purchase Price"** has the meaning given to such term in Section 3.1.
- (yy) **"Purchased Assets"** has the meaning given to such term in Section 2.1.
- (zz) **"QST"** means the Québec sales tax payable under the QST Legislation.
- (aaa) **"QST Legislation"** means *An Act Respecting the Québec Sales Tax (Québec)*.
- (bbb) **"Release Date"** means May 15, 2018.
- (ccc) **"Retained IP Addresses"** means the following internet protocol address blocks: 142.93.0.0/16; 204.225.80.0/22; 204.225.96.0/23
- (ddd) **"Retained IP Address Registration Information"** has the meaning given to such term in Section 8.2(b).
- (eee) **"Sears Group"** has the meaning given to such term in the preamble to this Agreement.
- (fff) **"Seller Parties"** has the meaning given to such term in Section 8.6(b).
- (ggg) **"Seller"** has the meaning given to such term in the preamble to this Agreement.
- (hhh) **"SISP"** means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (iii) **"SISP Order"** means the Order granted by the CCAA Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.

- (jjj) “**SISP Order Date**” means July 13, 2017.
- (kkk) “**Sunset Date**” has the meaning given to such term in Section 10.1(b).
- (lll) “**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.

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 the Seller'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 12.7 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(e)	Form of Approval and Vesting Order
Schedule 2.1(a)	Parts Inventory

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, 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, all of the Seller's right, title and interest in, to and under, or relating to, the following assets, property and undertaking owned by the Seller (collectively, the "**Purchased Assets**"):

- (a) *Parts Inventory* – the Parts Inventory;
- (b) *IP Addresses* – the Sellers' interest in the registration right to the IP Addresses;
and
- (c) *Customer Lists* – the Customer Lists.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the assets of the Seller that are not explicitly included in the definition of "Purchased Assets" in Section 2.1 (collectively, the "**Excluded Assets**").

2.3 Excluded Liabilities

All other liabilities of the 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 the liabilities and obligations relating to the Purchased Assets that arise in respect of and relate to the period on and after the Closing Time which shall be assumed by the Buyer as of the Closing Time, 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 (collectively, the "**Excluded Liabilities**").

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 the amount of [REDACTED] in cash.

3.2 Purchase Price Allocation

The Purchase Price shall be allocated among the Purchased Assets as follows:

- (a) [REDACTED] to the IP Addresses; and
- (b) [REDACTED] to the Parts Inventory and Customer Lists, apportioned as set forth in the "Extended Cost" column of the table at Schedule 2.1(a).

(the "Allocation Statement").

The Buyer and the Seller shall: (a) report the purchase and sale of the Purchased Assets in any income Tax returns relating to the transactions contemplated in this Agreement in accordance with the Allocation Statement; and (b) act in accordance with the Allocation Statement in the preparation, filing and audit of any Tax return.

3.3 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 portion of the Purchase Price equal to the Escrow Amounts will be satisfied by the payment of such amounts by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Escrow Agent specified in writing by the Seller not less than two (2) Business Days prior to the Closing Date, and will be disbursed by the Escrow Agent in accordance with Section 8.2 of this Agreement; and
 - (iii) 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.

- (b) 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 3.3(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 due to a default by Buyer hereunder 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. 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
 - (i) returned to the Buyer, less any applicable withholding tax, if the Closing does not occur for any reason other than a default by Buyer hereunder; the Buyer shall have no further recourse against the Seller.
- (c) The Escrow Amount shall be invested by the Escrow Agent, in trust, in an interest bearing account or term deposit or guaranteed investment certificate until released in accordance with Section 8.2 or the earlier termination or non-completion of this Agreement.

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 federal laws of Canada.

4.2 Ownership of Purchased Assets

The Seller owns the Parts Inventory, the Customer Lists and an interest in the registration right to the IP Addresses (which interest is subject to ARIN's policies).

4.3 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;

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- (ii) carry out its obligations under this Agreement and the Closing Documents;
and
 - (iii) except for the IP Addresses, own or lease and to operate and use the Purchased Assets;
- (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.

4.4 Residence of the Seller

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

4.5 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 number to the Buyer prior to Closing.

4.6 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 Purchased Assets or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.6 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 its sale of the Purchased Assets:

5.1 Corporate Existence

The Buyer is a corporation duly formed, validly existing and in good standing under the laws of Ontario.

5.2 Residence of the Buyer

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

5.3 Financial Ability

- (a) As of August 31, 2017, the Parent and its subsidiaries had unrestricted cash and cash equivalents recorded on their consolidated balance sheet of approximately [REDACTED]. As of the date hereof, subject to applicable borrowing conditions, the Buyer has committed equity in the amount of up to [REDACTED] pursuant to an executed commitment letter (the "**Commitment Letter**") (a copy of which has been provided to the Seller), which 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.
- (b) The Commitment Letter, in the form so delivered, is a valid and legally binding obligation of the Buyer, and to the knowledge of the Buyer, the other parties thereto, and is enforceable by the Buyer in accordance with its terms, and is in full force and effect. The Buyer has fully paid any and all commitment fees or other fees required to be paid by the Buyer prior to the date of this Agreement pursuant to the terms of the Commitment Letter. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default on the part of the Buyer under the Commitment Letter. As of the date of this Agreement, the Buyer has no reason to believe that it will be unable to satisfy on a timely basis any term or condition of closing to be satisfied by it contained in the Commitment Letter. Each Commitment Letter constitutes, as of the date of this Agreement, the entire and complete agreement between the parties thereto with respect to the financing contemplated thereby (other than any fee letter executed in connection therewith), and, except as set forth, described or provided for therein, as of the date of this Agreement, (i) there are no conditions precedent to the respective obligations of the parties under the particular Commitment Letter, and (ii) there are no contractual contingencies or other

provisions under any agreement (including any side letters) relating to the transactions contemplated by this Agreement to which the Buyer or any of its affiliates is a party that would permit a reduction of the total amount of the financing contemplated under the Commitment Letter below the amount required to enable to the Buyer to have sufficient funds available to pay the Purchase Price or impose any additional condition precedent to the availability of the financing under the Commitment Letter.

5.4 Absence of Conflicts

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.

5.5 Due Authorization and Enforceability of Obligations

The Buyer and Parent have all necessary corporate power, authority and capacity to enter into and deliver this Agreement, the Commitment Letter and the Closing Documents, and to carry out their respective obligations thereunder. 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.

5.6 Approvals and Consents

Except for the issuance of the Approval and Vesting Order and the approval of ARIN, 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.

5.7 GST, HST and QST Registration

The Buyer is or will be duly registered under subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and to the extent required by applicable law under the 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 8.7(g).

5.8 IP Addresses

As of Closing and each Release Date, the Buyer is qualified pursuant to ARIN's policies to receive the Seller's interest in the IP Addresses.

5.9 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.

5.10 Personal Information

- (a) The Buyer shall be solely responsible, and shall take all action as may be required, for the lawful disclosure by the Seller to, and corresponding collection by, the Buyer of the Customer Lists and any other Personal Information disclosed in connection with the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereto (the "**Disclosed Personal Information**"). The Buyer agrees to:
 - (i) use and disclose the Disclosed Personal Information solely for the purposes for which the Personal Information was collected, permitted to be used or disclosed before the transactions contemplated by this Agreement are completed;
 - (ii) protect the Disclosed Personal Information by security safeguards appropriate to the sensitivity of the information;
 - (iii) give effect to any withdrawal of consent by an individual to the collection, use or disclosure of the Disclosed Personal Information; and
 - (iv) notify individuals, including affected customers, within a reasonable time after the transaction is completed, that their Personal Information has been disclosed in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereto.

- (b) The Buyer and the Seller acknowledge and agree that
 - (i) the disclosure by the Seller to, and subsequent collection and use by, the Buyer of the Disclosed Personal Information is necessary for the purposes of determining whether to proceed with the transactions contemplated by this Agreement, and if the transactions proceed, the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereto, and thereafter for the purposes of carrying on the Business; and
 - (ii) the primary purpose or result of the transaction is not the purchase, sale or other disposition or acquisition, or lease, of Personal Information.
- (c) If the transactions contemplated by this Agreement do not proceed, the Buyer shall return, or, at Seller's request, securely destroy, the Disclosed Personal Information.

5.11 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances) 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 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 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, INCLUDING 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, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY TRANSFERRED INTELLECTUAL PROPERTY OR ANY OF THE PURCHASED ASSETS, 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 with respect to the IP Addresses, the Seller's interest in and right to use the IP Addresses are subject to ARIN's policies, and the Seller's right and ability to transfer its interest in and right to use the IP Addresses to the Buyer are subject to the terms and conditions set forth in ARIN's transfer policies. No representation, warranty or covenant is expressed or implied by the Seller regarding any of the foregoing. For greater certainty, the closing of the transactions contemplated by this Agreement are not conditional on ARIN approving the transfer of the IP Addresses to the Buyer or its designee. In the event that ARIN does not approve the transfer of the IP Addresses to the Buyer or its designee, the Buyer will complete the transactions contemplated by this Agreement without reduction of the Purchase Price.
- (c) 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.

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

5.12 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;
- (b) *Court Orders* – the Approval and Vesting 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 in all material respects as at the Closing Time;
- (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 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, each acting in a commercially reasonable manner.

ARTICLE 7 GUARANTEE

7.1 Guarantee

The Parent unconditionally guarantees to the Seller the due, punctual and complete performance of all of the obligations of the Buyer under this Agreement, including the due, punctual and complete payment of the Purchase Price by the Buyer in accordance with ARTICLE 3 hereof, on and subject to the terms and conditions set forth herein, provided that the maximum amount payable by the Parent hereunder shall not exceed the Purchase Price less any amount paid by the Buyer to the Seller. The Seller is not bound to proceed against the Buyer or pursue any rights or remedies against the Buyer before being entitled to pursue its rights against the Parent.

ARTICLE 8 ADDITIONAL AGREEMENTS OF THE PARTIES

8.1 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 Purchased Assets, and shall furnish them with all such information relating to the Purchased Assets 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, and in such a manner as to maintain confidentiality, 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 consider 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 its affiliates are 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.

8.2 Use of the IP Addresses

- (a) Notwithstanding anything in this Agreement to the contrary, the Seller shall retain registered ownership in and the Buyer shall allow the Seller and its affiliates, at no cost to the Seller, to use the Retained IP Addresses from and after Closing until the Release Date.
- (b) On the Release Date, the Seller shall provide the Buyer with the administrative information in the Seller's possession that is necessary to change the registration information associated with the Retained IP Addresses and transfer registered ownership in the Retained IP Addresses to the Buyer (the "**Retained IP Address Registration Information**").

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- (c) Upon receipt of the Retained IP Address Registration Information, the Buyer shall promptly, and in any event within five Business Days after the Release Date, send a notice to the Escrow Agent and the Seller which identifies the Retained IP Addresses for which it has received the Retained IP Address Registration Information, if any. Upon receipt of this notice from the Buyer and a joint direction in writing executed by the Buyer and the Seller setting out the amounts of the Escrow Funds to be delivered and the parties to which the Escrow Funds will be delivered (the "**Joint Direction**"), the Escrow Agent shall transfer the Escrow Amount(s) that correspond to the Retained IP Addresses for which the Retained IP Address Registration Information has been provided by wire transfer of immediately available funds to the Seller. All interest earned on the released portion of the Escrow Amount shall be paid to the Buyer. Notwithstanding the foregoing, the Buyer agrees that it shall not take any steps to register the transfer of the Retained IP Addresses until the applicable Escrow Amount(s) is released by the Escrow Agent or the Court, as applicable, to the Seller in accordance with this Section 8.2.
- (d) If the Seller fails to provide the Retained IP Address Registration Information within five Business Days following the Release Date, the Buyer shall promptly, and in any event within a further five Business Days, send a notice to the Escrow Agent and the Seller which identifies the Retained IP Addresses for which it has not received the Retained IP Address Registration Information, if any. Upon receipt by the Escrow Agent of such notice and a Joint Direction: (i) the Escrow Amount(s) that correspond to the Retained IP Addresses for which the Retained IP Address Registration Information has not been provided (and all interest accrued thereon) will be returned to the Buyer by the Escrow Agent, (ii) the Purchase Price will be reduced by the amount of the applicable Escrow Amount(s), and (iii) ownership of the applicable Retained IP Addresses will be transferred to the Seller.
- (e) In the event (i) of a dispute between the Parties as to entitlement to the Escrow Amount and any interest earned thereon, or (ii) the Escrow Agent does not receive a Joint Direction within ten Business Days following the Release Date, the Escrow Agent may, in its sole, unfettered and unreviewable discretion, pay the Escrow Amount (or any part thereof) and any interest earned thereon into Court, whereupon the Escrow Agent shall have no further obligations relating to the Escrow Amount and any interest earned thereon or otherwise hereunder. For greater certainty, in the event of such dispute, registered ownership shall remain with the Seller and only transfer upon further Order of the Court.
- (f) The Escrow Agent shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction or any written confirmation received pursuant to this Section 8.2 and the Escrow Agent is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Escrow Agent of the Joint Direction.
- (g) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Seller and the Buyer acknowledges and agrees that: (i) the Escrow

Agent's obligations hereunder are and shall remain limited to those specifically set out in this Section 8.2; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Seller and not in its personal or corporate capacity, and the Monitor has no liability for taking any actions in furtherance of its responsibilities under this Section 8.2 whatsoever, in its personal or corporate capacity, or in its capacity as Escrow Agent, or otherwise.

8.3 Conduct of Business Until Closing Time

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

- (a) use commercially reasonable efforts to preserve the Purchased Assets; and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance on or otherwise dispose of any of the Purchased Assets; or (ii) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

8.4 Approvals and Consent

- (a) Subject to Section 8.2, as soon as reasonably possible following the date hereof, the Seller and the Buyer shall make all such filings and seek all such consents, approvals, permits and authorizations with any Governmental Authorities whose consent is required for consummation of the transactions contemplated by this Agreement, and the Buyer will request any expedited processing available.
- (b) Without limiting the generality of Section 8.4(a), the Seller and the Buyer shall cooperate to obtain ARIN's approval for the transfer of the Seller's interest in the IP Addresses to the Buyer at the Buyer's expense in accordance with Section 8.2 of the ARIN Number Resource Policy Manual (or any other applicable policies, guidelines or regulations developed by ARIN and established on its website, as may be amended and supplemented from time to time). Nothing in this Agreement is intended, nor shall be construed, as exempting the Seller or the Buyer from complying with those policies. The Seller shall execute any documents necessary to effectuate such transfer, including ARIN's standard attestation form provided that such documents do not impose any liability or further obligation upon the Seller. The Buyer shall diligently and expeditiously (i) take all steps and submit all documentation required by ARIN to complete the Buyer's request for such transfer with ARIN, and (ii) comply with all of ARIN's transfer policies, procedures and requirements, as conveyed by ARIN's personnel, to obtain ARIN's approval for, and to complete, such transfer.

- (c) In the event that ARIN does not approve the transfer of the Seller's interest in the IP Addresses to the Buyer, the Buyer may designate one or more other entities acceptable to ARIN as the transferee of the IP Addresses.

8.5 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.
- (d) The Seller shall furnish the Buyer and its representatives reasonable access to the Premises and the Parts Inventory at all times during normal business hours which, for greater certainty, shall include access to the Premises after Closing for a period of no less than five (5) Business Days following Closing to permit the Buyer to remove the Parts Inventory from the Premises. The Buyer's right of

access shall be exercised with care and in compliance with all policies and procedures of the Seller. The Buyer shall be responsible for all freight costs associated with removing the Parts Inventory from the Premises. The Buyer acknowledges that the Seller is packaging the Parts Inventory for removal by the Buyer and the access rights to the Premises pursuant to this Section 8.5(d) and any rights under Section 8.1 do not include a right to inspect or count the Parts Inventory prior to Closing and its removal from the Premises.

- (e) The Seller hereby covenants and agrees that it shall not use the Customer Lists or the Disclosed Personal Information for soliciting the past or current customers of the Business in connection with the Business or any similar business, or disclose the Customer Lists or the Disclosed Personal Information to any other Person who carries on or is engaged in or has a material ownership or other interest in a business that is the same as, similar to or competes with the Business, for any purpose whatsoever, except as required under applicable Law, without the prior written consent of the Buyer, which consent may be granted or withheld in the Buyer's absolute discretion. Notwithstanding the foregoing, the Buyer acknowledges and agrees that the Seller and the Monitor shall be entitled to use the Customer Lists and the Disclosed Personal Information as they determine is reasonably necessary to carry the administration of the CCAA Proceedings and any subsequent similar proceedings; to satisfy any audit, accounting, investigation or similar requirements and to settle any outstanding claims in respect of the Business.

8.6 Release; Acknowledgements; Indemnity

- (a) 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 the Buyer had, has or may have in the future to the extent relating to the Purchased Assets, the Excluded Assets or the Excluded Liabilities.
- (b) 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, damages and Claims arising from, in connection with or related in any manner whatsoever to the Buyer's access and/or removal of the Purchased Assets from the Premises, as applicable, in accordance with Sections 8.1 and 8.5(d).

8.7 Tax Matters

- (a) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the Allocation Statement, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. 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 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 directly 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 or Provincial Sales 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 section 167 of the GST and HST Legislation and Section 75 of the QST Legislation, and at the Buyer’s sole discretion, the Buyer and, as applicable, 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) 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.

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- (f) If requested by the Buyer and to the extent permitted thereunder, a 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 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 the 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 the Seller.
- (g) 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 8.7 (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 GST and HST, 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 such Seller to collect and remit any GST and HST 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 8.7 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 8.7 or the GST/HST and QST Certificate, Undertaking and Indemnity.

8.8 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.

8.9 Risk of Loss

The Purchased Assets shall be at the risk of the Seller until the Closing Time. At the Closing Time, title shall be deemed to vest to the Buyer and the Buyer shall take possession of the Purchased Assets wheresoever situated within five Business Days of the Closing Time or such later date agreed to by the Parties. The Buyer shall arrange its own insurance in respect of the Purchased Assets at the Closing Time and the Seller shall not assign any insurance policies to the Buyer. Notwithstanding anything in this Agreement to the contrary, in the case of damage or loss to the Purchased Assets on or prior to the Closing Time that has reduced the aggregate market value of the Purchased Assets by less than [REDACTED], the Buyer will complete the transactions contemplated by this Agreement without reduction of the Purchase Price.

ARTICLE 9 COURT ORDERS

9.1 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.
- (b) The Seller will provide the Buyer with draft court materials and an opportunity to provide comments on them before they are served and filed.
- (c) 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.

9.2 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 10 TERMINATION

10.1 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 Monitor) or on further order of the CCAA Court;
- (b) by the Seller (with the consent of the Monitor) or the Buyer if Closing has not occurred on or before December 31, 2017 or such later date agreed to in writing by both the Buyer and the Seller (with the consent of the Monitor) (the "Sunset

Date"); provided, that the terminating party is not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in ARTICLE 6 to not be satisfied;

- (c) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (d) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (e) 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);
- (f) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (g) by the Seller (with the consent of 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
- (h) 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 10.1 (other than pursuant to Section 10.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

10.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 10.1, 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 10.2 and Sections 3.3(b), 7.1, 8.6, 12.1, 12.3, 12.4, 12.5, 12.6 and 12.7 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 11 CLOSING

11.1 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.

11.2 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) the Customer Lists;
- (d) an executed copy of the Monitor's Certificate;
- (e) the certificates contemplated by Section 6.2(c);
- (f) Seller's HST registration number;
- (g) 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 8.7; and
- (h) 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.

11.3 Buyer's Deliveries at Closing

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price (less the amount of the Deposit);
- (b) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 8.7(b) hereof;
- (c) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Buyer;
- (d) the certificate contemplated by Section 6.3(c);

- (e) 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 8.7;
- (f) the GST/HST and QST Certificate, Undertaking and Indemnity;
- (g) 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.

11.4 Possession of Assets

Subject to Section 8.2, within five Business Days of Closing or such later date agreed to by the Parties, the Buyer will take possession of the Purchased Assets wheresoever situated at Closing and shall be responsible for removing the Parts Inventory from the Premises by the end of such period. 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 11.3.

11.5 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 8.7(b) 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).

11.6 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 12 GENERAL MATTERS

12.1 Confidentiality

The Buyer and Parent shall keep confidential all Confidential Information relating to the Seller, the Business, the Purchased Assets, the Excluded Assets, the Purchase Price and the Excluded Liabilities in accordance with the terms of the NDA (and the Buyer shall, for the avoidance of doubt, be considered an Interested Party Representative thereunder).

12.2 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 12.2, 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. 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.

12.3 Survival

None of the representations, warranties, covenants (except the covenants in ARTICLE 2, ARTICLE 3, ARTICLE 12 and Sections 7.1, 8.2, 8.5, 8.6, 8.7, 11.4, 12.1 and 12.4 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.

12.4 Expenses

Except as otherwise specifically provided herein, 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.

12.5 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.

12.6 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 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 Sections 8.2 and 8.6, 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.

12.7 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:

c/o DirectBuy Home Improvement Inc. fka CSC Generation
8450 Broadway
Merrillville IN 46410
Attention: Justin Yoshimura, CEO
Email: justin@ice.com

with copies (which shall not in themselves constitute notice) to:

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Attention: Trevor Courtis and Matthew Flynn

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Telephone: 416-601-7643
Facsimile: 416-868-0673
Email: tcourtis@mccarthy.ca

and

Cooley LLP
The Grade Building
1114 Avenue of the Americas
New York, NY 10036

Attention: Robert Winning
Telephone: (212) 479-6525
Email: rwinning@cooley.com

(b) in the case of a Notice to the Seller at:

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

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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.

12.8 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.

12.9 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: _____
Name:
Title:

BUYERS GROUP OF MISSISSAUGA INC.

By:  _____
Name: DYLAN K ASTLE
Title: COO

By:  _____
Name: JACK CARSKADDON
Title: CMO

solely for purposes of Sections 7.1 and 12.1 herein,

DIRECTBUY HOME IMPROVEMENT INC.

By:  _____
Name: DYLAN K ASTLE
Title: COO

solely for the limited purpose of acting as Escrow Agent for purposes of Section 8.2 herein,

FTI CONSULTING CANADA INC., in its court-appointed Monitor of Sears Canada Inc. and not in its personal or corporate capacity and without personal or corporate liability

Per: _____
Name:
Title:

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

SEARS CANADA INC.

By: _____
Name:
Title:

BUYERS GROUP OF MISSISSAUGA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

solely for purposes of Sections 7.1 and 12.1 herein,

DIRECTBUY HOME IMPROVEMENT INC.

By: _____
Name:
Title:

solely for the limited purpose of acting as Escrow Agent for purposes of Section 8.2 herein,

FTI CONSULTING CANADA INC., in its capacity as court-appointed Monitor of Sears Canada Inc. and not in its personal or corporate capacity and without personal or corporate liability

Per: 

Name: Steven Bissell
Title: Managing Director

SCHEDULE 1.1(E)
FORM OF APPROVAL AND VESTING ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

●, THE ●TH

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 – (Major Appliances Protection Agreement 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 the sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement between, among others, Sears Canada Inc. (the “**Seller**”), as vendor, Buyers Group of Mississauga Inc. (the “**Purchaser**”), as purchaser, and DirectBuy Home Improvement Inc., as parent, dated December 19, 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 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) 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 (but excluding the Retained IP Addresses (as defined in the APA)) 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 such 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 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* (Alberta) 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 such Purchased Assets are hereby expunged and discharged as against such Purchased Assets.

5. THIS COURT ORDERS that notwithstanding the foregoing, the Purchased Assets to be vested upon delivery of the Monitor’s Certificate shall not include the ownership rights held by the Seller in and to any Retained IP Addresses. Any ownership rights held by the Seller in and to any Retained IP Addresses shall be treated as Purchased Assets under this Order, and shall vest in accordance with paragraph 4 herein, only upon the release of the applicable Escrow Amount(s) to the Seller in accordance with Section 8.2 of the APA, without further Order of the Court or further action by the Monitor, the Purchaser or the Seller.

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. The

term “Net Proceeds” shall not include the Escrow Amount (as defined in the APA) or any portion thereof until such time as the Escrow Amount or such portion thereof has been released to the Seller in accordance with Section 8.2 of the APA.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, or any similar provision of any applicable provincial private-sector privacy legislation, the Seller is authorized and ordered to disclose to the Purchaser the Disclosed Personal Information in accordance with and subject to the APA.

9. 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.

10. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of the Seller 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 the Seller and the Agent dated October 10, 2017; and
- (b) the terms of the Liquidation Sale Approval Order granted October 13, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

SEALING

11. 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

12. 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.

13. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

14. 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, among others, Sears Canada Inc. (the "**Seller**"), as vendor, Buyers Group of Mississauga Inc. (the "**Purchaser**"), as purchaser, and DirectBuy Home Improvement Inc., as parent, dated December 19, 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) (excluding the Retained IP Addresses (as defined in the APA)), which vesting is to be effective with respect to such 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; (ii) the portion of

- 2 -

the Purchase Price equal to the Escrow Amounts (as defined in the APA) payable by the Purchaser to the Seller have been received by the Monitor, in its capacity as Escrow Agent (as defined in the APA); and (iii) the cash portion of the Purchase Price in addition to the Escrow Amount and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller, including transfer Taxes that would be applicable on transfer of the Retained IP Addresses (as defined in the APA), 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 portion of the Purchase Price equal to the Escrow Amounts payable by the Purchaser to the Seller have been received by the Monitor, in its capacity as Escrow Agent; and
3. The cash portion of the Purchase Price in addition to the Escrow Amount and all applicable sales and transfer Taxes payable by the Purchaser to the Seller, including transfer Taxes that would be applicable on transfer of the Retained IP Addresses (as defined in the APA) 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 2.1(a)
PARTS INVENTORY

(see attached)

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 21 ST
)	
JUSTICE HAINEY)	DAY OF DECEMBER, 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
(Major Appliances Protection Agreement 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 the sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement between, among others, Sears Canada Inc. (the “**Seller**”), as vendor, Buyers Group of Mississauga Inc. (the “**Purchaser**”), as purchaser, and DirectBuy Home Improvement Inc., as parent, dated December 19, 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 December 19, 2017 including the exhibits thereto, and the Ninth 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 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) 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 (but excluding the Retained IP Addresses (as defined in the APA)) 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 such 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 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* (Alberta) 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 such Purchased Assets are hereby expunged and discharged as against such Purchased Assets.

5. THIS COURT ORDERS that notwithstanding the foregoing, the Purchased Assets to be vested upon delivery of the Monitor's Certificate shall not include the ownership rights held by the Seller in and to any Retained IP Addresses. Any ownership rights held by the Seller in and to any Retained IP Addresses shall be treated as Purchased Assets under this Order, and shall vest in accordance with paragraph 4 herein, only upon the release of the applicable Escrow Amount(s) to the Seller in accordance with Section 8.2 of the APA, without further Order of the Court or further action by the Monitor, the Purchaser or the Seller.

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. The term "Net Proceeds" shall not include the Escrow Amount (as defined in the APA) or any portion thereof until such time as the Escrow Amount or such portion thereof has been released to the Seller in accordance with Section 8.2 of the APA.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, or any similar provision of any applicable

provincial private-sector privacy legislation, the Seller is authorized and ordered to disclose to the Purchaser the Disclosed Personal Information in accordance with and subject to the APA.

9. 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.

10. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of the Seller 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 the Seller and the Agent dated October 10, 2017; and
- (b) the terms of the Liquidation Sale Approval Order granted October 13, 2017 including the Sale Guidelines attached as Schedule "A" thereto.

SEALING

11. THIS COURT ORDERS that Confidential Appendix "C" to the Ninth 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

12. 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.

13. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

14. 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, among others, Sears Canada Inc. (the “**Seller**”), as vendor, Buyers Group of Mississauga Inc. (the “**Purchaser**”), as purchaser, and DirectBuy Home Improvement Inc., as parent, dated December 19, 2017 (the “**APA**”), a redacted copy of which is attached as Exhibit “A” to the Affidavit of Billy Wong dated December 19, 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) (excluding the Retained IP Addresses (as defined in the APA)), which vesting is to be effective with respect to such 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; (ii) the portion of the Purchase

Price equal to the Escrow Amount (as defined in the APA) payable by the Purchaser to the Seller has been received by the Monitor, in its capacity as Escrow Agent (as defined in the APA); and (iii) the cash portion of the Purchase Price in addition to the Escrow Amount and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller, including transfer Taxes that would be applicable on transfer of the Retained IP Addresses, 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;
2. The portion of the Purchase Price equal to the Escrow Amount payable by the Purchaser to the Seller has been received by the Monitor, in its capacity as Escrow Agent; and
3. The cash portion of the Purchase Price in addition to the Escrow Amount and all applicable sales and transfer Taxes payable by the Purchaser to the Seller, including transfer Taxes that would be applicable on transfer of the Retained IP Addresses, 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:

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 Buyers Group of Mississauga Inc. and DirectBuy Home Improvement Inc. returnable December 21, 2017)

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