Court File No. CV-13-10279-00CL

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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.
(the "APPLICANT")

MOTION RECORD OF ALLEN-VANGUARD CORPORATION
(Motion Regarding Extension and Scope of Stay, returnable October 29, 2013)

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Lawyers for Allen-Vanguard Corporation

TO: **THE SERVICE LIST**

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(the "APPLICANT")

NOTICE OF MOTION

(Motion Regarding Extension and Scope of Stay, returnable October 29, 2013)

Allen-Vanguard Corporation will make a Motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 29, 2013 at 10:00 a.m. or as soon after that time as the Motion can be heard, at the Court House, 330 University Avenue, 8th Floor, Toronto, Ontario, or at such other time and place as the Court may direct.

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

THE MOTION IS FOR:

(a) An Order, if necessary, validating and abridging the time for service and filing of this Notice of Motion and Motion Record, and dispensing with any further service thereof;

(b) An Order that the stay of proceedings imposed by the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 and any extensions made

thereto, shall not apply to the continuation of proceedings in Court File No. 08-CV-43188 and Court File no. 08-CV-43544, on such terms as are just;

(c) In the alternative, an Order confirming that the stay of proceedings imposed by the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 and any extensions made thereto, shall have no effect on the continuation of the proceedings in Court File No. 08-CV-43188 and Court File No. 08-CV-43544 against or in respect of any other party named therein, except for Growthworks Canadian Fund Ltd. ("Growthworks"), on such terms as are just;

(d) In the further alternative, an Order extending the Initial Order dated October 1, 2013 until November 12, 2013 and adjourning this motion as well as the motion made by Growthworks to extend the Stay Period (as defined in paragraph 14 of the Initial Order), and scheduling a date for the hearing of the motion; and

(e) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

(a) On October 1, 2013, the Honourable Mr. Justice Newbould granted an Initial Order, which included a stay of proceedings as against Growthworks until and including October 31, 2013, or until such later date as the Court may order;

(b) Growthworks now seeks an extension of the Stay Period to January 15, 2014;

(c) Although it was not disclosed by Growthworks in its materials filed in support of the Application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 or its subsequent motion to extend the Stay Period, Growthworks has been a

party to litigation with Allen-Vanguard Corporation ("Allen-Vanguard") since 2008, which relates to Allen-Vanguard's purchase of Growthworks' shares in Med-Eng Systems Inc. ("MES") in 2007;

(d) Allen-Vanguard entered into a Share Purchase Agreement, made as of August 3, 2007, with Growthworks and the other former majority shareholders of MES to purchase all of the shares of MES for approximately $600,000,000.00, plus an amount established at approximately $50,000,000.00 for the purpose of excess working capital (the "Share Purchase Agreement");

(e) The share purchase transaction closed on September 17, 2007 (the "Transaction");

(f) As part of the Share Purchase Agreement, the parties also entered into an Escrow Agreement, dated September 17, 2007 (the "Escrow Agreement"). The Escrow Agreement provides that $40,000,000.00 of the purchase price paid by Allen-Vanguard, plus accrued interest, is to be held in escrow to indemnify Allen-Vanguard for any claims which Allen-Vanguard may have resulting from breaches of representations, warranties and covenants committed by MES and in accordance with the terms of the Share Purchase Agreement (the "Indemnification Escrow Amount");

(g) Growthworks, Schroder Venture Managers (Canada) Limited, Schroder Ventures Holding Limited, Richard L'Abbé and 1062455 Ontario Inc. were the former majority shareholders of MES and are collectively referred to as the "Offeree Shareholders";

(h) The Offeree Shareholders are Defendants in an action commenced by Allen-Vanguard in Ottawa (Court File No. 08-CV-43544) in December 2008;

(i) In its Amended Statement of Claim, Allen-Vanguard has claimed against the Offeree Shareholders indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $650,000,000.00, of which $40,000,000.00 is to be distributed to Allen-Vanguard in accordance with the terms of the Escrow Agreement;

(j) The Offeree Shareholders held approximately 80% of the shares of MES immediately prior to the Transaction. Growthworks held approximately 12% of the shares of MES at that time;

(k) The entire Indemnification Escrow Amount continues to be held in escrow by Computershare Trust Company of Canada as a result of the litigation between Allen-Vanguard and the Offeree Shareholders;

(l) The Offeree Shareholders are also Plaintiffs in an action commenced in November 2008 in Ottawa (Court File No. 08-CV-43188). In that action, the Offeree Shareholders have sought a declaration that they are entitled to payment of the Indemnification Escrow Amount;

(m) Both of these actions have been ordered to be tried together by the same trial judge and were scheduled to proceed to trial in Ottawa on September 3, 2013;

(n) The trial was adjourned at the request of the Offeree Shareholders on the basis that the Offeree Shareholders intend to bring a motion for summary judgment;

(o) Allen-Vanguard intends to bring a motion to stay the Offeree Shareholders' summary judgment motion and to ensure that a new trial date will be fixed without further delay;

(p) Although the Initial Order stays the proceedings against Growthworks, there is no basis upon which Allen-Vanguard should be precluded from proceeding with the actions against the other non-debtor Offeree Shareholders;

(q) Allen-Vanguard's action against the Offeree Shareholders raises serious claims that have a real chance of success;

(r) Allen-Vanguard will experience significant prejudice if the stay of proceedings imposed by the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 is extended and precludes Allen-Vanguard from continuing its action against the Offeree Shareholders, or any of them;

(s) Growthworks will experience no prejudice if the litigation involving Allen-Vanguard proceeds at this time, with or without Growthworks' involvement;

(t) It is in Growthworks' interest to have an expeditious and final adjudication of the litigation involving Allen-Vanguard, since Growthworks has a significant interest in the Indemnification Escrow Amount;

(u) The litigation involving Allen-Vanguard:

(i) is unrelated to Growthworks' Application made under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36;

(ii) will have no effect on Growthworks' ability to continue its business;

(iii) will not interfere with the restructuring of Growthworks; and

(iv) will not distract Growthworks from the restructuring process;

(v) Growthworks has had, and will continue to have, very limited involvement in the litigation with Allen-Vanguard:

(i) the nature of the litigation is such that Growthworks' liability rests upon the evidence of others;

(ii) Allen-Vanguard has not alleged that Growthworks made any fraudulent misrepresentations, but rather that it is liable (along with the other Offeree Shareholders) under the terms of the Share Purchase Agreement for the fraudulent misrepresentations committed by MES and its former management;

(iii) Growthworks' involvement in the litigation is largely dependent upon an evidentiary record that is focused on the actions of MES and its former management;

(iv) of the 31 days of Examination for Discovery conducted to date in the litigation, Growthworks' representative has been examined for only one day (in August 2011) and it is unlikely that any further discovery of a Growthworks representative will be necessary; and

(v) the Schroder entities will continue to direct the course of the litigation on behalf of Growthworks and the other Offeree Shareholders;

(w) The litigation involving Allen-Vanguard has ground to a halt as a result of the stay of proceedings against Growthworks pursuant to the Initial Order dated October 1, 2013, which has prevented:

(i) the exchange of materials pursuant to the Court-ordered timetable in respect of the summary judgment motion brought by the Offeree Shareholders and the stay motion brought by Allen-Vanguard, which motions are to be heard in Ottawa by the Honourable Regional Senior Justice Hackland; and

(ii) the scheduling of a new trial date.

(x) The Affidavit material filed by Growthworks in this proceeding states that Growthworks is insolvent, despite having a total net asset value of approximately $84.62 million as at September 30, 2013;

(y) Allen-Vanguard requires time to conduct a Cross-Examination on the Affidavit material filed by Growthworks in this proceeding;

(z) The provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and the equitable jurisdiction of this Honourable Court;

(aa) Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*;

(bb) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

(a) The Affidavit of David E. Luxton, sworn October 28, 2013 and Exhibits attached thereto; and

(b) Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

October 28, 2013

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TO: **THE SERVICE LIST**

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(the "APPLICANT")

AFFIDAVIT OF DAVID E. LUXTON

I, DAVID E. LUXTON, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the current Chairman of the Board of Directors of Allen-Vanguard Corporation ("Allen-Vanguard"). I am also the former President and Chief Executive Officer of Allen-Vanguard. As such, I have personal knowledge of the matters to which I hereinafter depose, save and except where my knowledge is based on information and belief in which case I believe such information to be true.

2. Allen-Vanguard is in the business of developing and marketing technologies, tools and training for defeating and minimizing the effects of hazardous devices and materials. It also provides field and support solutions for protection and counter-measures in collaboration with military and security forces, major research institutes, prime contractors, systems integrators and emerging technology companies.

Allen-Vanguard Corporation Purchased Med-Eng Systems Inc.

3. In 2007, Allen-Vanguard entered into a Share Purchase Agreement, made as of August 3, 2007, with the former majority shareholders of Med-Eng Systems Inc. ("MES") to purchase all of the shares of MES for approximately $600,000,000.00, plus an amount established at approximately $50,000,000.00 for the purpose of excess working capital (the "Share Purchase Agreement"). A copy of the Share Purchase Agreement (without schedules) is attached hereto as **Exhibit "A"**. The share purchase transaction closed on September 17, 2007 (the "Transaction").

4. As part of the Share Purchase Agreement, the parties also entered into an Escrow Agreement, made as of September 17, 2007 (the "Escrow Agreement"). A copy of the Escrow Agreement is attached hereto as **Exhibit "B"**.

5. The Escrow Agreement provides that $40,000,000.00 of the Purchase Price paid by Allen-Vanguard, plus accrued interest, is to be held in escrow to indemnify Allen-Vanguard for any claims which Allen-Vanguard may have resulting from any breaches of representations, warranties and covenants of MES contained in the Share Purchase Agreement and in accordance with the terms of the Share Purchase Agreement (the "Indemnification Escrow Amount").

6. Growthworks Canadian Fund Ltd. ("Growthworks"), Schroder Venture Managers (Canada) Limited, Schroder Ventures Holding Limited, Richard L'Abbé and 1062455 Ontario Inc. were the former majority shareholders of MES and are collectively referred to as the "Offeree Shareholders".

7. The Offeree Shareholders held approximately 80% of the shares of MES immediately prior to the Transaction. The relative shareholdings of the Offeree Shareholders at that time is described in the table below:

Offeree Shareholder(s)	**Approximate Percentage Shareholdings in MES Prior to September 17, 2007**
Schroder Venture Managers (Canada) Limited	30%
Schroders Venture Holdings Limited	16%
Richard L'Abbé / 1062455 Ontario Inc.	21%
Growthworks Canadian Fund Ltd.	12%

8. Following Allen-Vanguard's acquisition of MES, MES was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007. The name of the amalgamated corporation was subsequently changed to Allen-Vanguard Technologies Inc. ("AVTI") on or about April 1, 2008. A copy of the Articles of Amalgamation are attached hereto as **Exhibit "C"**.

9. On January 1, 2011, AVTI amalgamated with Allen-Vanguard. The name of the amalgamated corporation was changed to Allen-Vanguard Corporation. A copy of the Articles of Amalgamation are attached hereto as **Exhibit "D"**.

The Litigation History Between the Offeree Shareholders and Allen-Vanguard

i. The Notice of Claim and Notice of Objection

10. Following the close of the Transaction, Allen-Vanguard became aware of misrepresentations as well as breaches of representations, warranties and covenants made by

MES, which entitle Allen-Vanguard to claim the Indemnification Escrow Amount as well as an additional amount for fraud committed by MES.

11. Therefore, on September 10, 2008, Allen-Vanguard delivered a Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement, setting out a detailed description of its claims. A copy of the Notice of Claim and the covering letter delivered by Allen-Vanguard to the Offeree Shareholders is attached hereto as **Exhibit "E"**.

12. On October 6, 2008, the Offeree Shareholders delivered a Notice of Objection on behalf of the Offeree Shareholders in respect of Allen-Vanguard's Notice of Claim. A copy of the letter from Robert Chapman of McCarthy Tétrault to Allen-Vanguard dated October 6, 2008 and the enclosed Notice of Objection, is attached hereto as **Exhibit "F"**.

ii. Actions Commenced by the Offeree Shareholders and Allen-Vanguard

13. On November 12, 2008, the Offeree Shareholders issued a Statement of Claim in Ottawa against Allen-Vanguard, Computershare Trust Company of Canada and AVTI (formerly MES). The Statement of Claim seeks a declaration that the Offeree Shareholders are entitled to payment of the Indemnification Escrow Amount. A copy of the Statement of Claim, dated November 12, 2008 (Court File No. 08-CV-43188) is attached hereto as **Exhibit "G"**.

14. Allen-Vanguard and AVTI delivered their Statement of Defence to the action commenced by the Offeree Shareholders on December 18, 2008. A copy of the Statement of Defence in Court File No. 08-CV-43188 is attached hereto as **Exhibit "H"**.

15. On the same day, Allen-Vanguard commenced an action in Ottawa against the Offeree Shareholders (Court File No. 08-CV-43544), claiming indemnification and/or damages for

fraudulent and/or negligent misrepresentation and breach of contract in the amount of $40,000,000.00. A copy of the Statement of Claim in Court File No. 08-CV-43544 is attached hereto as **Exhibit "I"**.

16. On February 10, 2009, the Offeree Shareholders delivered their Statement of Defence in Court File No. 08-CV-43544 and their Reply in Court File No. 08-CV-43188. A copy of the Statement of Defence and Reply of the Offeree Shareholders is attached hereto as **Exhibit "J"**.

17. Ronald G. Slaght, Eli S. Lederman and Ian MacLeod of Lenczner Slaght Royce Smith Griffin LLP are litigation counsel for Allen-Vanguard and Thomas Conway, Christopher Hutchison and Calina Ritchie of Cavanagh LLP are litigation counsel for the Offeree Shareholders in both proceedings.

iii. The Timmis Action

18. Allen-Vanguard is also involved in a related legal proceeding with Paul Timmis, the former Vice-President of Electronic Systems at MES. Mr. Timmis is one of the three members of the former management of MES whose knowledge is defined as the "knowledge" of MES under the express terms of the Share Purchase Agreement.

19. Shortly before the Transaction, Mr. Timmis negotiated a retention bonus in the amount of $19,000,000.00 with the Offeree Shareholders, which was to be held in escrow and eventually distributed to Mr. Timmis, provided that he fulfilled certain terms and conditions, and provided that he would continue to be employed by MES for an additional 3 years following the Transaction (the "Original Timmis Escrow Amount"). Mr. Timmis also negotiated and was paid an additional $5,000,000.00 on the closing of the Transaction.

20. The distribution of the Original Timmis Escrow Amount was governed by the terms of an escrow agreement dated September 17, 2007, entered into between Allen-Vanguard, MES, Mr. Timmis and the Escrow Agent.

21. Pursuant to section 4.06 and 5.02(f) of the Share Purchase Agreement, Allen-Vanguard deposited $19,000,000.00 in cash by wire transfer to the Escrow Agent in respect of the Original Timmis Escrow Amount.

22. Approximately four months later, on January 25, 2008, Allen-Vanguard and MES entered into a separation agreement with Mr. Timmis, which stipulated that Mr. Timmis was voluntarily resigning his employment with Allen-Vanguard and MES (the "Separation Agreement"). At that time and in connection with the Separation Agreement, $9,500,000.00 of the Original Timmis Escrow Amount was distributed to Allen-Vanguard and $4,750,000.00 less statutory deductions was distributed to Mr. Timmis. An additional $4,750,000.00 was held in escrow and to be distributed to Mr. Timmis in instalments upon the fulfilment of certain terms and conditions.

23. However, the Amended Timmis Escrow Agreement that was attached as a schedule to the Separation Agreement also provided that the payments of the additional amounts to Mr. Timmis totalling $4,750,000.00 were to be reduced by any claims which Allen-Vanguard may have with respect to the breaches of representations, warranties or covenants or other claims, as set out in the Share Purchase Agreement and Escrow Agreement.

24. In the months following the Separation Agreement, Allen-Vanguard made two instalment payments to Mr. Timmis. However, Allen-Vanguard became aware of several breaches of representations, warranties and covenants made by Mr. Timmis, among the other former

management of MES on behalf of MES, which disentitle Mr. Timmis to any further payments under the Amended Timmis Escrow Agreement.

25. On June 3, 2008, Allen-Vanguard notified Mr. Timmis' counsel in writing of the fact that a Notice of Claim was pending and therefore that it was withholding any further payment under the terms of the Amended Timmis Escrow Agreement.

26. On June 23, 2008, Mr. Timmis commenced an action (Court File No. 08-CV-41899) alleging, among other things, damages for breach of contract. Allen-Vanguard delivered its Statement of Defence and Counterclaim in which Allen-Vanguard pleads that it is not required to make any further payments to Mr. Timmis as a result of, among other things, the misrepresentations and breaches of representations, warranties and covenants made by MES. A copy of Allen-Vanguard's Amended Amended Statement of Defence and Counterclaim in Court File No. 08-CV-41899 is attached hereto as **Exhibit "K"**.

27. The Timmis action (Court File No. 08-CV-41899) has been conducted in parallel to Allen-Vanguard's litigation with the Offeree Shareholders and has been ordered to be tried at the same time as the action against the Offeree Shareholders.

iv. The Discovery Process

28. Documentary and oral discovery commenced in 2009, following the close of pleadings.

29. I have been the discovery representative for Allen-Vanguard in these actions, and have been examined for 21 days to date by counsel for the Offeree Shareholders. The following table lists the Examination for Discovery conducted by counsel for the Offeree Shareholders:

Party	Discovery Representative	Dates of Examination for Discovery
Allen-Vanguard Corporation	David E. Luxton	December 2, 2010 December 3, 2010 December 13, 2010 December 14, 2010 February 15, 2011 February 16, 2011 February 17, 2011 February 28, 2011 March 1, 2011 April 13, 2011 April 14, 2011 May 2, 2011 May 27, 2011 May 30, 2011 June 1, 2011 December 3, 2012 December 4, 2012 December 5, 2012 January 30, 2013 January 31, 2013 February 1, 2013

30. The following table lists the Examination for Discovery conducted by counsel for Allen-Vanguard to date in the actions involving the Offeree Shareholders:

Party/Parties	Discovery Representative	Dates of Examination for Discovery
Schroder Venture Managers (Canada) Limited and Schroder Ventures Holding Limited	Paul Echenberg	July 6, 2011 July 7, 2011 July 8, 2011 July 18, 2011 July 19, 2011 July 20, 2011
Richard L'Abbé and	Richard L'Abbé	July 25, 2011

1062455 Ontario Inc.		July 26, 2011 July 27, 2011
Growthworks Canadian Fund Ltd.	Richard Charlebois	August 15, 2011

31. The single day of discovery of Richard Charlebois (a retired employee of Growthworks Capital Ltd.) reflects the very limited involvement and role of Growthworks in the litigation.

v. The Timetable and Trial Date

32. The Offeree Shareholder actions and the Timmis action are case managed by Master Calum MacLeod in Ottawa.

33. On April 16, 2012, Master MacLeod scheduled the trial of the Offeree Shareholder actions for September 3, 2013. A copy of Master MacLeod's Endorsement dated April 16, 2012 is attached hereto as **Exhibit "L"**.

34. On December 4, 2012, Master MacLeod further ordered that the Offeree Shareholder actions and the Timmis action were to be heard at the same time by the same trial judge, commencing on September 3, 2013. A copy of the Endorsement and Order of Master MacLeod dated December 4, 2012 are attached hereto as **Exhibit "M"**.

vi. Allen-Vanguard Amended its Statement of Claim in Early 2013

35. On January 18, 2013, Allen-Vanguard completed its Examination for Discovery of Mr. Mr. Timmis.

36. In light of the evidence which was adduced from the discoveries in that action, Allen-Vanguard sought to amend its Statement of Claim to further particularize its claims for

fraudulent misrepresentation and to increase the damages claimed as it is entitled to do pursuant to the terms of the Share Purchase Agreement.

37. In February 2013, Allen-Vanguard brought a motion to amend its Statement of Claim against the Offeree Shareholders. The Offeree Shareholders opposed this motion.

38. Master MacLeod heard Allen-Vanguard's motion to amend the Statement of Claim on February 19, 2013 and subsequently granted leave to Allen-Vanguard to amend its Statement of Claim. A copy of Master MacLeod's Order dated February 19, 2013 is attached hereto as **Exhibit "N"**.

39. The Offeree Shareholders appealed Master MacLeod's Order dated February 19, 2013. The Honourable Regional Senior Justice Hackland heard their appeal on April 22, 2013 and dismissed the appeal on May 22, 2013. A copy of the Endorsement of the Honourable Regional Senior Justice Hackland dated May 22, 2013 is attached hereto as **Exhibit "O"**.

40. Allen-Vanguard's Amended Statement of Claim was issued on June 11, 2013. A copy of the Amended Statement of Claim is attached hereto as **Exhibit "P"**.

41. The Offeree Shareholders delivered a Demand for Particulars to counsel for Allen-Vanguard on April 19, 2013 and on May 15, 2013 Allen-Vanguard delivered a Response to the Demand for Particulars. A copy of the Demand for Particulars and the Response to the Demand for Particulars are attached hereto as **Exhibit "Q"**.

42. On June 28, 2013, the Offeree Shareholders delivered an Amended Statement of Defence. A copy of the Amended Statement of Defence is attached hereto as **Exhibit "R"**.

43. On August 22, 2013, Allen-Vanguard delivered a Reply to the Amended Statement of Defence. A copy of the Reply is attached hereto as **Exhibit "S"**.

vii. The Offeree Shareholders Sought to Adjourn the Trial

44. Although the Offeree Shareholders were unsuccessful in opposing the pleadings amendments, they nevertheless sought extensive terms associated with the amendments. In particular, they sought:

(a) an adjournment of the trial scheduled for September 3, 2013 to the second quarter of 2014;

(b) to schedule a motion for summary judgment in September 2013;

(c) an Order requiring Allen-Vanguard to produce all documents relating to the drafting and negotiation of the Share Purchase Agreement and Escrow Agreement, including solicitor-client privileged documents; and

(d) an extension of the deadline for delivery of the Offeree Shareholders' experts' reports to a date to be fixed by the Court following the release of reasons in respect of the Offeree Shareholders' motion for summary judgment.

45. On May 30, 2013, Master MacLeod released an Order & Direction which adjourned the trial scheduled for September 3, 2013. A copy of the Order & Direction dated May 30, 2013 is attached hereto as **Exhibit "T"**.

viii. The Subsequent Timetable and Motions

46. Following the adjournment of the trial, the Offeree Shareholders sought to schedule a motion with respect to privilege issues as well as a summary judgment motion. Allen-Vanguard also sought to schedule a motion to stay the Offeree Shareholders' summary judgment motion on the basis that a summary judgment motion is inappropriate at this stage of the litigation and in these factual circumstances.

47. At a Case Conference held on July 9, 2013, Master MacLeod ordered a timetable for the delivery of materials in respect of the privilege motion, the summary judgment motion and the motion to stay the summary judgment motion. The following table sets out the relevant deadlines:

Deadline	**Procedural Step**
September 6, 2013	The Offeree Shareholders are to serve their motion material for the privilege motion
September 30, 2013	Allen-Vanguard is to serve its responding material for the privilege motion
October 16, 2013	The Offeree Shareholders are to serve their motion material for the summary judgment motion
October 31, 2013	Allen-Vanguard is to serve its motion material to stay the summary judgment motion

A copy of Master MacLeod's Endorsement dated July 9, 2013 is attached hereto as **Exhibit "U"**.

48. Allen-Vanguard and the Offeree Shareholders subsequently agreed to extend the deadline for the delivery of material in respect of the privilege motion, but no agreement was made to extend the deadlines for the delivery of summary judgment motion material.

49. At a Case Conference held on October 2, 2013, Master MacLeod scheduled the Offeree Shareholders' privilege motion for December 10, 2013. He also advised the parties that the Honourable Regional Senior Justice Hackland agreed to hear the stay motion and the summary judgment motion. A copy of Master MacLeod's Endorsement dated October 2, 2013 is attached hereto as **Exhibit "V"**.

Allen-Vanguard Learns of the CCAA Application Filed by Growthworks

50. On October 10, 2013, counsel for the Offeree Shareholders advised Allen-Vanguard that Growthworks had applied for protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

51. In correspondence to Allen-Vanguard's counsel dated October 10, 2013, counsel for the Offeree Shareholders stated that "we will not be delivering motion materials or taking any steps until the stay is lifted" and also proposed to address the issue at an upcoming Case Conference before Master MacLeod scheduled for November 12, 2013. A copy of Thomas Conway's letter to Eli Lederman dated October 10, 2013 is attached hereto as **Exhibit "W"**.

52. Counsel for the Offeree Shareholders also wrote to Master MacLeod on October 10, 2013 to advise of the Initial Order made with respect to Growthworks on October 1, 2013. In that letter, counsel for the Offeree Shareholders stated the following:

> We have informed Lenczner Slaght of this development. We have also stated to them that, in light of this development, we cannot serve any motion materials or take any active steps in this litigation until we sort out the issues with GrowthWorks, the monitor or the presiding judge in the CCAA proceedings.

A copy of Thomas Conway's letter to Master MacLeod dated October 10, 2013 is attached hereto as **Exhibit "X"**.

53. On October 11, 2013, counsel for Allen-Vanguard wrote to Master MacLeod in response to the correspondence received from the Offeree Shareholders' counsel on October 10, 2013. In that letter, counsel for Allen-Vanguard acknowledged that the Initial Order stayed the proceedings against Growthworks, but that there was no basis for the other Offeree Shareholders not to comply with the timetable set by Master MacLeod:

> Although the Initial Order dated October 1, 2013 stays proceedings against Growthworks Canadian Fund Ltd., there is of course no stay of this proceeding against the Schroder Defendants, Mr. L'Abbe or 1062455 Ontario Inc.
>
> As a result, there is no basis for these defendants not to comply with the timetable set by this Court. Those Offeree Shareholders are still required to deliver their motion material for the summary judgment motion by October 16, 2013 and there is no reason why that deadline should not be complied with.
>
> The fact that all defendants are represented by Mr. Conway is not a factor that has any bearing on the obligations of the unaffected defendants to meet this Court's requirements.
>
> We are certainly prepared to convene a Case Conference to discuss the implications of the Initial Order on the proceedings against Growthworks. However, the Initial Order has no impact on the continuation of the proceedings against the remaining defendants.
>
> In the circumstances, we expect to receive the motion material of the unaffected Offeree Shareholders by October 16, 2013.

A copy of Eli Lederman's letter to Master MacLeod dated October 11, 2013 is attached hereto as **Exhibit "Y"**.

54. On October 15, 2013, counsel for the Offeree Shareholders sent a letter to counsel for Allen-Vanguard which stated the following:

> Your interpretation of Mr. Justice Newbould's order may well be correct, but regrettably it is not for Master MacLeod to say. If you are not correct, you are asking Master MacLeod to interpret and vary the order of a judge. A Master does not have the jurisdiction to vary the order of a judge of the Superior Court.
>
> As you know from the terms of Mr. Justice Newbould's order itself, there is, as is usual in CCAA proceedings, provision for another hearing to consider whether

> the Initial Order should be continued or varied in any material way. In our view, your concerns, which we share, should be addressed in that forum.
>
> As you will note, the Initial Order expires at the end of October, so we hope that we will know by then what GrowthWorks' continued involvement in the above-noted actions will be.
>
> A related issue, to which your letter makes only passing reference, is that of our joint retainer with the Offeree Shareholders. You do not appear to give this issue any serious consideration, but as you well know, we have been acting for all of the Offeree Shareholders on a joint retainer and must therefore receive the same instructions from all of them. At the moment, the court order prevents us from taking any further steps in the proceeding on behalf of GrowthWorks. As a consequence, we cannot take any fresh steps on behalf of any of our clients.
>
> I can assure you again that our clients are as anxious as yours is to move these proceedings along. We are hoping to have this issue resolved at the earliest possible opportunity, and to that end have been in contact with McCarthy Tétrault, counsel to GrowthWorks in the CCAA proceedings. You might consider contacting McCarthy Tétrault yourself to impress upon them the urgency of having this issue resolved.

A copy of Thomas Conway's letter to Eli Lederman dated October 15, 2013 is attached hereto as **Exhibit "Z"**.

Growthworks' Involvement in the Litigation is Extremely Limited

55. The litigation involving Allen-Vanguard:

(a) is unrelated to Growthworks's Application made under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36;

(b) will have no effect on Growthworks's ability to continue its business;

(c) will not interfere with the restructuring of Growthworks; and

(d) will not distract Growthworks from the restructuring process.

56. I am advised by counsel for Allen-Vanguard that Growthworks has had, and will continue to have, very limited involvement in the litigation with Allen-Vanguard, since:

(a) the nature of the litigation is such that Growthworks's liability rests upon the evidence of others;

(b) Allen-Vanguard has not alleged that Growthworks made any fraudulent misrepresentations, but rather that it is liable (along with the other Offeree Shareholders) under the terms of the Share Purchase Agreement for the fraudulent misrepresentations committed by MES and its former management;

(c) the involvement of Growthworks in the litigation is largely dependent upon an evidentiary record that is focused on the actions of MES and its former management;

(d) it is unlikely that there will be any further examination for discovery of a representative for Growthworks; and

(e) the Schroder entities will continue to direct the course of the litigation on behalf of Growthworks and the other Offeree Shareholders.

The Stay Will Prejudice Allen-Vanguard

57. Allen-Vanguard will experience significant prejudice if the stay of proceedings imposed by the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 is extended and precludes Allen-Vanguard from continuing its action against the Offeree Shareholders, or any of them.

58. Growthworks will experience no prejudice if the litigation involving Allen-Vanguard proceeds at this time against the other Offeree Shareholders.

59. Further, given Growthworks' limited role in the litigation, it would experience no prejudice even if the actions with Allen-Vanguard were permitted to proceed against it. Indeed, if Allen-Vanguard obtains judgment as against Growthworks while Growthworks is under *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 protection, Allen-Vanguard will seek direction from this Court before taking any steps to enforce any judgment against Growthworks.

60. I swear this affidavit in support of Allen-Vanguard's motion with respect to the scope of the stay imposed by the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 and pursuant to any extensions thereto, and for no improper purpose.

SWORN BEFORE ME at the City of Ottawa, in the Province of Ontario this 28th day of October, 2013.

Commissioner for Taking Affidavits
(or as may be)

DAVID E. LUXTON

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

Court File No. CV-13-10279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF DAVID E. LUXTON
(SWORN OCTOBER 28, 2013)

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
Barristers
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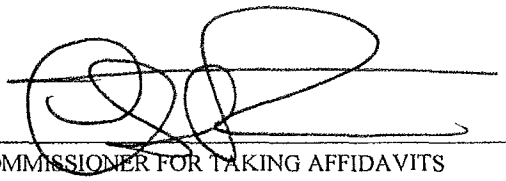
Lawyers for Allen-Vanguard Corporation

This is Exhibit "A" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

SHARE PURCHASE AGREEMENT

BETWEEN

ALLEN-VANGUARD CORPORATION

AND

OFFEREE SHAREHOLDERS

AND

MED-ENG SYSTEMS INC.

MADE AS OF

AUGUST 3, 2007

McCarthy Tétrault LLP

Ottawa, Ontario

SHARE PURCHASE AGREEMENT

THIS AGREEMENT is made as of August 3, 2007

BETWEEN

Allen-Vanguard Corporation, a corporation incorporated under the laws of the Province of Ontario (the **"Purchaser"**),

- and -

Offeree Shareholders (as defined below),

- and -

Med-Eng Systems Inc., a corporation incorporated under the laws of the Province of Ontario (the **"Corporation"**),

WHEREAS the Offeree Shareholders and the Minority Shareholders (as defined below) are the registered owners of all of the Shares (as defined below);

AND WHEREAS the Purchaser delivered to the Offeree Shareholders an offer dated August 2, 2007 to purchase all of the Shares on the terms and conditions set forth herein (the "Offer");

AND WHEREAS the Offeree Shareholders, who hold in excess of 70% of the aggregate of the Shares on a fully diluted basis (as defined in the Shareholders Agreement defined below), have accepted the Offer;

AND WHEREAS the Offeree Shareholders will deliver to all other Shareholders (the "Minority Shareholders"), together with a copy of the Offer, a notice (the "Drag Along Notice") indicating the intention of the Offeree Shareholders to accept the Offer and requiring the Minority Shareholders to sell the Shares held by them to the Purchaser in accordance with the Shareholders Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1- INTERPRETATION

1.01 **Definitions**

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

"**Affiliate**" means, with respect to any person, any other person that controls or is controlled by or is under common control with the referent person.

"**Agreement**" means this agreement, including its recitals and schedules, as amended from time to time.

"**Applicable Law**" means

(i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and

(ii) any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority having the force of law.

"**Audited Financial Statements**" has the meaning set out in Section 3.01(2)(b).

"**Balance Sheet**" means the consolidated balance sheet of the Corporation.

"**Balance Sheet Date**" means June 30, 2007.

"**Benefit Plans**" has the meaning set out in Section 3.01(8)(a).

"**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in Ottawa, Ontario.

"**Claims**" means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements.

"**Closing Date**" means August 31, 2007 or as soon as practicable thereafter following satisfaction of the conditions to closing set forth in Sections 5.01(d) and 5.02(e) or such other date, in each case as may be agreed to in writing by the Offeree Shareholders, the Corporation and the Purchaser.

"**Commitment Letters**" has the meaning set out in Section 3.03(g).

"**Compensation Policies**" has the meaning set out in Section 3.01(8)(b).

"**Competition Act**" means the *Competition Act* (Canada).

"**Corporation**" means Med-Eng Systems Inc.

"**CRA**" means the Canada Revenue Agency.

"**Defence Counsel**" has the meaning set out in Section 7.04.

"**Defence Notice**" has the meaning set out in Section 7.04.

"**Environmental Law**" means any Applicable Law relating to the environment including those pertaining to

(i) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances, and

(ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.

"Escrow Agent" means Computershare Trust Company of Canada.

"Escrow Agreement" means the escrow agreement among the Purchaser, the Offeree Shareholders and the Escrow Agent in a form acceptable to each of them, and providing for the escrow arrangements contemplated by this Agreement pertaining to the Working Capital Escrow Amount and the Indemnification Escrow Amount.

"Estimated Working Capital" has the meaning set out in Section 2.03(2).

"Governmental Authority" means any domestic or foreign legislative, executive, judicial or administrative body or law enforcement agency or person having or purporting to have jurisdiction in the relevant circumstances.

"HSR Act" has the meaning set out in Section 5.01(d).

"Hazardous Substance" means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Laws.

"Indemnification Escrow Amount" means $40 million, which amount will be deposited with the Escrow Agent as contemplated by Section 2.04, and will be held in accordance with the terms of the Escrow Agreement.

"Indemnitee" has the meaning set out in Section 7.04.

"Indemnitor" has the meaning set out in 7.04.

"Intellectual Property" means intellectual property of the Corporation and its Subsidiaries of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, Software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations, processes and processing methods, technology and techniques, and know-how.

"Inventories" means all inventories of the Corporation and its Subsidiaries, determined in accordance with generally accepted accounting principles, including all finished goods, work in progress, raw materials, supplies and spare parts.

"Investment Canada Act" means the *Investment Canada Act* (Canada).

"knowledge" means with respect to the Corporation, the actual knowledge of any of Danny Osadca, President and Chief Executive Officer, Blair Geddes, Chief Financial Officer and Secretary, and Paul Timmis, Vice President, Electronic Systems.

"Licensed Intellectual Property" means all Intellectual Property other than shrink-wrap software that is used by the Corporation but owned by another person and which is necessary to the operation of the business of the Corporation and its Subsidiaries as presently conducted.

"Material Adverse Effect" means, when used in connection with the Corporation and its Subsidiaries or their business, any change, event, violation, inaccuracy, circumstance or effect that is or could reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition, results of operations of the Corporation and its Subsidiaries other than as a result of (i) changes to the Canadian, United States or global economy, in each case as a whole; (ii) changes to the financial markets; (iii) changes adversely affecting the industry in which the Corporation and its Subsidiaries operate (so long as the Corporation and its Subsidiaries are not disproportionately affected thereby); (iv) the announcement or pendency of the transactions contemplated by this Agreement; (v) changes in laws; or (vi) changes in generally accepted accounting principles.

"Minority Shareholders" has the meaning set forth in the recitals hereto, being the Shareholders whose names and respective holdings are set forth in Schedule 3.02(e) other than the Offeree Shareholders.

"Non-Resident Shareholders" means the Shareholders whose names are identified as such in Schedule 3.02(e).

"Normalized Working Capital" has the meaning set out in Section 2.03(1).

"Offer" has the meaning set forth in the recitals hereto.

"Offeree Shareholders" means Richard L'Abbé, 1062455 Ontario Inc., GrowthWorks Canadian Fund Ltd., Schroder Canada and Schroder UK.

"Options" means options for the purchase of Class A Common Shares of the Corporation granted pursuant to the Stock Option Plan, being at the date of this Agreement options for an aggregate of 2,045,625 Class A Common Shares held by the individuals whose names and respective holdings are set forth in Schedule 3.01(1)(g)(i).

"Owned Intellectual Property" means all material Intellectual Property that is owned by the Corporation and which is necessary to the operation of the business of the Corporation and its Subidiaries as presently conducted.

"Partnership" means Med-Eng Technologies, a partnership formed under the laws of the Province of Alberta, of which the partners are 1252110 Alberta Ltd. and 1252144 Alberta Ltd.

"Permits" means all permits, consents, waivers, licences, certificates, approvals, authorizations, registrations, franchises, rights, privileges, quotas and exemptions, or any item with a similar effect, issued or granted by any person.

"**Personal Information**" means the type of information regulated by Privacy Laws and collected, used, disclosed or retained by the Corporation and its Subsidiaries including information regarding the customers, suppliers, employees and agents of the Corporation and its Subsidiaries, such as an individual's name, address, age, gender, identification number, income, family status, citizenship,

employment, assets, liabilities, source of funds, payment records, credit information, personal references and health records.

"**Privacy Laws**" means all Applicable Laws governing the collection, use, disclosure and retention of Personal Information, including the *Personal Information Protection and Electronic Documents Act* (Canada).

"**Privacy Policies**" means all privacy, data protection and similar policies adopted or used by the Corporation and its Subsidiaries in respect of Personal Information, including any complaints process.

"Purchase Price" has the meaning set out in Section 2.02.

"**Purchaser Indemnitees**" has the meaning set out in Section 7.02(1).

"Release" means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

"Schroder Canada" means Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3; Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6.

"Schroder UK" means Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme and SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc).

"Shareholder Indemnitees" has the meaning set out in Section 7.03(1).

"Shareholders" means the registered holders of the Shares of the Corporation whose names and respective holdings are set forth in Parts I and II of Schedule 3.01(1)(d).

"Shareholders Agreement" means the Shareholders Agreement made as of April 19, 2000, as supplemented, between the Corporation, Schroder Canada, Schroder UK, Richard L'Abbé, 1062445 Ontario Inc., Vincent Crupi, Danielle Crupi, Richard L'Abbé as Voting Trustee, and Growthworks Canadian Fund Ltd. as transferee from Capital Alliance Ventures Inc.

"Shares" means all of the Class A Common Shares and the Class B Common Shares of the Corporation issued and outstanding on the Closing Date, including the Class A Common Shares issued subsequent to the date of this Agreement and prior to the Closing Date upon the exercise of Options.

"Software" means all software of the Corporation and its Subsidiaries, including all versions thereof, and all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, and all other material related to such software.

"Stock Option Plan" means the Employee and Director Stock Option Plan of the Corporation as amended and restated as of April 12, 2000.

"**Subsidiary**" means, with respect to any person, an entity which is controlled by such person; when used without reference to a particular person, "Subsidiary" means a Subsidiary of the Corporation.

"**Take Back Notes**" means subordinated secured promissory notes of the Purchaser having the following terms and conditions:

(i) Interest: 10% simple interest per annum, payable monthly in arrears;

(ii) Maturity: 120 days from the Closing Date;

(iii) Extension Right: If requested by the holders in writing, the Purchaser shall have the right to extend the maturity date of the notes to March 31, 2008 on payment to the holders of an extension fee of 3% of the principal amount of the notes then held by the holders. During this extension period, simple interest shall be payable at the rate of 14% per annum, payable monthly in arrears;

(iv) Public Offering: The Purchaser will use its best efforts to raise net proceeds, after payment of all expenses of the offering, of not less than the aggregate principal amount of all issued notes by way of a public offering of equity or convertible debt securities. So long as the notes are outstanding, the Purchaser shall continue to use its best efforts to complete such offering and shall use the proceeds of the completed public offering to repay any amounts outstanding under the notes, subject to the terms of the Senior Lenders' financing in the original principal amount of $370 million to be provided by the lenders (the "Senior Lenders") as contemplated in a Commitment Letter (the "Senior Commitment Letter"), a copy of which has been delivered by the Purchaser to the Corporation and the Offeree Shareholders (the "Senior Lenders' Financing") (all debt under the Senior Lenders' Financing is the "Senior Debt"). If the Purchaser cannot use the proceeds of such public offering to retire the notes because of the terms of the Senior Lenders' Financing, the Purchaser will use its best efforts to replace the Senior Lenders' Financing with conventional bank lending arrangements;

(v) Rank: The notes shall rank behind the Senior Debt provided by the Senior Lenders to the Purchaser for the acquisition of the Corporation but shall

rank prior to all other indebtedness for borrowed money of the Purchaser and its subsidiaries;

(vi) Security: The notes shall be entitled to security to the same extent and granted by the same parties as the security held by the Senior Lenders, and such security will be subordinated to the Senior Lenders' security as contemplated in the Senior Commitment Letter;

(vii) Representations, Warranties and Covenants: The notes will be issued pursuant to a note purchase agreement to be signed on or prior to the Closing Date and contain the same representations, warranties and covenants (subject to customary cushions versus the corresponding Senior Debt covenants), other than with respect to repayment, events of default, conditions precedent, financial covenants and due diligence rights as the agreement for the Senior Debt;

(viii) Assignability: The notes will be assignable without the consent of the Purchaser.

"Tax Act" means the *Income Tax Act* (Canada).

"Taxes" means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Governmental Authority including, (i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, (ii) all withholdings on amounts paid to or by the relevant person, (iii) all employment insurance premiums, Canada, Quebec, U.S. and any other pension plan contributions or premiums, (iv) any fine, penalty, interest, or addition to tax, (v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee, and (vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law.

"Tax Returns" means all returns, reports, declarations, statements, bills, schedules, forms or written information of, or in respect of, Taxes that are, or are required to be, filed with or supplied to any Taxation Authority.

"Taxation Authority" means any domestic or foreign government, agency or authority that is entitled to impose Taxes or to administer any applicable Tax legislation.

"Time of Closing" means 10:00 a.m. (Ottawa Time) on the Closing Date or such other time on the Closing Date as may be agreed in writing by the Offeree Shareholders, the Corporation and the Purchaser.

"Third Party Proceedings" has the meaning set out in Section 7.04.

"Unaudited Financial Statements" has the meaning set out in Section 3.01(2)(c).

"Voting Trust Agreement" means the Voting Trust Agreement made as of April 19, 2000, as supplemented, between the Minority Shareholders and Richard L'Abbé, as Trustee.

"Working Capital" means the consolidated current assets, excluding cash, cash equivalents, short-term investments and future Tax receivables of the Corporation and its Subsidiaries as at the close of business on the day before the Closing Date, all calculated in accordance with generally accepted accounting principles consistently applied, less the consolidated current liabilities, excluding all bank and other indebtedness (including capital lease obligations) and future Tax liabilities of the Corporation and its Subsidiaries as at the close of business on the day before the Closing Date, all calculated in accordance with generally accepted accounting principles consistently applied.

"Working Capital Escrow Amount" means $3 million, which amount will be deposited with the Escrow Agent as contemplated by Section 2.04, and will be held in accordance with the terms of the Escrow Agreement.

"Working Capital Statement" has the meaning set out in Section 2.03(3).

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term "including" means "including without limiting the generality of the foregoing" and the term "third party" means any person other than a Shareholder, the Corporation and the Purchaser.

1.04 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 **Accounting Principles**

Wherever in this Agreement reference is made to a calculation to be made or an action to be taken in accordance with generally accepted accounting principles, such reference will be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation or action is made or taken or required to be made or taken.

1.06 **Currency**

Unless otherwise expressly stated, all references to currency herein are to lawful money of Canada.

1.07 **Control**

(1) For the purposes of this Agreement,

(a) a person controls a body corporate if securities of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate, or the person otherwise, directly or indirectly, possesses the power to direct or cause the direction of the management and policies of such body corporate, whether through the ownership of voting securities or other equity securities, by contract or otherwise;

(b) a person controls an unincorporated entity, other than a limited partnership, if more than 50 per cent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity, or the person otherwise, directly or indirectly, possesses the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of such ownership interests, by contract or otherwise; or

(c) the general partner of a limited partnership controls the limited partnership.

(2) A person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

(3) A person is deemed to control, within the meaning of Section 1.07(1)(a) or (1)(b) an entity if the aggregate of

(a) any securities of the entity that are beneficially owned by that person, and

(b) any securities of the entity that are beneficially owned by any entity controlled by that person

is such that, if that person and all of the entities referred to in paragraph (b) that beneficially own securities of the entity were one person, that person would control the entity.

1.08 **Schedules**

The following are the Schedules to this Agreement:

Schedule 2.04	-	Proportionate Interests of the Shareholders
Schedule 3.01(1)(c)	-	Share Rights, Privileges, Restrictions and Conditions attaching to Shares
Schedule 3.01(1)(d)(i)	-	Shareholders
Schedule 3.01(1)(d)(ii)		Non-Resident Shareholders (Minority Shareholders)
Schedule 3.01(1)(g)(i)	-	Employee and Director Stock Option Plan
Schedule 3.01(2)(b)	-	Audited Financial Statements for year ended December 31, 2006
Schedule 3.01(2)(c)	-	Unaudited Financial Statements for the period ended June 30, 2007
Schedule 3.01(2)(d)	-	Liabilities
Schedule 3.01(2)(e)	-	Transactions out of the Normal Course of Business
Schedule 3.01(2)(g)	-	Non-Arm's Length Indebtedness
Schedule 3.01(3)(a)	-	Non-Owned Property
Schedule 3.01(3)(f)	-	Dividends
Schedule 3.01(3)(g)	-	Exceptions to Product Specifications & Material Claims
Schedule 3.01(4)(a)	-	Contracts in Excess of 12 Months or $100,000
Schedule 3.01(4)(c)	-	Guarantees, Indemnities, Sureties & Similar Obligations
Schedule 3.01(4)(d)	-	Leased Real Property
Schedule 3.01(4)(e)	-	Restrictions on Business
Schedule 3.01(4)(f)	-	Options to Acquire Securities
Schedule 3.01(4)(h)	-	Required Consents
Schedule 3.01(5)(a)	-	Intellectual Property Rights
Schedule 3.01(6)(a)	-	Management or Consulting Fees
Schedule 3.01(6)(b)	-	Employee Contracts
Schedule 3.01(6)(c)	-	List of Employees
Schedule 3.01(6)(d)	-	Consulting Contracts
Schedule 3.01(6)(g)	-	Organized Labour Issues
Schedule 3.01(8)(a)	-	Benefit Plans
Schedule 3.01(8)(b)	-	Compensation Policies
Schedule 3.01(8)(e)	-	Employee Obligations upon Execution of Transaction
Schedule 3.01(8)(f)	-	Obligations under Collective Bargaining Agreements
Schedule 3.01(9)(b)	-	Environmental Permits
Schedule 3.01(10)(a)	-	Taxes

Schedule 3.01(11)(a)	-	Export Law Compliance
Schedule 3.01(11)(b)	-	FCPA and CFPOA Compliance
Schedule 3.01(12)(a)	-	Litigation
Schedule 3.01(12)(c)	-	Regulatory Compliance
Schedule 3.01(12)(d)	-	List of Required Permits
Schedule 3.01(12)(e)	-	List of Insurance Policies
Schedule 3.01(12)(j)	-	Corporate Bank Accounts and Authorized Persons
Schedule 3.01(12)(k)	-	Ten Largest Suppliers and Customers; and
Schedule 3.02(e)	-	Non-Resident Shareholders (Offeree Shareholders)

For purposes of this Agreement, information disclosed in any Schedule will be deemed to be disclosed for purposes of disclosure in any other Schedule.

ARTICLE 2- SALE AND PURCHASE

2.01 Shares to be Sold and Purchased

Upon and subject to the terms and conditions hereof, the Shareholders will sell the Shares to the Purchaser and the Purchaser will purchase the Shares from the Shareholders, as of the Time of Closing on the Closing Date.

2.02 Purchase Price

The purchase price payable by the Purchaser to the Shareholders for the Shares (such amount being hereinafter referred to as the "Purchase Price") will be $581 million, subject to adjustment as provided in Section 2.03.

2.03 Working Capital Adjustment

(1) The Purchase Price has been determined on the basis that the Corporation and its Subsidiaries will have Working Capital of $10 million ("Normalized Working Capital") as at the close of business on the day before the Closing Date. At or immediately prior to the close of business on the day before the Closing Date, cash, cash equivalents and short-term investments valued in accordance with generally accepted accounting principles will be distributed by the Corporation to its Shareholders and all bank and other indebtedness (including capital lease obligations) owing by the Corporation and its Subsidiaries will be repaid by the Corporation and its Subsidiaries, as applicable.

(2) The Corporation will deliver to the Purchaser for its review prior to the Closing Date, a statement certified as being accurate and complete by a senior officer of the Corporation, setting out the Working Capital as at the month end before the Closing Date and setting out an estimate of the Working Capital as at the close of business on the day before the Closing Date (the "Estimated Working Capital"). The Purchase Price will be adjusted on a dollar-for-dollar basis to the extent that such Estimated Working Capital is greater than or less than Normalized Working Capital.

(3) Within 30 Business Days after the Closing Date, the Purchaser (with the Corporation's cooperation and assistance) will prepare and deliver to the Offeree Shareholders an

unaudited statement setting out (by separate line-item) the Working Capital for the Corporation and its Subsidiaries as at the close of business on the day before the Closing Date (the "Working Capital Statement"), to be prepared in a manner consistent with the accounting policies and practices of the Corporation as used in the preparation of the Financial Statements and in accordance with generally accepted accounting principles. The Offeree Shareholders and their auditors or other representatives will be entitled to review the working papers and other documentation used or prepared in connection with the preparation of, or which otherwise form the basis of, the Working Capital Statement.

(4) If the Offeree Shareholders give written notice to the Purchaser that they dispute the Working Capital Statement within 10 Business Days after the Working Capital Statement is given to the Offeree Shareholders and the parties cannot reach agreement on the Working Capital Statement within 15 Business Days after such notice of dispute is given, the dispute will be referred for determination by arbitration to a senior audit partner at the Ottawa, Ontario office of Deloitte & Touche LLP chosen by the managing partner of such office and who is acceptable to the Offeree Shareholders and the Purchaser, each acting reasonably. The determination by such arbitrator will be made within 10 Business Days of such referral and will be final and binding on the parties. The costs of the arbitrator will be borne by the party losing the majority of the amount at issue in the arbitration.

(5) If the Working Capital as determined by the parties or the arbitrator, as the case may be, exceeds the Estimated Working Capital, the Purchaser will pay the amount of the difference to the Shareholders within two Business Days after the determination together with interest on such amount at a rate per annum equal to the floating annual rate of interest established from time to time by the Royal Bank of Canada as the base rate it will use to determine rates of interest on Canadian dollar loans to customers in Canada and designated as the prime rate, plus 1% (the "Interest Rate"), computed from the Closing Date to the date of payment and the Purchase Price will be adjusted accordingly. If the Working Capital as so determined is less than the Estimated Working Capital, the Offeree Shareholders will cause the Escrow Agent to pay the amount of the difference to the Purchaser from the Working Capital Escrow Amount in Take Back Notes, and if there are insufficient Take Back Notes, cash from the Working Capital Escrow Amount within two Business Days after the determination and the Shareholders will pay in Take Back Notes or cash to the extent that there are insufficient Take Back Notes held by the Offeree Shareholders (or by the Escrow Agent) any additional amount to the Purchaser if required to pay such difference, and the Purchase Price will be adjusted accordingly. Any balance of the Working Capital Escrow Amount will be paid at such time to the Shareholders (net of any Taxes on interest required by Applicable Law to be withheld) by way of the distribution of the Take Back Notes held by the Escrow Agent.

2.04 **Payment of Purchase Price**

The Purchase Price will be payable by the Purchaser to the Shareholders in accordance with the respective portions set forth in Schedule 2.04, as follows:

(a) at the Time of Closing, the Purchaser will pay $431 million, which amount includes the Withheld Amounts as contemplated in Section 2.05, in cash by the wire transfer of immediately available funds in trust to McCarthy Tétrault LLP to an account specified by McCarthy Tétrault LLP, counsel for the Corporation, to

be distributed to the Offeree Shareholders and the Minority Shareholders, as directed by the Offeree Shareholders;

(b) at the Time of Closing, the Purchaser will deliver to the Offeree Shareholders Take Back Notes in an aggregate principal amount of $150 million, adjusted as provided in Section 2.03(2), less an aggregate principal amount of $43 million of Take Back Notes;

(c) at the Time of Closing, the Purchaser will deposit with the Escrow Agent in respect of the Indemnification Escrow Amount and the Working Capital Escrow Amount an aggregate principal amount of $43 million of Take Back Notes on behalf of the Offeree Shareholders;

(d) prior to October 1, 2007, the Purchaser will use the net proceeds, after payment of all expenses, of any equity offering to repay the Take Back Notes; provided that net proceeds will be applied (i) first to the Take Back Notes held by the Offeree Shareholders, then (ii) second to the Take Back Notes representing the Working Capital Escrow Amount, and then (iii) third to the Take Back Notes representing the Indemnification Escrow Amount;

(e) on October 1, 2007, the Purchaser will cause the lenders of the Bridge (as defined in three Commitment Letters, copies of which have been delivered by the Purchaser to the Corporation and the Offeree Shareholders) (the "Bridge Lenders") to purchase from the Shareholders an aggregate principal amount of the Take Back Notes equal to $150 million less the net proceeds, after payment of all expenses, of any equity offering completed by the Purchaser between the Closing Date and October 1, 2007 and applied to purchase Take Back Notes; provided, that if the net proceeds of such equity offerings have been applied to purchase Take Back Notes in the aggregate principal amount of at least $150 million, then the Purchaser shall not be required to cause the Bridge Lenders to purchase any Take Back Notes; further provided that proceeds from the Bridge Lenders will be applied (i) first to the Take Back Notes held by the Offeree Shareholders, then (ii) second to the Take Back Notes representing the Working Capital Escrow Amount, and then (iii) third to the Take Back Notes representing the Indemnification Escrow Amount;

(f) from and after October 1, 2007, if the Offeree Shareholders continue to hold Take Back Notes the Purchaser will use its best efforts to complete equity offerings and shall use the proceeds of any completed public offering to repay Take Back Notes; and

(g) at the time specified in Section 2.03(5), by the Purchaser or the Shareholders, as applicable, paying any adjustment to the Purchase Price pursuant to Section 2.03(5)).

2.05 **Section 116 Withholding**

Each Non-Resident Shareholder will comply with the requirements of section 116 of the Tax Act in respect of the sale and purchase of the Shares, provided that:

(a) if a certificate issued by the Minister of National Revenue pursuant to subsection 116(2) of the Tax Act in respect of the disposition of the Shares to the Purchaser, specifying a certificate limit in an amount that is not less than that Non-Resident Shareholder's portion of the Purchase Price is not delivered to the Purchaser on or before the Closing Date, the Purchaser will be entitled to withhold an amount equal to 25% of the Non-Resident Shareholder's portion of the Purchase Price payable to the Shareholders (the "Withheld Amount"), and the Purchaser will pay any such Withheld Amount to McCarthy Tétrault LLP in trust in the manner contemplated in Section 2.04(a) on the Closing Date and the amount so paid will be credited to the Purchaser as payment on account of that portion of the Purchase Price.

(b) McCarthy Tétrault LLP will cause the Withheld Amount so withheld with respect to each Non-Resident Shareholder set forth on Schedule 3.01(1)(d)(ii) to be remitted to CRA promptly following the Closing Date, but in any event not later than the 28th day after the end of the month in which the Closing Date occurs, and will invest, on behalf of each beneficial Non-Resident Shareholder set forth in Schedule 3.02(e), the Withheld Amounts with respect to such beneficial Non-Resident Shareholder in one or more investments as directed by Schroder Canada and Schroder UK, from the Closing Date until the earlier of the date on which the Withheld Amount (or relevant portion thereof) is delivered to that Non-Resident Shareholder or remitted to the CRA in accordance with this Section 2.05.

(c) If, prior to the 28th day after the end of the month in which the Closing Date occurs (or such later time before which the CRA confirms in writing that the CRA will not enforce the remittance of funds as required by subsection 116(5) of the Tax Act and that the Purchaser will not be liable for interest and penalties in respect of the late remittance of the funds withheld (the "Comfort Letter")), any Non-Resident Shareholder set forth in Schedule 3.02(e) delivers to the Purchaser (with a copy to McCarthy Tétrault LLP):

(i) a certificate issued by the Minister of National Revenue under subsection 116(2) of the Tax Act in respect of the disposition of the Shares to such beneficial Non-Resident Shareholder set forth in Schedule 3.02(e), McCarthy Tétrault LLP will promptly pay to that beneficial Non-Resident Shareholder the lesser of (i) the Withheld Amount and (ii) the Withheld Amount less the product of X and Y where X is the amount, if any, by which that Non-Resident Shareholder's portion of the Purchase Price exceeds the certificate limit specified in such certificate and Y is 25% or any other percentage specified in subsection 116(5) of the Tax Act, together with any interest earned on the Withheld Amount to the date of such payment, or

(ii) a certificate issued by the Minister of National Revenue under subsection 116(4) of the Tax Act in respect of the disposition of the Shares to the Purchaser, McCarthy Tétrault LLP will promptly pay the Withheld Amount to that beneficial Non-Resident Shareholder, together with any interest earned thereon.

(d) If McCarthy Tétrault LLP continues to hold all or a portion of the Withheld Amount on the later of the 28th day after the end of the month in which the Closing Date occurs and the time when (if the CRA has provided the Comfort Letter) the Purchaser is obliged to remit funds to the CRA, McCarthy Tétrault LLP will remit to the Receiver General for Canada the amount required to be remitted pursuant to subsection 116(5) of the Tax Act and McCarthy Tétrault LLP will pay to that Non-Resident Shareholder any remaining portion of the Withheld Amount, together with interest earned thereon, prior to such remittance.

(e) Where any amount is remitted to the CRA pursuant to this Section 2.05, McCarthy Tétrault LLP will furnish that Non-Resident Shareholder and the Purchaser with confirmation that such remittance has been made. Any such remittance will be deemed to have been paid by the Purchaser to that Non-Resident Shareholder on account of the Purchase Price.

(f) The foregoing provisions will apply *mutatis mutandis* to the amount of the Purchase Price paid to a Non-Resident Shareholder as adjusted pursuant to Section 2.03 unless a certificate issued by the Minister of National Revenue under subsection 116(4) of the Tax Act in respect of the disposition of the Shares has already been issued to the Non-Resident Shareholder and the Purchaser.

ARTICLE 3- REPRESENTATIONS AND WARRANTIES

3.01 Corporation's Representations and Warranties

The Corporation represents and warrants to the Purchaser that:

(1) *Corporate*

(a) Each of the Corporation and 1252110 Alberta Ltd. and 1252144 Alberta Ltd is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction with the corporate power to own its assets and to carry on its business and has made all material filings under all applicable corporate, securities and Taxation laws or any other Applicable Laws. The Partnership is a general partnership duly established, organized and subsisting under the laws of its jurisdiction with the power to own its assets and to carry on its business and has made all material filings under all applicable corporate, securities and Taxation laws or any other Applicable Laws.

(b) The authorized capital of the Corporation consists of an unlimited number of Class A Common Shares, of which, at the date hereof, 24,817,768 have been validly issued and are outstanding as fully paid and non-assessable, an unlimited number of Class B

Common Shares, of which, at the date hereof, 22,392,022 have been validly issued and are outstanding as fully paid and non-assessable, and an unlimited number of preferred shares issuable in series, of which none is issued and outstanding. On or prior to the Time of Closing, the Options will be exercised and an additional 2,045,625 Class A Common Shares will be issued and outstanding and the Stock Option Plan will have been terminated. At the Time of Closing, the Shares will be the only issued and outstanding shares in the capital of the Corporation;

(c) The rights, privileges, restrictions and conditions attached to the Class A Common Shares and the Class B Common Shares of the Corporation are as set out in Schedule 3.01(1)(c).

(d) (i) All of the issued and outstanding Class A Common Shares and Class B Common Shares of the Corporation are registered in the names of the Shareholders in the respective numbers set out in Schedule 3.01(1)(d)(i) and such Schedule will be updated as at the Time of Closing to indicate the registered holders of the Shares in the respective numbers held by them, and (ii) to the knowledge of the Corporation, except as set forth in Schedule 3.01(1)(d) (ii) and in any certificate delivered pursuant to Section 5.01(b), each Minority Shareholder is not a non-resident person within the meaning of section 116 of the Tax Act.

(e) The Corporation is the registered and beneficial holder of all of the issued shares of 1252110 Alberta Ltd. and 1252144 Alberta Ltd., and the only partners of the Partnership are 1252110 Alberta Ltd. and 1252144 Alberta Ltd.

(f) This Agreement constitutes a valid and legally binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court.

(g) There is no contract, option or any other right of another binding upon or which at any time in the future may become binding upon:

(i) the Corporation or its Subsidiaries to allot or issue any of the unissued shares of the Corporation or its Subsidiaries or to create any additional class of shares, except pursuant to the Stock Option Plan as set out in Schedule 3.01(1)(g)(i), and which additional shares will be issued prior to the Time of Closing and the Stock Option Plan terminated; or

(ii) the Corporation or its Subsidiaries to sell, transfer, assign, pledge, mortgage or in any other way dispose of or encumber any of the assets of the Corporation or its Subsidiaries other than sales of products pursuant to purchase orders accepted by the Corporation or its Subsidiaries in the usual and ordinary course of business.

(h) Neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby will result in the violation of:

(i) any of the provisions of the articles or by-laws of the Corporation or its Subsidiaries;

(ii) any agreement or other instrument to which the Corporation or any of its Subsidiaries is a party or by which the Corporation or any of its Subsidiaries is bound, except for the obtaining of certain consents under the Shareholders Agreement and the Voting Trust Agreement, all of which will be obtained prior to the Time of Closing; or

(iii) any Applicable Law in respect of which the Corporation or its Subsidiaries must comply, except to the extent that such violation would not reasonably be expected to limit in any material manner the operations of the Business as they are presently conducted or result in a Material Adverse Affect.

(i) Each of the Shareholders, including the Minority Shareholders is a party, whether directly or as a party to the Voting Trust Agreement, to and is bound by the provisions of the Shareholders Agreement (including for greater certainty, the provisions of Section 5.7 – Drag Along Rights, thereof). Pursuant to the Shareholders Agreement, the Minority Shareholders are required to sell to the Purchaser the Class A Shares of the Corporation held by them on the terms and conditions set forth herein, and at the Time of Closing, the Purchaser will acquire good and valid title to all of the Shares held by all of the Shareholders, including the Minority Shareholders, in each case, free and clear of all Encumbrances.

(2) Financial

(a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all material financial transactions of the Corporation and its Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.

(b) The audited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on December 31, 2006, together with the report of KPMG LLP, chartered accountants, thereon and the notes thereto (collectively, the "Audited Financial Statements"), a copy of which is attached hereto as Schedule 3.01(2)(b) present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries as at December 31, 2006 and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.

(c) The unaudited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on the Balance Sheet Date, (collectively, the "Unaudited Financial Statements"), a copy of which is attached hereto as Schedule 3.01(2)(c) present fairly in all material respects the consolidated financial position of the Corporation and its

Subsidiaries as at the Balance Sheet Date and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.

(d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i) liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).

(e) Except as set forth in Schedule 3.01(2)(e), since the Balance Sheet Date, the business of the Corporation and its Subsidiaries has been carried on in its usual and ordinary course and neither the Corporation nor its Subsidiaries has entered into any transaction out of the usual and ordinary course of business.

(f) Since the Balance Sheet Date there has been no Material Adverse Effect in respect of the Corporation or its Subsidiaries.

(g) No current or former director, officer, shareholder or employee of the Corporation or its Subsidiaries or any person not dealing at arm's length within the meaning of the Tax Act with any such person or with the Corporation or its Subsidiaries is indebted to the Corporation or any of its Subsidiaries, except such indebtedness as is disclosed in Schedule 3.01(2)(g).

(3) Condition of Assets

(a) The Corporation and its Subsidiaries are the owner, with good title to all assets, of all assets shown or reflected on the Balance Sheet (except for assets disposed of in the usual and ordinary course since the Balance Sheet Date) or acquired by the Corporation and its Subsidiaries since the Balance Sheet Date including the Owned Intellectual Property, free and clear of all liens, charges, encumbrances and any other rights of others other than those set out in Part II of Schedule 3.01(3)(a). Neither the Corporation nor any of its Subsidiaries now own or previously owned any real property.

(b) All machinery and equipment owned or used by the Corporation and its Subsidiaries have been properly maintained and are in good working order for the purposes of on-going operation, subject to ordinary wear and tear for machinery and equipment of comparable age.

(c) All of the Inventories, net of reserves, are of merchantable quality and reasonably fit for their usual purpose. Current Inventory levels are consistent with the level of Inventories that has been maintained in the operation of the business of the Corporation and its Subsidiaries prior to the date hereof in accordance with the operation of such business in the ordinary course.

(d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.

(e) No capital expenditures in the aggregate in excess of $5,000,000 have been made or authorized by the Corporation or its Subsidiaries since the Balance Sheet Date.

(f) Except as set forth in Schedule 3.01(3)(f), no dividends have been declared or paid on or in respect of the Shares and no other distribution on any of its securities or shares has been declared or made by the Corporation or its Subsidiaries since December 31, 2006 and all dividends which to the date hereof have been declared or paid by the Corporation or its Subsidiaries have been duly and validly declared and accrued for or paid.

(g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

(4) Contracts and Commitments

(a) The Corporation is not a party to any contract, agreement, lease, instrument or other commitment (whether written or oral) ("Contracts") outside the usual and ordinary course of business and is not a party to any Contract by the Corporation or its Subsidiaries extending for a period of time longer than 12 months or involving expenditures by the Corporation and its Subsidiaries in the aggregate in excess of $100,000, except such Contracts as are listed in Schedule 3.01(4)(a).

(b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.

(c) Except as set forth in Schedule 3.01(4)(c), neither the Corporation nor any of its Subsidiaries is a party to or bound by any guarantee, indemnification, surety or similar obligation.

(d) Except as set forth in Schedule 3.01(4)(d), neither the Corporation nor any of its Subsidiaries is a party to any lease or other Contract in the nature of a lease for real

property, whether as lessor or lessee. The current uses of each property subject to a such a lease comply, in all material respects, with Applicable Law.

(e) Except as set forth in Schedule 3.01(4)(e) neither the Corporation nor any of its Subsidiaries is a party to any Contract containing outstanding covenants or other obligations (other than customary confidentiality and non-disclosure obligations entered into in the ordinary course of business) that in any way restrict the business activity of the Corporation or its Subsidiaries or limit the freedom of the Corporation or its Subsidiaries to engage in any line of business or to compete with any person.

(f) The Corporation does not have any Subsidiaries or hold any interest in any other person other than the Subsidiaries or any agreements, options or commitments to acquire any securities of any person or to acquire or lease any real property or assets other than, in the latter case, Inventory and equipment that are to be used in the usual and ordinary course of business, except as listed in Schedule 3.01(4)(f).

(g) There is no agreement, option, understanding or commitment, or any right or privilege capable of becoming an agreement, for the purchase from the Corporation or any of its Subsidiaries of its business or any of its assets other than in the usual and ordinary course of business.

(h) Except as disclosed in Schedule 3.01(4)(h), no consent is required nor is any notice required to be given under any Contract by any party thereto or any other person in connection with the completion of the transactions contemplated by this Agreement in order to maintain the rights of the Corporation and its Subsidiaries under such Contract, in all material respects. The completion of the transactions contemplated by this Agreement will not afford any party to any of the material Contracts or any other person the right to terminate any such Contract nor will the completion of such transactions result in any material additional or more onerous obligation on the Corporation or its Subsidiaries under any Contract.

(5) Intellectual Property.

(a) Attached hereto as Schedule 3.01(5)(a) is a list of all registered trade marks, trade names, patents and copyrights, of all unregistered trade marks, trade names and copyrights and of all patent applications, trade mark registration applications and copyright registration applications, both domestic and foreign, owned or made by the Corporation or its Subsidiaries.

(b) All trade marks, trade names, patents and copyrights, both domestic and foreign, and other Intellectual Property used in or required for the proper carrying on of the business of the Corporation and its Subsidiaries are validly and beneficially owned by or licensed to the Corporation and the Subsidiaries, as the case may be, with the right to use the same, and are in good standing and duly registered in all appropriate offices to preserve the right thereof and thereto; the Employees and all consultants and independent contractors retained by the Corporation and its Subsidiaries have agreed to maintain the confidentiality of confidential Intellectual Property and have provided waivers of all moral rights in the Intellectual Property.

(c) To the knowledge of the Corporation, the conduct of the Corporation and its Subsidiaries does not infringe upon the Intellectual Property rights, domestic or foreign, of any other person, nor has the Corporation or any of its Subsidiaries received any notice of infringement. To the knowledge of the Corporation, no person has infringed the rights of the Corporation and its Subsidiaries to the Intellectual Property.

(6) Employees

(a) Neither the Corporation nor its Subsidiaries is a party to or bound by any contract or commitment to pay any management or consulting fee except as disclosed in Schedule 3.01(6)(a).

(b) Neither the Corporation nor its Subsidiaries has any written employment contract with any person whomsoever, except as disclosed in Schedule 3.01(6)(b).

(c) Schedule 3.01(6)(c) sets out:

(i) the names of all employees of the Corporation and its Subsidiaries;

(ii) their position or title;

(iii) their status (i.e., full time, part time, temporary, casual, seasonal, co-op student);

(iv) their total annual remuneration, including a breakdown of (A) salary and (B) bonus, commissions or other incentive compensation, if any;

(v) other terms and conditions of their employment (other than Benefit Plans and Compensation Policies);

(vi) [intentionally omitted];

(vii) their total length of employment including any prior employment that would affect calculation of years of service for any purpose, including statutory entitlements, contractual entitlements (express or implied) benefit entitlement or pension entitlement; and

(viii) whether any employees are on any approved or statutory leave of absence, and, if so, the reason for such absence and the expected date of return.

(d) Schedule 3.01(6)(d) sets out:

(i) the names of all consultants of the Corporation and its Subsidiaries;

(ii) whether the consultant is providing services pursuant to a written consulting contract;

(iii) the term of any contract under clause (ii) above;

(iv) notice, if any, required for the Corporation to terminate the consulting relationship without cause;

(v) the date the consultant first commenced providing services to the Corporation or the Subsidiaries;

(vi) the hourly fee of the consultant and any bonus, commissions or other incentive compensation payable to the consultant, if any ; and

(vii) the annual fees paid to the consultant for the preceding calendar year.

(e) Neither the Corporation nor its Subsidiaries is bound by or a party to any collective bargaining agreement.

(f) No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent:

(i) holds bargaining rights with respect to any employees of the Corporation or its Subsidiaries by way of certification, interim certification, voluntary recognition, designation or successor rights;

(ii) has applied to be certified as the bargaining agent of any employees of the Corporation or its Subsidiaries; or

(iii) has applied to have the Corporation or its Subsidiaries declared a related employer or successor employer pursuant to applicable labour legislation,

(g) There are no actual, threatened or pending organizing activities of any trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent or any actual, threatened or pending unfair labour practice complaints, strikes, work stoppages, picketing, lock-outs, hand-billings, boycotts, slowdowns, arbitrations, grievances, complaints, charges or similar labour related disputes or proceedings pertaining to the Corporation or its Subsidiaries, and there have not been any such activities or disputes or proceedings within the last year, except as disclosed in Schedule 3.01(6)(g).

(h) All vacation pay for employees of the Corporation and its Subsidiaries is properly reflected and accrued in the books and accounts of the Corporation and its Subsidiaries.

(i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its

Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

(j) The Corporation and its Subsidiaries are employing all employees of the Corporation and its Subsidiaries in compliance with all applicable Taxation, health, labour and employment laws, rules, regulations, notices, and orders.

(k) Each of the Corporation and its Subsidiaries is in compliance with all provisions of all Applicable Laws relating to occupational health and safety, including the *Occupational Health and Safety Act* (Ontario) and regulations made pursuant thereto and there are no outstanding claims, charges or orders thereunder.

(l) Each of the Corporation and its Subsidiaries is in compliance with applicable workers' compensation laws and regulations made pursuant thereto and there are no outstanding assessments, levies or penalties thereunder.

(m) Each of the Corporation and its Subsidiaries has prepared and posted an employment equity plan for all employees of the Corporation and its Subsidiaries as may be required pursuant to Applicable Laws dealing with employment equity including, the *Employment Equity Act* or the federal contractors program.

(n) The Corporation has prepared and posted a pay equity plan for all employees of the Corporation and has made all necessary adjustments pursuant to such pay equity plan in full compliance with the *Pay Equity Act* (Ontario), and the Corporation has fully disclosed to the Purchaser the terms pertaining thereto.

(7) Privacy Laws

(a) The collection, use and retention of the Personal Information by the Corporation and its Subsidiaries, the disclosure or transfer of the Personal Information by the Corporation and its Subsidiaries to any third parties and transfer of the Personal Information by the Corporation and its Subsidiaries to the Purchaser as part of the Purchaser's due diligence and as contemplated by this Agreement or any ancillary agreement complies with all Privacy Laws and is consistent with the Corporation's own Privacy Policies.

(b) There are no restrictions on the collection, use, disclosure and retention by the Corporation or its Subsidiaries of the Personal Information except as provided by Privacy Laws and the Corporation's own Privacy Policies.

(c) There are no investigations, inquiries, actions, suits, claims, demands or proceedings, whether statutory or otherwise, pending, ongoing, or to the Corporation's knowledge, threatened, with respect to the collection, use, disclosure or retention by the Corporation or its Subsidiaries of the Personal Information.

(d) No decision, judgment or order, whether statutory or otherwise, is pending or has been made, and no notice has been given pursuant to any Privacy Laws, requiring the

Corporation or its Subsidiaries to take (or to refrain from taking) any action with respect to the Personal Information.

(8) Benefit Plans

(a) Schedule 3.01(8)(a) contains a list of every benefit plan, program, agreement or arrangement (whether written or unwritten) maintained, contributed to, or provided by the Corporation or any Subsidiary thereof for the benefit of any of the employees, former employees or dependent or independent contractors of the Corporation and its Subsidiaries or their respective dependants or beneficiaries (the "Benefit Plans") including all bonus, deferred compensation, incentive compensation, share purchase, share option, stock appreciation, phantom stock, savings, profit sharing, severance or termination pay, health or other medical, life, disability or other insurance (whether insured or self-insured), supplementary unemployment benefit, pension, retirement and supplementary retirement plans, programs, agreements and arrangements, except for any statutory plans to which the Corporation is obliged to contribute or comply including the Canada/Québec Pension Plan, or plans administered pursuant to applicable federal or provincial health, worker's compensation or employment insurance legislation.

(b) Schedule 3.01(8)(b) contains a list of all compensation policies and practices of the Corporation and its Subsidiaries ("Compensation Policies") applicable to employees of the Corporation and its Subsidiaries.

(c) The Corporation has delivered to the Purchaser true, complete and up-to-date copies of all Benefit Plans and Compensation Policies and all amendments thereto together with all summary descriptions of the Benefit Plans and Compensation Policies provided to past or present participants therein.

(d) No fact, condition or circumstance exists that would materially affect the information contained in the documents provided pursuant to Section 3.01(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.

(e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.

(f) The obligations of the Corporation and its Subsidiaries to any of the Benefit Plans that are multi-employer plans are restricted to providing information and making contributions and are set out completely and accurately in the collective bargaining agreements listed in Schedule 3.01(8)(f).

(9) Environmental

(a) The business of the Corporation and its Subsidiaries, as carried on by the Corporation and its Subsidiaries, and their assets are in compliance in all material respects with all Environmental Laws and, to the knowledge of the Corporation, there are no facts that could give rise to a notice of non-compliance with any Environmental Law.

(b) Schedule 3.01(9)(b) contains a complete list of all environmental Permits used in or required to carry on the business of the Corporation and its Subsidiaries in its usual and ordinary course and such Permits are in full force and effect.

(c) The Corporation and its Subsidiaries have not used any of their facilities, or permitted them to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances except in compliance in all material respects with all Environmental Laws.

(d) Neither the Corporation nor any of its Subsidiaries has been convicted of an offence or been subjected to any judgment, injunction or other proceeding or been fined or otherwise sentenced for non-compliance with any Environmental Laws, and it has not settled any prosecution or other proceeding short of conviction in connection therewith.

(10) Taxes

(a) Except as set out in Schedule 3.01(10)(a):

(i) Each of the Corporation and its Subsidiaries has filed all Tax Returns, including any elections and designations required by or referred to in any such Tax Return, which were required to be filed by it with any Taxation Authority prior to the date hereof. All Tax Returns filed by the Corporation and its Subsidiaries are accurate and complete in all material respects;

(ii) Each of the Corporation and its Subsidiaries has withheld, and will continue until the Closing Date to withhold, any Taxes that are required by Applicable Law to be withheld and has timely paid or remitted, and will continue until the Closing Date to pay and remit, on a timely basis, the full amount of any Taxes that have been or will be withheld, to the applicable Taxation Authority;

(iii) Each of the Corporation and its Subsidiaries has paid and will continue until the Closing Date to pay all Taxes, including any amount due on or before the Closing Date, including instalments or prepayments of Taxes, which are required to have been paid to any Taxation Authority pursuant to Applicable Law, and no deficiency with respect to the payment of any Taxes or Tax instalments has been asserted against it by any Taxation Authority.

(iv) Neither the Corporation nor its Subsidiaries is a party to any agreement, waiver or arrangement with any Taxation Authority that relates to any

extension of time with respect to the filing of any Tax Return, any payment of Taxes or any assessment;

(11) International Trade Laws

(a) Except as set forth on Schedule 3.01(11)(a) and except for non-compliance that would not result in a Material Adverse Effect, the Corporation and its Subsidiaries, as applicable, are in material compliance with (i) all Applicable Laws concerning the exportation of any products, technology, technical data and services, including those administered by, without limitation, the United States Department of Commerce, the United States Department of State, and the United States Department of the Treasury; (ii) United States and international economic and trade sanctions, including those administered by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury; (iii) the antiboycott regulations administered by the United States Department of Commerce, and all laws and regulations administered by the Bureau of Customs and Border Protection in the United States Department of Homeland Security;

(b) Except as set forth on Schedule 3.01(11)(b) and except for non-compliance that would not result in a Material Adverse Effect, the Corporation and its Subsidiaries, as applicable, are in compliance with the United States Foreign Corrupt Practices Act and the Corruption of Foreign Public Officials Act (Canada);

(c) To the Knowledge of the Corporation, no director, officer or employee of Company or any of its Subsidiaries is identified on any of the following documents: (i) the OFAC list of "Specially Designated Nationals and Blocked Persons" ("SDNs"); (ii) the Bureau of Industry and Security of the United States Department of Commerce "Denied Persons List", "Entity List" or "Unverified List"; (iii) the Office of Defense Trade Controls of the United States Department of State "List of Debarred Parties"; (iv) the Financial Sanctions Unit of the Bank of England "Consolidated List"; (v) the Solicitor General of Canada's "Anti-Terrorism Act Listed Entities"; (vi) the Australian Department of Foreign Affairs and Trade "Charter of the United Nations (Anti-terrorism-Persons and Entities) List"; (vii) the United Nations Security Council Counter-Terrorism Committee "Consolidated List"; or (viii) European Union Commission Regulation No. 1996/2001 of October 11, 2001;

(12) General

(a) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Corporation or its Subsidiaries):

(i) pending or threatened against or materially adversely affecting, or which could materially adversely affect, the Corporation or its Subsidiaries or any of their assets,

(ii) before or by any Governmental Authority,

except such actions, suits or proceedings as are disclosed in Schedule 3.01(12)(a) and or to the Corporation's knowledge, there is no valid basis for any such action, suit or proceeding.

(b) The Corporation is not conducting its business in any jurisdiction other than the Province of Ontario; the Corporation's Subsidiary, Med-Eng, Inc., is not conducting its business in any jurisdiction other than the State of New York; and the Corporation's Subsidiaries, 1252110 Alberta Ltd. and 1252144 Alberta Ltd., and the Partnership are not conducting their respective businesses in any jurisdiction other than the Province of Alberta.

(c) The Corporation is conducting its business in material compliance with all Applicable Laws of Canada and of the Province of Ontario, the Corporation's Subsidiary, Med-Eng, Inc. is conducting its business in all material respects in compliance with all Applicable Laws of the United States and of the State of New York and the Corporation's Subsidiaries, 1252110 Alberta Ltd. and 1252144 Alberta Ltd., and the Partnership are conducting their respective businesses in compliance with all applicable laws of the Province of Alberta, except in each case where any such non-compliance would not have a Material Adverse Effect. The Corporation and its Subsidiaries have or, where applicable, have caused their contractors and agents to comply with Applicable Laws in those jurisdictions where business is being carried on by or on behalf of the Corporation or its Subsidiaries with a Governmental Authority. Except as set forth in 3.01(12)(c), (i) the Corporation has not been charged with and, to the knowledge of the Corporation, the Corporation is not now under investigation with respect to, a violation of any Applicable Law, (ii) the Corporation is not a party to or bound by any order, judgment, decree, injunction or of any Governmental Authority and (c) the Corporation has filed all material reports and has all material licenses and permits required to be filed with any Governmental Authority on or before the date hereof.

(d) Attached as Schedule 3.01(12)(d) is a true and complete list of all Permits necessary or required to enable the business of the Corporation and its Subsidiaries to be carried on as now conducted and its assets to be owned, leased and operated.

(e) Attached as Schedule 3.01(12)(e) is a true and complete list of all insurance policies maintained by the Corporation and its Subsidiaries that also specifies the insurer, the amount of the coverage, the type of insurance, the policy number and any pending claims thereunder.

(f) Assuming that the Closing Date is the date of this Agreement, the Corporation together with its affiliates (as defined in the Competition Act) do not have assets in Canada that exceed $11 million or annual gross revenues from sales in, from and into Canada that exceed $30 million, in either case, as determined pursuant to section 109 of the Competition Act, provided that, for the purposes of Section 5.01(a), the assumption that the Closing Date is the date of this Agreement will not apply.

(g) The value of the assets of the Corporation and its Subsidiaries, calculated in the manner prescribed by the Investment Canada Act, is less than $281 million.

(h) The Corporation is a WTO investor within the meaning of the Investment Canada Act.

(i) To the knowledge of the Corporation, except for the Non-Resident Shareholders, none of the beneficial owners of the Shares is a non-resident person within the meaning of section 116 of the Tax Act.

(j) Schedule 3.01(12)(j) is a correct and complete list showing (i) the name of each bank in which the Corporation and its Subsidiaries has an account and the names of all persons authorized to draw on the account, and (ii) the names of all persons who hold powers of attorney from the Corporation and its Subsidiaries.

(k) Schedule 3.01(12)(k) lists the ten largest customers and the ten largest suppliers of the Corporation and its Subsidiaries (or such additional customers or suppliers of the Corporation and its Subsidiaries which are sufficient to constitute ten per cent or more of total sales or purchases, as the case may be) for the calendar years ending December 31, 2005 and December 31, 2006, and the aggregate amount which each customer was invoiced and each supplier was paid during each such calendar year. The Corporation is not aware of, nor has it received notice of, any intention on the part of any such customer or supplier to cease doing business with the Corporation and its Subsidiaries or to modify or change in any material manner any existing arrangement with the Corporation and its Subsidiaries for the purchase or supply of any products or services. The relationships of the Corporation and its Subsidiaries with each of its principal suppliers, shippers and customers are satisfactory, and there are no material unresolved disputes with any such supplier, shipper or customer.

(l) No agent, broker, investment banker, financial advisor or other firm or person engaged by the Corporation and its Subsidiaries is or will be entitled to any brokers' or finders' fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement, except CIBC World Markets Inc., whose fees and expenses will be paid by the Corporation in accordance with the Corporation's agreement with such firm and such fees will included in determining the adjustment on account of Working Capital pursuant to Section 2.03.

(m) No representation or warranty or other statement made by the Corporation in this Agreement contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

3.02 **Offeree Shareholders' Representations and Warranties**

Each Offeree Shareholder, for itself and not jointly, represents and warrants to the Purchaser that:

(a) The Offeree Shareholder is the registered owner of the Shares set forth opposite the name of the Offeree Shareholder in Schedule 3.01(1)(d), free and clear of all liens, charges, encumbrances and any other rights of others;

(b) The Offeree Shareholder has good and sufficient power, authority and right to enter into and deliver this Agreement and to transfer the legal and beneficial title and ownership of the Shares owned by the Offeree Shareholder to the Purchaser free and clear of all liens, charges, encumbrances and any other rights of others;

(c) Except for the Shareholders Agreement, there is no contract, option or any other right or agreement binding upon or which at any time in the future may become binding upon the Offeree Shareholder to sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber any of the Shares owned by the Offeree Shareholder other than pursuant to the provisions of this Agreement;

(d) Neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by the Offeree Shareholder will result in the violation of any agreement or other instrument to which the Offeree Shareholder is a party or by which the Offeree Shareholder is bound; and

(e) Except for any Offeree Shareholder whose name is identified in Schedule 3.02(e) as a Non-Resident Shareholder, the Offeree Shareholder or the beneficial owner of the Shares it represents, is not a non-resident person within the meaning of section 116 of the Tax Act.

3.03 **Purchaser's Representations and Warranties**

The Purchaser represents and warrants to the Shareholders and the Corporation that:

(a) The Purchaser is a corporation duly incorporated, organized and subsisting under the laws of the province of Ontario.

(b) The Purchaser has good and sufficient power, authority and right to enter into and deliver this Agreement and to complete the transactions to be completed by the Purchaser contemplated hereunder.

(c) This Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court.

(d) Neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by the Purchaser will result in a violation of:

(i) any of the provisions of the constating documents or by-laws of the Purchaser;

(ii) any agreement or other instrument to which the Purchaser is a party or by which the Purchaser is bound; or

(iii) any Applicable Law in respect of which the Purchaser must comply.

(e) Assuming that the Closing Date is the date of this Agreement, the Purchaser together with its affiliates (as defined in the Competition Act) does not have assets in Canada that exceed $140 million or annual gross revenues from sales in, from or into Canada that exceed $15 million, in either case, as determined pursuant to section 109 of the Competition Act, provided that, for the purposes of Section 5.02(a), the assumption that the Closing Date is the date of this Agreement will not apply.

(f) The Purchaser is a WTO investor within the meaning of the Investment Canada Act.

(g) The Purchaser has internal resources and financing commitments from responsible financial institutions (each a "Commitment Letter" and collectively, the "Commitment Letters"), copies of which have been provided to the Corporation and the Offeree Shareholders, available in connection with the acquisition of the Shares, which are in the aggregate amount sufficient to consummate the transaction contemplated hereby. There are no conditions to the funding of the financing described in the Commitment Letters other than those expressly set forth in the Commitment Letters delivered to the Corporation and the Offeree Shareholders on or prior to the date hereof (the conditions so set forth in the Commitment Letters, the "Disclosed Conditions"). No Person has any right to (i) impose, and the Purchaser no obligation to accept, any condition precedent to such financing other than the Disclosed Conditions, or (ii) reduce the amounts of the financing commitments made in the Commitment Letters. As of the date of this Agreement, each Commitment Letter is in full force and effect, in all material respects, and there has been no breach, default, action or omission to act on the part of the Purchaser, or to the Purchaser's actual knowledge, on the part of the other parties thereto, that would permit any party thereto to terminate or cancel any Commitment Letter. The financial statements of the Purchaser as of March 31, 2007 and for the period then ended, which have been previously delivered to the Corporation, fairly present, in all material respects, the financial condition and results of operation of the Purchase as of the dates and for the periods then ended in accordance with generally accepted accounting principles; and

(h) No agent, broker, investment banker, financial advisor or other firm or person engaged by the Purchaser is or will be entitled to any brokers' or finders' fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement, except Genuity Capital Markets, whose fees and expenses will be paid by the Purchaser in accordance with Purchaser's agreement with such firm.

3.04 **Exclusivity of Representations and Warranties**

The representations and warranties of the Corporation, each Offeree Shareholder and the Purchaser set forth in Sections 3.01, 3.02 and 3.03, respectively, are the only representations and

warranties made by such party. THE CORPORATION AND EACH OFFEREE SHAREHOLDER SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING THE FURTHER PROFITABILITY OF THE CORPORATION FOLLOWING THE CLOSING DATE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN SECTIONS 3.01, 3.02 AND 3.03, THE CORPORATION, EACH OFFEREE SHAREHOLDER AND THE PURCHASER, RESPECTIVELY, MAKE NO REPRESENTATION , WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER.

ARTICLE 4 - COVENANTS

4.01 Covenants of the Corporation

(1) Except as otherwise contemplated by this Agreement or consented to in writing by the Purchaser, from the date of this Agreement until Closing, the Corporation will ensure that each of the Corporation and its Subsidiaries will:

(a) carry on their business only in the ordinary course of business consistent with past practice and shall not, other than in the ordinary course of business, enter into any transaction or take any action which if taken before the date hereof would constitute a breach of any representation, warranty or covenant contained in this Agreement;

(b) use all reasonable commercial efforts to preserve intact its business, organization and goodwill, to keep available the employees of its business as a group and to maintain satisfactory relationships with suppliers, distributors, customers and others with whom the Corporation and its Subsidiaries have business relationships;

(c) use all reasonable commercial efforts to cause its current insurance policies not to be cancelled or terminated or any other coverage thereunder to lapse, unless simultaneously with such terminations, cancellation or lapse, replacement policies underwritten by insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies, and where possible, for substantially similar premiums, are in full force and effect;

(d) promptly advise the Purchaser in writing of the occurrence of any Material Adverse Effect in respect of the Corporation or its Subsidiaries or of any facts that come to their attention which would cause any of the Corporation's representations and warranties herein contained to be untrue in any respect;

(e) not amend or waive any of the provisions of any of the employment Contracts and other arrangements for any of the employees of the Corporation and its Subsidiaries earning annual base salary in excess of $200,000, other than as required by such Contracts or arrangements;

(f) maintain the books, records and accounts of the Corporation and its Subsidiaries in the usual and ordinary course, consistent with past practice and record all transactions on a basis consistent with that practice;

(g) as soon as practicable after the date of this Agreement, and in any event no later than 30 days prior to the Closing Date, prepare and file, jointly with the Purchaser, a joint voluntary notice with the Committee on Foreign Investment in the United States (CFIUS) under the Exon-Florio amendment to the Defense Production Act of 1950, as amended (Exon-Florio), with respect to the transaction contemplated by this Agreement. The parties shall provide CFIUS with any additional or supplemental information requested by CFIUS or its member agencies during the Exon-Florio review process. The parties, in cooperation with each other, shall take all commercially reasonable steps advisable, necessary or desirable to finally and successfully complete the Exon-Florio review process as promptly as practicable; and

(h) as soon as practicable after the date of this Agreement, file the notice required by Section 122.4(b) of the United States International Traffic in Arms Regulations to be filed with the United States Department of State. The parties shall cooperate with each other, as necessary, whether prior to or following the Closing Date, to facilitate the amendment of any licenses, agreements, or other authorization under U.S. export control laws as required by the closing of this Agreement.

4.02 **Examination of Records and Assets**

The Corporation will make available to the Purchaser and its authorized representatives all data bases recorded or stored by means of any device, including in electronic form, title documents, abstracts of title, deeds, surveys, leases, certificates of trade marks and copyrights, contracts and commitments in its possession or under its control relating to any of the Corporation and its Subsidiaries, their assets or business. The Corporation will forthwith make available to the Purchaser and its authorized representatives for examination all books of account and accounting records relating to the Corporation and its Subsidiaries. The Corporation will give the Purchaser and its authorized representatives every reasonable opportunity to have access to and to inspect the assets of the Corporation and its Subsidiaries. The exercise of any rights of access or inspection by or on behalf of the Purchaser under this Section 4.02 will not affect or mitigate the covenants, representations and warranties of the Corporation or the Offeree Shareholders in this Agreement which will continue in full force and effect.

4.03 **Regulatory Matters**

Each of the Purchaser and the Corporation agree to make, if applicable, an appropriate filing pursuant to the HSR Act with respect to the transaction contemplated hereby within ten Business Days after the date of this Agreement and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act. The Purchaser shall have responsibility for any required filing fees association with the HSR Act filing. The Purchaser and the Corporation, acting through outside counsel, agree to coordinate and cooperate fully and promptly with each other in exchanging information and providing assistance as the other party may reasonably request in connection with any government inquiries related to the transaction contemplated herein. The Corporation and the Purchaser will (i) promptly notify the other of any communication to it from any governmental entity relating to the matters that are the subject of this Agreement and (ii) to the extent practicable and permitted by law, provide copies to the other of any

information to be submitted to any governmental entity relating to the matters that are the subject of this Agreement.

4.04 **Cooperation Regarding Structure**

Between the date hereof and the Closing Date, the Purchaser and the Corporation will in good faith cooperate and work together to endeavour to structure the transaction contemplated by this Agreement in a manner which accommodates the tax, corporate and other commercial considerations of the Purchaser; provided that such structure does not adversely affect the Corporation or the Shareholders.

4.05 **Inclusion of Financial Statements and Assistance**

The Corporation consents to the Purchaser including a copy of the audited consolidated financial statements of the Corporation for the periods ended on December 31, 2005 and December 31, 2006, the Unaudited Financial Statements (as defined in Section 3.01(2)(c)) and any other financial statements required by Applicable Law, in any prospectus, registration statement, offering memorandum or other offering document of the Purchaser prepared in connection with any debt or equity financing contemplated by the Purchaser, together with such other information regarding the Corporation and the Subsidiaries as may reasonably be required to be included in any such prospectus, registration statement, offering memorandum or other offering document. The Corporation also agrees to reasonably assist the Purchaser in connection with the completion of such financing, including in connection with preparing the responses to the due diligence inquiries of the persons providing such financing and in connection with obtaining the required consents and comfort letters of the auditors and other relevant parties. The Purchaser shall on request reimburse the Corporation for all out-of-pocket expenses incurred by the Corporation in connection with providing such assistance.

4.06 **Retention Bonuses and Commissions**

The Shareholders will be responsible for (a) the retention bonuses provided for in the employment arrangements with the employees set out on Schedule 3.01(8)(e); and (b) the commissions payable to Paul Timmis provided for in his employment arrangements in respect of all sales up to the Closing Date. At the Time of Closing, the amount of the retention bonus for Paul Timmis will be deposited into an escrow account and will be disbursed in accordance with the terms of the employment arrangement between the Corporation and Paul Timmis relating to such retention bonus. In the event of a forfeiture by Paul Timmis of his entitlement for all or any portion of his retention bonus, such amount will be released from escrow and will be delivered to the Purchaser, or as the Purchaser directs.

4.07 **Purchaser Financing**

(1) The Purchaser shall use its reasonable commercial efforts to arrange and consummate the financing on substantially the terms and conditions set forth in the Commitment Letters, including using reasonable commercial efforts to (A) satisfy on a timely basis all terms, conditions, representations and warranties applicable to the Purchaser in the Commitment Letters, (B) enter into definitive agreements with respect to the financing as promptly as

practicable on terms and conditions no less certain than those contained in the Commitment Letters and (C) obtain the funds under the Commitment Letters.

(2) The Purchaser shall keep the Corporation reasonably informed with respect to all material activity concerning the status of the financing and shall give the Corporation prompt notice of any material adverse change or material delay with respect to the financing. Without limiting the foregoing, the Purchaser shall notify the Corporation promptly, and in any event within one Business Day, if at any time prior to the date of Closing (A) any Commitment Letter shall be breached in any respect or expire or be terminated for any reason or (B) any financing source that is a party to any Commitment Letter notifies Purchaser that such source no longer intends to provide financing to Purchaser on the terms set forth therein. Without the prior written consent of the Corporation, neither the Purchaser nor any of its affiliates shall knowingly take any action or omit to take any action that reasonably would be expected to impair, delay or prevent the Purchaser's ability to timely obtain the proceeds of the financing or to enter into and timely consummate any alternate financing arrangement. The Purchaser shall not, without the prior written consent of the Corporation, terminate, amend or alter, or agree to terminate, amend or alter, any Commitment Letter in a manner that reasonably would impair, delay or prevent the transactions contemplated by this Agreement.

(3) If any portion of the financing becomes unavailable on the terms and conditions contemplated in the Commitment Letters, the Purchaser shall use reasonable commercial efforts to (A) arrange alternate financing (on terms and conditions, with respect to timing and amount, no less favorable in any material respect than those contained in the Commitment Letters) and, if obtained, shall promptly provide the Corporation with a copy of the new financing commitments, (B) enter into definitive agreements with respect to any such alternate financing arrangements as promptly as practicable and (C) obtain funds under such alternate financing arrangements to the extent necessary to consummate the transactions contemplated by this Agreement without undue delay.

ARTICLE 5- CONDITIONS AND TERMINATION

5.01 Conditions for the Benefit of the Purchaser

The sale by the Shareholders and the purchase by the Purchaser of the Shares is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

(a) except to the extent otherwise contemplated herein, the representations and warranties of the Corporation set forth in Section 3.01 and the Offeree Shareholders set forth in Section 3.02 will be true and correct in all material respects and for this purpose all materiality qualifications in such representations and warranties will be disregarded at the Time of Closing with the same force and effect as if made at and as of such time;

(b) the Corporation shall have used reasonable commercial efforts to obtain from each of the Minority Shareholders an instrument executed by that Minority Shareholder setting forth as to that Minority Shareholder the representations and warranties in

substantially the form set forth in Section 3.02 and shall cause all such instruments so obtained to be delivered to the Purchaser;

(c) the Corporation and the Shareholders will have performed or complied with all of the obligations and covenants and conditions of this Agreement to be performed or complied with in all material respects by the Corporation or the Shareholders at or prior to the Time of Closing;

(d) any waiting period (and any extension thereof) applicable to the completion of the transaction contemplated by this Agreement under the *Hart-Scott-Rodino Antitrust Improvements Act of 1976,* as amended, and the rules and regulations thereunder (the "HSR Act"), shall have been terminated or shall have expired, and the approvals required to consummate of the transaction contemplated by this Agreement pursuant to the antitrust laws of any other applicable jurisdiction shall have been obtained (or any applicable waiting period thereunder shall have been terminated or shall have expired) or litigation relating to the denial of such required approvals shall have terminated in favour of the approval of the transaction;

(e) the security in favour of Canadian Imperial Bank of Commerce over the property and assets of the Corporation and its Subsidiaries will have been discharged;

(f) no action or proceeding will be pending or threatened by any person to enjoin, restrict or prohibit

(i) the sale and purchase of the Shares contemplated hereby; or

(ii) the right of the Corporation and its Subsidiaries to conduct the business of the Corporation and its Subsidiaries;

(g) all required consents and approvals and notices to be obtained from or given to the applicable Governmental Authorities by the Corporation or its Subsidiaries and required to be obtained or given under any of the Permits or Contracts of the Corporation and its Subsidiaries, will have been obtained or given, as the case may be;

(h) no Material Adverse Effect in respect of the Corporation and its Subsidiaries will have occurred from the date hereof to the Time of Closing;

(i) all directors of the Corporation and its Subsidiaries specified by the Purchaser will resign;

(j) all directors of the Corporation and its Subsidiaries will release the Corporation and its Subsidiaries from any and all possible claims arising from any act, matter or thing arising at or prior to the Time of Closing except for any claim for indemnification to which a director or officer of the Corporation may be entitled;

(k) share certificates representing all of the Shares duly endorsed in blank for transfer, or accompanied by irrevocable security transfer powers of attorney duly executed in

blank, in either case by the holders of record will have been delivered to the Purchaser;

(l) the Escrow Agreement will have been signed and delivered by the parties thereto;

(m) the Shareholders Agreement, the Voting Trust Agreement, the Employee Share Purchase Plan – 2006 of the Corporation and the Stock Option Plan shall have been terminated; and

(n) all necessary steps and proceedings will have been taken to permit the Shares to be duly and regularly transferred to and registered in the name of the Purchaser.

5.02 **Conditions for the Benefit of the Shareholders**

The sale by the Shareholders and the purchase by the Purchasers of the Shares is subject to the following conditions, which are for the exclusive benefit of the Shareholders and which are to be performed or complied with at or prior to the Time of Closing:

(a) the representations and warranties of the Purchaser set forth in Section 3.03 will be true and correct in all material respects and for this purpose all materiality qualifications in such representations and warranties will be disregarded at the Time of Closing with the same force and effect as if made at and as of such time;

(b) the Corporation will release, and will cause its Subsidiaries to release, all directors of the Corporation and its Subsidiaries from any and all possible claims arising from any act, matter or thing arising at or prior to the Time of Closing;

(c) the Purchaser will have performed or complied with all of the obligations and covenants and conditions of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing;

(d) the Escrow Agreement will have been signed and delivered by the parties thereto;

(e) any waiting period (and any extension thereof) applicable to the completion of the transaction contemplated by this Agreement under the HSR Act shall have been terminated or shall have expired, and the approvals required to consummate of the transaction contemplated by this Agreement pursuant to the antitrust laws of any other applicable jurisdiction shall have been obtained (or any applicable waiting period thereunder shall have been terminated or shall have expired) or litigation relating to the denial of such required approvals shall have terminated in favour of the approval of the transaction; and

(f) the Purchaser will have deposited with the Escrow Agent in respect of the retention bonus of Paul Timmis described in Section 4.06(a) $19,000,000 in cash by wire transfer of immediately available funds to the Escrow Agent.

5.03 **Waiver of Condition**

The Purchaser, in the case of a condition set out in Section 5.01, and the Offeree Shareholders, in the case of a condition set out in Section 5.02, will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the sale and purchase of the Shares herein contemplated but will not have the right to sue the other party in respect of any breach of the other party's covenants, obligations or any inaccuracy or misrepresentation in a representation or warranty of the other party which gave rise to the non-performance of or non-compliance with the condition so waived.

5.04 **Termination**

This Agreement may be terminated, by notice given prior to or at the completion of the sale and purchase of the Shares herein contemplated:

(a) by the Offeree Shareholders or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party (or the Corporation in the case of a termination by the Purchaser) and such breach has not been waived on or before the Closing Date;

(b) by the Purchaser if any of the conditions in Section 5.01 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition on or before the Closing Date;

(c) by the Offeree Shareholders if any of the conditions in Section 5.02 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Offeree Shareholders or the Corporation to comply with their obligations under this Agreement) and the Offeree Shareholders have not waived such condition on or before the Closing Date;

(d) by written agreement of the Purchaser and the Offeree Shareholders; or

(e) by the Offeree Shareholders, if any Commitment Letter is withdrawn and an alternative financing commitment letter(s) (within the meaning of Section 4.07(3)) is not delivered by the Purchaser to the Corporation and the Offeree Shareholders within five days of such withdrawal.

5.05 **Effect of Termination**

(a) Each party's right of termination under Section 5.04 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated

pursuant to Section 5.04, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 6.02(2) and 8.03 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by one of the other parties or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of such other party's failure to comply with its obligations under this Agreement including in the case of termination by the Offeree Shareholders as a result of the failure of the Purchaser to satisfy its obligations pursuant to Sections 2.01, 2.02, 2.04(a) or 2.04(b) or both, or pursuant to Section 5.04(e), the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

(b) In the event of the termination of this Agreement by the Offeree Shareholders or the Purchaser pursuant to Section 5.04, written notice thereof shall forthwith be given to the non-terminating parties hereto. If this Agreement is terminated and the transactions contemplated herein are abandoned as provided herein:

(i) the Purchaser will redeliver to the Corporation all documents, work papers and other material of the Corporation relating to the transactions contemplated hereby, whether obtained before or after the execution hereof; and

(ii) from and after the date of this Agreement, all confidential information received by the Purchaser with respect to the business of the Corporation shall be treated in accordance with the provisions of the Confidentiality Agreement dated May 2, 2007 between CIBC World Markets Corp., on behalf of the Corporation, and the Purchaser, which shall survive the termination of this Agreement.

ARTICLE 6- CLOSING ARRANGEMENTS

6.01 Closing

The sale and purchase of the Shares will be completed at the Time of Closing at the offices of McCarthy Tétrault LLP, 40 Elgin Street, Suite 1400, Ottawa, Ontario, K1P 5K6.

6.02 Deliveries and Confidentiality

(1) The Purchaser will ensure that the Corporation preserves all documents described in Section 4.02 for a period of six years from the Closing Date, or for such other period as is required by any Applicable Law, and will permit the Shareholders and their authorized representatives reasonable access thereto in connection with the affairs of the Shareholders.

(2) The Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning the Shareholders or the Corporation obtained by the Purchaser pursuant hereto, and will hold all such information in the strictest confidence.

(3) From and after the Closing Date the Shareholders will not disclose to anyone or use for any purpose, other than as required in order to permit the Shareholders to comply with any applicable laws, including laws relating to taxes, any confidential information concerning the Corporation and its Subsidiaries and will hold all such information in the strictest confidence.

6.03 **Directors' and Officers' Insurance**

(1) The Corporation will purchase a pre-paid non-cancellable run-off extension to the Corporation's current directors' and officers' insurance policy on terms and conditions no less advantageous to the directors and officers of the Corporation than those contained in the policy in effect on the date hereof, for all present and former directors and officers of the Corporation and its Subsidiaries, covering claims made prior to or within six years after the Closing Date.

(2) From and after the Closing Date, the Purchaser will, and will cause the Corporation (or its successor) to, indemnify the current and former directors and officers of the Corporation and its Subsidiaries to the fullest extent to which the Purchaser and the Corporation are permitted to indemnify such officers and directors under and in accordance with their respective charter, by-laws, Applicable Law and contracts of indemnity.

ARTICLE 7 - INDEMNIFICATION

7.01 **Survival**

All covenants, representations and warranties of each party contained in this Agreement will survive the Closing and will continue in full force and effect, subject to the provisions of this Article 7.

7.02 **Indemnification by the Corporation**

(1) Subject to the provisions of this Article 7, the Corporation will indemnify and save harmless the Purchaser and the directors, officers, employees and agents of the Purchaser (collectively, the "Purchaser Indemnitees") from and against all Claims incurred by the Purchaser directly or indirectly resulting from (i) any breach of any covenant of the Corporation contained in this Agreement, (ii) any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 or (iii) the contravention of, non-compliance with or other breach, on or before the Closing Date, by the Corporation or its Affiliates of the Teaming Agreement ("GD Teaming Agreement") between General Dynamics Armament and Technical Products ("GD") and the Corporation dated May 27, 2005, as amended.

(2) Notwithstanding any of the other provisions of this Agreement, the Corporation will not be liable to any Purchaser Indemnitee in respect of:

(a) any representation and warranty of the Corporation set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement unless any claim or demand by the Purchaser against the Corporation with respect thereto is given to the Corporation and the Offeree Shareholders by the Purchaser prior to December 21, 2008, except in the

case of fraud, in which case there will be no time limit for the Purchaser to make a demand or claim against the Corporation in respect thereof; or

(b) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement:

(i) unless and until the aggregate of all Claims exceeds $4.0 million, and then only to the extent that such aggregate exceeds $2.0 million; or

(ii) in excess of the Indemnification Escrow Amount;

other than, in all cases, any Claim attributable to fraud.

(3) Subject to the provisions of this Article 7, each Shareholder, severally and not jointly, will indemnify and save harmless the Purchaser Indemnitees from and against all Claims incurred by the Purchaser directly or indirectly resulting from any breach of any covenant of that Shareholder contained in this Agreement or resulting from any inaccuracy or misrepresentation in any representation or warranty of that Shareholder set forth in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b), as the case may be.

(4) Notwithstanding any of the other provisions of this Agreement, no Shareholder will be liable to any Purchaser Indemnitee in respect of:

(a) any inaccuracy or misrepresentation of a Shareholder set forth in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b), unless any claim or demand by the Purchaser against that Shareholder is given to that Shareholder prior to December 21, 2008; or

(b) any inaccuracy or misrepresentation of a Shareholder set forth in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b). in an amount for that Shareholder in excess of that Shareholder's pro rata share of the Indemnification Escrow Amount;

other than, in all cases, a Claim based on the absence of, or deficiency in, the title of that Shareholder to its Shares or a Claim attributable to fraud.

(5) The Indemnification Escrow Amount shall be the Purchaser's sole recourse in the event of a successful Claim made by the Purchaser against the Corporation or the Shareholders except in respect of liability of any Shareholder for a Claim based on the absence of, or deficiency in, the title of that Shareholder to its shares, or liability under any Claim attributable to fraud of that Shareholder.

(6) For greater certainty, the Indemnification Escrow Amount is available to the Purchaser to satisfy Claims against the Corporation which the Purchaser is entitled to make pursuant to Sections 7.02(1) and (2). For the purposes of this Agreement, but without any derogation from the monetary limits set forth in Section 7.02(2), any Claim incurred by the Corporation (including any direct Claim or any Claim arising from a Third Party Proceeding) pursuant to Section 7.02 will be deemed to be a Claim incurred by the Purchaser.

7.03 **Indemnification by the Purchaser**

(1) Subject to the provisions of this Article 7, the Purchaser will indemnify collectively and save harmless the Shareholders and the Corporation and the directors, officers, employees and agents of the Shareholders and of the Corporation (the "Shareholder Indemnitees") from and against all Claims incurred by the Shareholders or the Corporation directly or indirectly resulting from any breach of any covenant of the Purchaser contained in this Agreement or from any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.03.

(2) Notwithstanding any of the other provisions of this Agreement, the Purchaser will not be liable to the Shareholder Indemnitees in respect of any Claim directly or indirectly resulting from any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.03, unless any claim or demand by the Shareholders against the Purchaser with respect thereto is given to the Purchaser by the Shareholders prior to December 21, 2008 and the Purchaser will not be liable in respect of any Claim unless and until the aggregate of all such Claims exceeds $4.0 million and then only to the extent that such aggregate exceeds $2.0 million and only up to a maximum amount equal to $40 million, other than, in all cases, any Claim attributable to fraud.

7.04 **Third Party Indemnification**

Promptly after the assertion by any third party of any claim, demand or notice thereof (a **"Third Party Proceeding"**) against any person entitled to indemnification under this Agreement (the **"Indemnitee"**) that results or may result in the incurrence by such Indemnitee of any Claims for which such Indemnitee would be entitled to indemnification pursuant to this Agreement, such Indemnitee will promptly notify the party from whom such indemnification is or may be sought (the **"Indemnitor"**) of such Third Party Proceeding. Such notice will also specify with reasonable detail (to the extent the information is reasonably available) the factual basis for the Third Party Proceeding, the amount claimed by the third party, or if such amount is not then determinable, a reasonable estimate of the likely amount of the claim by the Third Party. The failure to promptly provide such notice will not relieve the Indemnitor of any obligation to indemnify the Indemnitee, except to the extent such failure prejudices the Indemnitor. Thereupon, the Indemnitor will have the right, upon written notice (the "Defence Notice") to the Indemnitee within 30 days after receipt by the Indemnitor of notice of the Third Party Proceeding (or sooner if such Third Party Proceeding so requires) to conduct, at its own expense, the defence against the Third Party Proceeding in its own name or, if necessary, in the name of the Indemnitee provided that: (a) the Indemnitor acknowledges and agrees in the Defence Notice that as between the Indemnitor and the Indemnitee, it is liable to pay for all Claims arising from or relating to such Third Party Proceeding and (b) the Indemnitor provides to the Indemnitee adequate security (approved by the Indemnitee acting reasonably) from time to time in respect of such Claims. The Defence Notice will specify the counsel the Indemnitor will appoint to defend such Third Party Proceeding (the "Defence Counsel"), and the Indemnitee will have the right to approve the Defence Counsel, which approval will not be unreasonably withheld. Any Indemnified Party will have the right to employ separate counsel in any Third Party Proceeding and/or to participate in the defence thereof, but the fees and expenses of such counsel will not be included as part of any Claims incurred by the Indemnified Party unless (i) the Indemnitor failed to give the Defence Notice, including the acknowledgement and agreement to be set out therein within the prescribed period, (ii) such Indemnified Party has received an opinion of counsel, reasonably acceptable to the Indemnitor, to the effect that the interests of the Indemnified

Party and the Indemnitor with respect to the Third Party Proceeding are sufficiently adverse to prohibit the representation by the same counsel of both parties under applicable ethical rules, or (iii) the employment of such counsel at the expense of the Indemnitor has been specifically authorized by the Indemnitor. The party conducting the defence of any Third Party Proceeding will keep the other party apprised of all significant developments and will not enter into any settlement, compromise or consent to judgment with respect to such Third Party Proceeding unless the Indemnitor and the Indemnitee consent, which consent will not be unreasonably withheld.

7.05 **Duty to Mitigate and Subrogation**

(1) Nothing in this Agreement in any way restricts or limits the general obligation at law of the Indemnified Party to mitigate any damages which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement. The amount of any and all Claims under this Article 7 will be determined after taking into account any actual tax cost incurred (grossed up for such tax cost) or net of (i) the amount of any tax benefits actually realized by the Indemnified Party arising from the deduction of any such Claims, and (ii) any amounts actually recovered by the Indemnified Party under insurance policies, indemnities, reimbursement arrangements or similar agreements with respect to such Claims. The Indemnified Party shall take reasonable steps to enforce such recovery.

(2) The Indemnified Party shall, to the extent permitted by law, subrogate its rights relating to any third party claim to the Indemnifying Party and shall make or permit to be made all counterclaims and implead and permit to be impleaded all other Persons as may be reasonably required by the Indemnifying Party, the whole at the cost and expense of the Indemnifying Party.

7.06 **Exclusive Remedy**

From and after the completion of the sale and purchase of Shares herein contemplated, except in the case of a breach of Section 6.02(2) or (3), the rights of indemnity set forth in this Article 7 are the sole and exclusive remedies of each party in respect of any inaccuracy or misrepresentation in any representation or warranty, or breach of covenant or other obligation by another party under this Agreement. Accordingly, the parties waive, from and after the Closing, any and all rights, remedies and claims that one party may have against another party, whether at law, under any statute or in equity (including claims for contribution or other rights of recovery arising under any Environmental Law, claims for breach of contract, breach of representation and warranty, negligent representation and all claims for breach of duty), or otherwise, directly or indirectly, relating to the provisions of this Agreement or the transaction contemplated by this Agreement other than equitable remedies in the case of a breach of Section 6.02(3), as expressly provided for in this Article 7 and other than those arising with respect to any fraud. This Article 7 will remain in full force and effect in all circumstances and will not be terminated by any breach (fundamental, negligent or otherwise) by any party of its representations, warranties, covenants or other obligations under this Agreement or under any Closing document or by any termination or rescission of this Agreement by any party.

7.07 **Adjustment to Purchase Price**

All amounts payable by the Corporation or the Shareholders to a Purchaser Indemnitee pursuant to Article 7 will be deemed to be a decrease to the Purchase Price. All amounts

payable by the Purchaser to a Shareholder Indemnitee pursuant to Article 7 will be deemed to be an increase to the Purchase Price.

ARTICLE 8 - GENERAL

8.01 **Further Assurances**

Each of the Shareholders, the Corporation and the Purchaser will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

8.02 **Time of the Essence**

Time is of the essence of this Agreement.

8.03 **Costs and Expenses**

Each of the Shareholders, the Corporation and the Purchaser will pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim for any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

8.04 **Public Announcements**

Subject to disclosure as may be required by law or regulation of any government authority to which the Corporation, any Shareholder or the Purchaser submits, no publicity release or announcement concerning the discussions between the parties hereto, this Agreement, or the transactions contemplated hereby between the parties hereto will be issued by any party without the prior approval of the form and substance thereof by each other party. In the event that disclosure is required by law or regulation of any government authority to which the Corporation, any Shareholder or the Purchaser submits, to the extent practicable in the circumstances, the parties will consult in advance concerning the disclosure and the party proposing to make disclosure shall provide drafts for consideration and prior approval by the other parties with respect to any required press release or other disclosure. For greater certainty, the foregoing shall not prevent the Corporation from publicly commenting upon the transaction contemplated hereby on a general basis without reference to the Purchaser.

8.05 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, other legal representatives, successors and permitted assigns of the parties hereto.

8.06 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

8.07 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

8.08 **Assignment**

This Agreement may be assigned by any Offeree Shareholder or by the Purchaser without the consent of the Purchaser or the Offeree Shareholders as the case may be, to an Affiliate of such Offeree Shareholder or the Purchaser, provided that such Affiliate enters into a written agreement to be bound by the provisions of this Agreement in all respects and to the same extent as such Offeree Shareholder or the Purchaser is bound and provided that such Offeree Shareholder or the Purchaser will continue to be bound by all the obligations hereunder as if such assignment had not occurred and perform such obligations to the extent that such Affiliate fails to do so. The Purchaser may also assign this Agreement without the consent of the Offeree Shareholders to the Senior Lenders (as defined in Section 1.01 (Take Back Notes)) and the Bridge Lenders (as defined in Section 1.01 (Take Back Notes)), or their respective agents, as collateral security for the obligations of the Purchaser to the Senior Lenders and the Bridge Lenders in respect of credit facilities made available by them to the Purchaser, or in respect of notes issued to them by the Purchaser, as the case may be. Following the Closing Date, any Offeree Shareholder may assign any of its rights or obligations under this Agreement in connection with any dissolution or winding-up of such Offeree Shareholder only with the prior written consent of the Purchaser, which consent will not be unreasonably withheld.

8.09 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery , by registered mail or by electronic means of communication addressed to the recipient as follows:

To Richard L'Abbé and 1062455 Ontario Inc.

c/o Richard L'Abbé
1902 – 3590 Rivergate Way
Ottawa, Ontario K1V 1V6

To Growthworks Canadian Fund Ltd.

275 Slater Street, Suite 900
Ottawa, Ontario K1P 5H9

Facsimile No.: (613) 567-3979

Attention: Richard Charlebois
Vice President, Investments

with a copy to Growthworks Canadian Fund Ltd.

20 Queen Street West, Suite 3504
Toronto, Ontario M5H 3R3

Facsimile No.: (416) 929-0901

Attention: Les Lyall
Senior Vice-President

To Schroder Canada and Schroder UK

c/o Schroders Venture Managers (Canada) Limited
Suite 3000, 1800 McGill College Ave.
Montreal, Quebec H3A 3J6

Facsimile No.: (514) 861-2495

Attention: Paul S. Echenberg

with a copy to Stikeman Elliott LLP:

40th Floor, 1155 René Levesque West
Montreal, QC H3B 3V2

Facsimile No.: (514) 397-3222

Attention: André Roy

and with a copy to:

Schroder Ventures Holdings Limited
111 Strand Street
London WC2R 0AG

Facsimile No.: (44) 207 240 5346

Attention: Gerard Lloyd

To the Corporation:

Med-Eng Systems Inc.
2400 St. Laurent Blvd.
Ottawa, Ontario K1G 6C4

Facsimile No.: (613) 739-3345

Attention: Danny Osadca, President and CEO

with a copy to:

McCarthy Tétrault LLP
Barristers & Solicitors
Suite 1400, 40 Elgin Street
Ottawa, ON K1P 5K6

Facsimile No.: (613) 563-9386

Attention: Robert D. Chapman

To the Purchaser:

Allen-Vanguard Corporation
5459 Canotek Road
Ottawa, Ontario
K1J 9M3

Facsimile No.: (613) 749-8981

Attention: David Luxton
President and CEO

with a copy to:

Lang Michener LLP
50 O'Connor Street
Suite 300
Ottawa, Ontario
K1P 6L2

Facsimile No.: (613) 231-3191

Attention: Elisabeth Preston

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on

the day of actual delivery thereof and, if given by registered mail, on the fifth Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

8.10 **Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.11 **No Third Party Beneficiaries**

This Agreement is solely for the benefit of :

(a) the Shareholders and the Corporation, and their respective heirs, executors, administrators, other legal representatives, successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and

(b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Corporation and the Shareholders under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other person any remedy, claim, liability, reimbursement, cause of action or other right. The Corporation appoints the Purchaser as the trustee for the Purchaser Indemnitees of the covenants of indemnification of the Corporation with respect to such Purchaser Indemnitees as specified in this Agreement and the Purchaser accepts such appointment. The Purchaser appoints the Offeree Shareholders as the trustee for the Shareholder Indemnitees of the covenants of indemnification of the Purchaser with respect to such Shareholder Indemnitees specified in this Agreement and the Shareholders accept such appointment.

8.12 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.13 **Attornment**

For the purpose of all legal proceedings this Agreement shall be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario shall have jurisdiction to entertain any action arising under this Agreement. The Corporation, each Shareholder and the Purchaser each hereby attorns to the jurisdiction of the courts of the Province of Ontario.

8.14 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

[Balance of this page intentionally left blank.]

8.15 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission in PDF format will be as effective as delivery of a manually executed copy of this Agreement by such party.

IN WITNESS WHEREOF the parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

8.15 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission in PDF format will be as effective as delivery of a manually executed copy of this Agreement by such party.

IN WITNESS WHEREOF the parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

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IN WITNESS WHEREOF the parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name: TIMOTHY LEE
Title: SVP INVESTMENTS

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

8.15 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission in PDF format will be as effective as delivery of a manually executed copy of this Agreement by such party.

IN WITNESS WHEREOF the parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name: CATHERINE LYNG
Title: DIRECTOR

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

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IN WITNESS WHEREOF the parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By: Gerard Lloyd
Name: GERARD LLOYD
Title: Director

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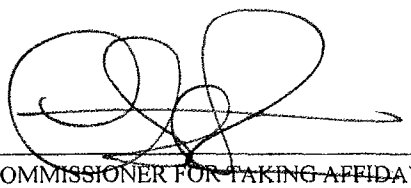
This is Exhibit "B" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

THIS ESCROW AGREEMENT is made as of the 17th day of September, 2007

BETWEEN:

Allen-Vanguard Corporation, a corporation incorporated under the laws of the Province of Ontario (the "Purchaser"),

- and -

Offeree Shareholders (as defined below),

- and -

Med-Eng Systems Inc., a corporation incorporated under the laws of the Province of Ontario (the "Corporation"),

- and –

Computershare Trust Company of Canada, a trust company governed by the laws of Canada (the "Escrow Agent").

RECITALS:

A. The Parties other than the Escrow Agent are parties to a share purchase agreement dated as of August 3, 2007 (the **"Share Purchase Agreement"**), under which the Purchaser agreed to purchase all of the issued and outstanding shares in the capital of the Corporation (as defined in Section 1.1).

B. Pursuant to a Shareholder Agreement made as of the 19th day of April, 2000 between the Corporation and all Shareholders (as defined below), the Shareholders are obliged to sell their shares of the Corporation in accordance with the Share Purchase Agreement.

C. Pursuant to Section 2.04 of the Share Purchase Agreement, the Purchaser and the Offeree Shareholders agreed to enter into an escrow agreement to provide for the deposit of funds and Take Back Notes (as defined herein) receivable by all Shareholders as part of the Purchase Price (as defined in the Share Purchase Agreement) into escrow to be held as security for (i) any Claims for indemnification made by the Purchaser for itself or on behalf of a Purchaser Indemnitee pursuant to Section 7.02 or 7.04 of the Share Purchase Agreement, and (ii) any post-Closing downwards adjustment in the Estimated Working Capital under Section 2.03 of the Share Purchase Agreement, all in accordance with the terms and conditions of this Agreement.

D. The foregoing recitals are representations and statements of fact by the Purchaser, the Offeree Shareholders and the Corporation, and not by the Escrow Agent.

THEREFORE, the parties agree as follows:

ARTICLE 1
DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Whenever used in this Agreement, the words and terms listed below have the meanings set out below.

"Agreement" means this escrow agreement, including all schedules, and all amendments or restatements, as permitted, and references to "Article" or "Section" mean the specified Article or Section of this Agreement.

"Authorized Investment" means a Canadian dollar denominated investment in any: (a) short-term direct obligations of, or unconditionally guaranteed by, the federal government of Canada, any agency thereof, or any Province of Canada, or (b) short-term guaranteed investment certificates of deposit or other evidences of indebtedness issued by, or money market fund maintained by, any bank listed on Schedule I to the *Bank Act* (Canada).

"**Business Day**" means any day of the week other than a Saturday or Sunday, or a statutory or civic holiday observed in Toronto, Ontario.

"Claims" means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements incurred by a Purchaser Indemnitee directly or indirectly resulting from any breach of any covenant of the Corporation or any Shareholder contained in the Share Purchase Agreement or from any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 of the Share Purchase Agreement or of any Shareholder set out in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b) of the Share Purchase Agreement.

"Corporation" means Med-Eng Systems Inc., a corporation governed by the laws of the Province of Ontario.

"Escrow Funds" means, collectively, the Indemnification Escrow Fund and the Working Capital Escrow Fund.

"Indemnification Escrow Amount" has the meaning ascribed thereto in Section 2.1(a)(i).

"Indemnification Escrow Fund" has the meaning ascribed thereto in Section 2.1(a)(i).

"Notice of Claim" has the meaning ascribed thereto in Section 4.1(b).

"Objection Notice" has the meaning ascribed thereto in Section 4.1(c).

"Offeree Shareholders" means Richard L'Abbé, 1062455 Ontario Inc., Growthworks Canadian Fund Ltd., Schroder Canada and Schroder UK.

"Parties" means, collectively, all of the Purchaser, the Shareholders, the Corporation and the Escrow Agent, and "**Party**" means any one of them.

"Purchaser Indemnitee" means the Purchaser and the directors, officers, employees and agents of the Purchaser.

"Schroder Canada" means Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLPL3; Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6, limited partnerships formed under the laws of Quebec.

"Schroder UK" means Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, a limited partnership formed under the laws of England and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc).

"Shareholders" means all of the shareholders of the Corporation as set forth in Schedule 4.1(f).

"Share Purchase Agreement" has the meaning ascribed thereto in Recital A.

"Take Back Notes" means the Fixed Rate Secured Subordinated Notes, due December 31, 2007, of the Purchaser issued to the Offeree Shareholders as contemplated in the Share Purchase Agreement.

"Working Capital Escrow Amount" has the meaning ascribed thereto in Section 2.1(a)(ii).

"Working Capital Escrow Fund" has the meaning ascribed thereto in Section 2.1(a)(ii).

1.2 Certain Rules of Interpretation

In this Agreement:

(a) **Consent** – Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

(b) **Currency** – Unless otherwise specified, all references to money amounts are to lawful currency of Canada.

(c) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

(d) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

(e) **Including** – Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

(f) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

(g) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

(h) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.

(i) **Statutory references** – A reference to a statute includes all regulations and rules made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.

(j) **Time** – Time is of the essence in the performance of the Parties' respective obligations. All references to a time in this Agreement shall be Toronto time.

(k) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.3 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between 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.

1.4 Schedules

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

Schedule	Description
Schedule 2.3	Form of Investment Direction
Schedule 4.1(f)	Proportionate Interests of the Shareholders and Mailing Addresses for Distributions
Schedule 4.2	Form of Distribution Direction

ARTICLE 2
ESTABLISHMENT OF ESCROW; INVESTMENT OF ESCROW FUNDS

2.1 Deposit of Escrow Amount; Escrow Fund

(a) The amounts set forth below will be deposited by the Shareholders with the Escrow Agent in cash or in Take Back Notes measured by the principal amount thereof or in a combination of cash and Take Back Notes, on or about the date hereof. The Escrow Agent shall acknowledge receipt of such amounts by delivering to the Parties a written receipt executed by the Escrow Agent.

(i) $40,000,000 (the **"Indemnification Escrow Amount"**); the Indemnification Escrow Amount, as (i) increased by any interest earned or accrued on the cash portion thereof further to the Authorized Investments made in accordance with Section 2.3, and (ii) reduced by any distributions made in accordance with Section 4.1, is referred to herein as the **"Indemnification Escrow Fund"**; and

(ii) $3,000,000 (the **"Working Capital Escrow Amount"**); the Working Capital Escrow Amount, as (i) increased by any interest earned or accrued on the cash portion thereof further to the Authorized Investments made in accordance with Section 2.3, and (ii) reduced by any distributions made in accordance with Section 4.2, is referred to herein as the **"Working Capital Escrow Fund"**.

(b) All amounts received in cash by the Escrow Agent upon payment of interest and principal under the Take Back Notes shall be held by the Escrow Agent in place of the Take Back Notes in accordance with the terms hereof.

(c) The Offeree Shareholders may from time to time deposit cash with the Escrow Agent in substitution, in whole or in part, for Take Back Notes, such amount of cash to be equal to the aggregate principal amount of such Take Back Notes plus interest accrued thereon to the date of deposit of such cash.

2.2 Appointment of Escrow Agent

The Offeree Shareholders and the Purchaser hereby appoint the Escrow Agent as escrow agent, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent and to hold, safeguard and disburse each of the Escrow Funds in accordance with the terms and conditions of this Agreement.

2.3 Investment of Escrow Fund

The Escrow Agent shall invest the cash portion of Indemnification Escrow Fund and Working Capital Escrow Fund from time to time in such Authorized Investments as may be specified by the Offeree Shareholders pursuant to a written direction delivered by the Offeree Shareholders substantially in the form of Schedule 2.3. If the Escrow Agent has not at any time received such written direction in respect of any of the Escrow Funds, such Escrow Funds shall be held in a segregated interest-bearing cash account to be held by the Escrow Agent at a Bank listed on Schedule I of the Bank Act (Canada); provided however that such Escrow Funds shall not be commingled with any other Escrow Fund. The Escrow Agent is authorized to liquidate in accordance with its customary procedures any portion of the applicable Escrow Funds consisting of investments to provide for payments required to be made under this Agreement. The Escrow Agent shall have no responsibility or liability for any diminution of any of the Escrow Funds resulting from any Authorized Investment made in accordance with this Section 2.3, including any losses on any investment liquidated prior to maturity in order to make a payment required hereunder.

2.4 Interest

(a) Interest earned in respect of the Escrow Funds shall be for the benefit of the Party to whom such Escrow Funds, or a portion thereof, is distributed pro rata to such distributed amount.

(b) Each of the Shareholders shall be required to recognize and include as income in its applicable Tax Returns, and pay any applicable Tax arising in respect of, its proportionate share of any interest earned or accrued in respect of each Escrow Fund further to the Authorized Investments made in accordance with Section 2.3; provided however that no amount shall be credited by the Escrow Agent to any of the Shareholders on account of interest earned or accrued in respect of any of the Escrow Funds until a distribution is made out of the applicable Escrow Fund in accordance with this Agreement.

ARTICLE 3
DUTIES OF ESCROW AGENT; FEES; REMOVAL OR RESIGNATION OF ESCROW AGENT

3.1 Duties and Liabilities of the Escrow Agent

(a) The Escrow Agent and its officers, directors, employees, agents and successors and assigns shall have no duties or responsibilities other than those expressly set forth in this Agreement, and shall have no liability or responsibility arising under any other agreement, including any agreement referred to in this Agreement, to which the Escrow Agent is not a party, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent.

(b) The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and shall not be held liable for any error in judgment made in

good faith, unless it is proved that the Escrow Agent was negligent or engaged in wilful misconduct.

(c) Subject to Section 3.1(b), the Escrow Agent shall be entitled to: (i) rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof, and (ii) act in reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so.

(d) The Escrow Agent may retain legal counsel, accountants, engineers, appraisers, other experts, agents, agencies and advisors as may be reasonably required for the purpose of discharging its duties or determining its rights under this Agreement, and the Escrow Agent shall not be held liable or responsible for the misconduct of any of them. Subject to Section 3.1(b), the Escrow Agreement shall incur no liability if it acts, or does not act, in accordance with the opinion and instruction of such legal counsel. The reasonable costs of such services shall be added to and be part of the Escrow Agent's fee hereunder.

(e) In the event of any disagreement between the other Parties hereto resulting in adverse claims or demands being made in connection with any of the Escrow Funds or in the event that the Escrow Agent is in doubt as to what action (if any) it should take hereunder in connection with any of the Escrow Funds, the Escrow Agent shall be entitled, at its discretion, to refuse to comply with any demands or claims on it, as long as such disagreement shall continue, and in so refusing the Escrow Agent may make no delivery or other disposition of any asset involved herein or affected hereby, and in so doing the Escrow Agent shall not be or become liable in any way or to any other Party for its failure or refusal to comply with such conflicting demands or adverse claims, and shall be entitled to continue so to refrain from acting and so to refuse to act until the Escrow Agent shall have received (i) a final non-appealable order of a court of competent jurisdiction directing delivery of such Escrow Funds, or (ii) a written agreement executed by the Offeree Shareholders and the Purchaser directing delivery of such Escrow Funds, in which event the Escrow Agent shall disburse such Escrow Funds in accordance with such order or agreement.

(f) All payments made from either of the Escrow Funds shall be subject to any withholding or other requirements of any applicable Laws in force at the time of the payment.

(g) Subject to Section 3.1(b), the Escrow Agent shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, or for the form or execution of such instrument, or for the identity, authority or right of any Person executing or depositing any such instrument.

(h) The Escrow Agent shall not be required to take notice of any default or to take any action with respect to such default involving any expense or liability, unless notice in writing of such default is delivered to the Escrow Agent in accordance with Section 5.1(f) and unless the Escrow Agent is indemnified, in a manner satisfactory to it, against such expense or liability.

(i) The Escrow Agent shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Escrow Agent.

(j) Each other Party hereby represents to the Escrow Agent that any account to be opened by, or interest to held by, the Escrow Agent in connection with this Agreement, for or to the credit of such Party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case such Party hereto agrees to complete and execute forthwith a declaration in the Escrow Agent's prescribed form as to the particulars of such third party.

(k) Subject to Section 3.1(b), no provision of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur financial liability in the performance of its duties or the exercise of any of its rights or powers.

(l) The Escrow Agent shall retain the right not to act and shall, subject to Section 3.1(b), not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Escrow Agent, in its sole reasonable judgment, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Escrow Agent, in its reasonable judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then the Escrow Agent shall have the right to resign on ten days written notice to the other parties to this Agreement, or such shorter period as agreed to by the parties to this Agreement, notwithstanding the provisions of Section 3.3(a) of this Agreement, provided (i) that the Escrow Agent's written notice shall describe the circumstances of such non-compliance; (ii) that if such circumstances are rectified to the Escrow Agent's satisfaction within such ten day period, then such resignation shall not be effective.

(m) The Parties acknowledge that the Escrow Agent may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

(i) to provide the services required under this agreement and other services that may be requested from time to time;

(ii) to help the Escrow Agent manage its servicing relationships with such individuals;

(iii) to meet the Escrow Agent's legal and regulatory requirements; and

(iv) if Social Insurance Numbers are collected by the Escrow Agent, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that the Escrow Agent may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Agreement for the purposes described above and, generally, in the manner and on the terms described in its Privacy Code, which the Escrow Agent shall make available on its website or upon request, including revisions thereto. Further, each party agrees that it shall not provide or cause to be provided to the Escrow Agent any personal information relating to an individual who is not a party to this Agreement unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

(n) Upon the Escrow Agent's delivery of the Indemnification Escrow Amount and the Working Capital Escrow Amount in accordance with the provisions of this Agreement, the Escrow Agent shall be automatically and immediately released from all obligations under this Agreement to any party hereto and to any other person with respect to the Indemnification Escrow Amount and the Working Capital Escrow Amount.

(o) Subject to Section 3.1(b), the Escrow Agent will not be liable to any of the other Parties hereunder for any action taken or omitted to be taken by it under or in connection with this Agreement. Under no circumstances will the Escrow Agent be liable for any special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages hereunder, including any loss of profits, whether foreseeable or unforeseeable.

3.2 Fees, Costs and Expenses of the Escrow Agent

As full compensation for its services rendered under this Agreement, the Escrow Agent shall be entitled to remuneration in accordance with the Schedule of Fees provided by the Escrow Agent and executed by the Corporation and the Escrow Agent. The Escrow Agent shall be reimbursed for all reasonable out-of-pocket expenses or disbursements incurred or made by the Escrow Agent in the performance of its duties hereunder (except to the extent such expenses or disbursements were made or incurred as a result of the negligence or wilful misconduct of the Escrow Agent). All fees, expenses or disbursements payable under this Section 3.2 shall be paid by the Corporation. The Escrow Agent shall invoice the Corporation in arrears in respect of such fees, expenses and disbursements. Any amount owing under this Section and unpaid 30 days after request for such payment, will bear interest from the expiration of such 30 days at a rate per

annum equal to the then current rate charged by the Escrow Agent, payable on demand. The foregoing section shall survive the termination of this Agreement or the resignation or removal of the Escrow Agent.

3.3 Resignation or Removal of the Escrow Agent

(a) The Escrow Agent may resign from its position as escrow agent and be discharged from all further duties and liabilities hereunder upon thirty days' written notice delivered to the Offeree Shareholders and the Purchaser, or such shorter notice as the Parties may agree. The Escrow Agent may be removed from its office as escrow agent by the Offeree Shareholders and the Purchaser upon 30 days' joint written notice delivered (by the Offeree Shareholders and the Purchaser) to the Escrow Agent, or such shorter notice as the Parties may agree. Upon any discharge or removal, the Escrow Agent shall deliver the Escrow Funds by certified cheque as jointly directed by the Offeree Shareholders and the Purchaser, and shall execute such further assurances and documents as are required by the Offeree Shareholders and the Purchaser in connection with such transition.

(b) In the event of the resignation or removal of the Escrow Agent, the Offeree Shareholders and the Purchaser shall jointly appoint a successor escrow agent on terms and conditions substantially identical to the terms and conditions of this Agreement.

3.4 Indemnification of the Escrow Agent

The Shareholders and the Purchaser shall be jointly and severally liable to indemnify the Escrow Agent, its officers, directors, employees and agents and hold them harmless from and against any and all loss, liability, damage, cost and expense of any nature incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to, reasonable attorneys' fees and other costs and expenses of defending or preparing to defend against any claim of liability, unless and except to the extent such loss, liability, damage, cost and expense shall be caused by the breach by the Escrow Agent of its obligations under this Agreement or by the Escrow Agent's negligence, bad faith or wilful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement or the resignation or removal of the Escrow Agent.

ARTICLE 4
DISTRIBUTIONS FROM ESCROW FUNDS

4.1 Distributions out of the Indemnification Escrow Fund

(a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall

be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.

(b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a **"Notice of Claim"**) to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.

(c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written notice (an **"Objection Notice"**) setting forth the reasons for the objection.

(d) If the Offeree Shareholders do not deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the dollar amount of the Claim claimed in the Notice of Claim shall be deemed established for all purposes of this Agreement and the Share Purchase Agreement and, at the end of such 30 days' period, the Escrow Agent shall pay such amount to the Purchaser from the Indemnification Escrow Fund. The Escrow Agent shall pay such amount in the form of Take Back Notes plus interest accrued thereon in accordance with their terms until all Take Back Notes have been delivered from the Indemnification Escrow Fund before any payments are made in cash. The Escrow Agent shall not, and shall not be required to, inquire into or consider whether a Notice of Claim complies with the requirements of the Share Purchase Agreement.

(e) If the Offeree Shareholders deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the Escrow Agent shall make payment of the non-disputed portion of the Notice of Claim as provided in Section 4.1(d) above and shall make payment with respect to the disputed portion of the Notice of Claim only in accordance with (i) joint written instructions of the Purchaser and the Offeree Shareholders, or (ii) a final non-appealable order of a court of competent jurisdiction. The Escrow Agent shall act on any such court order without further inquiry or question.

(f) On December 21, 2008, the Indemnification Escrow Fund shall be reduced by the value (if any) of any Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement which remain pending as of such date, and the Escrow Agent shall distribute the remaining amount to the Shareholders (in the proportions set forth on Schedule 4.1(f)) on, or as soon as possible after, such date. Any amount remaining in the Indemnification Escrow Fund after all Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement are resolved shall be distributed by the Escrow Agent to the

Shareholders (in the proportions set forth on Schedule 4.1(f)) as soon as possible after such resolution.

(g) For greater certainty, the aggregate liability of the Shareholders and the Company with respect to any and all Claims made under Section 7.02 or 7.04 of the Share Purchase Agreement shall not exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof and the aggregate amount of any distributions made by the Escrow Agent to the Purchaser under this Section 4.1 shall in no event exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof.

4.2 Distributions out of the Working Capital Escrow Fund

(a) If the Purchaser becomes entitled, pursuant to Section 2.03 of the Share Purchase Agreement, to all or a portion of the Working Capital Escrow Amount, then the Offeree Shareholders and the Purchaser agree to execute and deliver to the Escrow Agent a joint written direction, substantially in the form of Schedule 4.2, authorizing the Escrow Agent to pay such amount to the Purchaser from the Working Capital Escrow Fund. The Escrow Agent shall, as soon as possible following the receipt of such joint written direction, without further inquiry or question, pay such amount to the Purchaser from the Working Capital Escrow Fund. The Escrow Agent shall pay such amount in the form of Take Back Notes plus accrued interest thereon in accordance with their terms to the full extent of Take Back Notes available before any portion of the payment is made in cash.

(b) If any amount is remaining in the Working Capital Escrow Fund after all payments required to be made to the Purchaser pursuant to Section 2.03 of the Share Purchase Agreement have been made, then the Offeree Shareholders and the Purchaser agree to execute and deliver to the Escrow Agent a joint written direction, substantially in the form of Schedule 4.2, authorizing the Escrow Agent to pay such remaining amount to the Shareholders from the Working Capital Escrow Fund (in the proportions set forth on Schedule 4.1(f)). The Escrow Agent shall, as soon as possible following the receipt of such joint written direction, without further inquiry or question, pay such amount to the Shareholders from the Working Capital Escrow Fund (in the proportions set forth on Schedule 4.1(f)).

ARTICLE 5
GENERAL

5.1 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 by facsimile):

(a) in the case of a Notice to the Purchaser, at:

Allen-Vanguard Corporation
5459 Canotek Road
Ottawa, Ontario
K1J 9M3

Facsimile No.: (613) 749-8981

Attention: David Luxton
President and CEO

with a copy to:

Lang Michener LLP
50 O'Connor Street
Suite 300
Ottawa, Ontario
K1P 6L2

Facsimile No.: (613) 231-3191

Attention: Elisabeth Preston

(b) in the case of Richard L'Abbé and 1062455 Ontario Inc., to Richard L'Abbé, at:

c/o Richard L'Abbé
1902 – 3590 Rivergate Way
Ottawa, Ontario K1V 1V6

(c) to Growthworks Canadian Fund Ltd.

275 Slater Street, Suite 900
Ottawa, Ontario K1P 5H9

Facsimile No.: (613) 567-3979

Attention: Richard Charlebois
Vice President, Investments

with a copy to Growthworks Canadian Fund Ltd.

20 Queen Street West, Suite 3504
Toronto, Ontario M5H 3R3

Facsimile No.: (416) 929-0901

Attention: Les Lyall
Senior Vice-President

(d) to Schroder Canada and Schroder UK, at

c/o Schroders Venture Managers (Canada) Limited
Suite 3000, 1800 McGill College Ave.
Montreal, Quebec H3A 3J6

Facsimile No.: 514-861-2495

Attention: Paul S. Echenberg

with a copy to Stikeman Elliott LLP:

40th Floor, 1155 René Levesque West
Montreal, QC H3B 3V2

Facsimile No.: 514-397-3222

Attention: André Roy

and with a copy to:

Schroder Ventures Holdings Limited
111 Strand Street
London WC2R 0AG

Facsimile No.: (44) 201 240 5346

Attention: Gerard Lloyd

(e) to the Corporation, at:

Med-Eng Systems Inc.
2400 St. Laurent Blvd.
Ottawa, Ontario K1G 6C4

Facsimile No.: 613-739-3345

Attention: Danny Osadca, President and CEO

with a copy to:

McCarthy Tétrault LLP
Barristers & Solicitors
Suite 1400, 40 Elgin Street
Ottawa, ON K1P 5K6

Facsimile No: 613-563-9386

Attention: Robert D. Chapman

(f) to the Escrow Agent, at:

Computershare Trust Company of Canada
100 University Avenue
9th Floor, North Tower
Toronto, Ontario M5J 2Y1

Facsimile No. 416-981-9777

Attention: Manager, Corporate Trust

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.

5.2 Assignment

Any Offeree Shareholder may assign any of its rights or obligations under this Agreement to any Affiliate of such Offeree Shareholder. Any Offeree Shareholder may assign any of its rights or obligations under this Agreement in connection with any dissolution or winding-up of such Offeree Shareholder only with the prior written consent of the Purchaser, which consent shall not be unreasonably withheld. Each of the Corporation and the Purchaser may assign and transfer this Agreement and any of its rights and obligations under this Agreement, in whole or in part, to an Affiliate or to any one subsequent purchaser of the Corporation or the Purchaser or any of their respective Affiliates. Other than as expressly provided in this Section 5.2, neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by any Party without the prior written consent of the other Parties.

5.3 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation, dissolution or winding-up of any Party) and permitted assigns.

5.4 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

5.5 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing.

[Balance of this page intentionally left blank.]

5.6 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

IN WITNESS OF WHICH the Parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name: David Luxton
Title: President and CEO

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

Computershare Trust Company of Canada

By:_____
Name:
Title:

By:_____
Name:
Title:

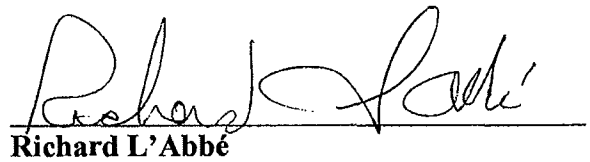
5.6 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

IN WITNESS OF WHICH the Parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:



Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name: BLAIR GEDDES
Title: CFO

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

Computershare Trust Company Of Canada

By:_____
Name:
Title:

By:_____
Name:
Title:

5.6 Execution and Delivery

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IN WITNESS OF WHICH the Parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name: Timothy Lee
Title: SVP Investments

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

Computershare Trust Company Of Canada

By:_____
Name:
Title:

By:_____
Name:
Title:

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This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

IN WITNESS OF WHICH the Parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name: CATHERINE LYNG
Title: DIRECTOR

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

Computershare Trust Company Of Canada

By:_____
Name:
Title:

By:_____
Name:
Title:

5.6 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

IN WITNESS OF WHICH the Parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By: Gerard Lloyd
Name: GERARD LLOYD
Title: Director

Computershare Trust Company Of Canada

By:_____
Name:
Title:

By:_____
Name:
Title:

5.6 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

IN WITNESS OF WHICH the Parties have executed this Agreement.

Allen-Vanguard Corporation

By:_____
Name:
Title:

_____
Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

Med-Eng Systems Inc.

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

Computershare Trust Company Of Canada

By:_____
Name: Michelle Mendonca
Title: Professional, Corporate Trust

By:_____
Name: Patricia Wakelin
Title: Professional, Corporate Trust

This is Exhibit "C" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

For Ministry Use Only
À l'usage exclusif du ministère

Ontario Corporation Number
Numéro de la société en Ontario
1747991

1

Ministry of Government Services
Ontario

Ministère des Services gouvernementaux

CERTIFICATE
This is to certify that these articles are effective on

CERTIFICAT
Ceci certifie que les présents statuts entrent en vigueur le

OCTOBER 0 1 OCTOBRE, 2007

Director / Directrice
Business Corporations Act / Loi sur les sociétés par actions

Form 4
Business Corporations Act

Formule 4
Loi sur les sociétés par actions

ARTICLES OF AMALGAMATION
STATUTS DE FUSION

1. The name of the amalgamated corporation is: (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale de la société issue de la fusion (écrire en LETTRES MAJUSCULES SEULEMENT) :

MED-ENG SYSTEMS INC.

2. The address of the registered office is:
Adresse du siège social :

5459 Canotek Road, Unit 2
(Street & Number or R.R. Number & if Multi-Office Building give Room No.)
(Rue et numéro, ou numéro de la R.R. et, s'il s'agit d'un édifice à bureaux, numéro du bureau)

Ottawa, **Ontario** K1J 9M3
(Name of Municipality or Post Office) (Postal Code / *Code postal*)
(Nom de la municipalité ou du bureau de poste)

3. Number of directors is/are: **or** minimum and maximum number of directors is/are:
Nombre d'administrateurs : **ou** *nombres minimum et maximum d'administrateurs :*

Number **or** Nombre **ou**	minimum *minimum*	and *et*	maximum *maximum*
	1		10

4. The director(s) is/are:
Administrateur(s) :

First name, middle names and surname *Prénom, autres prénoms et nom de famille*	Address for service, giving Street & No. or R.R. No., Municipality, Province, Country and Postal Code *Domicile élu, y compris la rue et le numéro ou le numéro de la R.R., le nom de la municipalité, la province, le pays et le code postal*	Resident Canadian State 'Yes' or 'No' *Résident canadien Oui/Non*
David Luxton	366 Bruyere Street, Ottawa, Ontario K1N 5E7	Yes
Robert Ryan	53 Silverhill Drive, Toronto, Ontario M9B 3W3	Yes
Elisabeth Preston	20 Lakeview Avenue, Rockcliffe Park, Ontario K1M 0T1	Yes

07121 (08/2005)

AVC00083044/1

5. **Check A or B**
Cocher A ou B

☐ A) The amalgamation agreement has been duly adopted by the shareholders of each of the amalgamating corporations as required by subsection 176 (4) of the *Business Corporations Act* on the date set out below.

A) Les actionnaires de chaque société qui fusionnne ont dûment adopté la convention de fusion conformément au paragraphe 176(4) de la Loi sur les sociétés par actions *à la date mentionnée ci-dessous.*

or
ou

☑ B) The amalgamation has been approved by the directors of each amalgamating corporation by a resolution as required by section 177 of the *Business Corporations Act* on the date set out below.

B) Les administrateurs de chaque société qui fusionne ont approuvé la fusion par voie de résolution conformément à l'article 177 de la Loi sur les sociétés par actions *à la date mentionnée ci-dessous.*

The articles of amalgamation in substance contain the provisions of the articles of incorporation of
Les statuts de fusion reprennent essentiellement les dispositions des statuts constitutifs de

ALLEN-VANGUARD HOLDINGS LTD.

and are more particularly set out in these articles.
et sont énoncés textuellement aux présents statuts.

Names of amalgamating corporations *Dénomination sociale des sociétés qui fusionnent*	Ontario Corporation Number *Numéro de la société en Ontario*	Date of Adoption/Approval *Date d'adoption ou d'approbation* Year / *année* Month / *mois* Day / *jour*
ALLEN-VANGUARD HOLDINGS LTD.	2147012	2007/09/26
MED-ENG SYSTEMS INC.	1443574	2007/09/26

6. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.
Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la société.

There are no restrictions on the business the Corporation may carry on or on the powers the Corporation may exercise.

7. The classes and any maximum number of shares that the corporation is authorized to issue:
Catégories et nombre maximal, s'il y a lieu, d'actions que la société est autorisée à émettre :

An unlimited number of common shares without par value.

8. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series:
Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions qui peut être émise en série :

The holders of the common shares shall be entitled:

(a) to vote at all meetings of shareholders of the Corporation, except meetings at which only holders of a specified class of shares are entitled to vote;

(b) to receive, subject to the rights of the holders of another class of shares, any dividends declared by the Corporation; and

(c) to receive, subject to the rights of the holders of another class of shares, the remaining property of the Corporation on the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

9. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:
L'émission, le transfert ou la propriété d'actions est/n'est pas restreint. Les restrictions, s'il y a lieu, sont les suivantes :

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares of the Corporation without either:

(a) the approval of the directors of the Corporation expressed either by a resolution passed at a duly constituted meeting of the board of directors, by a majority of the directors of the Corporation present and entitled to vote or by an instrument or instruments in writing signed by a majority of the directors; or

(b) the approval of the shareholders of the Corporation expressed either by a resolution passed at a duly constituted meeting of the shareholders, by a majority of the votes cast thereat or by an instrument or instruments in writing signed by the holders of outstanding shares in the capital of the Corporation having a majority of the voting rights attaching to all of the outstanding shares in the capital of the Corporation.

10. Other provisions, (if any):
Autres dispositions, s'il y a lieu :

(a) The number of shareholders of the Corporation, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after termination of that employment to be, shareholders of the Corporation, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

(b) Any invitation to the public to subscribe for securities of the Corporation is prohibited.

11. The statements required by subsection 178(2) of the *Business Corporations Act* are attached as Schedule "A".
Les déclarations exigées aux termes du paragraphe 178(2) de la Loi sur les sociétés par actions *constituent l'annexe A.*

12. A copy of the amalgamation agreement or directors' resolutions (as the case may be) is/are attached as Schedule "B".
Une copie de la convention de fusion ou les résolutions des administrateurs (selon le cas) constitue(nt) l'annexe B.

These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

Names of the amalgamating corporations and signatures and descriptions of office of their proper officers.
Dénomination sociale des sociétés qui fusionnent, signature et fonction de leurs dirigeants régulièrement désignés.

ALLEN-VANGUARD HOLDINGS LTD.

Per: _____
Elisabeth Preston- Director

MED-ENG SYSTEMS INC.

Per: _____
Elisabeth Preston - Director

Schedule "A" to Articles of Amalgamation of

MED-ENG SYSTEMS INC.

STATEMENT OF DIRECTOR OR OFFICER

The undersigned, a director of each of **Allen-Vanguard Holdings Ltd.** and **Med-Eng Systems Inc.**, the amalgamating corporations referred to in the Articles of Amalgamation to which this schedule is attached as Schedule "A", hereby states that:

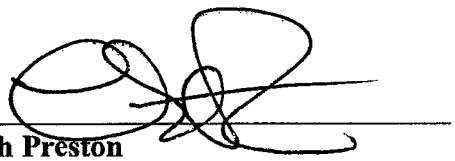
1. there are reasonable grounds for believing that each of **Allen-Vanguard Holdings Ltd.** and **Med-Eng Systems Inc.** is, and the Amalgamated Corporation will be, able to pay its liabilities as they become due and the realizable value of the Amalgamated Corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes;

2. there are reasonable grounds for believing that no creditor of **Allen-Vanguard Holdings Ltd.** or **Med-Eng Systems Inc.** will be prejudiced by the amalgamation;

3. no creditors of **Allen-Vanguard Holdings Ltd.** or **Med-Eng Systems Inc.** have notified the corporation that they object to the amalgamation and therefore clause 178(2)(c) of the *Business Corporations Act* (Ontario) (the "Act") is not applicable; and

4. with respect to clause 178(2)(d) of the Act this clause is not applicable in light of the statement made in reference to clause 178(2)(c) of the Act.

DATED the 26th day of September, 2007.



Elisabeth Preston

Schedule "B-1" to Articles of Amalgamation of

MED-ENG SYSTEMS INC.

RESOLUTION OF THE BOARD OF DIRECTORS OF

ALLEN-VANGUARD HOLDINGS LTD.

"Amalgamation

WHEREAS Allen-Vanguard Holdings Ltd. (the "Corporation") is the sole shareholder of and has agreed to amalgamate with Med-Eng Systems Inc. pursuant to Subsection (1) of Section 177 of the *Business Corporations Act* (Ontario) (the "Act");

RESOLVED THAT:

1. the amalgamation of the Corporation with Med-Eng Systems Inc., pursuant to Subsection (1) of Section 177 thereof, is hereby approved;

2. effective upon issuance of a Certificate of Amalgamation pursuant to Section 178 of the Act, all shares of the authorized capital of Med-Eng Systems Inc., including all shares which have been issued and are outstanding at the date hereof, shall be cancelled without any repayment of capital in respect thereof;

3. the by-laws of the amalgamated corporation shall be the same as the by-laws of the Corporation;

4. the articles of amalgamation of the amalgamated corporation shall be the same as the articles of the Corporation;

5. the name of the amalgamated corporation shall be Med-Eng Systems Inc.;

6. no securities shall be issued and no assets shall be distributed by the amalgamated corporation in connection with the amalgamation;

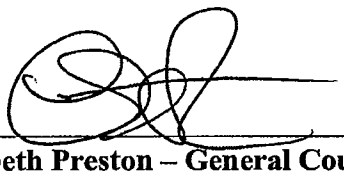
7. the stated capital of each class of shares of the amalgamated corporation issued and outstanding immediately following the issuance of a Certificate of Amalgamation shall be equal to the stated capital of the corresponding class of shares of the Corporation issued and outstanding immediately prior to the issuance of the said certificate; and

8. any one officer or director of the Corporation is hereby authorized to do all things and execute all instruments and documents necessary or desirable to carry out and give effect to the foregoing."

****

CERTIFIED to be a true copy of a resolution of **Allen-Vanguard Holdings Ltd.** passed by the signatures of all the directors of the Corporation who would be entitled to vote on the resolution at a meeting of the directors pursuant the *Business Corporations Act* (Ontario) on the 26th day of September, 2007, which resolution is in full force and effect unamended as at the date hereof.

DATED the 26th day of September, 2007.



Elisabeth Preston – General Counsel and Corporate Secretary

Schedule "B-2" to Articles of Amalgamation of

MED-ENG SYSTEMS INC.

RESOLUTION OF THE BOARD OF DIRECTORS OF

MED-ENG SYSTEMS INC.

"Amalgamation

WHEREAS Med-Eng Systems Inc. (the "Corporation") is the subsidiary of and has agreed to amalgamate with Allen-Vanguard Holdings Ltd. pursuant to Subsection (1) of Section 177 of the *Business Corporations Act* (Ontario) (the "Act");

RESOLVED THAT:

1. the amalgamation of the Corporation with Allen-Vanguard Holdings Ltd., pursuant to Subsection (1) of Section 177 of the Act, is hereby approved;

2. effective upon issuance of a Certificate of Amalgamation pursuant to Section 178 of the Act the shares in the capital of the Corporation, including all such shares of which have been issued and are outstanding at the date hereof, shall be cancelled without any repayment of capital in respect thereof;

3. the by-laws of the amalgamated corporation shall be the same as the by-laws of Allen-Vanguard Holdings Ltd.;

4. the articles of amalgamation of the amalgamated corporation shall be the same as the articles of Allen-Vanguard Holdings Ltd.;

5. the name of the amalgamated corporation shall be Med-Eng Systems Inc.;

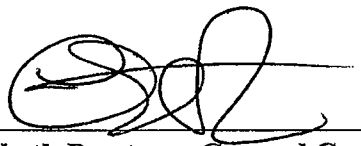
6. no securities shall be issued and no assets shall be distributed by the amalgamated corporation in connection with the amalgamation; and

7. any one officer or director of the Corporation is hereby authorized to do all things and execute all instruments and documents necessary or desirable to carry out and give effect to the foregoing."

****

CERTIFIED to be a true copy of a resolution of **Med-Eng Systems Inc.** passed by the signatures of all the directors of the Corporation who would be entitled to vote on the resolution at a meeting of the directors pursuant the *Business Corporations Act* (Ontario) on the 26th day of September, 2007, which resolution is in full force and effect unamended as at the date hereof.

DATED the 26th day of September, 2007.



Elisabeth Preston – General Counsel and Corporate Secretary

This is Exhibit "D" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

1

For Ministry Use Only
À l'usage exclusif du ministère

Ministry of Government Services
Ontario

Ministère des Services gouvernementaux

Ontario Corporation Number
Numéro de la société en Ontario

1839861

CERTIFICATE
This is to certify that these articles are effective on

CERTIFICAT
Ceci certifie que les présents statuts entrent en vigueur le

JANUARY 01 JANVIER, 2011

Director / Directrice
Business Corporations Act / Loi sur les sociétés par actions

Form 4
Business Corporations Act

Formule 4
Loi sur les sociétés par actions

ARTICLES OF AMALGAMATION
STATUTS DE FUSION

1. The name of the amalgamated corporation is: (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale de la société issue de la fusion: (Écrire en LETTRES MAJUSCULES SEULEMENT) :

ALLEN-VANGUARD CORPORATION

2. The address of the registered office is:
Adresse du siège social :

2400 St. Laurent Blvd.

Street & Number or R.R. Number & if Multi-Office Building give Room No. /
Rue et numéro ou numéro de la R.R. et, s'il s'agit d'un édifice à bureaux, numéro du bureau

Ottawa — ONTARIO — K1G6C4

Name of Municipality or Post Office /
Nom de la municipalité ou du bureau de poste

Postal Code/*Code postal*

3. Number of directors is:
Nombre d'administrateurs :

Fixed number / *Nombre fixe* [ ]

OR minimum and maximum / ***OU*** *minimum et maximum* 3 to 15

4. The director(s) is/are: / *Administrateur(s) :*

First name, middle names and surname *Prénom, autres prénoms et nom de famille*	Address for service, giving Street & No. or R.R. No., Municipality, Province, Country and Postal Code *Domicile élu, y compris la rue et le numéro ou le numéro de la R.R., le nom de la municipalité, la province, le pays et le code postal*	Resident Canadian State 'Yes' or 'No' *Résident canadien Oui/Non*
David Luxton	31 MacKay, Ottawa, Ontario, K1M 2B1	Yes
Raymond French	2929 Arch Street, Philadelphia, Pennsylvania, U.S.A. 19104	No
Paul Halpern	2929 Arch Street, Philadelphia, Pennsylvania, U.S.A. 19104	No

07121E (05/2007)

AVC00073905/1

4. The Directors are (continued from page 1, number 4):

First name, middle name, surname	Address for service, giving Street & No. or R.R. No., Municipality, Province, Country and Postal Code	Resident Canadian State "Yes" or "No"
Dennis Morris	2400 St. Laurent Blvd. Ottawa, Ontario K1G 6C4	Yes

5. Method of amalgamation, check A or B
Méthode choisie pour la fusion – Cocher A ou B :

A - **Amalgamation Agreement / *Convention de fusion* :**

☐ The amalgamation agreement has been duly adopted by the shareholders of each of the amalgamating corporations as required by subsection 176 (4) of the *Business Corporations Act* on the date set out below.
Les actionnaires de chaque société qui fusionnne ont dûment adopté la convention de fusion conformément au paragraphe 176(4) de la Loi sur les sociétés par actions *à la date mentionnée ci-dessous.*

or
ou

B - **Amalgamation of a holding corporation and one or more of its subsidiaries or amalgamation of subsidiaries / *Fusion d'une société mère avec une ou plusieurs de ses filiales ou fusion de filiales :***

☒ The amalgamation has been approved by the directors of each amalgamating corporation by a resolution as required by section 177 of the *Business Corporations Act* on the date set out below.
Les administrateurs de chaque société qui fusionne ont approuvé la fusion par voie de résolution conformément à l'article 177 de la Loi sur les sociétés par actions *à la date mentionnée ci-dessous.*

The articles of amalgamation in substance contain the provisions of the articles of incorporation of
Les statuts de fusion reprennent essentiellement les dispositions des statuts constitutifs de

Allen-Vanguard Corporation

and are more particularly set out in these articles.
et sont énoncés textuellement aux présents statuts.

Names of amalgamating corporations *Dénomination sociale des sociétés qui fusionnent*	Ontario Corporation Number *Numéro de la société en Ontario*	Date of Adoption/Approval *Date d'adoption ou d'approbation* Year *année* / Month *mois* / Day *jour*
Allen-Vanguard Corporation	1633813	2010-12-09
Allen-Vanguard Technologies Inc.	1747991	2010-12-09

6. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.
Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la société.

None

7. The classes and any maximum number of shares that the corporation is authorized to issue:
Catégories et nombre maximal, s'il y a lieu, d'actions que la société est autorisée à émettre :

An unlimited number of common shares and an unlimited number of preferred shares, issuable in series.

8. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series:

Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions qui peut être émise en série :

See attached.

A COMMON SHARES

There shall be attached to the common shares, the following rights, privileges, restrictions and conditions, namely:

1 The holders of common shares shall be entitled to receive notice of, and to vote at every meeting of the shareholders of the Corporation and shall have one (1) vote thereat for each such common share so held.

2 Subject to the rights, privileges, restrictions and conditions attached to any preferred shares of the Corporation, the holders of common shares shall be entitled to receive such dividend as the directors may from time to time, by resolution, declare.

3 Subject to the rights, privileges, restrictions and conditions attached to any preferred shares of the Corporation, in the event of liquidation, dissolution or winding up of the Corporation or upon any distribution of the assets of the Corporation among shareholders being made (other than by way of dividend out of monies properly applicable to the payment of dividends) the holders of common shares shall be entitled to share pro rata.

The additional rights, privileges, restrictions and conditions attaching to the common shares as a class shall be as follows:

1. Defined Terms

For the purposes of paragraphs 2 and 3 hereof:

(a) **"Corporation"** means Allen-Vanguard Corporation;

(b) **"Contego AV"** means Contego AV Luxembourg S.à r.l, a Luxembourg S.à r.l;

(c) **"Transfer"** has the meaning ascribed to such term in paragraph 2(b) hereof;

(d) **"Transfer Agent"** means CIBC Mellon Trust Company;

(e) **"Transfer Date"** means the date upon which the Transfer Notice is delivered to the Transfer Agent in accordance with paragraph 2(a) hereof;

(f) **"Transfer Price"** means $1.00;

(g) **"Transfer Notice"** means the notice advising of the Transfer, substantially in the form attached hereto; and

(h) **"Transfer Time"** means the time the Transfer Notice is delivered to the Transfer Agent on the Transfer Date in accordance with paragraph 2(a) hereof.

2. Transfer

(a) At any time, the Corporation may cause the Transfer through the delivery by the Corporation of the Transfer Notice to the Transfer Agent by hand delivery to an authorized signing officer of the Transfer Agent, which delivery shall be deemed to be delivery of the Transfer Notice to each holder of common shares of the Corporation, with a copy to Contego AV by delivery to an authorized signing officer of Contego AV.

(b) In the event the Transfer Notice is delivered by the Corporation in accordance with paragraph 2(a) hereof, at the Transfer Time, each holder of common shares shall be deemed to have transferred, to Contego AV all of such person's right, title and interest in and to its common shares and Contego AV shall acquire, and shall be deemed to have acquired, from each such holder of common shares all, but not less than all, of the common shares held by each such holder (which transfer and acquisitions are referred to herein as the **"Transfer"**) and, at the Transfer Time, each holder of common shares shall not be entitled to exercise any of the rights of a holder of common shares in respect thereof other than the right to receive its pro rata share of the Transfer Price for the common shares.

(c) Contego AV shall, on the Transfer Date, deposit with, or otherwise cause to be deposited with, the Transfer Agent sufficient funds to pay the Transfer Price to the holders of the common shares and, in the event that the Transfer Notice is delivered by the Corporation in accordance with paragraph 2(a) hereof, such deposit shall constitute a full and complete discharge of Contego AV's obligation to pay the Transfer Price to the holders of the common shares. On and after the Transfer Time, any such money deposited with the Transfer Agent shall be held by the Transfer Agent as agent for the holders of the common shares, and receipt of payment by the Transfer Agent shall be deemed to constitute payment of the Transfer Price to the holders of the common shares for all of the common shares transferred pursuant to the Transfer. The holders of the common shares transferred pursuant to the Transfer shall be entitled to receive their pro rata share of the Transfer Price (rounded down to the nearest $0.01), without interest, for the common shares so transferred, (i) on presentation and surrender of the certificate or certificates representing all common shares held by such holder (or, in respect of any such certificate or certificates which have been lost, destroyed or wrongfully taken, an indemnity bond together with an affidavit confirming ownership, each in a form satisfactory to Contego AV, acting reasonably) or any other evidence of ownership with respect to the common shares which is satisfactory to Contego AV, acting reasonably, and (ii) on presentation of a fully completed and duly executed letter of transmittal in a form acceptable to Contego AV and the Transfer Agent, acting reasonably, provided that no holder shall be entitled to receive an amount less than $0.01. Should any holder of any common shares transferred pursuant to the Transfer fail to present and surrender the above

mentioned documentation, Contego AV shall have the right after four (4) years from the Transfer Date, to have all remaining funds deposited with the Transfer Agent returned to Contego AV and Contego AV shall thereafter be responsible for payment of the Transfer Price to any former holder of a common share upon presentation and surrender of such documentation as Contego AV may require.

3. If the Transfer Notice has not been delivered to the Transfer Agent in accordance with paragraph 2(a) hereof on or prior to 11:59 p.m. on the date that is two (2) business days after the date on which the certificate of amendment is received by the Corporation from the Ministry of Government Services, the provisions of paragraphs 1 and 2 hereof shall be of no force or effect.

B **(PREFERRED SHARES (ISSUABLE IN SERIES)**

There shall be attached to the preferred shares, the following rights, privileges, restrictions and conditions, namely:

1. The directors of the Corporation may, from time to time, issue the preferred shares in one or more series, each series to consist of such number of shares as may before issuance thereof, be determined by the directors.
2. The directors of the Corporation may, be resolution (subject as hereinafter provided) fix before issuance, the designation, rights, privileges, restrictions and conditions to attach to the preferred shares of each series, including, without limiting the generality of the foregoing, the rate, form, entitlement and payment of preferential dividends, the redemption price, terms, procedures and conditions of redemption, if any, voting rights and conversion rights (if any) and any sinking fund, purchase fund or other provisions attaching to the preferred shares of such series; and provided, however, that no shares of any series shall be issued until the directors have filed an amendment to the Articles with the Director of the Companies Branch, Ministry of Consumer and Business Services, Province of Ontario, or such designated person in any other jurisdiction in which the Corporation may be continued.
3. If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series shall participate rateably in respect of accumulated dividends and return of capital.
4. The preferred shares shall be entitled to preference over the common shares of the Corporation and any other shares of the Corporation ranking junior to the preferred shares with respect to the payment of dividends, if any, and in the distribution of assets in the event of liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, and may also be given such other preferences over the common shares of the Corporation and any other shares of the corporation ranking junior to the preferred shares as may be fixed by the resolution of the directors of the corporation as to the respective series authorized to be issued.

5. The preferred shares of each series shall rank on a parity with the preferred shares of every other series with respect to priority in the payment of dividends and in the distribution of assets in the event if liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary exclusive of any conversion rights that may affect the aforesaid.

6. No dividends shall at any time be declared or paid on or set apart for payment on any shares of the Corporation ranking junior to the preferred shares unless all dividends, if any, up to and including the dividend payable for the last completed period for which such dividend shall be payable on each series of preferred shares then issued and outstanding shall have been declared and paid or set apart for payment at the date of such declaration or payment or setting apart for payment on such shares of the Corporation ranking junior to the preferred shares nor shall the Corporation call for redemption or redeem or purchase for cancellation or reduce or otherwise pay off any of the preferred shares (less than the total amount then outstanding) or any shares of the Corporation ranking junior to the preferred shares unless all dividends up to and including the dividend payable, if any, for the last completed period for which such dividends shall be payable on each series of the preferred shares then issued and outstanding shall have been declared and paid or set apart for payment at the date of such call for redemption, purchase, reduction or other payment.

7. Preferred shares of any series may be purchased for cancellation or made subject to redemption by the Corporation out of capital pursuant to the provisions of the *Business Corporations Act* (Ontario), if the directors so provide in the resolution of the Board of Directors of the Corporation relating to the issuance of such preferred shares, and upon such other terms and conditions as may be specified in the designations, rights, privileges, restrictions and conditions attaching to the preferred shares of such series as set forth in the said resolution of the Board of Directors and the amendment to the Articles of the Corporation relating to the issuance of such series.

8. The holders of the preferred shares shall not, as such, be entitled as of right to subscribe for or purchase or receive any part of any issue of shares or bonds, debentures or other securities of the Corporation now or hereafter authorized.

9. No class of shares may be created or rights and privileges increased to rank in parity or priority with the rights and privileges of the preferred shares including, without limiting the generality of the foregoing, the rights of the preferred shares to receive dividends or to return of capital, without the approval of the holders of the preferred shares as required under the *Business Corporations Act* (Ontario).

4E

TRANSFER NOTICE

TO: CIBC Mellon Trust Company

COPY TO: Contego AV Luxembourg S.à r.l.

FROM: Allen-Vanguard Corporation

DATE: **[insert date]**

All capitalized terms in this Transfer Notice that are not defined herein have the meaning ascribed to such terms in the share provisions attaching to the common shares of Allen-Vanguard Corporation.

In accordance with the share provisions attaching to the common shares, Allen-Vanguard Corporation hereby gives notice to the Transfer Agent and Contego AV Luxembourg S.à r.l. of the Transfer.

ALLEN-VANGUARD CORPORATION

Per:_____

Name:
Title:

Date on which this Transfer Notice is delivered to the Transfer Agent: _____

Time on the Transfer Date this Transfer Notice is delivered to the Transfer Agent: _____

9. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:
L'émission, le transfert ou la propriété d'actions est/n'est pas restreint. Les restrictions, s'il y a lieu, sont les suivantes :

No restrictions

10. Other provisions, (if any):
Autres dispositions, s'il y a lieu :

Meetings of shareholders of the Corporation may be held outside Ontario at any place within Canada or the United States of America as the Board of Directors of the Corporation may determine.

11. The statements required by subsection 178(2) of the *Business Corporations Act* are attached as Schedule "A".
Les déclarations exigées aux termes du paragraphe 178(2) de la Loi sur les sociétés par actions *constituent l'annexe A.*

12. A copy of the amalgamation agreement or directors' resolutions (as the case mey be) is/are attached as Schedule "B".
Une copie de la convention de fusion ou les résolutions des administrateurs (selon le cas) constitue(nt) l'annexe B.

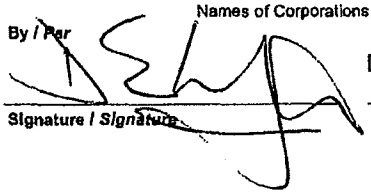
These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

Name and **original signature** of a director or authorized signing officer of each of the amalgamating corporations. Include the name of each corporation, the signatories name and description of office (e.g. president, secretary). **Only a director or authorized signing officer can sign on behalf of the corporation.** */ Nom et **signature originale** d'un administrateur ou d'un signataire autorisé de chaque société qui fusionne. Indiquer la dénomination sociale de chaque société, le nom du signataire et sa fonction (p. ex. : président, secrétaire). **Seul un administrateur ou un dirigeant habilité peut signer au nom de la société.***

Allen-Vanguard Corporation

Names of Corporations / *Dénomination sociale des sociétés*

By / *Par*



Signature / *Signature*

David Luxton

Print name of signatory / *Nom du signataire en lettres moulées*

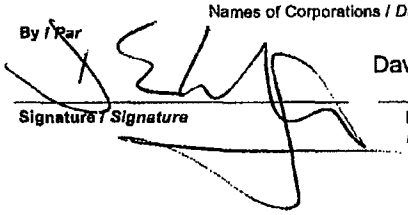
Chairman

Description of Office / *Fonction*

Allen-Vanguard Technologies, Inc.

Names of Corporations / *Dénomination sociale des sociétés*

By / *Par*



Signature / *Signature*

David Luxton

Print name of signatory / *Nom du signataire en lettres moulées*

President

Description of Office / *Fonction*

Names of Corporations / *Dénomination sociale des sociétés*

By / *Par*

Signature / *Signature*

Print name of signatory / *Nom du signataire en lettres moulées*

Description of Office / *Fonction*

Names of Corporations / *Dénomination sociale des sociétés*

By / *Par*

Signature / *Signature*

Print name of signatory / *Nom du signataire en lettres moulées*

Description of Office / *Fonction*

Names of Corporations / *Dénomination sociale des sociétés*

By / *Par*

Signature / *Signature*

Print name of signatory / *Nom du signataire en lettres moulées*

Description of Office / *Fonction*

STATEMENT OF A DIRECTOR
OF ALLEN-VANGUARD CORPORATION
made pursuant to subsection (2) of section 178 of
the *Business Corporations Act* (Ontario)
in the matter of the amalgamation of Allen-Vanguard Corporation
and Allen-Vanguard Technologies Inc. (the "Amalgamated Corporation")

I, **David Luxton**, of the City of Ottawa , in the Province of Ontario, do hereby certify and state as follows:

1. This statement is made pursuant to subsection 178(2) of the *Business Corporations Act* (Ontario);

2. I am a Director of **Allen-Vanguard Corporation** and as such have knowledge of its affairs;

3. I have conducted such examinations of the books and records of **Allen-Vanguard Corporation** as are necessary to enable me to make the statements hereinafter set forth;

4. There are reasonable grounds for believing that:

   (a) **Allen-Vanguard Corporation** is and the corporation to be formed by the amalgamation of **Allen-Vanguard Corporation** and **Allen-Vanguard Technologies Inc.** will be able to pay its liabilities as they become due; and

   (b) the realizable value of the Amalgamated Corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and

5. There are reasonable grounds for believing that no creditor of **Allen-Vanguard Corporation** will be prejudiced by the amalgamation.

DATED at Ottawa, Ontario this 9th day of December, 2010.

David Luxton

LM - #50128694v1

STATEMENT OF A DIRECTOR
OF ALLEN-VANGUARD TECHNOLOGIES INC.
made pursuant to subsection (2) of section 178 of
the *Business Corporations Act* (Ontario)
in the matter of the amalgamation of Allen-Vanguard Corporation
and Allen-Vanguard Technologies Inc. (the "Amalgamated Corporation")

I, David Luxton, of the City of Ottawa , in the Province of Ontario, do hereby certify and state as follows:

1. This statement is made pursuant to subsection 178(2) of the *Business Corporations Act* (Ontario);

2. I am a Director of **Allen-Vanguard Technologies Inc.** and as such have knowledge of its affairs;

3. I have conducted such examinations of the books and records of **Allen-Vanguard Technologies Inc.** as are necessary to enable me to make the statements hereinafter set forth;

4. There are reasonable grounds for believing that:

   (a) **Allen-Vanguard Technologies Inc.** is and the corporation to be formed by the amalgamation of **Allen-Vanguard Corporation** and **Allen-Vanguard Technologies Inc.** will be able to pay its liabilities as they become due; and

   (b) the realizable value of the Amalgamated Corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and

5. There are reasonable grounds for believing that no creditor of **Allen-Vanguard Technologies Inc.** will be prejudiced by the amalgamation.

DATED at Ottawa, Ontario this 9th day of December, 2010.

David Luxton

LM - #50128696v1

DIRECTORS' RESOLUTIONS OF
Allen-Vanguard Corporation
(the "Corporation")
authorizing its amalgamation with
Allen-Vanguard Technologies Inc.
under the *Business Corporations Act* (Ontario)

WHEREAS the Corporation is desirous of amalgamating with its subsidiary company, **Allen-Vanguard Technologies Inc.**, in accordance with subsection (1) of section 177 of the *Business Corporations Act* (Ontario);

BE IT RESOLVED as follows:

1. The amalgamation of the Corporation with **Allen-Vanguard Technologies Inc.** is hereby authorized in accordance with subsection (1) of section 177 of the *Business Corporations Act* (Ontario);

2. The Board hereby confirms that all of the shares of **Allen-Vanguard Technologies Inc.** are owned by the Corporation;

3. The shares of **Allen-Vanguard Technologies Inc.** shall be cancelled upon the amalgamation without any repayment of capital in respect thereof;

4. The by-laws of the amalgamated corporation shall be the same as the by-laws of the Corporation;

5. Except as may be prescribed, the articles of amalgamation shall be the same as the articles of the Corporation;

6. No securities shall be issued and no assets shall be distributed by the amalgamated corporation in connection with the amalgamation;

7. In connection with the amalgamation, the President or the Secretary of the Corporation is authorized and directed to sign all documents and to do all things necessary to carry out the amalgamation; and

8. This Resolution may be signed in several counterparts and by way of facsimile or electronic means and when so signed shall be deemed to be an original signed Resolution and the counterparts together shall constitute one and the same Resolution effective as of the date set out in this Resolution.

The foregoing Resolutions are hereby passed and consented to in accordance with the *Business Corporations Act* (Ontario) as evidenced by the signatures hereto of all of the Directors of the Corporation effective the 9th day of December, 2010.

David Luxton	Raymond French
Paul Halpern	Gregory Segall
Dennis Morris	

LM - #50128684v1

DIRECTORS' RESOLUTIONS OF
Allen-Vanguard Technologies Inc.
(the "Corporation")
authorizing its amalgamation with
Allen-Vanguard Corporation
under the *Business Corporations Act* (Ontario)

WHEREAS the Corporation is desirous of amalgamating with its parent company, **Allen-Vanguard Corporation,** in accordance with subsection (1) of section 177 of the *Business Corporations Act* (Ontario);

BE IT RESOLVED as follows:

1. The amalgamation of the Corporation with **Allen-Vanguard Corporation** is hereby authorized in accordance with subsection (1) of section 177 of the *Business Corporations Act* (Ontario);

2. The Board hereby confirms that all of the shares of the Corporation are owned by **Allen-Vanguard Corporation;**

3. The shares of the Corporation shall be cancelled upon the amalgamation without any repayment of capital in respect thereof;

4. The by-laws of the amalgamated corporation shall be the same as the by-laws of **Allen-Vanguard Corporation;**

5. Except as may be prescribed, the articles of amalgamation shall be the same as the articles of **Allen-Vanguard Corporation;**

6. No securities shall be issued and no assets shall be distributed by the amalgamated corporation in connection with the amalgamation;

7. In connection with the amalgamation, the President or the Secretary of the Corporation is authorized and directed to sign all documents and to do all things necessary to carry out the amalgamation; and

8. This Resolution may be signed in several counterparts and by way of facsimile or electronic means and when so signed shall be deemed to be an original signed Resolution and the counterparts together shall constitute one and the same Resolution effective as of the date set out in this Resolution.

The foregoing Resolutions are hereby passed and consented to in accordance with the *Business Corporations Act* (Ontario) as evidenced by the signatures hereto of all of the Directors of the Corporation effective the 9th day of December, 2010.

David Luxton	Raymond French
Paul Halpern	Gregory Segall

LM - #50128677v1

This is Exhibit "E" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3555
Email: elederman@litigate.com

September 10, 2008

VIA FACSIMILE

Richard L'Abbé
1902 - 3590 Rivergate Way
Ottawa, Ontario K1V 1V6

Growthworks Canadian Fund Ltd.
275 Slater Street, Suite 900
Ottawa, Ontario K1P 5H9
Attention: Richard Charlebois

1062455 Ontario Inc.
c/o Richard L'Abbé
1902 - 3590 Rivergate Way
Ottawa, Ontario K1V 1V6

Med-Eng Systems Inc.
2400 St. Laurent Blvd.
Ottawa, Ontario K1G 6C4
Attention: Danny Osadca

Schroder Canada and Schroder UK
c/o Schroders Venture Managers (Canada) Limited
Suite 3000, 1800 McGill College Ave.
Montreal, Quebec H3A 3J6
Attention: Paul Echenberg

Computershare Trust Company of Canada
100 University Avenue
9th Floor, North Tower
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust

Dear Sirs/Mesdames:

Re: Indemnification pursuant to the Share Purchase Agreement dated August 3, 2007 and Escrow Agreement dated September 17, 2007

We are counsel to Allen-Vanguard Corporation with respect to the above-noted matter.

We write to advise you of our client's claims for indemnification pursuant to the Share Purchase Agreement and the Escrow Agreement entered into between Allen-Vanguard Corporation, the Offeree Shareholders (as defined in the Share Purchase Agreement) and Med-Eng Systems Inc. ("MES").

In that regard, we are enclosing the Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement, which describes the claims for indemnification determined as of September 10, 2008.

Offeree Shareholders September 10, 2008

Our client reserves its rights to assert further or other claims as may be subsequently determined, including any claims it has in respect of fraud.

Yours very truly,

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

Per: 

Eli S. Lederman

ESL/jgw/ls

cc: Les Lyall, *Growthworks Canadian Fund Ltd.*
André Roy, *Stikeman Elliott LLP*
Gerard Lloyd, *Schroder Ventures Holdings Limited*
Robert D. Chapman, *McCarthy Tétrault LLP*
Ronald G. Slaght, Q.C.

NOTICE OF CLAIM

TO: Computershare Trust Company of Canada (the "Escrow Agent")

TO: Richard L'Abbé
1062455 Ontario Inc.
Growthworks Canadian Fund Ltd.
Schroder Canada
Schroder UK

Reference is made to the Share Purchase Agreement (the "Share Purchase Agreement") made as of August 3, 2007 between Allen-Vanguard Corporation (the "Purchaser"), the Offeree Shareholders (as defined in the Share Purchase Agreement) and Med-Eng Systems Inc. ("MES") and to the Escrow Agreement (the "Escrow Agreement") made as of the 17th day of September, 2007 between the Purchaser, the Offeree Shareholders, MES and the Escrow Agent.

This document constitutes a Notice of Claim by the Purchaser under the Escrow Agreement. The Purchaser on behalf of the Purchaser Indemnitees hereby asserts the following Claims with respect to which the Purchaser Indemnitees are entitled to indemnification under the Share Purchase Agreement and the Escrow Agreement.

1. The Purchaser claims for breaches of representations and warranties associated with the financial condition of MES. Specifically, the Purchaser claims that MES breached sections 3.01(2)(a)-(d), 3.01(2)(f), 3.01(12)(k), 3.01(12)(m) and 4.01(1)(a)-(d) of the Share Purchase Agreement, the particulars of which are as follows:

(i) MES misrepresented the expected bookings, revenue and earnings associated with customer orders which were in backlog and/or in the pipeline. These orders were represented to the Purchaser as being a material component of MES's revenue forecast, and upon which the Purchaser relied in negotiating the purchase price and all other terms of the transaction;

(ii) Although these backlog and pipeline orders were represented as a substantial source of revenue for MES, the management of MES knew or ought to have known that these orders would not generate the revenue which had been projected or were otherwise unlikely to materialize at all;

(iii) MES further represented to the Purchaser significant revenue associated with a particular order in the pipeline, but based its projections on the foreign exchange rate which applied when the order had been received as opposed to the rate which applied at the time that the order was delivered. This discrepancy resulted in a significant shortfall in the post-closing revenue which had been represented by MES.

2. The Purchaser claims for breaches of representations and warranties associated with contingent and other liabilities of MES. Specifically, the Purchaser claims that MES breached sections 3.01(2)(a)-(d), 3.01(2)(f), 3.01(3)(d), 3.01(12)(c), 3.01(12)(m) and 4.01(1)(a), (b), (d) and (f) of the Share Purchase Agreement, the particulars of which are as follows:

(i) MES failed to provide full and complete disclosure with respect to an audit conducted by the United States Defence Contract Management Agency through the Canadian Commercial Corporation and Public Works and Government Services Canada (the "Assist Audit");

(ii) Despite the Purchaser's attempts to obtain more information prior to the close of the transaction with respect to the Assist Audit and the potential exposure associated therewith, MES misled the Purchaser as to the status of the Assist Audit, the cost and expense associated with its compliance, and the significant exposure to MES in the event that the U.S. government determined that MES did not qualify for an exemption which would entitle it to refrain from disclosing its cost margins, and if it determined that MES's prices were not fair and reasonable;

(iii) The Assist Audit represented a significant contingent liability of MES, which MES was required to disclose to the Purchaser and failed to do so;

(iv) MES further breached its representations and warranties by failing to disclose the risk and contingent liability associated with a challenge by CRA of MES's tax treatment of certain amounts in connection with the transaction;

(v) MES knew or ought to have known that such amounts were in fact not deductible for tax purposes by MES and failed to disclose this as a contingent liability of MES.

3. The Purchaser claims for breaches of representations and warranties associated with warranty claims asserted against MES. Specifically, the Purchaser claims that MES breached sections 3.01(3)(g), 3.01(4)(b), 3.01(12)(k), 3.01(12)(m) and 4.01(1)(a), (b), (d) and (f) of the Share Purchase Agreement, the particulars of which are as follows:

(i) MES failed to disclose the extent and exposure associated with a quality control issue relating to MES's shipment of defective units to its customers prior to the close of the transaction.

4. The Purchaser claims for breaches of representations and warranties associated with the status of MES Contracts and commitments. Specifically, MES breached sections 3.01(4)(b), 3.01(12)(k), 3.01(12)(m) and 4.01(1)(a), (b), (d) and (f) of the Share Purchase Agreement, the particulars of which are as follows:

(i) MES failed to provide full and complete disclosure with respect to the allegations made by General Dynamics and Armament and Technical

Products ("GDATP") that MES had committed material breaches of the Teaming Agreement entered into between MES and GDATP on May 27, 2005;

(ii) Contrary to the representations and warranties contained in the Share Purchase Agreement, MES failed to disclose that there were numerous breaches and acts of default which GDATP was alleging against MES;

(iii) MES further failed to disclose the true status of its relationships with its customers and suppliers;

5. The Purchaser claims for breaches of representations and warranties associated with MES's employees. Specifically, MES breached sections 3.01(6)(b), 3.01(6)(i), 3.01(8)(d), 3.01(8)(e) and 4.01(a)-(f) of the Share Purchase Agreement, the particulars of which are as follows:

(i) MES failed to disclose to the Purchaser that it had promised, agreed or otherwise committed to changing the compensation, remuneration and benefits which would be paid to its employees following the close of the transaction;

(ii) Contrary to the representations and warranties contained in the Share Purchase Agreement, MES had promised that the Purchaser would meet the increased compensation expectations of the employees following the close of the transaction;

(iii) At no time during the negotiation of the Share Purchase Agreement did MES advise the Purchaser that these employees were seeking increased compensation or that it had led them to believe that they would receive it after the acquisition was completed.

6. The aggregate amount of the Claim described herein is $40,000,000, plus interest earned or accrued further to the Authorized Investments and the Purchaser hereby claims its entitlement to draw upon the Indemnification Escrow Fund for the amount of such Claim.

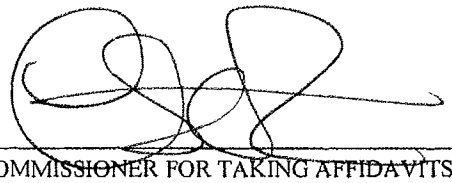
7. Capitalized terms used and not otherwise defined in this Notice of Claim will have the meanings given to such terms in the Share Purchase Agreement.

8. The Purchaser reserves its rights to assert further and other Claims as may be subsequently determined.

ALLEN-VANGUARD CORPORATION

Per: _____

This is Exhibit "F" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

Barristers & Solicitors
Patent & Trade-mark Agents

McCarthy Tétrault

McCarthy Tétrault LLP
The Chambers
Suite 1400, 40 Elgin Street
Ottawa ON K1P 5K6
Canada
Telephone: 613 238-2000
Facsimile: 613 563-9386
mccarthy.ca

Robert D. Chapman
Direct Line: 613 238-2111
Direct Fax: 613 563-9386
E-Mail: rchapman@mccarthy.ca

By Facsimile

October 6, 2008

Allen-Vanguard Corporation
5459 Canotek Road
Ottawa, ON K1J 9M3

Attention: David Luxton, President and CEO

Computershare Trust Company of Canada
100 University Avenue
9th Floor, North Tower
Toronto, ON M5J 2Y1

Attention: Manager, Corporate Trust

Dear Sirs:

Re: Indemnification pursuant to the Share Purchase Agreement made as of August 3, 2007 and the Escrow Agreement made as of September 17, 2007

On behalf of the Offeree Shareholders, we are delivering to you a Notice of Objection dated October 1, 2008 pursuant to Section 4.1(c) of the captioned Escrow Agreement.

Yours very truly,

R. D. Chapman

Robert D. Chapman
RDC/jf
Encl.

c. Lang Michener LLP -Attention: Elisabeth Preston
c. Lenczner Slaght Royce Smith Griffin LLP - Attention: Eli S. Letterman
c. Schroders Venture Managers (Canada) Limited - Attention: Cecile Ducharme
c. 1062455 Ontario Inc. - Attention: Richard L'Abbé
c. Richard L'Abbé
c. Growthworks Canadian Fund Ltd. - Attention: Richard Charlebois
c. McCarthy Tétrault LLP - Attention: Thomas G. Conway

Notice of Objection

To: Computershare Trust Company of Canada (the "Escrow Agent")

To: Allen-Vanguard Corporation

Reference is made to the Share Purchase Agreement (the "Share Purchase Agreement") made as of August 3, 2007 between Allen-Vanguard Corporation (the "Purchaser"), the Offeree Shareholders (as defined in the Share Purchase Agreement) and Med-Eng Systems Inc. ("MES") and to the Escrow Agreement (the "Escrow Agreement") made as of the 17th day of September, 2007 between the Purchaser, the Offeree Shareholders, MES and the Escrow Agent.

Reference is also made to the undated Notice of Claim delivered by the Purchaser under the Escrow Agreement by facsimile on September 10, 2008.

This document constitutes a Notice of Objection by the Offeree Shareholders under the Escrow Agreement.

The Offeree Shareholders dispute each and all of the Claims set forth in the Notice of Claim.

1. (a) MES disclosed the financial condition of MES as at June 30, 2007 and its customer purchase orders in the Share Purchase Agreement and in the Schedules thereto, as updated at the Time of Closing.

   (b) MES made no representations and warranties in the Share Purchase Agreement with respect to the future financial condition of the Corporation including as to expected bookings, revenue and earnings associated with customer orders which were in backlog and/or in the pipeline. In particular, Section 3.04 of the Share Purchase Agreement provides as follows:

   > "The Corporation and each Offeree Shareholder specifically disclaim any warranty regarding the further profitability of the Corporation following the Closing Date."

   (c) The Purchaser has not identified actual damages incurred by the Purchaser Indemnitees arising from alleged breaches of representations and warranties associated with the financial condition of MES.

2. (a) MES disclosed contingent and other liabilities of MES in the Share Purchase Agreement and in the Schedules thereto, as updated at the Time of Closing.

   (b) In particular, in Schedule 3.01(2)(d) to the Share Purchase Agreement the Corporation provided disclosure with respect to a request by Public Works and Government Services Canada ("PWGSC") for information in order to determine whether MES's prices quoted to General Dynamics Armament and Technical

Products ("GDATP") on April 4, 2007 were fair and reasonable (the "PWGSC Request").

(c) The Purchaser has not identified the challenge by the Canada Revenue Agency ("CRA") of MES's "tax treatment of certain amounts in connection with the transaction".

(d) The Purchaser has not identified actual damages incurred by the Purchaser Indemnitees arising from the alleged breaches of representations and warranties associated with contingent and other liabilities of MES.

3. (a) As disclosed by MES in the Share Purchase Agreement, there were no material warranty claims at the Time of Closing.

(b) The Purchaser has not identified actual damages incurred by the Purchaser Indemnitees arising from the alleged breaches of representations and warranties associated with warranty claims.

4. (a) MES disclosed the status of MES contracts and commitments in the Share Purchase Agreement and the Schedules thereto, as updated at the Time of Closing.

(b) In particular, in Schedule 3.01(2)(d) the Purchaser disclosed a Show Cause and Cure Notice received from GDATP dated August 30, 2007. This matter was also specifically addressed in Section 7.02 of the Share Purchase Agreement.

(c) The Purchaser has not identified any actual damages incurred by the Purchaser Indemnitees arising from alleged breaches of representations and warranties associated with the status of MES contracts and commitments.

5. (a) MES disclosed the status of compensation, remuneration and benefits in the Share Purchase Agreement and the Schedules thereto, as updated at the Time of Closing.

(b) MES did not breach its covenant in Section 4.01(e) of the Share Purchase Agreement with respect to any of the provisions of the employment contracts and other arrangements for any of its employees. With the knowledge of the Purchaser, prior to the Time of Closing MES amended a retention bonus agreement with Paul Timmis. The full cost of this retention bonus agreement and certain other retention bonuses was borne by the Shareholders as provided for in Section 4.06 of the Share Purchase Agreement.

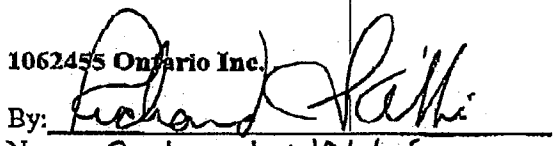
(c) The Purchaser has not identified any actual damages arising from alleged breaches of representations and warranties associated with MES's employees.

6. Capitalized terms used and not otherwise defined in this Notice of Objection will have the meanings given to such terms in the Share Purchase Agreement.

Dated October 1, 2008.

Richard L'Abbé

1062455 Ontario Inc.



By:
Name: Richard L'Abbé
Title: President

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:
Name:
Title:

~~**Med-Eng Systems Inc.**~~

By:
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:
Name:
Title:

6. Capitalized terms used and not otherwise defined in this Notice of Objection will have the meanings given to such terms in the Share Purchase Agreement.

Dated October 1, 2008.

Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name: TIM LEE
Title: SVP INVESTMENTS

~~**Med-Eng Systems Inc.**~~

By:_____
Name:
Title:

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name:
Title:

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name:
Title:

6. Capitalized terms used and not otherwise defined in this Notice of Objection will have the meanings given to such terms in the Share Purchase Agreement.

Dated October 1, 2008.

Richard L'Abbé

1062455 Ontario Inc.

By:_____
Name:
Title:

Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.

By:_____
Name:
Title:

~~**Med-Eng Systems Inc.**~~

By:_____
Name:
~~Title:~~

Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:_____
Name: CATHERINE LYNG
Title: DIRECTOR

Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By:_____
Name: ROBERT CHRISTOPHER MORRIS
Title: DIRECTOR

This is Exhibit "G" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08 CV 43188

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD.,
SCHRODER VENTURE MANAGERS (CANADA) LIMITED
in its capacity as general partner of each of
Schroder Canadian Buy-Out Fund II Limited Partnership CLP1,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP2,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP3,
Schroeder Canadian Buy-Out Fund II Limited Partnership CLP4,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP5,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP6 and
SCHRODER VENTURES HOLDING LIMITED,
in its capacity as general partner of
Schroeder Canadian Buy-Out Fund II UKLP, and on behalf of
Schroeder Canadian Buy-Out Fund II Coinvestment Scheme and
SVG Capital plc (formally, Schroeder Ventures International Investment Trust plc)

Plaintiffs

- and -

ALLEN-VANGUARD CORPORATION,
ALLEN-VANGUARD TECHNOLOGIES INC. and
COMPUTERSHARE TRUST COMPANY OF CANADA

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $» for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

Date November 12, 2008 Issued by _____

Local registrar

Address of court office 161 Elgin Street
Ottawa, ON K2P 2K1

TO: ALLEN-VANGUARD CORPORATION
5459 Canotek Road
Ottawa ON K1J 9M3

ALLEN-VANGUARD TECHNOLOGIES INC.
2400 St. Laurent Boulevard
Ottawa ON K1G 6C4

COMPUTERSHARE TRUST COMPANY OF CANADA
100 University Avenue
9th Floor, North Tower
Toronto ON M5J 2Y1

CLAIM

1. The plaintiffs claim:

   (a) a declaration that the plaintiffs and the other former shareholders of the defendant, Med-Eng Systems Inc., are entitled as of December 21, 2008 to the payment and distribution of the "Indemnification Escrow Fund", as that term is defined in an Escrow Agreement, made as of September 17, 2007 among the plaintiffs, Richard L'Abbé, 1062455 Ontario Inc., Growthworks Canadian Fund Ltd., Schroder Venture Managers (Canada) Limited, Schroder Ventures Holding Limited and the defendants, Allen-Vanguard Corp., Med-Eng Systems Inc. and Computershare Trust Company of Canada, from the defendant, Computershare Trust Company of Canada;

   (b) an order that the defendant, Computershare Trust Company of Canada, pay to the plaintiffs and the other former shareholders of the defendant, Med-Eng Systems Inc., the Indemnification Escrow Fund in accordance with the Escrow Agreement, without deduction for any of claims made by the defendant, Allen-Vanguard Corporation, against the Indemnification Escrow Fund or otherwise; and

   (c) their costs of this action on the substantial indemnity basis.

2. The plaintiffs were shareholders of Med-Eng Systems Inc. ("Med-Eng"), and are parties to a Share Purchase Agreement, dated as of August 3, 2007 (the "Share Purchase Agreement"). The plaintiffs are referred to collectively as the "Offeree Shareholders".

3. The Offeree Shareholders are also parties to an Escrow Agreement, made as of September 17, 2007 pursuant to the Share Purchase Agreement (the "Escrow Agreement").

4. The defendant, Allen-Vanguard Corporation, is a corporation incorporated under the laws of the Province of Ontario and was the purchaser of all of the issued and outstanding shares in the capital of Med-Eng. This defendant is hereinafter referred to as "Allen-Vanguard" or the "Purchaser".

5. The defendant, Allen-Vanguard Technologies Inc., was formerly known as Med-Eng Systems Inc. Med-Eng was a corporation incorporated under the laws of the Province of Ontario and was the corporation whose shares were acquired from the Offeree Shareholders and other shareholders by Allen-Vanguard. Med-Eng is a party to the Share Purchase Agreement and to the Escrow Agreement. Following the closing of the share purchase transaction, Med-Eng was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007 and the name of the amalgamated corporation is Allen-Vanguard Technologies Inc.

6. The defendant, Computershare Trust Company of Canada, is a trust company governed by the laws of Canada and is the Escrow Agent under the Escrow Agreement. This defendant is hereinafter referred to as "Computershare" or the "Escrow Agent".

7. Pursuant to a Shareholder's Agreement, made as of April 19, 2000, as supplemented, between Med-Eng and all shareholders of Med-Eng, the Offeree Shareholders issued a Drag Along Notice, dated August 23, 2007, to the other shareholders of Med-Eng, obliging them to sell their shares to Med-Eng in accordance with the Share Purchase Agreement.

8. The purchase price payable by Allen-Vanguard to the shareholders of Med-Eng for the shares was $581 million, subject to adjustment as provided in the Share Purchase Agreement.

9. In Section 3.01 of the Share Purchase Agreement, Med-Eng made representations and warranties to Allen-Vanguard with respect to certain matters relating to its status and business.

10. Section 7.02 of the Share Purchase Agreement states:

> 7.02 **Indemnification by the Corporation**
>
> (1) Subject to the provisions of this Article 7, the Corporation will indemnify and save harmless the Purchaser and the directors, officers, employees and agents of the Purchaser (collectively, the "Purchaser Indemnitees") from and against all Claims incurred by the Purchaser directly or indirectly resulting from (i) any breach of any covenant of the Corporation contained in this Agreement, (ii) any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 or (iii) the contravention of, non-compliance with or other breach, on or before the Closing Date, by the Corporation or its Affiliates of the

Teaming Agreement ("GD Teaming Agreement") between General Dynamics Armament and Technical Products ("GD") and the Corporation dated May 27, 2005, as amended.

(2) Notwithstanding any of the other provisions of this Agreement, the Corporation will not be liable to any Purchaser Indemnitee in respect of:

(a) any representation and warranty of the Corporation set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement unless any claim or demand by the Purchaser against the Corporation with respect thereto is given to the Corporation and the Offeree Shareholders by the Purchaser prior to December 21, 2008, except in the case of fraud, in which case there will be no time limit for the Purchaser to make a demand or claim against the Corporation in respect thereof; or

(b) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement:

(i) unless and until the aggregate of all Claims exceeds $4.0 million, and then only to the extent that such aggregate exceeds $2.0 million; or

(ii) in excess of the Indemnification Escrow Fund;

other than, in all cases, any Claim attributable to fraud.

11. The share purchase transaction closed on September 17, 2007.

12. Pursuant to Section 2.04 of the Share Purchase Agreement, Allen-Vanguard and the Offeree Shareholders agreed to enter into the Escrow Agreement to provide for the deposit of funds, which were part of the purchase price under the Share Purchase Agreement, into escrow to be held as security for any claims for indemnification made by the Allen-Vanguard for itself or on behalf of a Purchaser Indemnitee pursuant to Section 7.02 of the Share Purchase Agreement.

13. Pursuant to Section 2.1 of the Escrow Agreement, an escrow fund was created into which the shareholders of Med-Eng deposited an amount, to be held by Computershare in accordance with the terms of the Escrow Agreement, and defined in the Escrow Agreement as:

$40,000,000 (the "Indemnification Escrow Fund"); the Indemnification Escrow Fund, as (i) increased by any interest earned or accrued on the cash portion thereof further to the Authorized Investments made in accordance with Section 2.3, and (ii) reduced by any distributions made in accordance with Section 4.1, is referred to herein as the "Indemnification Escrow Fund"

14. Section 4.1 of the Escrow Agreement states:

> 4.1 **Distributions out of the Indemnification Escrow Fund**
>
> (a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.
>
> (b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a "Notice of Claim") to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.
>
> (c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written notice (an "Objection Notice") setting forth the reasons for the objection.
>
> (d) If the Offeree Shareholders do not deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the dollar amount of the Claim claimed in the Notice of Claim shall be deemed established for all purposes of this Agreement and the Share Purchase Agreement and, at the end of such 30 days' period, the Escrow Agent shall pay such amount to the Purchaser from the Indemnification Escrow Fund. The Escrow Agent shall pay such amount in the form of Take Back Notes plus interest accrued thereon in accordance with their terms

until all Take Back Notes have been delivered from the Indemnification Escrow Fund before any payments are made in cash. The Escrow Agent shall not, and shall not be required to, inquire into or consider whether a Notice of Claim complies with the requirements of the Share Purchase Agreement.

(e) If the Offeree Shareholders deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the Escrow Agent shall make payment of the non-disputed portion of the Notice of Claim as provided in Section 4.1(d) above and shall make payment with respect to the disputed portion of the Notice of Claim only in accordance with (i) joint written instructions of the Purchaser and the Offeree Shareholders, or (ii) a final non-appealable order of a court of competent jurisdiction. The Escrow Agent shall act on any such court order without further inquiry or question.

(f) On December 21, 2008, the Indemnification Escrow Fund shall be reduced by the value (if any) of any Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement which remain pending as of such date, and the Escrow Agent shall distribute the remaining amount to the Shareholders (in the proportions set forth on Schedule 4.1(f)) on, or as soon as possible after, such date. Any amount remaining in the Indemnification Escrow Fund after all Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement are resolved shall be distributed by the Escrow Agent to the Shareholders (in the proportions set forth on Schedule 4.1(f)) as soon as possible after such resolution.

(g) For greater certainty, the aggregate liability of the Shareholders and the Company with respect to any and all Claims made under Section 7.02 or 7.04 of the Share Purchase Agreement shall not exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof and the aggregate amount of any distributions made by the Escrow Agent to the Purchaser under this Section 4.1 shall in no event exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof.

15. On September 10, 2008, Allen-Vanguard delivered an undated notice of claim pursuant to the Escrow Agreement. Allen-Vanguard claims to be entitled to the entire Indemnification Escrow Fund for alleged breaches of representations and warranties by Med-Eng under Section

3.01 of the Share Purchase Agreement and for alleged breaches of covenants in Section 4.01 of the Share Purchase Agreement.

16. By notice of objection, dated October 1, 2008, and delivered by the Offeree Shareholders on October 6, 2008, the Offeree Shareholders disputed each and all of the claims set forth in the notice of claim.

17. Under Section 4.1(e) of the Escrow Agreement, in the absence of joint written instructions from Allen-Vanguard and the Offeree Shareholders, Computershare cannot pay out the Indemnification Escrow Fund to the Offeree Shareholders and other former shareholders of Med-Eng without a final non-appealable order of this Court.

18. The Offeree Shareholders therefore seek judgment in the terms set out in paragraph 1.

19. The plaintiffs propose that this action be tried at Ottawa.

November 12, 2008

McCarthy Tétrault LLP
1400-40 Elgin St.
The Chambers
Ottawa ON K1P 5K6

Thomas G. Conway LSUC#: 29214C
Tel: 613-238-2000
Fax: 613-563-9386

Solicitors for the Plaintiff

RICHARD L'ABBÉ et al.
Plaintiffs

and

ALLEN-VANGUARD CORPORATION et al.
Defendants

Court File No:
08 CV 43188

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

STATEMENT OF CLAIM

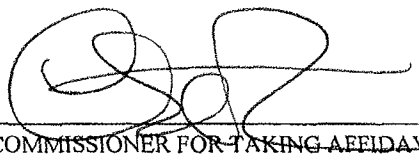
McCarthy Tétrault LLP
1400-40 Elgin St.
The Chambers
Ottawa ON K1P 5K6

Thomas G. Conway LSUC#: 29214C
Tel: 613-238-2000
Fax: 613-563-9386

Solicitors for the Plaintiffs

#5682822

This is Exhibit "H" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-43188

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD.,
SCHRODER VENTURE MANAGERS (CANADA) LIMITED
in its capacity as general partner of each of
Schroder Canadian Buy-Out Fund II Limited Partnership CLP1
Schroder Canadian Buy-Out Fund II Limited Partnership CLP2,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP3,
Schroeder Canadian Buy-Out Fund II Limited Partnership CLP4,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP5,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP6, and
SCHRODER VENTURES HOLDING LIMITED,
in its capacity as general partner of Schroeder Canadian Buy-Out Fund II UKLP, and on behalf of Schroeder Canadian Buy-Out Fund II Coinvestment Scheme and
SVG CAPITAL plc (formerly, Schroeder Ventures International Investment Trust plc)

Plaintiffs

- and -

ALLEN-VANGUARD CORPORATION,
ALLEN-VANGUARD TECHNOLOGIES INC. and
COMPUTERSHARE TRUST COMPANY OF CANADA

Defendants

STATEMENT OF DEFENCE OF ALLEN-VANGUARD CORPORATION AND ALLEN-VANGUARD TECHNOLOGIES INC.

1. The Defendants, Allen-Vanguard Corporation ("Allen-Vanguard") and Allen-Vanguard Technologies Inc., admit the allegations contained in paragraphs 2-6, 9-17 and 19 of the Statement of Claim.

2. Except as expressly admitted herein, the Defendants deny the balance of the allegations contained in the Statement of Claim and put the Plaintiffs to the strict proof thereof.

I. OVERVIEW

3. By way of overview:

(a) Allen-Vanguard agreed to pay approximately $650,000,000 to purchase all of the outstanding shares of MES;

(b) the substantial purchase price was predicated on various representations and warranties which the former management of MES made on behalf of MES with respect to MES's financial condition and expected revenue;

(c) within months of the close of the transaction, it became apparent that the former management of MES had made fraudulent and/or negligent misrepresentations on behalf of MES regarding MES's customer relationships, expected bookings, revenue and earnings which Allen-Vanguard had relied upon in negotiating the purchase price and all other terms of the transaction;

(d) in addition to the breaches of representations and warranties made by MES, Paul Timmis ("Timmis"), on behalf of MES, made a number of false promises to the MES employees about the compensation which the MES employees would receive after Allen-Vanguard acquired MES. Neither Timmis, nor anyone else on behalf of MES, ever disclosed to Allen-Vanguard that Timmis had made such promises to the MES employees and MES knew that, after the transaction closed, Allen-Vanguard would not be able to fulfill these promises or otherwise meet the

compensation expectations which had been intentionally and/or recklessly inflated by Timmis;

(e) as a result of the breaches of representations and warranties by MES, the Plaintiffs are directly liable to indemnify Allen-Vanguard for the damages which have been caused to Allen-Vanguard;

(f) On September 10, 2008, Allen-Vanguard delivered a Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement in which it notified the Plaintiffs of its claim to the Indemnification Escrow Amount (as defined herein);

(g) However, despite being put on notice of Allen-Vanguard's pending claim, the Plaintiffs commenced this action, more than a month before the deadline by which Allen-Vanguard is entitled to submit any additional claims under the Share Purchase Agreement;

(h) Allen-Vanguard has since commenced an action in the Superior Court of Justice to claim indemnification and/or damages against the Plaintiffs in accordance with the terms of the Share Purchase Agreement;

(i) the Plaintiffs' claim for a declaration is inappropriate as the dispute regarding the entitlement to the Indemnification Escrow Amount is the subject-matter of an existing proceeding commenced by Allen-Vanguard in Court File No. 08-CV-43544 dated December 18, 2008; and

(j) the Plaintiffs are not entitled to the relief sought against the Defendants and the action should be dismissed with costs.

II. FACTUAL BACKGROUND

4. The private equity firms, Schroder Venture Managers (Canada) Limited and Schroder Ventures Holdings Limited were the principal owners of MES, and in 2006, they sought to exit their position as long term investors. They engaged in a limited auction process to sell MES.

5. On August 3, 2007, Allen-Vanguard was the winning bidder in the auction and entered into a Share Purchase Agreement with the shareholders of MES to purchase all of the shares of MES on a debt and cash free basis, for $600,000,000, plus an amount established at approximately $50,000,000 for the purpose of excess working capital (the "Share Purchase Agreement"). That transaction closed on September 17, 2007.

6. Pursuant to section 2.04(c) and 7.02 of the Share Purchase Agreement, Allen-Vanguard deposited $40,000,000 of the purchase monies (the "Indemnification Escrow Amount") with the Escrow Agent, for the purposes of indemnifying Allen-Vanguard for any claims which Allen-Vanguard may have resulting from any breaches of representations, warranties and covenants of MES contained in the Share Purchase Agreement, or in respect of the contravention of, non-compliance with or other breach by MES of the Teaming Agreement entered into between MES and General Dynamics Armament and Technical Products ("GDATP") dated May 27, 2005.

7. Allen Vanguard is entitled to deliver a Notice of Claim for the Indemnification Escrow Amount at any time, provided that it does so before December 21, 2008. However, in the event that Allen-Vanguard has a claim for fraud, there is no temporal or monetary limitation to making such a claim.

8. Following the close of transaction, Allen-Vanguard became aware of several breaches of representations, warranties and covenants made by MES, which entitles Allen-Vanguard to claim the Indemnification Escrow Amount.

9. Therefore, on September 10, 2008, Allen-Vanguard delivered a Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement, setting out a detailed description of its claims including the provisions of the Share Purchase Agreement giving rise to the claim and the aggregate amount for the claim.

10. Specifically, Allen-Vanguard discovered that MES made a number of misrepresentations as to its expected bookings, revenue and earnings and as to the status of MES's customer relationships and the compensation expectations of the MES employees.

11. These representations were made knowing that Allen-Vanguard would rely on such representations and were made to induce Allen-Vanguard to enter into the transaction and to pay an inflated purchase price.

12. Pursuant to the terms of the Share Purchase Agreement, the Plaintiffs are directly liable to indemnify Allen-Vanguard for the breaches of the representations, warranties and covenants made by MES, up to $40,000,000, and they are further liable for any damages caused to Allen-Vanguard as a result of any fraud committed by or on behalf of MES.

13. The particulars of the breaches of representations, warranties and covenants made by MES and for which the Plaintiffs are directly liable are set out in an existing action commenced by Allen-Vanguard in Court File No. 08-CV-43544.

III. A DECLARATORY JUDGMENT SHOULD NOT BE GRANTED

14. A declaratory judgment should not be granted because:

(i) Allen-Vanguard is entitled to be paid the Indemnification Escrow Amount in the sum of $40,000,000, in accordance with the terms of the Share Purchase Agreement;

(ii) the Court is adjudicating the same facts and points of law in an existing Court proceeding commenced by Allen-Vanguard, which the Plaintiffs knew or ought to have known was pending at the time that they commenced this action;

(iii) the Plaintiffs have commenced this action notwithstanding the fact that the Share Purchase Agreement provides that Allen-Vanguard has until December 21, 2008 to submit any additional claims it may discover; and

(iv) Allen-Vanguard continues to reserve its rights to assert, at any time, any claims of fraud, for an amount in excess of the Indemnification Escrow Amount.

15. The Plaintiffs' claim for a declaratory judgment should therefore be dismissed with costs.

16. Alternatively, this action ought to be consolidated with the action commenced by Allen-Vanguard in Court File No. 08-CV-43544.

December 18, 2008

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
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Lawyers for the Defendants,
Allen-Vanguard Corporation and
Allen-Vanguard Technologies Inc.

TO: **McCARTHY TÉTRAULT LLP**
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Thomas G. Conway (29214C)
Tel : (613) 238-2000
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Lawyers for the Plaintiffs

AND TO: **COMPUTERSHARE TRUST COMPANY OF CANADA**
100 University Avenue
9th Floor, North Tower
Toronto ON M5J 2Y1

Defendant

RICHARD L'ABBÉ et al.
Plaintiffs

-and-

ALLEN-VANGUARD CORPORATION et al.
Defendants

Court File No. 08-CV-43188

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

STATEMENT OF DEFENCE OF ALLEN-VANGUARD CORPORATION AND ALLEN-VANGUARD TECHNOLOGIES INC.

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
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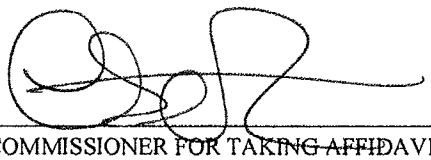
Lawyers for the Defendants,
Allen-Vanguard Corporation and
Allen-Vanguard Technologies Inc.

This is Exhibit "I" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

SUPERIOR COURT OF JUSTICE
Ontario
COUR SUPÉRIEURE DE JUSTICE

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date DEC 18 2008 Issued by _____
Local Registrar

Address of
court office: 161 Elgin Street
Ottawa, ON K2P 2K1

TO RICHARD L'ABBÉ

AND TO 1062455 ONTARIO INC.

AND TO GROWTHWORKS CANADIAN FUND LTD.

AND TO SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED, PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6

AND TO SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

CLAIM

1. The Plaintiff, Allen-Vanguard Corporation, claims against the Defendants:

   (a) Indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $40,000,000, which shall be distributed to Allen-Vanguard Corporation in accordance with the terms of the Escrow Agreement as defined herein;

   (b) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

   (c) Costs on a substantial indemnity basis; and

   (d) Such further and other relief as to this Honourable Court may seem just.

I. OVERVIEW

2. By way of overview:

   (a) Allen-Vanguard agreed to pay approximately $650,000,000 to purchase all of the outstanding shares of MES;

   (b) the substantial purchase price was predicated on various representations and warranties which the former management of MES made on behalf of MES with respect to MES's financial condition and expected revenue;

   (c) within months of the close of the transaction, it became apparent that the former management of MES had made fraudulent and/or negligent misrepresentations regarding MES's customer relationships, expected bookings, revenue and

earnings which Allen-Vanguard had relied upon in negotiating the purchase price and all other terms of the transaction;

(d) in addition to the breaches of representations and warranties made by MES, Paul Timmis ("Timmis"), on behalf of MES, made a number of false promises to the MES employees about the compensation which the MES employees would receive after Allen-Vanguard acquired MES. Neither Timmis, nor anyone else on behalf of MES, ever disclosed to Allen-Vanguard that Timmis had made such promises to the MES employees and MES knew that, after the transaction closed, Allen-Vanguard would not be able to fulfill these promises or otherwise meet the compensation expectations which had been intentionally and/or recklessly inflated by Timmis;

(e) as a result of the breaches of representations and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard for the damages which have been caused to Allen-Vanguard.

II. THE PARTIES

3. Allen-Vanguard is in the business of developing and marketing technologies, tools and training for defeating and minimizing the effects of hazardous devices and materials, and provides field and support solutions for protection and counter-measures in collaboration with military and security forces and with major research institutes, prime contractors, systems integrators and emerging technology companies. Allen-Vanguard is a public company listed on the Toronto Stock Exchange and is headquartered in Ottawa.

4. Prior to Allen-Vanguard's acquisition, MES was a private company incorporated pursuant to the laws of Ontario and carried on business as a global supplier of force protection products for military, homeland security and law enforcement organizations. In particular, MES had taken a leadership position in offering Electronic Counter-Measure (ECM) solutions to counter the growing and evolving threat represented by radio-controlled improvised explosive devices.

5. The Defendants were the principal shareholders of MES whose interests were acquired as a result of Allen-Vanguard's purchase of MES.

III. FACTUAL BACKGROUND

6. The private equity firms, Schroder Venture Managers (Canada) Limited and Schroder Ventures Holdings Limited were the principal owners of MES, and in 2006, they sought to exit their position as long term investors. They engaged in a limited auction process to sell MES.

7. On August 3, 2007, Allen-Vanguard was the winning bidder in the auction and entered into a Share Purchase Agreement with the shareholders of MES to purchase all of the shares of MES on a debt and cash free basis, for $600,000,000, plus an amount established at approximately $50,000,000 for the purpose of excess working capital (the "Share Purchase Agreement"). That transaction closed on September 17, 2007.

8. Pursuant to section 2.04(c) and 7.02 of the Share Purchase Agreement, Allen-Vanguard deposited $40,000,000 of the purchase monies (the "Indemnification Escrow Amount") with the Escrow Agent, for the purposes of indemnifying Allen-Vanguard for any claims which Allen-Vanguard may have resulting from any breaches of representations, warranties and covenants of MES contained in the Share Purchase Agreement, or in respect of the contravention of, non-

compliance with or other breach by MES of the Teaming Agreement entered into between MES and General Dynamics Armament and Technical Products ("GDATP") dated May 27, 2005.

9. Allen Vanguard is entitled to deliver a Notice of Claim for the Indemnification Escrow Amount at any time, provided that it does so before December 21, 2008. However, in the event that Allen-Vanguard has a claim for fraud, there is no temporal or monetary limitation to making such a claim.

10. The distribution of the Indemnification Escrow Amount is governed by the terms of an Escrow Agreement dated September 17, 2007, entered into between Allen-Vanguard, MES, the Defendants and the Escrow Agent (the "Escrow Agreement"). Section 4.1 of the Escrow Agreement provides in part as follows:

> **4.1 Distribution out of the Indemnification Escrow Fund**
>
> (a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.
>
> (b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a "**Notice of Claim**") to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.
>
> (c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written

notice (an "**Objection Notice**") setting forth the reasons for the objection.

11. Section 1.1 of the Escrow Agreement defines "Claims" as follows:

> **1.1 Definitions**
>
> "**Claims**" means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements incurred by a Purchaser Indemnitee directly or indirectly resulting from any breach of any covenant of the Corporation or any Shareholder contained in the Share Purchase Agreement or from any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 of the Share Purchase Agreement or of any Shareholder set out in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b) of the Share Purchase Agreement.

12. Following the close of transaction, Allen-Vanguard became aware of several breaches of representations, warranties and covenants made by MES, which entitles Allen-Vanguard to claim the Indemnification Escrow Amount.

13. Therefore, on September 10, 2008, Allen-Vanguard delivered a Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement, setting out a detailed description of its claims including the provisions of the Share Purchase Agreement giving rise to the claim and the aggregate amount for the claim.

14. In particular, Allen-Vanguard discovered that MES made a number of misrepresentations as to its expected bookings, revenue and earnings and as to the status of MES's customer relationships and the compensation expectations of the MES employees.

15. These representations were made knowing that Allen-Vanguard would rely on such representations and were made to induce Allen-Vanguard to enter into the transaction and to pay an inflated purchase price.

16. Pursuant to the terms of the Share Purchase Agreement, the Defendants are directly liable to indemnify Allen-Vanguard for the breaches of the representations, warranties and covenants made by MES, up to $40,000,000, and they are further liable for any damages caused to Allen-Vanguard as a result of any fraud committed by or on behalf of MES.

17. Nevertheless, on October 6, 2008, the Defendants delivered a Notice of Objection dated October 1, 2008, disputing each of the claims set out in the Notice of Claim.

IV. REPRESENTATIONS, WARRANTIES AND COVENANTS

18. In the Share Purchase Agreement, MES gave extensive representations and warranties to Allen-Vanguard.

19. These representations and warranties are set out in Section 3 of the Share Purchase Agreement.

20. In Sections 3.01(2)(a) and 3.01(2)(d) of the Share Purchase Agreement, MES represented and warranted that its books and records fairly present the financial position of the corporation and that it has no accrued, contingent or other liabilities except for those specified in the schedules to the Share Purchase Agreement:

> **3.01(2) Financial**
>
> 3.01(2)(a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all material financial transactions of the Corporation and its

> Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.
>
> (d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i) liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).

21. In addition, MES represented in Section 3.01(2)(f) of the Share Purchase Agreement that there had been no Material Adverse Effect which could reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition or results of operations of the corporation since June 30, 2007.

22. "Material Adverse Effect" is defined in the Share Purchase Agreement as follows:

> **"Material Adverse Effect"** means, when used in connection with the Corporation and its Subsidiaries or their business, any change, event, violation, inaccuracy, circumstance or effect that is or could reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition, results of operations of the Corporation and its Subsidiaries other than as a result of (i) changes to the Canadian, United States or global economy, in each case as a whole; (ii) changes to the financial markets; (iii) changes adversely affecting the industry in which the Corporation and its Subsidiaries operate (so long as the Corporation and its Subsidiaries are not disproportionately affected thereby); (iv) the announcement or pendency of the transactions contemplated by this Agreement; (v) changes in laws; or (vi) changes in generally accepted accounting principles.

23. In addition, except as disclosed in the schedules to the Share Purchase Agreement, MES represented and warranted that it had not received any orders, notices or similar requirements from any governmental authority:

> **3.01(3) Condition of Assets**
>
> 3.01(3)(d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.

24. MES further represented in Section 3.01(3)(g) of the Share Purchase Agreement that, except as disclosed in the schedules, no material claims had been made against it with respect to any warranty or with respect to the production or sale of defective or inferior products:

> 3.01(3)(g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

25. Similarly, MES represented in Section 3.01(4)(b) of the Share Purchase Agreement that it was not in default or in breach of any contract to which MES was a party:

> **3.01(4) Contractual Commitments**
>
> 3.01(4)(b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no condition, event or act

that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.

3.01(12)(k) ....The Corporation is not aware of, nor has it received notice of, any intention on the part of any such customer or supplier to cease doing business with the Corporation and its Subsidiaries or to modify or change in any material manner any existing arrangement with the Corporation and its Subsidiaries for the purchase or supply of any products or services. The relationships of the Corporation and its Subsidiaries with each of its principal suppliers, shippers and customers are satisfactory, and there are not material unresolved disputes with any such supplier, shipper or customer.

26. MES further represented and warranted that since June 30, 2007, it had not agreed or otherwise committed to change the compensation of its employees:

3.01(6) Employees

3.01(6)(i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

3.01(8)(d) No fact, condition or circumstances exists that would materially affect the information contained in the documents provided pursuant to Section 3.1(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.

> 3.01(8)(e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.

27. MES further represented in section 3.01(12)(a) of the Share Purchase Agreement that there were no suits or proceedings pending or threatened which could materially adversely affect the corporation.

28. Finally, MES provided the following covenants:

> 3.01(12)(m) No representation or warranty or other statement made by the Corporation in this Agreement contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.
>
> 4.01(1)Except as otherwise contemplated by this Agreement or consented to in writing by the Purchaser, from the date of this Agreement until Closing, the Corporation will ensure that each of the Corporation and its Subsidiaries will:
>
> (a) carry on their business only in the ordinary course of business consistent with past practice and shall not, other than in the ordinary course of business, enter into any transaction or take any action which if taken before the date hereof would constitute a breach of any representation, warranty or covenant contained in this Agreement;
>
> (b) use all reasonable commercial efforts to preserve intact its business, organization and goodwill, to keep available the employees of its business as a group to maintain satisfactory relationships with suppliers, distributors, customers and others with whom the Corporation and its Subsidiaries have business relationships; and

(d) promptly advise the Purchaser in writing of the occurrence of any Material Adverse Effect in respect of the Corporation or its Subsidiaries or of any facts that come to their attention which would cause any of the Corporation's representations and warranties herein contained to be untrue in any respect.

V. BREACHES OF REPRESENTATIONS, WARRANTIES AND COVENANTS

1. Misrepresentation of MES Revenue Profile

29. Pursuant to and in connection with the Share Purchase Agreement, MES made a number of representations and warranties about the financial condition of the company and delivered various projections as to its expected bookings, revenue and earnings.

30. In particular, a projection of the customer orders which were in backlog and/or in the pipeline were represented to Allen-Vanguard as being a material part of MES's revenue forecast, and upon which Allen-Vanguard relied in negotiating the purchase price and all other terms of the transaction.

31. Although these backlog and pipeline orders were represented as a substantial source of revenue for MES, the former management of MES knew or ought to have known that these orders were unlikely to generate the revenue which had been projected or were unlikely to even materialize at all.

32. Specifically, MES represented that it had secured an order from a large military customer through GDATP for 1,100 vehicle-mounted ECM Chameleon units, which was expected to generate revenue in the amount of $54,285,000 for the fiscal year 2008.

33. Despite representing that there was a 100% probability of securing this order, the customer subsequently advised Allen-Vanguard following the close of the transaction that it

would not proceed with the purchase of these 1,100 units until the Chameleon product was subjected to further performance testing.

34. The former management of MES knew or ought to have known at the time that this order was represented to Allen-Vanguard as being 100% probable, that the customer would require further evaluation of the product before placing the order with MES, if it decided to place the order at all.

35. In addition to the misrepresentations with respect to the pipeline order for the 1,100 Chameleon units, MES misrepresented the expected revenue associated with an order by a military customer for a repair and overhaul program.

36. In particular, MES represented that there was a 75% probability that it would secure an order by this customer to perform a program of repair and overhaul for all of its products. This order was projected to generate annual revenue to MES in the amount of $38,000,000, beginning in the fiscal year 2008.

37. Notwithstanding the representation that there was a 75% probability of securing this order, there was no reasonable basis to make such a representation as Allen-Vanguard subsequently learned following the close of the transaction that the customer had not made any commitment to engage MES to administer the repair and overhaul program.

38. In addition, MES represented that it had an order in the pipeline for 2007 by a U.S. military customer for 600 portable ECM units, which was projected to generate revenue for MES in the amount of $17,640,000 for the fiscal year 2008. MES had represented that there was a 70% probability of securing this order.

39. Despite these representations, this order was in fact far from materializing. Allen-Vanguard subsequently discovered after the transaction closed that there was no funded program in place which would enable the customer to place that order. The former management of MES knew or ought to have known that the U.S. government had not allocated any funds which could be drawn upon to place this order and therefore misrepresented the probability of this order ever materializing, let alone projecting that it was expected to generate $17,640,000 in fiscal year 2008.

40. MES further represented that there was a 75% probability of securing an open "Expanded Role" professional services contract directly with a military customer, which was projected to generate revenue in the amount of $13,500,000 in 2007 and $50,400,000 annually thereafter. However, this order required MES to be directly engaged by the customer as the prime contractor, which would constitute a clear violation of MES's Teaming Agreement with GDATP.

41. Indeed, if MES were to contract directly with the customer for this Expanded Role contract, MES would face significant exposure and liability associated with a direct contravention of the Teaming Agreement. Nevertheless, MES represented that there was a 75% probability of MES securing this Expanded Role contract and of generating the significant revenues described above.

42. However, following the close of the transaction, Allen-Vanguard learned that there would be no practical way of carrying out the Expanded Role contract without being in breach of the Teaming Agreement.

43. In addition, MES represented to Allen-Vanguard significant revenue associated with an order in the pipeline for 2,511 vehicle-mounted units to be carried out in fiscal year 2007. Although this order was in fact fulfilled, it did not generate the revenue which MES had represented in its projections to Allen-Vanguard.

44. The projected revenue which MES represented was apparently based upon the application of the foreign exchange rate which applied when the order had been received. However, the foreign exchange rate was significantly different than the applicable rate when the order was delivered. This discrepancy resulted in a shortfall in the post-closing revenue associated with the order in the amount of approximately $13,300,000.

45. Allen-Vanguard relied upon the representations made on behalf of MES with respect to the projected pipeline of orders in negotiating the purchase price for MES and all other terms of the transaction. The former management of MES were fully aware that the projections for the company's expected revenue, earnings and bookings, would impact on Allen-Vanguard's desire to enter into the transaction and the price it would be willing to pay for MES.

2. Misrepresentations with respect to Contingent and Other Liabilities of MES

(i) Assist Audit

46. Approximately three months prior to the close of the transaction, MES had been subjected to an audit by the United States Defence Contract Management Agency ("DCMA") through the Canadian Commercial Corporation and Public Works and Government Services Canada ("PWGSC") (the "Assist Audit"). The purpose of this audit was to confirm that the prices MES quoted to GDATP on specific items sold by MES were fair and reasonable.

47. Although MES disclosed the fact that DCMA had made a request in Schedule 3.01(2)(d) of the Share Purchase Agreement, it failed to provide full and complete disclosure as to what this request signified or how this request amounted to a significant contingent liability of MES.

48. Despite Allen-Vanguard's attempts to obtain more information prior to the close of the transaction with respect to the Assist Audit and the potential exposure associated therewith, the former management of MES misled Allen-Vanguard as to the status of the Assist Audit, the cost and expense associated with its compliance, and the significant exposure to MES in the event that the U.S. government determined that MES did not qualify for an exemption which would entitle it to refrain from disclosing its cost margins, and if it determined that MES's prices were not fair and reasonable.

49. Indeed, if the Assist Audit resulted in a finding that the prices charged to the U.S. government were not fair and reasonable, MES would be liable to pay the amount by which the U.S. government determined it had been over-charged.

50. This represented a significant contingent liability of MES, which the former management of MES was required to disclose to Allen-Vanguard in connection with the transaction.

51. When representatives of Allen-Vanguard made inquiries of the former MES management to obtain additional information with respect to the Assist Audit, the MES management characterized the audit as a "routine exercise" and deliberately down-played the ramifications associated with a determination by DCMA that MES's prices were not fair or reasonable.

52. However, unbeknownst to Allen-Vanguard at the time of the acquisition, the former members of the MES management were concerned about a negative outcome and had engaged

U.S. legal counsel and the services of a professional consulting firm to opine on whether MES qualified for an exemption under the Federal Acquisition Regulations ("FAR") which would excuse it from having to submit its cost or pricing data to support the proposed or negotiated prices for the sale of its ECM products to the U.S. government through GDATP.

53. MES never disclosed the fact that it had retained a professional consulting firm, or that it had received a draft report from its consultants prior to the close of the transaction. MES failed to disclose this information to Allen-Vanguard despite Allen-Vanguard's requests for further information with respect to the Assist Audit and the potential exposure associated therewith.

54. In fact, the former management of MES deliberately concealed the information it had with respect to the Assist Audit and delayed responding to the audit until days before the transaction was to close.

(ii) Tax Liabilities

55. As part of the calculation of working capital in connection with the transaction, MES made certain deductions in calculating its tax liability as at the closing date of the transaction.

56. However, following the close of the transaction, Allen-Vanguard discovered that a significant sum was in fact not deductible for tax purposes by MES.

57. Unbeknownst to Allen-Vanguard at the time of the transaction, MES had obtained an opinion from a major accounting firm, which specifically cautioned against the deduction of these sums and which specifically advised MES to act on the assumption that CRA will challenge a filing position which claimed these amounts as tax deductible.

58. Despite having obtained this opinion from the accounting firm, MES never disclosed to Allen-Vanguard the potential tax liability associated with such a challenge by CRA.

59. The elimination of this deduction will result in a significant increase to the income tax liability of MES, against which Allen-Vanguard has been required to provide a full reserve.

(iii) Warranty Claims Associated with Defective Products

60. MES further breached the representations and warranties associated with its liabilities by failing to disclose the extent and exposure associated with a quality control issue relating to MES's shipment of 192 defective units to GDATP prior to the close of the transaction.

61. Indeed, the contractor responsible for the manufacture of MES's Chameleon ECM units experienced a quality control issue which resulted in the shipment of 192 defective ECM units to Iraq.

62. As a result, GDATP withheld payments to Allen-Vanguard in respect of these defective units and additionally charged Allen-Vanguard for its costs in addressing this issue.

63. Allen-Vanguard was further required to incur repair costs and sought to recover a portion of these costs from its manufacturer.

64. Although MES disclosed the fact that it was addressing a manufacturing issue, it failed to disclose the full extent of the exposure and liability associated with the shipment of the 192 defective units.

3. *Misrepresentations with respect to Status of MES Contracts and Commitments*

65. Pursuant to Section 3.01(4)(b) of the Share Purchase Agreement, MES represented and warranted that it was not in default or breach, in any material respect, under any contract to which it was a party and that all of its contracts were in good standing.

66. Despite representing that MES was not in breach of any of its contracts, two days before the close of the transaction, Timmis, on behalf of MES, sent an email to David Luxton, the Chief Executive Officer of Allen-Vanguard, advising that MES had received a notice from GDATP alleging that MES had committed material breaches of the Teaming Agreement.

67. Even though this notice was received by Timmis on August 30, 2007, he did not advise Allen-Vanguard of it until two days before the transaction closed.

68. In particular, GDATP alleged that, contrary to the terms of the Teaming Agreement, MES had participated in a Request for Proposals (RFP) initiated by a military customer to contract directly with MES for non-warranty repair work of all of its Chameleon Mobile Counter-Measure units.

69. As a result of MES's attempts to contract directly with this customer, GDATP alleged that MES was in breach of Articles 1.3, 2.1 and 9.1 of the Teaming Agreement. In addition, GDATP alleged that MES had failed to provide GDATP with written disclosure of the non-warranty repair opportunity, as required by Article 2.2 of the Teaming Agreement.

70. As a result of these alleged breaches, GDATP requested that MES show cause as to why GDATP did not have a basis to terminate the Teaming Agreement in the event that it wished to do so.

71. Unbeknownst to Allen-Vanguard, this alleged breach represented only one of many breaches and acts of default which GDATP was then asserting against MES.

72. Aside from disclosing the alleged breach associated with MES's participation in the RFP set out in Timmis' email, no further details with respect to this allegation or with respect to any of the other alleged breaches of the Teaming Agreement were disclosed to Allen-Vanguard.

73. Such conduct constitutes a breach of the representations and warranties contained in the Share Purchase Agreement, for which Allen-Vanguard is entitled to indemnification out of the Indemnification Escrow Amount.

4. Misrepresentations with respect to Employees' Compensation Expectations

74. In the months following the close of the transaction, Allen-Vanguard discovered that a number of MES employees had approached Timmis in 2006 and 2007 seeking significantly increased compensation in connection with their continuing employment with MES.

75. On behalf of MES, Timmis told these employees that they should wait until MES had been sold and that they would receive increased compensation packages after MES had been acquired by the new owners. He expressly cautioned them against seeking increased compensation prior to the close of the transaction and promised that their compensation expectations would be met after the transaction closed.

76. The employees approached Timmis again leading up to the close of the transaction and again sought an increase in their compensation as part of the sale and as an incentive to continue to work for MES after it had been acquired.

77. Timmis again advised the employees that they should wait until after the close of the transaction with Allen-Vanguard and that he would then negotiate increased compensation packages on their behalf with Allen-Vanguard.

78. However, at no time during the negotiation of the Share Purchase Agreement did Timmis advise Allen-Vanguard that these employees were seeking increased compensation or that he had led them to believe that they would receive it after the acquisition was completed.

79. In fact, MES had represented and warranted in Section 3.01(6)(i) of the Share Purchase Agreement that there had been no changes in the terms and conditions of the employment of any employees of the corporation and that the corporation had not agreed or otherwise become committed to change any of the employees' compensation, remuneration or benefits payable to them.

80. After the transaction closed, Timmis provided David Luxton, the Chief Executive Officer of Allen-Vanguard, with a spreadsheet proposing a modest allocation of options and other compensation for these employees, despite being fully aware that these employees were expecting and demanding much more significant increases in their compensation.

81. Timmis deceived Allen-Vanguard into believing that the spreadsheet contained figures which were commensurate with the employees' compensation expectations, despite knowing full well that the figures were far lower than their true expectations.

82. Timmis then reported back to the employees and misled them into believing that he was attempting to negotiate higher compensation packages for them, but that Allen-Vanguard would

not agree to any greater compensation than that which had been submitted by Timmis in the spreadsheet.

83. When the MES employees learned that Allen-Vanguard was not going to be able to meet their compensation expectations, many of the employees felt betrayed by Timmis and refused to continue to work at MES as long as Timmis also continued to be employed by MES.

84. Indeed, it became apparent to the employees that Timmis had negotiated for himself the entire pool of funds which would otherwise have been earmarked for the retention of all employees following the close of the transaction.

85. Allen-Vanguard has continued to suffer damages caused by these misrepresentations made on behalf of MES.

86. Indeed, within months of the close of the transaction, as the new owner of MES, Allen-Vanguard was faced with a near mutiny by the MES employees.

87. As a result of Timmis' wrongful conduct on behalf of MES, Allen-Vanguard had no alternative but to terminate a critical engineering manager whose compensation expectations could not be met. In addition, as a result of Timmis' wrongful conduct on behalf of MES, Allen-Vanguard had no alternative but to meet some of the employees' compensation expectations or risk losing a substantial portion of its workforce.

88. Had Allen-Vanguard known that it would become saddled with these personnel issues and been forced to meet demands for increased compensation, it would have altered the terms of the deal it struck with MES.

VI. DAMAGES

89. Allen-Vanguard relied upon the information provided by the former management of MES in negotiating the purchase price and all other terms of the transaction. The projections with respect to MES's expected revenue, earnings and bookings, were made by the management of MES, knowing that they would impact on Allen-Vanguard's desire to enter into the transaction and the price it would be willing to pay for MES.

90. Allen-Vanguard reasonably relied upon the above misrepresentations to its detriment in valuing MES and deciding to proceed to close the transaction.

91. As a result, Allen-Vanguard is entitled to indemnification and/or damages from the Defendants for its reasonable reliance upon MES's misrepresentations and for the significant breaches of the Share Purchase Agreement.

92. Had the true state of MES's affairs been accurately represented, Allen-Vanguard would not have been prepared to complete the transaction without a significant discount to the purchase price.

93. These misrepresentations and breaches of the Share Purchase Agreement further caused Allen-Vanguard to refinance its debt arrangements with its senior debt lenders and has resulted in the payment by Allen-Vanguard of various penalty fees and amendment fees associated with such refinancing efforts.

December 18, 2008

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

ALLEN-VANGUARD CORPORATION
Plaintiff

-and-

RICHARD L'ABBÉ et al
Defendants

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

STATEMENT OF CLAIM

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

This is Exhibit "J" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ALLEN-VANGUARD CORPORATION

Plaintiff

- and -

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL INC. (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

STATEMENT OF DEFENCE

1. The defendants admit the allegations contained in paragraphs 3-5, 8-11, 17 and 19-28 of the Statement of Claim.

2. The defendants deny the allegations contained paragraphs 6, 7, 12-16, 18 and 29-93 of the Statement of Claim.

The Parties

3. The defendants were shareholders of Med-Eng Systems Inc. ("Med-Eng", referred to in the Statement of Claim as "MES"), and are parties to a Share Purchase Agreement, dated as of August 3, 2007 (the "Share Purchase Agreement") The defendants are referred to collectively as the "Offeree Shareholders".

4. The Offeree Shareholders are also parties to an Escrow Agreement, made as of September 17, 2007 pursuant to the Share Purchase Agreement (the "Escrow Agreement").

5. The plaintiff, Allen-Vanguard Corporation, is a corporation incorporated under the laws of the Province of Ontario and was the purchaser of all of the issued and outstanding shares in the capital of Med-Eng. The plaintiff is hereinafter referred to as "Allen-Vanguard" or the "Purchaser".

6. Med-Eng is a corporation incorporated under the laws of the Province of Ontario and is the corporation whose shares were acquired from the Offeree Shareholders and other shareholders by Allen-Vanguard. Allen-Vanguard and Med-Eng are parties to the Share Purchase Agreement and to the Escrow Agreement.

7. Following the closing of the Share Purchase Agreement, Med-Eng was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007. The name of the amalgamated corporation is Allen-Vanguard Technologies Inc. ("Allen-Vanguard Technologies"). Allen-Vanguard Technologies is hereinafter referred to as "Allen-Vanguard Technologies" or "Med-Eng".

8. Pursuant to a Shareholders' Agreement, made as of April 19, 2000, as supplemented, between Med-Eng and all shareholders of Med-Eng, the Offeree Shareholders issued a Drag Along Notice, dated August 23, 2007, to the other shareholders, obliging them to sell their shares to the Purchaser.

9. The purchase price payable by Allen-Vanguard for the purchase of all of the shares of Med-Eng was $581 million, subject to adjustments as provided in the Share Purchase Agreement.

Specific and Limited Representations, Warranties, Indemnification Given by Med-Eng under Share Purchase Agreement

10. In Section 3.01 of the Share Purchase Agreement, Med-Eng made representations and warranties to Allen-Vanguard with respect to certain matters relating to its status and business. All representations and warranties by Med-Eng are set forth in Section 3.01. The covenants of Med-Eng which are alleged to have been breached are set forth exclusively in Section 4.01. The material provisions of Section 3.01 state:

3.01 **Corporation's Representations and Warranties**

The Corporation represents and warrants to the Purchaser that:

...

(2) Financial

(a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all material financial transactions of the Corporation and its Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.

(b) The audited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on December 31, 2006, together with the report of KPMG LLP, chartered accountants, thereon and the notes thereto (collectively, the "Audited Financial Statements"), a copy of which is attached hereto as Schedule 3.01(2)(b) present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries as at December 31, 2006 and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.

(c) The unaudited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on the Balance Sheet Date [i.e. June 30, 2007], (collectively, the "Unaudited Financial Statements"), a copy of which is attached hereto as Schedule 3.01(2)(c) present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries as at the Balance Sheet Date and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.

(d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i)

liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).

...

(f) Since the Balance Sheet Date there has been no Material Adverse Effect in respect of the Corporation or its Subsidiaries.

...

(3) Condition of Assets

...

(d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.

...

(g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

(4) Contracts and Commitments

...

(b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no

condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.

...

(6) Employees

...

(b) Neither the Corporation nor its Subsidiaries has any written employment contract with any person whomsoever, except as disclosed in Schedule 3.01(6)(b).

...

(i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

...

(8) Benefit Plans

...

(d) No fact, condition or circumstance exists that would materially affect the information contained in the documents provided pursuant to Section 3.01(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.

(e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.

...

(12) General

(a) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Corporation or its Subsidiaries):

(i) pending or threatened against or materially adversely affecting, or which could materially adversely affect, the Corporation or its Subsidiaries or any of their assets,

(ii) before or by an Governmental Authority,

except such actions, suits or proceedings as are disclosed in Schedule 3.01(12)(a) and or to the Corporation's knowledge, there is no valid basis for any such action, suit or proceeding.

...

(c) The Corporation is conducting its business in material compliance with all Applicable Laws of Canada and of the Province of Ontario, the Corporation's Subsidiary, Med-Eng, Inc. is conducting its business in all material respects in compliance with all Applicable Laws of the United States and of the State of New York and the Corporation's Subsidiaries, 1252110 Alberta Ltd. and 1252144 Alberta Ltd., and the Partnership are conducting their respective businesses in compliance with all applicable laws of the Province of Alberta, except in each case where any such non-compliance would not have a Material Adverse Effect. The Corporation and its Subsidiaries have or, where applicable, have caused their contractors and agents to comply with Applicable Laws in those

jurisdictions where business is being carried on by or on behalf of the Corporation or its Subsidiaries with a Governmental Authority. Except as set forth in 3.01(12)(c), (i) the Corporation has not been charged with and, to the knowledge of the Corporation, the Corporation is not now under investigation with respect to, a violation of any Applicable Law, (ii) the Corporation is not a party to or bound by any order, judgment, decree, injunction or of any Governmental Authority and (c) the Corporation has filed all material reports and has all material licenses and permits required to be filed with any Governmental Authority on or before the date hereof.

11. Section 7.02 of the Share Purchase Agreement states:

7.02 **Indemnification by the Corporation**

(1) Subject to the provisions of this Article 7, the Corporation will indemnify and save harmless the Purchaser and the directors, officers, employees and agents of the Purchaser (collectively, the "Purchaser Indemnitees") from and against all Claims incurred by the Purchaser directly or indirectly resulting from (i) any breach of any covenant of the Corporation contained in this Agreement, (ii) any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 or (iii) the contravention of, non-compliance with or other breach, on or before the Closing Date, by the Corporation or its Affiliates of the Teaming Agreement ("GD Teaming Agreement") between General Dynamics Armament and Technical Products ("GD") and the Corporation dated May 27, 2005, as amended.

(2) Notwithstanding any of the other provisions of this Agreement, the Corporation will not be liable to any Purchaser Indemnitee in respect of:

(a) any representation and warranty of the Corporation set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement unless any claim or demand by the Purchaser against the Corporation with respect thereto is given to the Corporation and the Offeree Shareholders by the Purchaser prior to December 21, 2008, except in the case of fraud, in which case there will be no time limit for the Purchaser to make a demand or claim against the Corporation in respect thereof; or

(b) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement:

(i) unless and until the aggregate of all Claims exceeds $4.0 million, and then only to the extent that such aggregate exceeds $2.0 million; or

(ii) in excess of the Indemnification Escrow Fund;

other than, in all cases, any Claim attributable to fraud.

12. In respect of the claims made by Allen-Vanguard in this action, Section 7.02 (1) of the Share Purchase Agreement requires Med-Eng, but not the Offeree Shareholders, to indemnify and save harmless Allen-Vanguard from and against claims incurred by Allen-Vanguard resulting from:

(a) any breach of covenant of Med-Eng contained in the Share Purchase Agreement;

(b) any inaccuracy or misrepresentation in any representation or warranty of Med-Eng set forth in Section 3.01; or

(c) the contravention of, noncompliance with or other breach before September 17, 2007 by Med-Eng of the Teaming Agreement between General Dynamics Armament and Technical Products ("General Dynamics") and Med-Eng, dated May 27, 2005 (the "GD Teaming Agreement").

13. In respect of the claims made by Allen-Vanguard in this action, Section 7.02(2) of the Share Purchase Agreement limits the liability of Med-Eng to Allen-Vanguard under the Share Purchase Agreement. In particular, under Section 7.02(2), Med-Eng is not liable to Allen-Vanguard in respect of:

(a) any representation and warranty of Med-Eng set forth in Section 3.01 of the Share Purchase Agreement unless any claim or demand by Allen-Vanguard is given prior to December 21, 2008;

(b) any contravention of, noncompliance with or other breach, on or before September 17, 2007, of the GD Teaming Agreement, unless any claim or demand by Allen-Vanguard is given before December 21, 2008; and

(c) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before September 17, 2007, of the GD Teaming Agreement:

(i) unless and until the aggregate of all claims exceeds $4,000,000, and then only to the extent that such aggregate exceeds $2,000,000; or

(ii) in excess of the indemnification escrow amount of $40,000,000.

14. The Share Purchase Agreement does not prescribe any time limits or limit liability for claims of fraud made by Allen-Vanguard against Med-Eng.

Closing of Share Purchase Agreement Transaction

15. The share purchase transaction closed on September 17, 2007.

Establishment of Indemnification Escrow Fund

16. Pursuant to Section 2.04 of the Share Purchase Agreement, Allen-Vanguard and the Offeree Shareholders agreed to enter into the Escrow Agreement to provide for the deposit of funds, which were part of the purchase price under the Share Purchase Agreement, into escrow to be held as security for any claims for indemnification made by Allen-Vanguard pursuant to Section 7.02 of the Share Purchase Agreement.

17. Pursuant to Section 2.1 of the Escrow Agreement, an escrow fund was created into which the shareholders of Med-Eng deposited an amount, to be held by Computershare Trust Company of Canada ("Computershare") in accordance with the terms of the Escrow Agreement, and defined in the Escrow Agreement as:

> $40,000,000 (the "Indemnification Escrow Fund"); the Indemnification Escrow Fund, as (i) increased by any interest earned or accrued on the cash portion thereof further to the Authorized Investments made in accordance with Section 2.3,

and (ii) reduced by any distributions made in accordance with Section 4.1, is referred to herein as the "Indemnification Escrow Fund"

18. Section 4.1 of the Escrow Agreement states:

> 4.1 **Distributions out of the Indemnification Escrow Fund**
>
> (a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.
>
> (b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a "Notice of Claim") to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.
>
> (c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written notice (an "Objection Notice") setting forth the reasons for the objection.
>
> (d) If the Offeree Shareholders do not deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the dollar amount of the Claim claimed in the Notice of Claim shall be deemed established for all purposes of this Agreement and the Share Purchase Agreement and, at the end of such 30 days' period, the Escrow Agent shall pay such amount to the Purchaser from the Indemnification Escrow Fund. The Escrow Agent shall pay such amount in the form of Take Back Notes plus interest accrued thereon in accordance with their terms until all Take Back Notes have been delivered from the Indemnification Escrow Fund before any payments are made in cash. The Escrow Agent shall not, and shall not be required to,

inquire into or consider whether a Notice of Claim complies with the requirements of the Share Purchase Agreement.

(e) If the Offeree Shareholders deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the Escrow Agent shall make payment of the non-disputed portion of the Notice of Claim as provided in Section 4.1(d) above and shall make payment with respect to the disputed portion of the Notice of Claim only in accordance with (i) joint written instructions of the Purchaser and the Offeree Shareholders, or (ii) a final non-appealable order of a court of competent jurisdiction. The Escrow Agent shall act on any such court order without further inquiry or question.

(f) On December 21, 2008, the Indemnification Escrow Fund shall be reduced by the value (if any) of any Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement which remain pending as of such date, and the Escrow Agent shall distribute the remaining amount to the Shareholders (in the proportions set forth on Schedule 4.1(f)) on, or as soon as possible after, such date. Any amount remaining in the Indemnification Escrow Fund after all Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement are resolved shall be distributed by the Escrow Agent to the Shareholders (in the proportions set forth on Schedule 4.1(f)) as soon as possible after such resolution.

(g) For greater certainty, the aggregate liability of the Shareholders and the Company with respect to any and all Claims made under Section 7.02 or 7.04 of the Share Purchase Agreement shall not exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof and the aggregate amount of any distributions made by the Escrow Agent to the Purchaser under this Section 4.1 shall in no event exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof.

19. Interest on any payment made out of the Indemnification Escrow Fund is governed by the terms of the Escrow Agreement and recovery of additional interest under sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 is therefore precluded.

Allen-Vanguard's Notice of Claim

20. On September 10, 2008, Allen-Vanguard delivered an undated notice of claim pursuant to the Escrow Agreement. The notice of claim did not set out a reasonably detailed description of the basis for the claims of Allen-Vanguard, but nevertheless asserted an entitlement to the entire Indemnification Escrow Fund for alleged breaches of representations and warranties by Med-Eng under Section 3.01 of the Share Purchase Agreement and for alleged breaches of covenants in Section 4.01 of the Share Purchase Agreement.

21. On September 17, 2008 the Offeree Shareholders requested particulars of Allen-Vanguard's claims. Allen-Vanguard refused to provide the requested particulars.

22. By notice of objection, dated October 1, 2008, and delivered by the Offeree Shareholders on October 6, 2008, the Offeree Shareholders disputed each and all of the claims set forth in the notice of claim.

Allen-Vanguard Limited to Provable Claims against the Indemnification Escrow Fund

23. In paragraph 1 (a) of the Statement of Claim, Allen-Vanguard claims indemnification and/or damages for fraud and/or negligent misrepresentation and breach of contract in the amount of $40,000,000.

24. With respect to its claim to indemnification, Allen-Vanguard is limited by the terms of the Share Purchase Agreement, absent fraud, to "Claims":

(a) as defined in Section 1.1 of the Escrow Agreement;

(b) limited to those claims by Allen-Vanguard resulting directly or indirectly from any breach of any covenant contained in the Share Purchase Agreement;

(c) limited to those claims by Allen-Vanguard resulting from any inaccuracy or misrepresentation in any representation or warranty of Med-Eng set forth in Section 3.01 of the Share Purchase Agreement;

(d) made by December 21, 2008 in accordance with Section 4.1 of the Escrow Agreement;

(e) against the Indemnification Escrow Fund established pursuant to Section 2.1 of the Escrow Agreement; and

(f) which are allowed by a final non-appealable order of a court of competent jurisdiction.

25. Allen-Vanguard is not entitled to indemnification for claims arising out of any representation, warranty, term, condition, undertaking or collateral agreement not expressly set forth in the Share Purchase Agreement. Section 8.06 of the Share Purchase Agreement states:

> 8.06 **Entire Agreement**
>
> This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

26. The Offeree Shareholders deny that representations or warranties of Med-Eng set out in Section 3.01 of the Share Purchase Agreement contained any inaccuracies or misrepresentation. Allen-Vanguard is not therefore entitled to indemnification for any Claims out of the Indemnification Escrow Fund.

27. The Offeree Shareholders further plead and rely upon Section 7.06 of the Share Purchase Agreement, which states in material part:

> 7.06 **Exclusive Remedy**
>
> From and after the completion of the sale and purchase of Shares herein contemplated, ... the rights of indemnity set forth in this Article 7 are the sole and exclusive remedies of each party in respect of any inaccuracy or misrepresentation in any

> representation or warranty, or breach of covenant or other obligation by another party under this Agreement. Accordingly, the parties waive, from and after the Closing, any and all rights, remedies and claims that one party may have against another party, whether at law, under any statute or in equity (including claims for contribution or other rights of recovery arising under any Environmental Law, claims for breach of contract, breach of representation and warranty, negligent representation and all claims for breach of duty), or otherwise, directly or indirectly, relating to the provisions of this Agreement or the transaction contemplated by this Agreement ... as expressly provided for in this Article 7 and other than those arising with respect to any fraud. This Article 7 will remain in full force and effect in all circumstances and will not be terminated by any breach (fundamental, negligent or otherwise) by any party of its representations, warranties, covenants or other obligations under this Agreement or under any Closing document or by any termination or rescission of this Agreement by any party.

28. With respect to its claim for damages for fraudulent and/or negligent misrepresentation and breach of contract, the Offeree Shareholders state:

(a) Allen-Vanguard has made no allegations of fraud, negligent misrepresentation or breach of contract against the Offeree Shareholders;

(b) the Offeree Shareholders are therefore not liable to Allen-Vanguard for any alleged damages suffered allegedly as a result of fraud, negligent misrepresentation or breach of contract;

(c) to the extent that Allen-Vanguard has advanced claims for damages arising out of fraud, negligent misrepresentation or breach of contract against Med-Eng and its former management, Allen-Vanguard is not entitled to any relief whatsoever since it has failed or neglected to add Med-Eng or any individual of Med-Eng's former management as parties to this action.

29. In any event, the Offeree Shareholders deny that they, Med-Eng or Med-Eng's former management are liable to Allen-Vanguard for fraud, negligent misrepresentation or breach of contract. The Offeree Shareholders deny in their entirety the allegations of fraud, negligent misrepresentation and breach of contract, and seek an order of full indemnity costs against Allen-

Vanguard for making these allegations without any or proper evidentiary foundation, in bad faith and contrary to the express terms of the Share Purchase Agreement.

30. Furthermore, in respect to its claims for damages for negligent misrepresentation and breach of contract, Allen-Vanguard waived all such claims in Section 7.06 of the Share Purchase Agreement.

No Representation or Warranty regarding Future Profitability

31. Med-Eng made no representations regarding the future financial profitability of Med-Eng. Med-Eng made no representations regarding customer relationships, expected bookings, or revenue and earnings.

32. Section 3.04 of the Share Purchase Agreement provides:

> The representations and warranties of the Corporation, each Offeree Shareholder and the Purchaser set forth in Sections 3.01, 3.02 and 3.03, respectively, are the only representations and warranties made by such party. THE CORPORATION AND EACH OFFEREE SHAREHOLDER SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING THE FURTHER PROFITABILITY OF THE CORPORATION FOLLOWING THE CLOSING DATE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN SECTIONS 3.01, 3.02 AND 3.03, THE CORPORATION, EACH OFFEREE SHAREHOLDER AND THE PURCHASER, RESPECTIVELY, MAKE NO REPRESENTATION, WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER. [Emphasis in original.]

33. There are no representations and warranties in the Share Purchase Agreement with respect to any of the following, as alleged at paragraphs 29-45 of the Statement of Claim:

(a) expected bookings, revenue and earnings;

(b) backlog, except for Contracts as set forth in Section 3.01(4)(a);

(c) orders which were in the pipeline; and

(d) the probability of securing any order or contract.

Med-Eng Disclosed its Financial Condition in Accordance with the Share Purchase Agreement

34. Contrary to the allegations contained in paragraphs 29-45 of the Statement of Claim, Med-Eng did not misrepresent its financial condition at any time prior to the closing of the share purchase transaction.

35. Med-Eng disclosed its financial condition and its customer orders, as of June 30, 2007, in the Share Purchase Agreement and the Schedules thereto, as updated to the date of closing of the share purchase transaction.

36. Med-Eng was a party to the GD Teaming Agreement under which Med-Eng was required to contract through General Dynamics with U.S. military customers.

37. Med-Eng correctly reported all Contracts as required by Section 3.01(4)(a) of the Share Purchase Agreement.

Med-Eng Disclosed its Contingent and Other Liabilities in Accordance with the Share Purchase Agreement

38. Med-Eng disclosed contingent and other liabilities of Med-Eng in the Share Purchase Agreement and in the Schedules thereto, updated to the date of closing.

(i) Information Request from the U.S. Defence Contract Management Agency

39. Schedule 3.01(2)(d), as updated, relating to liabilities, includes a statement to the effect that the U.S. Defence Contract Management Agency ("DCMA") through Public Works and Government Services Canada ("PWGSC") had requested information in order to determine whether Med-Eng's prices quoted to General Dynamics on April 4, 2007 were fair and reasonable.

40. Med-Eng disclosed the DCMA's request (relayed to Med-Eng in a June 18, 2007 e-mail from a representative of PWGSC on behalf of DCMA) on or before August 3, 2007 at Schedule 3.01(2)(d) to the Share Purchase Agreement.

41. Med-Eng responded to all of PWGSC's requests for information.

(ii) Tax Liabilities

42. As required by Section 2.03(2) of the Share Purchase Agreement, Med-Eng delivered a statement setting out the working capital as at the month end before the closing date and setting out an estimate of the working capital as at the close of business on the day before the closing date. The certificate included a provision for income taxes payable (receivable), which provision was based on the calculation provided by Med-Eng's external tax advisors.

43. Following the closing of the transaction, pursuant to Section 2.03(3), Allen-Vanguard prepared and delivered to the Offeree Shareholders an unaudited statement setting out working capital as at the close of business on the day before the closing date which reflected an increase , as calculated by the Purchaser, in the amount of working capital of $1,030,000, payable to the former shareholders of Med-Eng.

44. The Offeree Shareholders have no knowledge of any filing position relating to alleged deductions taken by Med-Eng in any tax return filed by Med-Eng with Canada Revenue Agency.

(iii) Warranty Claims

45. As represented by Med-Eng in Section 3.01(3)(g) of the Share Purchase Agreement, there were no material warranty claims against Med-Eng at the time of the closing of the share purchase transaction.

Med-Eng Disclosed the Status of its Contracts and Commitments in Accordance with the Share Purchase Agreement

46. Med-Eng represented at Section 3.01(4)(b) of the Share Purchase Agreement that it was not in default or breach, in any material respect, under any contract to which it was a party and that all of its contracts were in all material respects, in good standing.

47. With respect to the allegations contained at paragraphs 66-73 of the Statement of Claim regarding General Dynamics' allegations that Med-Eng had committed breaches under the GD Teaming Agreement, Med-Eng disclosed to Allen-Vanguard the Show Cause and Cure Notice from General Dynamics dated August 30, 2007. Med-Eng made further disclosure with respect

to potential liabilities and potential litigation in Schedule 3.01(2)(d) of the Share Purchase Agreement and in Schedule 3.01(12)(a) of the Officer's Certificate delivered at closing pursuant to Section 5.01(a) of the Share Purchase Agreement.

48. Section 7.02(1)(iii) of the Share Purchase Agreement limits indemnification with respect to contravention of, non-compliance with or any other breach of the GD Teaming Agreement by Med Eng to conduct which took place on or before the closing date of the transaction (September 17, 2007).

Med-Eng Disclosed the Details of Employee Compensation in Accordance with the Share Purchase Agreement

49. Med-Eng disclosed the status of employee compensation, remuneration and benefits in the Share Purchase Agreement and the Schedules thereto, as updated at the time of closing.

50. Med-Eng did not breach its covenant in Section 4.01(e) of the Share Purchase Agreement. Med-Eng did not amend or waive any of the provisions of any of the employment contracts and other arrangements for any of the employees of Med-Eng and its subsidiaries earning annual base salary in excess of $200,000, other than as required by such contracts or arrangements.

51. Med-Eng did not promise to any employee that increased compensation would be paid following the closing of the share purchase transaction.

52. Paul Timmis ("Timmis") did not promise any employee that he would seek increased compensation on any employee's behalf and did not guarantee that increased compensation would be paid. In any event, Timmis did not have authority to bind Med-Eng as to employee compensation.

53. Before the closing of the share purchase transaction, Med-Eng, with Allen-Vanguard's knowledge, negotiated an amended retention bonus with Timmis based on Timmis' significant contribution to the share purchase transaction.

54. The full cost of Timmis' amended retention bonus and certain other retention bonuses was borne by the shareholders as provided in Section 4.06 of the Share Purchase Agreement.

No Entitlement to Damages

55. The Offeree Shareholders deny that Allen-Vanguard relied on any alleged misrepresentations of Med-Eng to its detriment.

56. In any event, Allen-Vanguard's claim with respect to any alleged misrepresentations is limited to those representations and warranties made in the Share Purchase Agreement.

57. The defendants deny that Allen-Vanguard has suffered any damages as a result of any alleged breaches of the Share Purchase Agreement, which alleged breaches are denied.

58. In the alternative, Allen-Vanguard has failed to mitigate its damages in accordance with Section 7.05 of the Share Purchase Agreement. In the further alternative, Allen-Vanguard has fully mitigated any alleged losses allegedly arising out of alleged breaches of the Share Purchase Agreement by Med-Eng.

Request for Full Indemnity Costs

59. Allen-Vanguard has made unfounded allegations of fraudulent and negligent misrepresentation against Med-Eng and the former management of Med-Eng without any or proper foundation. The allegations have been made in bad faith, recklessly and without regard to the facts or the reputations of the former management of Med-Eng. The Offeree Shareholders therefore request that the action be dismissed with costs on a full indemnity basis.

February 10, 2009

McCarthy Tétrault LLP
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Helen Gray LSUC#: 47626J
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Solicitors for the Defendants

ALLEN-VANGUARD CORPORATION
Plaintiff

and

RICHARD L'ABBÉ, ET AL.
Defendants

Court File No: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

STATEMENT OF DEFENCE

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Solicitors for the Defendants
Doc #5684388

Court File No.: 08-CV-43188

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD.,
SCHRODER VENTURE MANAGERS (CANADA) LIMITED
in its capacity as general partner of each of
Schroder Canadian Buy-Out Fund II Limited Partnership CLP1,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP2,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP3,
Schroeder Canadian Buy-Out Fund II Limited Partnership CLP4,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP5,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP6 and
SCHRODER VENTURES HOLDING LIMITED,
in its capacity as general partner of
Schroeder Canadian Buy-Out Fund II UKLP, and on behalf of
Schroeder Canadian Buy-Out Fund II Coinvestment Scheme and
SVG Capital plc (formally, Schroeder Ventures International Investment Trust plc)

Plaintiffs

- and -

ALLEN-VANGUARD CORPORATION,
ALLEN-VANGUARD TECHNOLOGIES INC. and
COMPUTERSHARE TRUST COMPANY OF CANADA

Defendants

REPLY

1. The plaintiffs ("Offeree Shareholders") admit the allegations contained in paragraph 7 of the Statement of Defence.

2. The Offeree Shareholders deny the balance of the allegations contained in the Statement of Defence.

3. On September 10, 2008, the defendant Allen-Vanguard Corporation ("Allen-Vanguard") delivered an undated notice of claim pursuant to the Escrow Agreement. By letter, dated September 17, 2008, the solicitors for the Offeree Shareholders requested from

the solicitors for Allen-Vanguard particulars of Allen-Vanguard's claim. Allen-Vanguard refused to provide the particulars requested. On October 6, 2008, the Offeree Shareholders delivered a notice of objection dated October 1, 2008 disputing each and all of the claims set forth in the notice of claim.

4. The Offeree Shareholders issued a Statement of Claim in this action on November 12, 2008. The Statement of Claim was served promptly on Allen-Vanguard thereafter. Allen-Vanguard made no further claims under the Share Purchase Agreement between September 10, 2008 and December 21, 2008, which was the latest date on which Allen-Vanguard could assert claims for breaches of representations and warranties and covenants under the provisions of the Share Purchase Agreement.

5. Allen-Vanguard issued a Statement of Claim in this court on December 18, 2008, the same date on which it delivered its Statement of Defence in this action. The title of proceeding and court file number of the action commenced by Allen-Vanguard on December 18, 2008 is *Allen-Vanguard Corp.* v. *Richard L'Abbé et al.*, Superior Court File No. 08-CV-43544. ("Allen-Vanguard Action"). In the Allen-Vanguard Action, Allen-Vanguard has not named Computershare Trust Company of Canada ("Computershare") or Allen-Vanguard Technologies Inc., formerly Med-Eng Systems Inc., as parties.

6. With reference to paragraph 14(ii) of the Statement of Defence, Allen-Vanguard commenced the Allen-Vanguard action over a month after this action was commenced. Furthermore, this action is more comprehensive than the Allen-Vanguard Action inasmuch as this action has named Computershare and Allen-Vanguard Technologies Inc. as defendants because they are parties to the Escrow Agreement and are necessary parties to the proceeding.

February 10, 2009

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Solicitors for the Defendants

RICHARD L'ABBÉ, ET AL. Plaintiffs	and	ALLEN-VANGUARD CORPORATION, ET AL. Defendants	Court File No: 08-CV-43188

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

REPLY

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Solicitors for the Plaintiffs

Doc #5684727

This is Exhibit "K" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-41899

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PAUL TIMMIS

Plaintiff
(Defendant by Counterclaim)

and

ALLEN-VANGUARD CORPORATION, ALLEN-VANGUARD TECHNOLOGIES INC. ~~MED-ENG SYSTEMS INC.~~ and COMPUTERSHARE TRUST COMPANY OF CANADA

Defendants
(Plaintiffs by Counterclaim)

AMENDED AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM OF ALLEN-VANGUARD CORPORATION AND ALLEN-VANGUARD TECHNOLOGIES INC. ~~MED-ENG SYSTEMS INC.~~

1. The Defendants, Allen-Vanguard Corporation ("Allen-Vanguard") and Allen-Vanguard Technologies Inc. ("AVTI") ~~Med-Eng Systems Inc. ("MES")~~, admit the allegations contained in paragraphs 3, 5, 7, 11 and 12 of the Amended Amended Statement of Claim.

2. Except as expressly admitted herein, the Defendants deny the balance of the allegations contained in the Amended Amended Statement of Claim and put the Plaintiff, Paul Timmis ("Timmis"), to the strict proof thereof.

I. OVERVIEW

3. By way of overview:

(a) Allen-Vanguard agreed to pay approximately $650,000,000 to purchase all of the outstanding shares of Med-Eng Systems Inc. ("MES"). Of that amount, Timmis was to receive a retention bonus in the amount of $5,000,000 on closing and he was to receive an additional $19,000,000 in accordance with the terms of the Amended and Restated Retention Bonus Agreement and the Timmis Escrow Agreement (as defined below);

(b) the retention bonus was subsequently renegotiated pursuant to the terms of a Separation Agreement dated January 25, 2008 (as defined below);

(c) the substantial purchase price was predicated on various representations and warranties which Timmis and the other former management of MES made on behalf of MES with respect to MES's financial condition and expected revenue;

(d) within months of the close of the transaction, it became apparent that Timmis, among the other former management of MES, had made material misrepresentations on behalf of MES regarding MES's customer relationships, expected bookings, revenue and earnings which Allen-Vanguard had relied upon in negotiating the purchase price and all other terms of the transaction;

(e) in addition to the breaches of representations and warranties made by MES, Timmis, on behalf of MES, made a number of false promises to the MES employees about the compensation which the MES employees would receive after Allen-Vanguard acquired MES. Timmis never disclosed to Allen-Vanguard that he had made such promises to the MES employees and he knew that, after the transaction closed, Allen-Vanguard would not be able to fulfill these promises or

otherwise meet the compensation expectations which had been intentionally and/or recklessly inflated by Timmis;

(f) following the close of the transaction, Timmis continued to misrepresent and deceive Allen-Vanguard as to the compensation expectations of the MES employees, while at the same time, deceiving the MES employees into believing that he was negotiating increased compensation packages on their behalf. Such conduct led to a near mutiny by the MES employees within months following Allen-Vanguard's acquisition, for which Allen-Vanguard has suffered considerable damages;

(g) as a result of the breaches of representations and warranties by MES, as well as the fraudulent misrepresentations made by Timmis and his acts of deceit, Timmis is not entitled to receive any further payment pursuant to the terms of the Separation Agreement, and any claims made thereunder are set off in their entirety by the damages incurred by Allen-Vanguard as a result of Timmis' wrongful conduct; and

(h) the Plaintiff has no claim against the Defendants and the action should be dismissed with costs.

II. THE PARTIES

4. Allen-Vanguard is in the business of developing and marketing technologies, tools and training for defeating and minimizing the effects of hazardous devices and materials, and provides field and support solutions for protection and counter-measures in collaboration with military and security forces and with major research institutes, prime contractors, systems

integrators and emerging technology companies. Allen-Vanguard is a public company listed on the Toronto Stock Exchange and is headquartered in Ottawa.

5. Prior to Allen-Vanguard's acquisition, MES was a private company incorporated pursuant to the laws of Ontario and carried on business as a global supplier of force protection products for military, homeland security and law enforcement organizations. In particular, MES had taken a leadership position in offering Electronic Counter-Measure (ECM) solutions to counter the growing and evolving threat represented by radio-controlled improvised explosive devices.

6. Following Allen-Vanguard's acquisition of MES, MES was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007. The name of the amalgamated corporation was subsequently changed to AVTI on or about April 1, 2008.

7. Timmis is a resident of Ottawa and was first employed by MES on November 17, 2003, and was subsequently appointed to Vice-President of Electronic Systems in November, 2006.

8. The Defendant, Computershare Trust Company of Canada (the "Escrow Agent"), acts as the escrow agent pursuant to the various escrow agreements entered into between the parties.

III. FACTUAL BACKGROUND

9. The private equity firms, Schroder Venture Managers (Canada) Limited and Schroder Ventures Holdings Limited were the principal owners of MES, and in 2006, they sought to exit their position as long term investors. They engaged in a limited auction process to sell MES.

10. On August 3, 2007, Allen-Vanguard was the winning bidder in the auction and entered into a Share Purchase Agreement with the shareholders of MES to purchase all of the shares of

MES on a debt and cash free basis, for $600,000,000, plus an amount established at approximately $50,000,000 for the purpose of excess working capital (the "Share Purchase Agreement"). That transaction closed on September 17, 2007.

11. Pursuant to section 2.04(c) and 7.02 of the Share Purchase Agreement, Allen-Vanguard deposited $40,000,000 of the purchase monies (the "Indemnification Escrow Amount") with the Escrow Agent, for the purposes of indemnifying Allen-Vanguard for any claims which Allen-Vanguard may have resulting from any breaches of representations, warranties and covenants of MES contained in the Share Purchase Agreement, or in respect of the contravention of, non-compliance with or other breach by MES of the Teaming Agreement entered into between MES and General Dynamics Armament and Technical Products ("GDATP") dated May 27, 2005.

12. Allen Vanguard is entitled to deliver a Notice of Claim for the Indemnification Escrow Amount at any time, provided that it does so before December 21, 2008. However, in the event that Allen-Vanguard has a claim for fraud, there is no temporal or monetary limitation to making such a claim.

13. The distribution of the Indemnification Escrow Amount is governed by the terms of an Escrow Agreement dated September 17, 2007, entered into between Allen-Vanguard, MES, the Offeree Shareholders of MES, as defined, and the Escrow Agent (the "Escrow Agreement").

14. Two days before Allen-Vanguard entered into the Share Purchase Agreement, Timmis had negotiated and agreed with the former management of MES that he would receive a retention bonus pursuant to an Amended and Restated Retention Bonus Agreement, dated August 1, 2007.

15. The Amended and Restated Retention Bonus Agreement acknowledged that Timmis' continued employment with MES was considered to be important to the continued success of MES, and based the quantum of his retention bonus on a formula to be calculated in accordance with the value of the consideration which would be paid on the sale of MES or on the sale of MES's ECM Division.

16. Based upon the purchase price of $650 million, Timmis was entitled to receive a retention bonus in the amount of $19,000,000 (the "Timmis Escrow Amount") under the terms of the Amended and Restated Retention Bonus Agreement. This retention bonus was to be held in escrow and eventually distributed to Timmis provided that Timmis fulfilled certain terms and conditions, and provided that he would continue to be employed by MES for an additional 3 years following the close of the transaction.

17. The distribution of the retention bonus is governed by the terms of an escrow agreement dated September 17, 2007, entered into between Allen-Vanguard, MES, Timmis and the Escrow Agent (the "Original Timmis Escrow Agreement").

18. The Amended and Restated Retention Bonus Agreement also provided that Timmis would receive an additional $5,000,000 on closing.

6. On closing, Timmis received $5,000,000 in accordance with the terms of the Amended and Restated Retention Bonus Agreement. In addition, pursuant to section 4.06 and 5.02(f) of the Share Purchase Agreement, Allen-Vanguard deposited $19,000,000 in cash by wire transfer to the Escrow Agent in respect of the Timmis Escrow Amount.

19. Approximately four months later, on January 25, 2008, Allen-Vanguard and MES entered into a Separation Agreement with Timmis (the "Separation Agreement"), which stipulated that Timmis was voluntarily resigning his employment with Allen-Vanguard and MES. The Separation Agreement further terminated the Amended and Restated Retention Bonus Agreement and attached as a Schedule an amendment to the Original Timmis Escrow Agreement (the "Amended Timmis Escrow Agreement).

20. The Amended Timmis Escrow Agreement provided that $9,500,000 of the Timmis Escrow Amount was to be distributed to Allen-Vanguard on January 25, 2008, and that $4,750,000 was to be distributed to Timmis on January 25, 2008.

21. The Amended Timmis Escrow Agreement further provided that an additional $4,750,000 was to be distributed to Timmis in instalments upon the fulfilment of certain terms and conditions.

22. However, the Amended Timmis Escrow Agreement also provided that the payments of the additional amounts totalling $4,750,000 were to be reduced by any claims which Allen-Vanguard may have with respect to the breaches of representations, warranties or covenants or with respect to any breaches of the Teaming Agreement by MES, as set out in the Share Purchase Agreement and Escrow Agreement.

23. Specifically, section 2.1 of the Amended Timmis Escrow Agreement provides as follows:

> **2.1 Amendment to Section 4.2 of the Original Agreement**
>
> Section 4.2 of the Original Agreement is hereby deleted in its entirety and replaced with the following:
>
> 4.2 Distributions out of the Escrow Amount to the Employee

(a) On January 25, 2008, the Escrow Agent, upon written direction from the Corporation will pay to the Employee from the Escrow Amount the sum of $4,750,000 net of the amount of applicable statutory deductions, and the Escrow Agent will remit to the Canada Revenue Agency, as directed by the Corporation, such statutory deductions.

(b) The Escrow Agent will pay a further aggregate amount of $4,750,000 (reduced as provided below) to the Employee from the Escrow Amount, with such amount to be paid in the following manner:

i. 3.17% of the Corporation's Chameleon ECM/ESM product or services revenue received in each month after the Resignation Date (as defined in the Separation Agreement) up to a maximum of $4,750,000, paid on a monthly basis over a period of 18 months and subject to and following receipt of such revenue from Chameleon, with the initial payment to be made no later than March 15, 2008 (based on the Corporation's Chameleon ECM/ESM product or services revenue received in February 2008) subject to the terms set out in Section 4.2(e) below.

ii. In the event that aggregate amount paid to the Employee pursuant to Section 4.2(b)(i) is less than $4,750,000, as of August 30, 2009, the shortfall shall be paid to the Employee by way of 18 equal monthly payments on the first day of each month with the first such payment commencing on September 1, 2009.

(c) **The payments contemplated by Section 4.2(b) above to the Employee from the Escrow Amount will be reduced by the amount of applicable statutory deductions and will also be reduced by the amount of any Claims described in a Notice of Claim pursuant to the Share Purchase Agreement which remain pending as of the date of the payment of each such payment to the Employee as described in Section 4.1(b) of the Share Purchase Escrow Agreement.** (Emphasis added).

24. Section 4.1(b) of the Escrow Agreement provides as follows:

(b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the

> Share Purchase Agreement (a **"Notice of Claim"**) to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.

25. On January 25, 2008, the sum of $4,750,000, less statutory deductions, was distributed to Timmis in accordance with the terms of the Amended Timmis Escrow Agreement.

26. However, Allen-Vanguard became aware of several breaches of representations, warranties and covenants by Timmis, among the other former management of MES on behalf of MES, which disentitle Timmis to any further payments under the Amended Timmis Escrow Agreement.

27. In addition, Allen-Vanguard has discovered that Timmis, on behalf of MES, made a number of fraudulent misrepresentations and deceived Allen-Vanguard as to the compensation expectations of the MES employees before and after the transaction closed.

28. On June 3, 2008, Elisabeth Preston, the Chief Legal Officer and General Counsel of Allen-Vanguard, advised Timmis' counsel in writing of the fact that a Notice of Claim was pending and therefore that it was withholding payment under the terms of the Amended Timmis Escrow Agreement.

29. However, even before Allen-Vanguard delivered its Notice of Claim as contemplated by the terms of the Share Purchase Agreement and the Escrow Agreement, Timmis launched this action, alleging, *inter alia*, damages for breach of contract and further alleging that he is entitled to punitive and exemplary damages. This, notwithstanding the fact that Allen-Vanguard has until December 21, 2008 to deliver its Notice of Claim under the terms of the Share Purchase

Agreement and Escrow Agreement for any claims arising from any breaches of the representations, warranties and covenants contained in the Share Purchase Agreement.

30. Although the extent of the damage caused by the breaches of representations and warranties and by the fraudulent misrepresentations and acts of deceit are not yet fully known, Allen-Vanguard is entitled to reduce the amount remaining to be paid to Timmis under the terms of the Amended Timmis Escrow Agreement.

31. Allen-Vanguard is further entitled to seek indemnification and/or damages against Timmis for an amount greater than the total sum claimed under the Amended Timmis Escrow Agreement and therefore any claims made thereunder are set off in their entirety.

IV. REPRESENTATIONS, WARRANTIES AND COVENANTS

32. In the Share Purchase Agreement, Timmis, among the other former management of MES, gave extensive representations and warranties to Allen-Vanguard on behalf of MES.

33. These representations and warranties are set out in Section 3 of the Share Purchase Agreement.

34. In Sections 3.01(2)(a) and 3.01(2)(d) of the Share Purchase Agreement, MES represented and warranted that its books and records fairly present the financial position of the corporation and that it has no accrued, contingent or other liabilities except for those specified in the schedules to the Share Purchase Agreement:

> **3.01(2) Financial**
>
> 3.01(2)(a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all

> material financial transactions of the Corporation and its Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.
>
> (d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i) liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).

35. In addition, MES represented in Section 3.01(2)(f) of the Share Purchase Agreement that there had been no Material Adverse Effect which could reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition or results of operations of the corporation since June 30, 2007.

36. "Material Adverse Effect" is defined in the Share Purchase Agreement as follows:

> **"Material Adverse Effect"** means, when used in connection with the Corporation and its Subsidiaries or their business, any change, event, violation, inaccuracy, circumstance or effect that is or could reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition, results of operations of the Corporation and its Subsidiaries other than as a result of (i) changes to the Canadian, United States or global economy, in each case as a whole; (ii) changes to the financial markets; (iii) changes adversely affecting the industry in which the Corporation and its Subsidiaries operate (so long as the Corporation and its Subsidiaries are not disproportionately affected thereby); (iv) the announcement or pendency of the transactions contemplated by this Agreement; (v) changes in laws; or (vi) changes in generally accepted accounting principles.

37. In addition, except as disclosed in the schedules to the Share Purchase Agreement, MES represented and warranted that it had not received any orders, notices or similar requirements from any governmental authority:

> **3.01(3) Condition of Assets**
>
> 3.01(3)(d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.

38. MES further represented in Section 3.01(3)(g) of the Share Purchase Agreement that, except as disclosed in the schedules, no material claims had been made against it with respect to any warranty or with respect to the production or sale of defective or inferior products:

> 3.01(3)(g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

39. Similarly, MES represented in Section 3.01(4)(b) of the Share Purchase Agreement that it was not in default or in breach of any contract to which MES was a party:

> **3.01(4) Contractual Commitments**
>
> 3.01(4)(b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would

constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.

3.01(12)(k) ....The Corporation is not aware of, nor has it received notice of, any intention on the part of any such customer or supplier to cease doing business with the Corporation and its Subsidiaries or to modify or change in any material manner any existing arrangement with the Corporation and its Subsidiaries for the purchase or supply of any products or services. The relationships of the Corporation and its Subsidiaries with each of its principal suppliers, shippers and customers are satisfactory, and there are not material unresolved disputes with any such supplier, shipper or customer.

40. MES further represented and warranted that since June 30, 2007, it had not agreed or otherwise committed to change the compensation of its employees:

3.01(6) Employees

3.01(6)(i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

3.01(8)(d) No fact, condition or circumstances exists that would materially affect the information contained in the documents provided pursuant to Section 3.1(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.

3.01(8)(e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the

> consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.

41. MES further represented in section 3.01(12)(a) of the Share Purchase Agreement that there were no suits or proceedings pending or threatened which could materially adversely affect the corporation.

42. Finally, MES provided the following covenants:

> 3.01(12)(m) No representation or warranty or other statement made by the Corporation in this Agreement contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.
>
> 4.01(1)Except as otherwise contemplated by this Agreement or consented to in writing by the Purchaser, from the date of this Agreement until Closing, the Corporation will ensure that each of the Corporation and its Subsidiaries will:
>
> (a) carry on their business only in the ordinary course of business consistent with past practice and shall not, other than in the ordinary course of business, enter into any transaction or take any action which if taken before the date hereof would constitute a breach of any representation, warranty or covenant contained in this Agreement;
>
> (b) use all reasonable commercial efforts to preserve intact its business, organization and goodwill, to keep available the employees of its business as a group to maintain satisfactory relationships with suppliers, distributors, customers and others with whom the Corporation and its Subsidiaries have business relationships; and
>
> (d) promptly advise the Purchaser in writing of the occurrence of any Material Adverse Effect in respect of the Corporation or its Subsidiaries or of any facts that come to their attention which

would cause any of the Corporation's representations and warranties herein contained to be untrue in any respect.

V. BREACHES OF REPRESENTATIONS, WARRANTIES AND COVENANTS

1. Misrepresentation of MES Revenue Profile

43. Pursuant to and in connection with the Share Purchase Agreement, Timmis, among the other former management of MES, made a number of representations and warranties on behalf of MES about the financial condition of the company and delivered various projections as to its expected bookings, revenue and earnings.

44. In particular, a projection of the customer orders which were in backlog and/or in the pipeline were represented to Allen-Vanguard as being a material part of MES's revenue forecast, and upon which Allen-Vanguard relied in negotiating the purchase price and all other terms of the transaction.

45. Although these backlog and pipeline orders were represented as a substantial source of revenue for MES, Timmis, among the other former management of MES, knew or ought to have known that these orders were unlikely to generate the revenue which had been projected or were unlikely to even materialize at all.

46. Specifically, MES represented that it had secured an order from a large military customer through GDATP for 1,100 vehicle-mounted ECM Chameleon units, which was expected to generate revenue in the amount of $54,285,000 for the fiscal year 2008.

47. Despite representing that there was a 100% probability of securing this order, the customer subsequently advised Allen-Vanguard following the close of the transaction that it

would not proceed with the purchase of these 1,100 units until the Chameleon product was subjected to further performance testing.

48. Timmis, among the other former management of MES, knew or ought to have known at the time that this order was represented to Allen-Vanguard as being 100% probable, that the customer would require further evaluation of the product before placing the order with MES, if it decided to place the order at all.

49. In addition to the misrepresentations with respect to the pipeline order for the 1,100 Chameleon units, Timmis, among the other former management of MES, misrepresented the expected revenue associated with an order by a military customer for a repair and overhaul program.

50. In particular, Timmis, among the other former management of MES, represented that there was a 75% probability that MES would secure an order by this customer to perform a program of repair and overhaul for all of its products. This order was projected to generate annual revenue to MES in the amount of $38,000,000, beginning in the fiscal year 2008.

51. Notwithstanding the representation that there was a 75% probability of securing this order, there was no reasonable basis to make such a representation as Allen-Vanguard subsequently learned following the close of the transaction that the customer had not made any commitment to engage MES to administer the repair and overhaul program.

52. In addition, Timmis, among the other former members of the MES management, represented that MES had an order in the pipeline for 2007 by a U.S. military customer for 600 portable ECM units, which was projected to generate revenue for MES in the amount of

$17,640,000 for the fiscal year 2008. MES had represented that there was a 70% probability of securing this order.

53. Despite these representations, this order was in fact far from materializing. Allen-Vanguard subsequently discovered after the transaction closed that there was no funded program in place which would enable the customer to place that order. Timmis, among the other former management of MES, knew or ought to have known that the U.S. government had not allocated any funds which could be drawn upon to place this order and therefore misrepresented the probability of this order ever materializing, let alone projecting that it was expected to generate $17,640,000 in fiscal year 2008.

54. MES further represented that there was a 75% probability of securing an open "Expanded Role" professional services contract directly with a military customer, which was projected to generate revenue in the amount of $13,500,000 in 2007 and $50,400,000 annually thereafter. However, this order required MES to be directly engaged by the customer as the prime contractor, which would constitute a clear violation of MES's Teaming Agreement with GDATP.

55. Indeed, if MES were to contract directly with the customer for this Expanded Role contract, MES would face significant exposure and liability associated with a direct contravention of the Teaming Agreement. Nevertheless, Timmis, among the former management of MES represented on behalf of MES that there was a 75% probability of MES securing this Expanded Role contract and of generating the significant revenues described above.

56. However, following the close of the transaction, Allen-Vanguard learned that there would be no practical way of carrying out the Expanded Role contract without being in breach of the Teaming Agreement.

57. In addition, Timmis, among the other former management of MES, represented to Allen-Vanguard significant revenue associated with an order in the pipeline for 2,511 vehicle-mounted units to be carried out in fiscal year 2007. Although this order was in fact fulfilled, it did not generate the revenue which MES had represented in its projections to Allen-Vanguard.

58. The projected revenue which MES represented was apparently based upon the application of the foreign exchange rate which applied when the order had been received. However, the foreign exchange rate was significantly different than the applicable rate when the order was delivered. This discrepancy resulted in a shortfall in the post-closing revenue associated with the order in the amount of approximately $13,300,000.

59. Allen-Vanguard relied upon the representations made on behalf of MES with respect to the projected pipeline of orders in negotiating the purchase price for MES and all other terms of the transaction. Timmis, among the other former management of MES were fully aware that the projections for the company's expected revenue, earnings and bookings, would impact on Allen-Vanguard's desire to enter into the transaction and the price it would be willing to pay for MES.

60. The breaches of representations and warranties directly caused Allen-Vanguard to refinance its debt arrangements with its senior debt lenders and resulted in the payment by Allen-Vanguard of various penalty fees and amendment fees associated with such refinancing efforts.

2. Misrepresentations with respect to Contingent and Other Liabilities of MES

(i) Assist Audit

61. Approximately three months prior to the close of the transaction, MES had been subjected to an audit by the United States Defence Contract Management Agency ("DCMA") through the Canadian Commercial Corporation and Public Works and Government Services Canada ("PWGSC") (the "Assist Audit"). The purpose of this audit was to confirm that the prices MES quoted to GDATP on specific items sold by MES were fair and reasonable.

62. Although MES disclosed the fact that DCMA had made a request in Schedule 3.01(2)(d) of the Share Purchase Agreement, it failed to provide full and complete disclosure as to what this request signified or how this request amounted to a significant contingent liability of MES.

63. Despite Allen-Vanguard's attempts to obtain more information prior to the close of the transaction with respect to the Assist Audit and the potential exposure associated therewith, Timmis, among the other former management of MES, misled Allen-Vanguard as to the status of the Assist Audit, the cost and expense associated with its compliance, and the significant exposure to MES in the event that the U.S. government determined that MES did not qualify for an exemption which would entitle it to refrain from disclosing its cost margins, and if it determined that MES's prices were not fair and reasonable.

64. Indeed, if the Assist Audit resulted in a finding that the prices charged to the U.S. government were not fair and reasonable, MES would be liable to pay the amount by which the U.S. government determined it had been over-charged.

65. This represented a significant contingent liability of MES, which Timmis, among the other members of the former management of MES, was required to disclose to Allen-Vanguard in connection with the transaction.

66. When representatives of Allen-Vanguard made inquiries of the former MES management to obtain additional information with respect to the Assist Audit, the MES management characterized the audit as a "routine exercise" and deliberately down-played the ramifications associated with a determination by DCMA that MES's prices were not fair or reasonable.

67. However, unbeknownst to Allen-Vanguard at the time of the acquisition, the former members of the MES management were concerned about a negative outcome and had engaged U.S. legal counsel and the services of a professional consulting firm to opine on whether MES qualified for an exemption under the Federal Acquisition Regulations ("FAR") which would excuse it from having to submit its cost or pricing data to support the proposed or negotiated prices for the sale of its ECM products to the U.S. government through GDATP.

68. MES never disclosed the fact that it had retained a professional consulting firm, or that it had received a draft report from its consultants prior to the close of the transaction. MES failed to disclose this information to Allen-Vanguard despite Allen-Vanguard's requests for further information with respect to the Assist Audit and the potential exposure associated therewith.

69. In fact, the former management of MES deliberately concealed the information it had with respect to the Assist Audit and delayed responding to the audit until days before the transaction was to close.

(ii) Tax Liabilities

70. As part of the calculation of working capital in connection with the transaction, Timmis, among the other former management of MES made certain deductions on behalf of MES in calculating its tax liability as at the closing date of the transaction.

71. However, following the close of the transaction, Allen-Vanguard discovered that a significant sum was in fact not deductible for tax purposes by MES.

72. Unbeknownst to Allen-Vanguard at the time of the transaction, Timmis, among the other former management of MES had obtained an opinion from a major accounting firm, which specifically cautioned against the deduction of these sums and which specifically advised MES to act on the assumption that CRA will challenge a filing position which claimed these amounts as tax deductible.

73. Despite having obtained this opinion from the accounting firm, Timmis, among the other former management of MES never disclosed to Allen-Vanguard the potential tax liability associated with such a challenge by CRA.

74. The elimination of this deduction will result in a significant increase to the income tax liability of AVTI ~~MES~~, against which Allen-Vanguard has been required to provide a full reserve.

(iii) Warranty Claims Associated with Defective Products

75. Timmis, among the other former management of MES on behalf of MES, further breached the representations and warranties associated with the liabilities of MES by failing to

disclose the extent and exposure associated with a quality control issue relating to MES's shipment of 192 defective units to GDATP prior to the close of the transaction.

76. Indeed, the contractor responsible for the manufacture of MES's Chameleon ECM units experienced a quality control issue which resulted in the shipment of 192 defective ECM units to Iraq.

77. As a result, GDATP withheld payments to Allen-Vanguard in respect of these defective units and additionally charged Allen-Vanguard for its costs in addressing this issue.

78. Allen-Vanguard was further required to incur repair costs and sought to recover a portion of these costs from its manufacturer.

79. Although Timmis, among the other former management of MES, disclosed the fact that MES was addressing a manufacturing issue, he failed to disclose the full extent of the exposure and liability associated with the shipment of the 192 defective units.

3. Misrepresentations with respect to Status of MES Contracts and Commitments

80. Pursuant to Section 3.01(4)(b) of the Share Purchase Agreement, MES represented and warranted that it was not in default or breach, in any material respect, under any contract to which it was a party and that all of its contracts were in good standing.

81. Despite representing that MES was not in breach of any of its contracts, two days before the close of the transaction, Timmis, on behalf of MES, sent an email to David Luxton, the Chief Executive Officer of Allen-Vanguard, advising that MES had received a notice from GDATP alleging that MES had committed material breaches of the Teaming Agreement.

82. Even though this notice was received by Timmis on August 30, 2007, he did not advise Allen-Vanguard of it until two days before the transaction closed.

83. In particular, GDATP alleged that, contrary to the terms of the Teaming Agreement, MES had participated in a Request for Proposals (RFP) initiated by a military customer to contract directly with MES for non-warranty repair work of all of its Chameleon Mobile Counter-Measure units.

84. As a result of MES's attempts to contract directly with this customer, GDATP alleged that MES was in breach of Articles 1.3, 2.1 and 9.1 of the Teaming Agreement. In addition, GDATP alleged that MES had failed to provide GDATP with written disclosure of the non-warranty repair opportunity, as required by Article 2.2 of the Teaming Agreement.

85. As a result of these alleged breaches, GDATP requested that MES show cause as to why GDATP did not have a basis to terminate the Teaming Agreement in the event that it wished to do so.

86. Unbeknownst to Allen-Vanguard, this alleged breach represented only one of many breaches and acts of default which GDATP was then asserting against MES.

87. Aside from disclosing the alleged breach associated with MES's participation in the RFP set out in Timmis' email, no further details with respect to this allegation or with respect to any of the other alleged breaches of the Teaming Agreement were disclosed to Allen-Vanguard.

88. Such conduct constitutes a breach of the representations and warranties contained in the Share Purchase Agreement, for which Allen-Vanguard is entitled to indemnification out of the Indemnification Escrow Amount and the Timmis Escrow Amount and/or damages.

VI. FRAUDULENT MISREPRESENTATION AND DECEIT

89. In the months following the close of the transaction, Allen-Vanguard discovered that a number of MES employees had approached Timmis in 2006 and 2007 seeking significantly increased compensation in connection with their continuing employment with MES.

90. On behalf of MES, Timmis told these employees that they should wait until MES had been sold and that they would receive increased compensation packages after MES had been acquired by the new owners. He expressly cautioned them against seeking increased compensation prior to the close of the transaction and promised that their compensation expectations would be met after the transaction closed.

91. The employees approached Timmis again leading up to the close of the transaction and again sought an increase in their compensation as part of the sale and as an incentive to continue to work for MES after it had been acquired.

92. Timmis again advised the employees that they should wait until after the close of the transaction with Allen-Vanguard and that he would then negotiate increased compensation packages on their behalf with Allen-Vanguard.

93. However, at no time during the negotiation of the Share Purchase Agreement did Timmis advise Allen-Vanguard that these employees were seeking increased compensation or that he had led them to believe that they would receive it after the acquisition was completed.

94. In fact, MES had represented and warranted in Section 3.01(6)(i) of the Share Purchase Agreement that there had been no changes in the terms and conditions of the employment of any employees of the corporation and that the corporation had not agreed or otherwise become

committed to change any of the employees' compensation, remuneration or benefits payable to them.

95. After the transaction closed, Timmis provided David Luxton, the Chief Executive Officer of Allen-Vanguard, with a spreadsheet proposing a modest allocation of options and other compensation for these employees, despite being fully aware that these employees were expecting and demanding much more significant increases in their compensation.

96. Timmis deceived Allen-Vanguard into believing that the spreadsheet contained figures which were commensurate with the employees' compensation expectations, despite knowing full well that the figures were far lower than their true expectations.

97. Timmis then reported back to the employees and misled them into believing that he was attempting to negotiate higher compensation packages for them, but that Allen-Vanguard would not agree to any greater compensation than that which had been submitted by Timmis in the spreadsheet.

98. When the MES employees learned that Timmis had negotiated a $19 million retention bonus for himself and had denied the employees' requests for increased compensation prior to the close of the transaction, many of the employees felt betrayed by Timmis and refused to continue to work at MES as long as Timmis also continued to be employed by MES.

99. Indeed, it became apparent to the employees that Timmis had negotiated for himself the entire pool of funds which would otherwise have been earmarked for the retention of all employees following the close of the transaction.

100. This conflict, among others, led to the negotiation and execution of the Separation Agreement, which provided that Timmis would voluntarily resign his employment with MES.

101. Allen-Vanguard has continued to suffer damages caused by Timmis' fraudulent misrepresentations and acts of deceit against Allen-Vanguard and AVTI ~~MES~~.

102. Indeed, within months of the close of the transaction, as the new owner of MES, Allen-Vanguard was faced with a near mutiny by the MES employees.

103. As a result of Timmis' wrongful conduct, Allen-Vanguard had no alternative but to terminate a critical engineering manager whose compensation expectations could not be met. In addition, as a result of Timmis' wrongful conduct, Allen-Vanguard had no alternative but to meet some of the employees' compensation expectations or risk losing a substantial portion of its workforce.

104. Had Allen-Vanguard known that it would become saddled with these personnel issues and been forced to meet demands for increased compensation, it would have altered the terms of the deal it struck with MES.

VII. BREACHES OF SEPARATION AGREEMENT AND TORTIOUS INTERFERENCE WITH ECONOMIC INTERESTS

105. Notwithstanding Allen-Vanguard's and AVTI's ~~MES's~~ rights to reduce the amounts owing to Timmis by the claims described herein, Timmis is not, in any event, entitled to receive any further payment as a result of Timmis' breaches of the Separation Agreement.

106. Section 4 of the Separation Agreement entered into between Timmis, Allen-Vanguard and MES provides as follows:

> 4) In further consideration of the gratuitous payments and provisions provided by the Company to the Employee as set out above in this Separation Agreement, **the Employee acknowledges and agrees that he is a fiduciary of the Company and he agrees to respect his ongoing fiduciary obligations to the Company, which obligations include, but are not limited to (i) his duty to keep confidential all proprietary Company information and trade secrets and to not use any such information and trade secrets for any purpose whatsoever; (ii) his duty to not solicit current and prospective Company clients, suppliers, customers, employees and contractors; and (iii) his duty to not disparage the Company or its products, services or personnel.** Furthermore, the Employee acknowledges and agrees that these fiduciary obligations are in addition to the ongoing contractual obligations owed to the Company following the cessation of the Employment and the Relationship including, but not limited to, contractual obligations in respect to confidentiality and intellectual property, which contractual obligations the Employee agrees have been valid and enforceable for the term of this employment and remain valid and enforceable and binding on the Employee despite the cessation of the Employment and the Relationship. The Employee agrees to abide by all such obligations and he will assist the Company in the protection and enforcement of its rights in respect of intellectual property by cooperating fully at all times with respect to signing further documents and doing such acts and other things reasonably requested by the Company to confirm transfer of ownership of rights, including intellectual property rights and to obtain patents or copyrights or the like. (Emphasis added).

107. In direct contravention of these contractual obligations, Timmis contacted one of Allen-Vanguard's major military customers and wrongfully disclosed to it confidential and proprietary information belonging to Allen-Vanguard. In addition to disclosing such confidential and proprietary information, Timmis made false statements to this customer about Allen-Vanguard's financial viability and has attempted to disparage Allen-Vanguard and AVTI ~~MES~~ in the marketplace and cause them economic harm.

7. Not only does such conduct amount to a direct violation of the terms of the Separation Agreement, it further constitutes tortious interference with Allen-Vanguard's and AVTI's ~~MES's~~ economic interests for which Timmis is personally liable.

108. As a result of such conduct, Timmis is not entitled to be paid any further amounts alleged to be owing under the terms of the Separation Agreement.

VIII. THE RETIREMENT COMPENSATION ARRANGEMENT PLAN

109. Timmis' Retirement Compensation Arrangement Plan dated August 20, 2004 was amended on January 25, 2008 (the "RCA Plan").

110. Amendments made to the RCA Plan on January 25, 2008 are set out in an RCA Plan Amending Agreement, which is Schedule "E" to the Separation Agreement. Article 2.1(c) of the RCA Plan Amending Agreement provides as follows:

> (c) The Original Plan is amended by adding the following as Section 4.6 of:
>
> > 4.6 The Member and the Company agree that none of the Member, or the Designated Beneficiary or the Alternate Beneficiary, as the case may be, shall be entitled to any payments from the Plan in the event that the Member breaches the Separation Agreement or any of the Schedules to the Separation Agreement. In the event that the Company, acting in good faith, makes a claim that the Member has breached the Separation Agreement or any of the Schedules to the Separation Agreement, the Committee shall be entitled to provide an instruction to the Trustee under the Trust Agreement instructing the Trustee to not make any payment to the Member, or the Designated Beneficiary or the Alternate Beneficiary, as the case may be, from the Trust Funds and the Trust Funds will remain in trust pursuant to the Trust Agreement

until such time as a Court of competent jurisdiction determines whether or not the Member has breached the Separation Agreement or any of the Schedules to the Separation Agreement.

111. AVTI, acting in good faith, made a claim against Timmis that he breached the Separation Agreement in the Statement of Defence and Counterclaim of Allen-Vanguard Corporation and Med-Eng Systems Inc. dated September 10, 2008. AVTI continues to assert that claim against Timmis.

112. As a result of Timmis' breaches of the Separation Agreement, the Defendants are not required to:

(a) make any further contributions to the RCA Plan;

(b) pay the Company Amount ($575,000 plus income tax) to the Trustee;

(c) direct the Trustee to pay the Company Amount to Timmis; or

(d) cause the Committee to direct the Trustee to pay the Company Amount to Timmis.

113. Timmis is not entitled to any payments pursuant to the terms of the RCA Plan.

114. In the alternative, any claims made by Timmis under the RCA Plan are set off in their entirety by the damages incurred by Allen-Vanguard and AVTI as a result of Timmis' wrongful conduct.

115. The Defendants ask that this action be dismissed with costs.

COUNTERCLAIM

116. The Defendants, Plaintiffs by Counterclaim, Allen-Vanguard Corporation ("Allen-Vanguard") and Allen-Vanguard Technologies Inc. ("AVTI") ~~Med-Eng Systems Inc. ("MES")~~, claim against the Plaintiff, Defendant by Counterclaim, Paul Timmis ("Timmis"):

(a) Indemnification and/or damages for negligent misrepresentation and/or fraudulent misrepresentation and deceit in the amount of $10,000,000, of which $4,750,000 shall be distributed to Allen-Vanguard from the Timmis Escrow Amount as defined herein;

(b) Indemnification and/or damages for breach of contract arising out of the breaches of representations, warranties and covenants of MES in an amount to be determined;

(c) An accounting to determine the amounts owing to Allen-Vanguard after application of that amount to the Indemnification Escrow Amount and to the claims of the Plaintiff herein by way of set-off;

(d) Damages in an amount to be determined for tortious interference with economic interests and for breach of contract arising out of the breaches of the Separation Agreement;

(e) Punitive, aggravated and/or exemplary damages in the amount of $500,000;

(f) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) Costs on a substantial indemnity basis; and

(h) Such further and other relief as to this Honourable Court may deem just.

117. Allen-Vanguard and AVTI ~~MES~~ repeat the allegations set out in the Statement of Defence herein.

118. Allen-Vanguard claims from Timmis indemnification and/or damages arising out of MES's breaches of representations, warranties and covenants as contained in the Share Purchase Agreement.

119. In addition, Allen-Vanguard and AVTI ~~MES~~ claim against Timmis indemnification and/or damages arising from Timmis' fraudulent misrepresentations and acts of deceit against Allen-Vanguard and AVTI ~~MES~~ with respect to the compensation of the MES employees.

120. Allen-Vanguard and AVTI ~~MES~~ further claim against Timmis damages arising from Timmis' breaches of the Separation Agreement dated January 25, 2008 and as a result of his tortious interference with Allen-Vanguard's and AVTI's ~~MES's~~ economic interests.

121. As a result of Timmis' egregious, high-handed, self-interested and bad faith misrepresentations to Allen-Vanguard and AVTI ~~MES~~ as described herein, Allen-Vanguard and AVTI ~~MES~~ claim aggravated, punitive and/or exemplary damages in the amount of $500,000.

August 24, 2012 ~~September 8, 2009~~ ~~September 10, 2008~~

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Lawyers for the Defendants (Plaintiffs by Counterclaim),
Allen-Vanguard Corporation and Allen-Vanguard Technologies Inc. ~~Med-Eng Systems Inc.~~

TO: **PERLEY-ROBERTSON, HILL & McDOUGALL LLP**
Barristers & Solicitors
1400 – 340 Albert Street
Ottawa ON K1R 0A5

R. Aaron Rubinoff
Tel : (613) 238-2022
Fax: (613) 238-8775

Lawyers for the Plaintiff
(Defendant by Counterclaim)

AND TO: **COMPUTERSHARE TRUST COMPANY OF CANADA**
100 University Avenue
9th Floor, North Tower
Toronto ON M5J 2Y1

Defendant

PAUL TIMMIS
Plaintiff (Defendant by Counterclaim)

-and-

ALLEN-VANGUARD CORPORATION et al.
Defendants (Plaintiffs by Counterclaim)

Court File No. 08-CV-41899

AMENDED THIS 10th DAY / JOUR
MODIFIÉE DE
OF / DE SEPTEMBER 20 13
PURSUANT TO RULE 26.02 (c)
CONFORMÉMENT A LA REGLE
OR ORDER OF MASTER ROGER
OU A L'ORDONNANCE
DATED THIS / FAIT CE 30th
DAY / JOUR OF / DE OCT 20 12
REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE

L Bergau

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM OF ALLEN-VANGUARD CORPORATION AND ALLEN-VANGUARD TECHNOLOGIES INC. ~~MED-ENG SYSTEMS INC.~~

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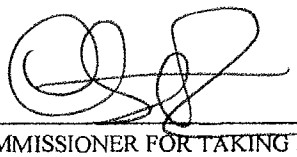
Lawyers for the Defendants (Plaintiffs by Counterclaim),
Allen-Vanguard Corporation and Allen-Vanguard Technologies Inc. ~~Med-Eng Systems Inc.~~

This is Exhibit "L" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

COURT FILE NO.: 08-CV-43188
& 08-CV-43544
CONFERENCE HEARD: 2012/04/16

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Richard L'Abbé et. al. v. Allen-Vanguard Corporation et. al.

Allen-Vanguard Corporation v. Richard L'Abbé et. al.

BEFORE: Master MacLeod

COUNSEL: Thomas G. Conway for Richard L'Abbé et. al. ("offeree shareholders")
Phone: (613) 780-2011 **Fax:** (613) 569-8668 **Email:** tconway@cwcb-law.com

Eli S. Lederman for Allen-Vanguard entities
Phone: (416) 865-3555 **Fax:** (416) 865-2872 **Email:** elederman@litigate.com

ENDORSEMENT AT CASE CONFERENCE

1] Allen-Vanguard is now involved in a document review pursuant to my rulings on the claims for privilege. There were certain documents still to be inspected by me but I am now advised that the four attachments to the e-mail in question will be produced to the offeree shareholders. There is therefore no need for me to rule on those attachments.

2] There are also documents to be produced from certain other employees involved with Mr. Timmis is a "near mutiny" which may be relevant. Those e-mail accounts are being reviewed.

3] This should still allow for follow up discovery to be completed by the end of this year.

4] The parties have agreed on a timetable leading up to the trial date. This of course may have to be fine tuned.

5] The parties will be looking for a pre-trial in June or July of 2013 leading up to the trial in September, 2013. Mr. Conway has also alerted the court to the fact that he may have Law Society obligations that could interfere with his ability to attend trial for five days of each week. Although that will ultimately be a decision for the trial judge, I have indicated on the trial list that the trial may have to be spread over as many as 10 weeks. Evidently a trial management conference with the trial judge will be required once the trial judge is designated.

6] I will set aside two days in January, 2013 for potential production and discovery motions. January 24th & 25th, 2013 will be reserved.

7] **The court therefore orders as follows:**

a. All outstanding undertakings are to be answered and all relevant non privileged documents located as the result of the additional investigations are to be produced by August 31, 2012.

b. Allen-Vanguard is to serve all expert reports for use at trial no later than March 1st, 2013.

c. Any document over which privilege has been claimed must be produced and privilege waived if a party intends to use the document at trial. This election must be made by April 30th, 2013 after which no such document may be introduced at trial except by agreement or with leave.

d. The offeree shareholders shall serve any expert reports to be used at trial by May 31, 2013.

e. Allen-Vanguard may serve a "rebuttal report" by July 2nd, 2013.

f. No other expert reports may be introduced at trial except by agreement without leave of the trial judge.

g. The action is to be set down for trial no later than the end of June, 2013.

h. A pre-trial will be held over two days in July of 2013. Counsel are to immediately canvas dates with each other and with their clients and are to advise my office of dates that are available to them. The trial co-ordinator and case management co-ordinator will then attempt to accommodate those dates.

i. Allen Vanguard is to serve a pre-trial brief one month prior to the pre-trial and the offeree shareholders are to serve a brief at least 14 days prior to the pre-trial.

j. The trial will commence on September 3rd, 2012 and will continue for up to 10 weeks. One or more trial management conferences may be held.

k. Prior to the pre-trial counsel are to exchange lists of witnesses to be called at trial and summaries of the anticipated evidence (except for experts and parties that have been discovered). Those lists are to be form part of the pre-trial briefs.

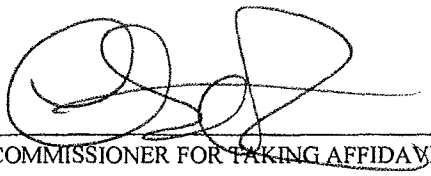
l. Any remaining discovery and production issues are to be dealt with by way of motions to be argued before me on January 24th and 25th, 2013.

m. This order is effective without further formality and is binding upon the parties pursuant to Rule 77 and Rule 3.

Master MacLeod

Date: April 16, 2012

This is Exhibit "M" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

COURT FILE NO.: 08-43188
08-43544
DATE: December 04, 2012

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: L'ABBE et al v. ALLEN-VANGUARD CORPORATION et al
ALLEN-VANGUARD CORPORATION v. L'ABBE et al

BEFORE: MASTER MACLEOD

ENDORSEMENT (at Case Conference)

1] The parties have been discussing the form of the order for trial together. They are in agreement that the three actions (except for the separate Timmis issues) be tried together but the contest is about whether the order should contain additional paragraphs having to do with the application of the deemed undertaking rule, use of discovery transcripts and privilege.

2] Obviously those issues must be dealt with but they need not be in the order for trial together. They fall within either or both of my case management jurisdiction and my motions jurisdiction under the rules.

3] The Timmis issues which are not common are the claims by Mr. Timmis against Allen-Vanguard and the claims by Allen-Vanguard against Mr. Timmis arising post takeover and in which breach of fiduciary duty is asserted.

4] The complication seems to be that Mr. Lederman states that there are 128 documents which are privileged as against the offeree shareholders but not against Mr. Timmis and which he wants to question him about. He does not wish to waive privilege though he recognizes that if the documents or Mr. Timmis's answers are to be used at the trial of the common issues then the privilege will have to be waived.

5] There is no doubt that counsel for Mr. Timmis should have access to and the right to attend the discoveries in the other actions. The issue boils down to the extent to which counsel for the offeree shareholders may participate in the Timmis discovery. They are not of course adverse in interest.

6] Apparently there are outstanding written submissions on the form and content of my ruling on privilege. I will attempt to finalize the form of that order this week.

7] There are also outstanding costs rulings on three motions. I have not yet dealt with those for reasons discussed at the case conference.

8] **The Court therefore orders as follows:**

a. The order for trial together in the form submitted today by Mr. Lederman shall issue.

b. The issues raised in paragraphs 3 – 6 of the draft order submitted by the offeree shareholders shall be determined by the master prior to the commencement of the Timmis discoveries.

c. The deemed undertaking will not apply to any production or discovery in relation to the common issues except for the time being to the documents identified in Schedule A1 to the Allen Vanguard affidavit of documents in the Timmis action and such portions of the Timmis discovery transcript as are identified by counsel for Allen Vanguard in accordance with the direction contained herein.

d. Counsel for Allen-Vanguard is to review the existing Timmis transcript and determine if there is any portion of that transcript over which privilege is asserted against the offeree shareholders. This is to be done by December 18th, 2012. Thereafter the deemed undertaking will not apply for purposes of these actions to any portion of the transcript which has not been identified.

e. The Timmis discoveries in January shall be conducted so that the non privileged common issues are covered first and the privileged common issues second and then the Timmis individual issues. Subject to further direction, counsel for the offeree shareholders will be entitled to be present for the first portion and not for the others.

f. Counsel for Timmis may participate in all further discoveries in the offeree shareholder actions and may have access to the existing discovery transcripts and productions to which the deemed undertaking shall not apply with respect to the common trial.

g. If any further clarification, variation or direction is required that counsel cannot resolve on the basis of these general directions and which will require a motion, the motion will be heard by me on January 11th, 2013 at 10:00 a.m.

h. Counsel are directed to continue a dialogue in good faith with a view to resolving all outstanding procedural issues.

i. The case conference on December 14th may proceed by telephone or if all parties agree it is not necessary it may be cancelled on consent.

Master Calum MacLeod

Date: December 04, 2012

Court File No.: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

MASTER	)	, THE
	)	
CALUM MACLEOD	)	DAY OF , 2012

B E T W E E N:

(Court Seal)

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

ORDER

THIS MOTION, made on Consent of the parties for an Order that this Action and the Actions with Court File Nos. 08-CV-43188 and 08-CV-41899 be heard at the same time, was heard this day at 161 Elgin Street, Ottawa, Ontario.

ON READING the Consent executed by the parties,

1. **THIS COURT ORDERS** that the following Actions shall be heard at the same time by the same trial judge, commencing on September 3, 2013:

(i) Allen-Vanguard Corporation v. Richard L'Abbé et al (Court File No. 08-CV-43544);

(ii) Richard L'Abbé et al v. Allen-Vanguard Corporation et al (Court File No. 08-CV-43188); and

(iii) Paul Timmis v. Allen-Vanguard Corporation et al (Court File No. 08-CV-41899).

2. THIS COURT FURTHER ORDERS that the claims made by the Plaintiff in Court File No. 08-CV-41899 and the allegations of breach of the Separation Agreement, tortious interference with economic interests and matters relating to the retirement compensation arrangement raised in paragraphs 105 through 114 and 120 of the Amended Amended Statement of Defence and Counterclaim in that action shall be heard between those parties following completion of the evidence on the common issues in the three actions referenced in paragraph 1 of this Order.

MASTER MACLEOD

ALLEN-VANGUARD CORPORATION
Plaintiff

-and-

RICHARD L'ABBÉ et al
Defendants

Court File No.: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

(PROCEEDING COMMENCED AT OTTAWA)

ORDER

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

2600159

This is Exhibit "N" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

Master Calum MacLeod) Tuesday, the 19th day of February, 2013

B E T W E E N :

ALLEN-VANGUARD CORPORATION

Plaintiff

- and -

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL INC. (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

ORDER

THIS MOTION, made by the Plaintiff for an Order granting leave to the Plaintiff to amend its Statement of Claim in the form attached as Schedule "A" to the Notice of Motion dated February 6, 2013 was heard this day at the court house, 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

ON READING the Plaintiff's Motion Record, Factum and Brief of Authorities, and the Defendants' Responding Motion Record, Factum and Brief of Authorities, and on hearing the submissions of the lawyers for the parties,

1. THIS COURT ORDERS that leave is granted to the Plaintiff to amend its Statement of Claim in the form attached as Schedule "A" to the Notice of Motion dated February 6, 2013.

2. THIS COURT ORDERS that the Plaintiff shall have the amended Statement of Claim issued within 10 days of February 21, 2013.

3. THIS COURT ORDERS that the Defendants may amend their Statement of Defence and may discover a representative of Allen-Vanguard Corporation in respect of the amendments.

4. THIS COURT ORDERS that the Plaintiff is to advise whether the amendments will require additional productions and advise as to when a supplementary affidavit of documents will be available.

5. THIS COURT ORDERS that it will hear further submissions if the Defendants seek additional terms.

6. THIS COURT ORDERS that if either party seeks to make submissions on costs they are to advise Master MacLeod's office within 30 days of February 21, 2013 failing which there will be no order as to costs.

MASTER MACLEOD

ENTERED AT OTTAWA
INSCRIT A OTTAWA

ON/LE AVR APR 22 2013

DOCUMENT # 1330
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

This is Exhibit "O" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

CITATION: Allen-Vanguard v. L'Abbé et al, 2013 ONSC 2950
COURT FILE NO.: 08-CV-43544
DATE: 20130522

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Allen-Vanguard Corporation, Respondent (Plaintiff)

AND:

Richard L'Abbé et al, Appellants (Defendants)

BEFORE: Hackland R.S.J.

COUNSEL: Ronald G. Slaght, Q.C. for the Respondent (Plaintiff)

Thomas G. Conway and Calina N. Ritchie for the Appellants (Defendants)

ENDORSEMENT

This is an appeal from the Order of Master MacLeod pursuant to which he granted leave to the respondent to amend its statement of claim to increase its claim for damages from $40 million to $610 million against the former shareholders of Med-Eng Systems Inc. (Med-Eng shareholders) for alleged misrepresentations and breaches of contract of Med-Eng in the course of the sale of the business of Med-Eng to the respondent. The Master's order also permitted the respondent to add the phrase "Fraudulent misrepresentations and ..." such that the relevant paragraph now reads:

> As a result of the fraudulent misrepresentations and breaches of representations and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard [the respondent] for the damages which have been caused to Allen-Vanguard.

[1] The Master held that the proposed amendment fell within the mandatory wording of Rule 26.01 of the *Rules of Civil Procedure* which provides:

> On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.
>
> (underlining added)

[2] The Master was well aware of the fact that the amendment if granted would expose the Med-Eng shareholders to potential liability for the full purchase price of the business and not simply for their respective interests in the $40 million holdback fund created on closing in order to secure any possible claims for misrepresentation and breach of warranty, as provided for in an escrow agreement. The amendment in issue is indeed potentially "game changing", as the Master observed.

[3] The appellants challenge the Master's order on the basis that the proposed amendment was not tenable. The law is clear that an amendment to a pleading should not be granted if it is clearly untenable in law or on the facts as pleaded. Whether or not the amendment is tenable depends significantly on the interpretation of the Share Purchase Agreement which governed the sale of the business.

[4] On the facts of this case, it is common ground that all of the critical representations and warranties were given by Med-Eng management on behalf of the corporation being acquired and not by the vendors, the offeree shareholders. Furthermore, it is well settled that shareholders are not vicariously liable for the acts of corporations in which they hold shares. This common law principle is enshrined in section 92 of the *Ontario Business Corporations Act*. The Master's reasons reflect that he was well aware of these considerations.

[5] It would appear to be common ground in this case that any liability on the part of the vendor shareholders could only be based on an obligation arising from the Share Purchase Agreement in the context of fraud. As the Master accurately observed, the effect of this amendment to the pleading will be totally dependent on proving fraud. Obviously in the context of this pleadings motion the court is not in a position to assess whether fraud can be proven on the evidence.

[6] Mr. Conway for the appellants argued persuasively that Article 7.02 of the Share Purchase Agreement was designed to limit any claims for damages for misrepresentation to the $40 million escrow fund. However the waiver or limitation of claims in Article 7.02 itself contains the limitation "other than those [remedies] arising with respect to any fraud". As the Master observed, this limitation does not itself create a right of action against the offeree shareholders. It is less than clear what the exclusion of fraud from Article 7.02 actually means.

This may be a matter for parol evidence at trial. The Master held that he was unable to find only one possible interpretation of the contract and accordingly could not definitively say that the proposed amendment was untenable.

[7] I respectfully agree with the Master's analysis, which is captured in paragraph 22 of his careful reasons:

> Since there is no fraud asserted against any defendant offeree shareholder, the defendants contend that this provision in article 7.02 (5) is a complete defence to a claim beyond the $40 million in the escrow fund. They may be right. Mr. Conway puts this argument persuasively and it is consistent with the intent of the agreement to limit the exposure of the vendors. Nevertheless I am not able to say with certainty that this is the only possible interpretation of the agreement. Mr. Lederman argues that no court can condone an interpretation which would unjustly enrich the former shareholders at the expense of the plaintiff if it was a victim of fraudulent misrepresentation. There is sufficient ambiguity in these interrelated provisions that I am unable to find only one possible interpretation of the contract. I cannot say that on the face of the agreement the plaintiff could never succeed.

[8] The respondent submits that on this pleadings motion, the court lacks the necessary evidence of the factual matrix within which the Share Purchase Agreement was negotiated. It is suggested that such evidence will help to explain how it was intended that the parties deal with claims for fraud in excess of the $40 million escrow fund. It is submitted by the respondent that Article 7.07 of the Share Purchase Agreement is not simply a tax adjustment clause, rather it was intended as a post closing remedial provision which, in the case of fraud, would result in an actual reduction or partial refund of the purchase price.

[9] Like the Master, I cannot say that the proposed amendment was untenable in the sense that it could never succeed. And I specifically do not accept the appellants' submission that it was an error of law for the Master to fail to articulate the specific ambiguity in the Share Purchase Agreement on which the respondent's amendment could succeed. Such a requirement could not be met on the evidentiary record available on a pleadings motion and would be contrary to the mandatory requirement in Rule 26.01 that leave to amendment pleadings shall be granted in the absence of prejudice that cannot be compensated in costs or by an adjournment.

[10] On the question of delay and abuse of process, I decline to interfere with the Master's exercise of discretion on this largely factual consideration. I understand and expect that the Master will hear submissions on whether an adjournment of the current trial dates is required in view of the amendments herein or whether any other terms are necessary to avoid prejudice to the appellants.

[11] In summary, I can find no error of law in the Master's reasons nor any error in the manner in which he has exercised his discretion in allowing the respondent to amend its pleadings. The appeal is therefore dismissed.

[12] The respondent may make a written submission on costs within 14 days of the release of this endorsement and the appellants may respond within 14 days of receiving the respondent's submission.

Hackland RSJ

Mr. Justice Charles T. Hackland

Released: May 22, 2013

CITATION: Allen-Vanguard v. L'Abbé et al, 2013 ONSC 2950
COURT FILE NO.: 08-CV-43544
DATE: 20130522

BETWEEN:

Allen-Vanguard Corporation

and

Richard L'Abbé et al

ENDORSEMENT

HACKLAND R.S.J.

Released: May 22, 2013

This is Exhibit "P" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR ~~TAKING AFFI~~DAVITS

Court File No.: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date AMENDED JUNE 11, 2013

Issued by _____ Local Registrar

Address of court office: 161 Elgin Street, Ottawa, ON K2P 2K1

TO RICHARD L'ABBÉ

AND TO 1062455 ONTARIO INC.

AND TO GROWTHWORKS CANADIAN FUND LTD.

AND TO SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED, PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6

AND TO SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

CLAIM

1. The Plaintiff, Allen-Vanguard Corporation ("Allen-Vanguard"), claims against the Defendants:

(a) Indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $650,000,000~~40,000,000~~, of which $40,000,000 shall be distributed to Allen-Vanguard ~~Corporation~~ in accordance with the terms of the Escrow Agreement as defined herein;

(b) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) Costs on a substantial indemnity basis; and

(d) Such further and other relief as to this Honourable Court may seem just.

I. OVERVIEW

2. By way of overview:

(a) Allen-Vanguard agreed to pay approximately $650,000,000 to purchase all of the outstanding shares of MES;

(b) the substantial purchase price was predicated on various representations and warranties which the former management of MES made on behalf of MES with respect to MES's financial condition and expected revenue;

(c) within months of the close of the transaction, it became apparent that the former management of MES had made fraudulent and/or negligent misrepresentations

regarding MES's customer relationships, expected bookings, revenue and earnings which Allen-Vanguard had relied upon in negotiating the purchase price and all other terms of the transaction;

(d) the former management of MES knew, prior to the closing of the transaction, that its largest and most important customer was planning to conduct a head-to-head test of MES' product against the product of a competing supplier. However, the former management of MES deliberately withheld this material fact from Allen-Vanguard in order to induce Allen-Vanguard to complete the transaction. The former management of MES either deliberately misled Allen-Vanguard or were reckless as to the truth or accuracy of their statements, despite their knowledge that Allen-Vanguard had sought disclosure on numerous occasions of all factors which could jeopardize the arrangements with this customer;

(e)~~(d)~~ in addition to the breaches of representations and warranties made by MES, Paul Timmis ("Timmis"), on behalf of MES, made a number of false promises to the MES employees about the compensation which the MES employees would receive after Allen-Vanguard acquired MES. Neither Timmis, nor anyone else on behalf of MES, ever disclosed to Allen-Vanguard that Timmis had made such promises to the MES employees and MES knew that, after the transaction closed, Allen-Vanguard would not be able to fulfill these promises or otherwise meet the compensation expectations which had been intentionally and/or recklessly inflated by Timmis;

(f)~~(e)~~ as a result of the fraudulent misrepresentations and breaches of representations and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard for the damages which have been caused to Allen-Vanguard.

II. THE PARTIES

3. Allen-Vanguard is in the business of developing and marketing technologies, tools and training for defeating and minimizing the effects of hazardous devices and materials, and provides field and support solutions for protection and counter-measures in collaboration with military and security forces and with major research institutes, prime contractors, systems integrators and emerging technology companies. Allen-Vanguard was~~is~~ a public company listed on the Toronto Stock Exchange and is headquartered in Ottawa.

4. Prior to Allen-Vanguard's acquisition, MES was a private company incorporated pursuant to the laws of Ontario and carried on business as a global supplier of force protection products for military, homeland security and law enforcement organizations. In particular, MES had taken a leadership position in offering Electronic Counter-Measure (ECM) solutions to counter the growing and evolving threat represented by radio-controlled improvised explosive devices.

5. Following Allen-Vanguard's acquisition of MES, MES was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007. The name of the amalgamated corporation was subsequently changed to Allen-Vanguard Technologies Inc. ("AVTI") on or about April 1, 2008.

6. Due to MES' misrepresentations and breaches of representations, warranties and covenants as described herein, Allen-Vanguard spiraled into insolvency in the months following the transaction. As a result, on December 16, 2009, the Superior Court of Justice made an Order

pursuant to Section 6 of the *Companies Creditors Arrangement Act* (the "CCAA") sanctioning a Plan of Arrangement and Reorganization dated December 9, 2009 (the "Sanction Order"). The Sanction Order was made on the basis that it was in the best interests of Allen-Vanguard and its economic stakeholders and employees to restructure its debt obligations and allow it to continue to carry on business as a going concern.

7. On January 1, 2011, AVTI amalgamated with and was continued under the name, Allen-Vanguard Corporation.

8.~~5.~~ The Defendants were the principal shareholders of MES whose interests were acquired as a result of Allen-Vanguard's purchase of MES.

III. FACTUAL BACKGROUND

9.~~6.~~ The private equity firms, Schroder Venture Managers (Canada) Limited and Schroder Ventures Holdings Limited were the principal owners of MES, and in 2006, they sought to exit their position as long term investors. They engaged in a limited auction process to sell MES.

10.~~7.~~ On August 3, 2007, Allen-Vanguard was the winning bidder in the auction and entered into a Share Purchase Agreement with the shareholders of MES to purchase all of the shares of MES on a debt and cash free basis, for $600,000,000, plus an amount established at approximately $50,000,000 for the purpose of excess working capital (the "Share Purchase Agreement"). That transaction closed on September 17, 2007.

11.~~8.~~ Pursuant to section 2.04(c) and 7.02 of the Share Purchase Agreement, Allen-Vanguard deposited $40,000,000 of the purchase monies (the "Indemnification Escrow Amount") with the Escrow Agent, for the purposes of indemnifying Allen-Vanguard for any claims which Allen-

Vanguard may have resulting from any breaches of representations, warranties and covenants of MES contained in the Share Purchase Agreement, or in respect of the contravention of, non-compliance with or other breach by MES of the Teaming Agreement entered into between MES and General Dynamics Armament and Technical Products ("GDATP") dated May 27, 2005.

12.~~9.~~ Allen Vanguard is entitled to deliver a Notice of Claim for the Indemnification Escrow Amount at any time, provided that it does so before December 21, 2008. However, in the event that Allen-Vanguard has a claim for fraud, there is no temporal or monetary limitation to making such a claim.

13.~~10.~~ The distribution of the Indemnification Escrow Amount is governed by the terms of an Escrow Agreement dated September 17, 2007, entered into between Allen-Vanguard, MES, the Defendants and the Escrow Agent (the "Escrow Agreement"). Section 4.1 of the Escrow Agreement provides in part as follows:

> **4.1 Distribution out of the Indemnification Escrow Fund**
>
> (a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.
>
> (b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a "**Notice of Claim**") to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.

(c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written notice (an "**Objection Notice**") setting forth the reasons for the objection.

14.~~11.~~ Section 1.1 of the Escrow Agreement defines "Claims" as follows:

1.1 Definitions

"**Claims**" means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements incurred by a Purchaser Indemnitee directly or indirectly resulting from any breach of any covenant of the Corporation or any Shareholder contained in the Share Purchase Agreement or from any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 of the Share Purchase Agreement or of any Shareholder set out in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b) of the Share Purchase Agreement.

15.~~12.~~ Following the close of transaction, Allen-Vanguard became aware of several breaches of representations, warranties and covenants made by MES, which entitles Allen-Vanguard to claim the Indemnification Escrow Amount.

16.~~13.~~ Therefore, on September 10, 2008, Allen-Vanguard delivered a Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement, setting out a detailed description of its claims including the provisions of the Share Purchase Agreement giving rise to the claim and the aggregate amount for the claim.

17.~~14.~~ In particular, Allen-Vanguard discovered that MES made a number of misrepresentations as to its expected bookings, revenue and earnings and as to the status of MES's customer relationships and the compensation expectations of the MES employees.

18.~~15.~~ These representations were made knowing that Allen-Vanguard would rely on such representations and were made to induce Allen-Vanguard to enter into the transaction and to pay an inflated purchase price.

19.~~16.~~ Pursuant to the terms of the Share Purchase Agreement, the Defendants are directly liable to indemnify Allen-Vanguard for the breaches of the representations, warranties and covenants made by MES, up to $40,000,000, and they are further liable for any damages caused to Allen-Vanguard as a result of any fraud committed by or on behalf of MES.

20.~~17.~~ Nevertheless, on October 6, 2008, the Defendants delivered a Notice of Objection dated October 1, 2008, disputing each of the claims set out in the Notice of Claim.

IV. FRAUDULENT MISREPRESENTATION

21. On behalf of MES, the former management of MES made fraudulent misrepresentations to Allen-Vanguard which induced Allen-Vanguard to enter into the transaction.

22. In particular, MES knew, prior to the closing of the transaction, that MES' largest and most important customer intended to conduct a head-to-head test of MES' ECM Chameleon unit against units produced by MES' competitors.

23. MES knew that this intention to test competing units on a head-to-head basis had material implications for the existing arrangements with this customer and the future supply of products to this customer.

24. The fact of this intention and the full particulars of the customer's plans as they developed over time ought to have been fully disclosed to Allen-Vanguard. Instead, MES intentionally or recklessly withheld this disclosure from Allen-Vanguard.

25. Prior to closing, Allen-Vanguard made repeated, specific inquiries of MES' management to identify any factors which might cause MES' largest customer to switch to a competing supplier. In response, the former management of MES said nothing about the upcoming head-to-head test.

26. Instead, MES withheld this disclosure with the intention to induce Allen-Vanguard to complete the transaction.

27. MES intended to deceive Allen-Vanguard by failing to disclose its knowledge of the head-to-head test and its ramifications or it was reckless as to the truth or falsity of its statements when Allen-Vanguard made repeated, specific inquiries as to the potential factors which could cause MES' largest customer to switch suppliers, and MES failed to disclose what it knew.

28. Allen-Vanguard relied on the fraudulent misrepresentations to its detriment.

29. Further, as described in paragraphs 41-57 below, all of the representations made by MES to Allen-Vanguard in its management presentations regarding the orders which were in the pipeline for this customer were knowingly false, given what MES knew about the intention of this customer to subject the Chameleon ECM unit to competitive testing and the ramifications of the testing. MES was, at the very least, reckless as to the truth or accuracy of its statements when it represented the expected orders in the pipeline and the probabilities of securing them.

30. Allen-Vanguard was deprived of the right and opportunity to address for itself the significance of the planned head-to-head test and its implications for the pipeline, the purchase price and the transaction as a whole.

IV. REPRESENTATIONS, WARRANTIES AND COVENANTS

31.~~18.~~ In the Share Purchase Agreement, MES gave extensive representations and warranties to Allen-Vanguard.

32.~~19.~~ These representations and warranties are set out in Section 3 of the Share Purchase Agreement.

33.~~20.~~ In Sections 3.01(2)(a) and 3.01(2)(d) of the Share Purchase Agreement, MES represented and warranted that its books and records fairly present the financial position of the corporation and that it has no accrued, contingent or other liabilities except for those specified in the schedules to the Share Purchase Agreement:

> **3.01(2) Financial**
>
> 3.01(2)(a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all material financial transactions of the Corporation and its Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.
>
> (d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i) liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).

34.~~21.~~ In addition, MES represented in Section 3.01(2)(f) of the Share Purchase Agreement that there had been no Material Adverse Effect which could reasonably be expected to be materially

adverse to the business, assets, liabilities, financial condition or results of operations of the corporation since June 30, 2007.

35.~~22.~~ "Material Adverse Effect" is defined in the Share Purchase Agreement as follows:

> **"Material Adverse Effect"** means, when used in connection with the Corporation and its Subsidiaries or their business, any change, event, violation, inaccuracy, circumstance or effect that is or could reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition, results of operations of the Corporation and its Subsidiaries other than as a result of (i) changes to the Canadian, United States or global economy, in each case as a whole; (ii) changes to the financial markets; (iii) changes adversely affecting the industry in which the Corporation and its Subsidiaries operate (so long as the Corporation and its Subsidiaries are not disproportionately affected thereby); (iv) the announcement or pendency of the transactions contemplated by this Agreement; (v) changes in laws; or (vi) changes in generally accepted accounting principles.

36.~~23.~~ In addition, except as disclosed in the schedules to the Share Purchase Agreement, MES represented and warranted that it had not received any orders, notices or similar requirements from any governmental authority:

> **3.01(3) Condition of Assets**
>
> 3.01(3)(d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.

37.~~24.~~ MES further represented in Section 3.01(3)(g) of the Share Purchase Agreement that, except as disclosed in the schedules, no material claims had been made against it with respect to any warranty or with respect to the production or sale of defective or inferior products:

> 3.01(3)(g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

38.~~25.~~ Similarly, MES represented in Section 3.01(4)(b) of the Share Purchase Agreement that it was not in default or in breach of any contract to which MES was a party:

> **3.01(4) Contractual Commitments**
>
> 3.01(4)(b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.
>
> 3.01(12)(k) ....The Corporation is not aware of, nor has it received notice of, any intention on the part of any such customer or supplier to cease doing business with the Corporation and its Subsidiaries or to modify or change in any material manner any existing arrangement with the Corporation and its Subsidiaries for the purchase or supply of any products or services. The relationships of the Corporation and its Subsidiaries with each of its principal suppliers, shippers and customers are satisfactory, and there are not material unresolved disputes with any such supplier, shipper or customer.

39.~~26.~~ MES further represented and warranted that since June 30, 2007, it had not agreed or otherwise committed to change the compensation of its employees:

3.01(6) Employees

3.01(6)(i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

3.01(8)(d) No fact, condition or circumstances exists that would materially affect the information contained in the documents provided pursuant to Section 3.1(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.

3.01(8)(e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.

40.~~27.~~ MES further represented in section 3.01(12)(a) of the Share Purchase Agreement that there were no suits or proceedings pending or threatened which could materially adversely affect the corporation.

41.~~28.~~ Finally, MES provided the following covenants:

3.01(12)(m) No representation or warranty or other statement made by the Corporation in this Agreement contains any untrue

statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

4.01(1)Except as otherwise contemplated by this Agreement or consented to in writing by the Purchaser, from the date of this Agreement until Closing, the Corporation will ensure that each of the Corporation and its Subsidiaries will:

(a) carry on their business only in the ordinary course of business consistent with past practice and shall not, other than in the ordinary course of business, enter into any transaction or take any action which if taken before the date hereof would constitute a breach of any representation, warranty or covenant contained in this Agreement;

(b) use all reasonable commercial efforts to preserve intact its business, organization and goodwill, to keep available the employees of its business as a group to maintain satisfactory relationships with suppliers, distributors, customers and others with whom the Corporation and its Subsidiaries have business relationships; and

(d) promptly advise the Purchaser in writing of the occurrence of any Material Adverse Effect in respect of the Corporation or its Subsidiaries or of any facts that come to their attention which would cause any of the Corporation's representations and warranties herein contained to be untrue in any respect.

VI. BREACHES OF REPRESENTATIONS, WARRANTIES AND COVENANTS

1. Misrepresentation of MES Revenue Profile

42.~~29.~~ Pursuant to and in connection with the Share Purchase Agreement, MES made a number of representations and warranties about the financial condition of the company and delivered various projections as to its expected bookings, revenue and earnings.

43.~~30.~~ In particular, a projection of the customer orders which were in backlog and/or in the pipeline were represented to Allen-Vanguard as being a material part of MES's revenue forecast,

and upon which Allen-Vanguard relied in negotiating the purchase price and all other terms of the transaction.

44.~~31.~~ Although these backlog and pipeline orders were represented as a substantial source of revenue for MES, the former management of MES knew or ought to have known that these orders were unlikely to generate the revenue which had been projected or were unlikely to even materialize at all.

45.~~32.~~ Specifically, MES represented that it had secured an order from a large military customer through GDATP for 1,100 vehicle-mounted ECM Chameleon units, which was expected to generate revenue in the amount of $54,285,000 for the fiscal year 2008.

46.~~33.~~ Despite representing that there was a 100% probability of securing this order, the customer subsequently advised Allen-Vanguard following the close of the transaction that it would not proceed with the purchase of these 1,100 units until the Chameleon product was subjected to ~~further performance~~ head-to-head testing against units produced by MES' competitors.

47.~~34.~~ The former management of MES knew ~~or ought to have known~~ at the time that this order was represented to Allen-Vanguard as being 100% probable, that the customer would require further evaluation of the product before placing the order with MES, if it decided to place the order at all.

48.~~35.~~ In addition to the misrepresentations with respect to the pipeline order for the 1,100 Chameleon units, MES misrepresented the expected revenue associated with an order by a military customer for a repair and overhaul program.

49.~~36.~~ In particular, MES represented that there was a 75% probability that it would secure an order by this customer to perform a program of repair and overhaul for all of its products. This order was projected to generate annual revenue to MES in the amount of $38,000,000, beginning in the fiscal year 2008.

50.~~37.~~ Notwithstanding the representation that there was a 75% probability of securing this order, there was no reasonable basis to make such a representation as Allen-Vanguard subsequently learned following the close of the transaction that the customer had not made any commitment to engage MES to administer the repair and overhaul program.

51.~~38.~~ In addition, MES represented that it had an order in the pipeline for 2007 by a U.S. military customer for 600 portable ECM units, which was projected to generate revenue for MES in the amount of $17,640,000 for the fiscal year 2008. MES had represented that there was a 70% probability of securing this order.

52.~~39.~~ Despite these representations, this order was in fact far from materializing. Allen-Vanguard subsequently discovered after the transaction closed that there was no funded program in place which would enable the customer to place that order. The former management of MES knew or ought to have known that the U.S. government had not allocated any funds which could be drawn upon to place this order and therefore misrepresented the probability of this order ever materializing, let alone projecting that it was expected to generate $17,640,000 in fiscal year 2008.

53.~~40.~~ MES further represented that there was a 75% probability of securing an open "Expanded Role" professional services contract directly with a military customer, which was projected to generate revenue in the amount of $13,500,000 in 2007 and $50,400,000 annually thereafter.

However, this order required MES to be directly engaged by the customer as the prime contractor, which would constitute a clear violation of MES's Teaming Agreement with GDATP.

54.~~41.~~ Indeed, if MES were to contract directly with the customer for this Expanded Role contract, MES would face significant exposure and liability associated with a direct contravention of the Teaming Agreement. Nevertheless, MES represented that there was a 75% probability of MES securing this Expanded Role contract and of generating the significant revenues described above.

55.~~42.~~ However, following the close of the transaction, Allen-Vanguard learned that there would be no practical way of carrying out the Expanded Role contract without being in breach of the Teaming Agreement.

56.~~43.~~ In addition, MES represented to Allen-Vanguard significant revenue associated with an order in the pipeline for 2,511 vehicle-mounted units to be carried out in fiscal year 2007. Although this order was in fact fulfilled, it did not generate the revenue which MES had represented in its projections to Allen-Vanguard.

57.~~44.~~ The projected revenue which MES represented was apparently based upon the application of the foreign exchange rate which applied when the order had been received. However, the foreign exchange rate was significantly different than the applicable rate when the order was delivered. This discrepancy resulted in a shortfall in the post-closing revenue associated with the order in the amount of approximately $13,300,000.

58.~~45.~~ Allen-Vanguard relied upon the representations made on behalf of MES with respect to the projected pipeline of orders in negotiating the purchase price for MES and all other terms of the transaction. The former management of MES were fully aware that the projections for the company's expected revenue, earnings and bookings, would impact on Allen-Vanguard's desire to enter into the transaction and the price it would be willing to pay for MES.

2. Misrepresentations with respect to Contingent and Other Liabilities of MES

(i) Assist Audit

59.~~46.~~ Approximately three months prior to the close of the transaction, MES had been subjected to an audit by the United States Defence Contract Management Agency ("DCMA") through the Canadian Commercial Corporation and Public Works and Government Services Canada ("PWGSC") (the "Assist Audit"). The purpose of this audit was to confirm that the prices MES quoted to GDATP on specific items sold by MES were fair and reasonable.

60.~~47.~~ Although MES disclosed the fact that DCMA had made a request in Schedule 3.01(2)(d) of the Share Purchase Agreement, it failed to provide full and complete disclosure as to what this request signified or how this request amounted to a significant contingent liability of MES.

61.~~48.~~ Despite Allen-Vanguard's attempts to obtain more information prior to the close of the transaction with respect to the Assist Audit and the potential exposure associated therewith, the former management of MES misled Allen-Vanguard as to the status of the Assist Audit, the cost and expense associated with its compliance, and the significant exposure to MES in the event that the U.S. government determined that MES did not qualify for an exemption which would

entitle it to refrain from disclosing its cost margins, and if it determined that MES's prices were not fair and reasonable.

62.~~49.~~ Indeed, if the Assist Audit resulted in a finding that the prices charged to the U.S. government were not fair and reasonable, MES would be liable to pay the amount by which the U.S. government determined it had been over-charged.

63.~~50.~~ This represented a significant contingent liability of MES, which the former management of MES was required to disclose to Allen-Vanguard in connection with the transaction.

64.~~51.~~ When representatives of Allen-Vanguard made inquiries of the former MES management to obtain additional information with respect to the Assist Audit, the MES management characterized the audit as a "routine exercise" and deliberately down-played the ramifications associated with a determination by DCMA that MES's prices were not fair or reasonable.

65.~~52.~~ However, unbeknownst to Allen-Vanguard at the time of the acquisition, the former members of the MES management were concerned about a negative outcome and had engaged U.S. legal counsel and the services of a professional consulting firm to opine on whether MES qualified for an exemption under the Federal Acquisition Regulations ("FAR") which would excuse it from having to submit its cost or pricing data to support the proposed or negotiated prices for the sale of its ECM products to the U.S. government through GDATP.

66.~~53.~~ MES never disclosed the fact that it had retained a professional consulting firm, or that it had received a draft report from its consultants prior to the close of the transaction. MES failed to disclose this information to Allen-Vanguard despite Allen-Vanguard's requests for further information with respect to the Assist Audit and the potential exposure associated therewith.

67.~~54.~~ In fact, the former management of MES deliberately concealed the information it had with respect to the Assist Audit and delayed responding to the audit until days before the transaction was to close.

(ii) Tax Liabilities

68.~~55.~~ As part of the calculation of working capital in connection with the transaction, MES made certain deductions in calculating its tax liability as at the closing date of the transaction.

69.~~56.~~ However, following the close of the transaction, Allen-Vanguard discovered that a significant sum was in fact not deductible for tax purposes by MES.

70.~~57.~~ Unbeknownst to Allen-Vanguard at the time of the transaction, MES had obtained an opinion from a major accounting firm, which specifically cautioned against the deduction of these sums and which specifically advised MES to act on the assumption that CRA will challenge a filing position which claimed these amounts as tax deductible.

71.~~58.~~ Despite having obtained this opinion from the accounting firm, MES never disclosed to Allen-Vanguard the potential tax liability associated with such a challenge by CRA.

72.~~59.~~ The elimination of this deduction will result in a significant increase to the income tax liability of MES, against which Allen-Vanguard has been required to provide a full reserve.

(iii) Warranty Claims Associated with Defective Products

73.~~60.~~ MES further breached the representations and warranties associated with its liabilities by failing to disclose the extent and exposure associated with a quality control issue relating to MES's shipment of 192 defective units to GDATP prior to the close of the transaction.

74.~~61.~~ Indeed, the contractor responsible for the manufacture of MES's Chameleon ECM units experienced a quality control issue which resulted in the shipment of 192 defective ECM units to Iraq.

75.~~62.~~ As a result, GDATP withheld payments to Allen-Vanguard in respect of these defective units and additionally charged Allen-Vanguard for its costs in addressing this issue.

76.~~63.~~ Allen-Vanguard was further required to incur repair costs and sought to recover a portion of these costs from its manufacturer.

77.~~64.~~ Although MES disclosed the fact that it was addressing a manufacturing issue, it failed to disclose the full extent of the exposure and liability associated with the shipment of the 192 defective units.

3. Misrepresentations with respect to Status of MES Contracts and Commitments

78.~~65.~~ Pursuant to Section 3.01(4)(b) of the Share Purchase Agreement, MES represented and warranted that it was not in default or breach, in any material respect, under any contract to which it was a party and that all of its contracts were in good standing.

79.~~66.~~ Despite representing that MES was not in breach of any of its contracts, two days before the close of the transaction, Timmis, on behalf of MES, sent an email to David Luxton, the Chief Executive Officer of Allen-Vanguard, advising that MES had received a notice from GDATP alleging that MES had committed material breaches of the Teaming Agreement.

80.~~67.~~ Even though this notice was received by Timmis on August 30, 2007, he did not advise Allen-Vanguard of it until two days before the transaction closed.

81.~~68.~~ In particular, GDATP alleged that, contrary to the terms of the Teaming Agreement, MES had participated in a Request for Proposals (RFP) initiated by a military customer to contract directly with MES for non-warranty repair work of all of its Chameleon Mobile Counter-Measure units.

82.~~69.~~ As a result of MES's attempts to contract directly with this customer, GDATP alleged that MES was in breach of Articles 1.3, 2.1 and 9.1 of the Teaming Agreement. In addition, GDATP alleged that MES had failed to provide GDATP with written disclosure of the non-warranty repair opportunity, as required by Article 2.2 of the Teaming Agreement.

83.~~70.~~ As a result of these alleged breaches, GDATP requested that MES show cause as to why GDATP did not have a basis to terminate the Teaming Agreement in the event that it wished to do so.

84.~~71.~~ Unbeknownst to Allen-Vanguard, this alleged breach represented only one of many breaches and acts of default which GDATP was then asserting against MES.

85.~~72.~~ Aside from disclosing the alleged breach associated with MES's participation in the RFP set out in Timmis' email, no further details with respect to this allegation or with respect to any of the other alleged breaches of the Teaming Agreement were disclosed to Allen-Vanguard.

86.~~73.~~ Such conduct constitutes a breach of the representations and warranties contained in the Share Purchase Agreement, for which Allen-Vanguard is entitled to indemnification out of the Indemnification Escrow Amount.

4. Misrepresentations with respect to Employees' Compensation Expectations

87.~~74.~~ In the months following the close of the transaction, Allen-Vanguard discovered that a number of MES employees had approached Timmis in 2006 and 2007 seeking significantly increased compensation in connection with their continuing employment with MES.

88.~~75.~~ On behalf of MES, Timmis told these employees that they should wait until MES had been sold and that they would receive increased compensation packages after MES had been acquired by the new owners. He expressly cautioned them against seeking increased compensation prior to the close of the transaction and promised that their compensation expectations would be met after the transaction closed.

89.~~76.~~ The employees approached Timmis again leading up to the close of the transaction and again sought an increase in their compensation as part of the sale and as an incentive to continue to work for MES after it had been acquired.

90.~~77.~~ Timmis again advised the employees that they should wait until after the close of the transaction with Allen-Vanguard and that he would then negotiate increased compensation packages on their behalf with Allen-Vanguard.

91.~~78.~~ However, at no time during the negotiation of the Share Purchase Agreement did Timmis advise Allen-Vanguard that these employees were seeking increased compensation or that he had led them to believe that they would receive it after the acquisition was completed.

92.~~79.~~ In fact, MES had represented and warranted in Section 3.01(6)(i) of the Share Purchase Agreement that there had been no changes in the terms and conditions of the employment of any employees of the corporation and that the corporation had not agreed or otherwise become

committed to change any of the employees' compensation, remuneration or benefits payable to them.

93.~~80.~~ After the transaction closed, Timmis provided David Luxton, the Chief Executive Officer of Allen-Vanguard, with a spreadsheet proposing a modest allocation of options and other compensation for these employees, despite being fully aware that these employees were expecting and demanding much more significant increases in their compensation.

94.~~81.~~ Timmis deceived Allen-Vanguard into believing that the spreadsheet contained figures which were commensurate with the employees' compensation expectations, despite knowing full well that the figures were far lower than their true expectations.

95.~~82.~~ Timmis then reported back to the employees and misled them into believing that he was attempting to negotiate higher compensation packages for them, but that Allen-Vanguard would not agree to any greater compensation than that which had been submitted by Timmis in the spreadsheet.

96.~~83.~~ When the MES employees learned that Allen-Vanguard was not going to be able to meet their compensation expectations, many of the employees felt betrayed by Timmis and refused to continue to work at MES as long as Timmis also continued to be employed by MES.

97.~~84.~~ Indeed, it became apparent to the employees that Timmis had negotiated for himself the entire pool of funds which would otherwise have been earmarked for the retention of all employees following the close of the transaction.

98.~~85.~~ Allen-Vanguard has continued to suffer damages caused by these misrepresentations made on behalf of MES.

99.~~86.~~ Indeed, within months of the close of the transaction, as the new owner of MES, Allen-Vanguard was faced with a near mutiny by the MES employees.

100.~~87.~~ As a result of Timmis' wrongful conduct on behalf of MES, Allen-Vanguard had no alternative but to terminate a critical engineering manager whose compensation expectations could not be met. In addition, as a result of Timmis' wrongful conduct on behalf of MES, Allen-Vanguard had no alternative but to meet some of the employees' compensation expectations or risk losing a substantial portion of its workforce.

101.~~88.~~ Had Allen-Vanguard known that it would become saddled with these personnel issues and been forced to meet demands for increased compensation, it would have altered the terms of the deal it struck with MES.

VII. DAMAGES

102.~~89.~~ Allen-Vanguard relied upon the information provided by the former management of MES in negotiating the purchase price and all other terms of the transaction. The projections with respect to MES's expected revenue, earnings and bookings, were made by the management of MES, knowing that they would impact on Allen-Vanguard's desire to enter into the transaction and the price it would be willing to pay for MES.

103.~~90.~~ Allen-Vanguard reasonably relied upon the above misrepresentations to its detriment in valuing MES and deciding to proceed to close the transaction.

104.~~91.~~ As a result, Allen-Vanguard is entitled to indemnification and/or damages from the Defendants for its reasonable reliance upon MES's misrepresentations and for the significant breaches of the Share Purchase Agreement.

105.~~92.~~ Had the true state of MES's affairs been accurately represented, Allen-Vanguard would not have been prepared to complete the transaction, or alternatively, it would have paid a significantly reduced ~~without a significant discount to the~~ purchase price.

106.~~93.~~ These misrepresentations and breaches of the Share Purchase Agreement further caused Allen-Vanguard to refinance its debt arrangements with its senior debt lenders and has resulted in the payment by Allen-Vanguard of various penalty fees and amendment fees associated with such refinancing efforts.

107. The Plaintiff proposes this action be tried at the City of Ottawa, Province of Ontario.

January 29, 2013 ~~December 18, 2008~~

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ALLEN-VANGUARD CORPORATION
Plaintiff

-and-

RICHARD L'ABBÉ et al
Defendants

Court File No. 08-CV-43544

AMENDED THIS 11th DAY / JOUR
MODIFIÉE DE
OF / DE JUNE 20 13
PURSUANT TO RULE 26.02(c).
CONFORMÉMENT A LA REGLE
OR ORDER of Master Macleod.
OU A L'ORDONNANCE
DATED THIS / FAIT CE 19th
DAY / JOUR OF / DE FEB 20 13.
REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE

L Bergeron.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

AMENDED STATEMENT OF CLAIM

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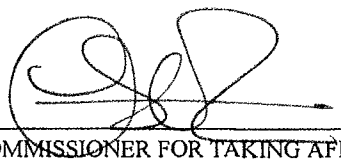
2013

This is Exhibit "Q" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ALLEN-VANGUARD CORPORATION

Plaintiff

- and -

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL INC. (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

DEMAND FOR PARTICULARS OF THE DEFENDANTS

The defendants, Richard L'Abbé et al. ("Offeree Shareholders") demand particulars of the following allegations in the amended statement of claim:

1. **Paragraph 2(d)**: Provide the names of the "former management of MES" who allegedly "knew, prior to the closing of the transaction, that its largest and most important customer was planning to conduct a head-to-head test of MES' product against the product of a competing supplier."

2. **Paragraph 2(d)**: Identify the "product" and the "competing supplier."

3. **Paragraph 2(d)**: Provide the names of the "former management of MES" who allegedly "deliberately withheld this material fact from Allen-Vanguard in order to induce Allen-Vanguard to complete the transaction."

4. **Paragraph 2(d)**: Provide the names of the "former management of MES" who allegedly "either deliberately misled Allen-Vanguard or were reckless as to the truth or accuracy of their statements, despite their knowledge that Allen-Vanguard had sought disclosure on numerous occasions of all factors which could jeopardize the arrangements with this customer."

5. **Paragraph 2(d)**: Provide full particulars of the "statements" about which former management were "reckless as to the truth or accuracy."

6. **Paragraph 2(f)**: Provide a concise statement of the material facts which support the conclusion that the "Defendants are directly liable to indemnify Allen-Vanguard" as a result of "fraudulent misrepresentations" by MES.

7. **Paragraph 21**: Provide the names of the "former management of MES" who "made fraudulent misrepresentations to Allen-Vanguard which induced Allen-Vanguard to enter into the transaction."

8. **Paragraph 21**: Provide full particulars of the "fraudulent misrepresentations" made to Allen-Vanguard which induced Allen-Vanguard to enter into the transaction, as well as when the alleged fraudulent misrepresentations were made.

9. **Paragraph 22**: Provide the names of individuals at MES who "knew, prior to the closing of the transaction, that MES' largest and most important customer intended to conduct a head-to-head test of MES' ECM Chameleon unit against units produced by MES' competitors."

10. **Paragraph 23**: Provide the names of individuals at MES who "knew that this intention to test competing units on a head-to-head basis had material implications for the existing arrangements with this customer and the future supply of products to this customer."

11. **Paragraph 23**: Provide full particulars of the "existing arrangements with this customer" alleged.

12. **Paragraph 24**: Provide the "full particulars of the customer's plans," which Allen-Vanguard alleges ought to have been disclosed.

13. **Paragraph 24**: Provide the names of the individuals at MES who "intentionally or recklessly withheld this disclosure from Allen-Vanguard."

14. **Paragraph 25**: Provide full particulars of the "repeated, specific inquiries of MES' management to identify any factors which might cause MES' largest customer to switch to a competing supplier," including the names of the individuals who are alleged to have made the "repeated, specific inquiries" and when the "repeated, specific inquiries" were made.

15. **Paragraph 25**: Provide the names of the "former management of MES" who responded to such inquiries and "said nothing about the upcoming head-to-head test."

16. **Paragraph 26**: Identify the individuals at MES who "withheld this disclosure with the intention to induce Allen-Vanguard to complete the transaction" and provide a concise statement of the material facts supporting the allegation that they did so "with the intention to induce Allen-Vanguard to complete the transaction."

17. **Paragraph 27**: Provide the names of the individuals at MES who "intended to deceive Allen-Vanguard."

18. **Paragraph 28**: Provide full particulars of the "fraudulent misrepresentations" on which Allen-Vanguard relied as well as full particulars of how Allen-Vanguard relied on them to its detriment.

19. **Paragraph 29**: Provide full particulars of the "representations made by MES to Allen-Vanguard in its management presentations" and identify the individuals from MES who knew that the alleged representations were false.

20. **Paragraph 29**: Provide the names of individuals at MES who "knew about the intention of this customer to subject the Chameleon ECM unit to competitive testing and the ramifications of the testing.

21. **Paragraph 105:** Provide full particulars with respect to the allegation that Allen-Vanguard "would have paid a significantly reduced purchase price."

This demand for particulars is served pursuant to Rule 25.10 of the Rules of Civil Procedure which provides that if particulars are not supplied within seven days, the court may order particulars to be delivered within a specified time.

Date: April 19, 2013

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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

DEMAND FOR PARTICULARS

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Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBE, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED IN ITS CAPACITY AS GENERAL PARTNER OF EACH OF SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURE HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

RESPONSE TO DEMAND FOR PARTICULARS

The Plaintiff, Allen-Vanguard Corporation ("Allen-Vanguard") provides the following response to the Demand for Particulars of the Offeree Shareholders dated April 19, 2013:

1. Paul Timmis, Danny Osadca and Blair Geddes are the former management of Med-Eng Systems Inc. ("MES") who knew, prior to the closing of the Transaction, that MES' largest and most important customer was planning to conduct a head-to-head test of MES' product against the product of a competing supplier.

2. MES' product was the Chameleon jammer and the competing supplier was EDO Corporation ("EDO").

3. Paul Timmis, Danny Osadca and Blair Geddes are the former management of MES who deliberately withheld the material fact of the head-to-head test from Allen-Vanguard in order to induce Allen-Vanguard to complete the transaction.

4. Paul Timmis, Danny Osadca and Blair Geddes are the former management of MES who either deliberately misled Allen-Vanguard or were reckless as to the truth or accuracy of their statements, despite their knowledge that Allen-Vanguard had sought disclosure on numerous occasions of all factors which could jeopardize the arrangements with the customer.

5. The material particulars of the statements made by the former management of MES which were reckless as to the truth or accuracy are as follows:

(a) Although Allen-Vanguard made repeated, specific inquiries as to the potential factors which could cause MES' largest customer to switch suppliers, the former management of MES stated that the only way that the United States Marine Corps ("USMC") could switch to EDO would be due to MES' inability to deliver in upgrades or production, both of which were stated to have been very unlikely. The former management of MES never disclosed to Allen-Vanguard that the USMC was intending to conduct a head-to-head test against EDO's product (the "CVRJ") or the implications of this test.

(b) The former management of MES were reckless as to the truth or accuracy of its statements when it represented the expected orders in the pipeline and the

probabilities of securing them, given that they knew that the USMC was planning to conduct a head-to-head test against the CVRJ and they knew the implications of this test. These statements are further particularized in paragraphs 42 to 58 of the Amended Statement of Claim.

6. The Share Purchase Agreement dated August 3, 2007 provides that the Defendants are directly liable to indemnify Allen-Vanguard for any fraudulent misrepresentations made by MES. Article 7.02 of the Share Purchase Agreement limits the liability of the Offeree Shareholders to the Indemnification Escrow Amount in the event that there are any breaches of representations, warranties and covenants made by MES, except in the case of fraud, in which case, the liability of the Offeree Shareholders is not capped by the Indemnification Escrow Amount. Further, any payments made by MES under Article 7 is deemed to be a reduction to the purchase price as stipulated in Article 7.07 of the Share Purchase Agreement. Articles 7.06 and 8.10 specifically exclude any limitation on the liability of the Offeree Shareholders in the event of fraud.

7. Paul Timmis, Danny Osadca and Blair Geddes made fraudulent misrepresentations to Allen-Vanguard which induced Allen-Vanguard to enter into the transaction.

8. The fraudulent misrepresentations are particularized in paragraphs 22 to 30 and 42 to 58 of the Amended Statement of Claim and are further particularized in the Response to the Demand for Particulars in paragraph 5 above.

9. Paul Timmis, Danny Osadca and Blair Geddes knew, prior to the closing of the transaction, that MES' largest and most important customer intended to conduct a head-to-head test of MES' ECM Chameleon unit against units produced by MES' competitors.

10. Paul Timmis, Danny Osadca and Blair Geddes knew that the intention to test competing units on a head-to-head basis had material implications for the existing arrangement with the customer and the future supply of products to the customer.

11. The existing arrangement was that MES was the USMC's incumbent supplier of ECM units. Allen-Vanguard was never advised that this existing arrangement was in jeopardy or that its continued supply of ECM units to the USMC was at risk.

12. The USMC had planned to conduct a head-to-head test of the CVRJ against the Chameleon system from at least June, 2007.

13. Paul Timmis, Danny Osadca and Blair Geddes intentionally or recklessly withheld from Allen-Vanguard the fact of the USMC's intentions and the full particulars of the USMC's plans as they developed over time.

14. The material particulars of the repeated, specific inquiries made by Allen-Vanguard are as follows:

(a) On September 9, 2007, David Luxton made specific inquiries of Danny Osadca and Paul Timmis as to the circumstances which might cause the USMC to start adopting EDO systems. Previously, Mr. Timmis had indicated that the USMC could only switch if the modification upgrade which MES had been working on was not successful. As a result, David Luxton specifically asked whether there were any other circumstances that might trigger the USMC to switch to EDO. Paul Timmis advised that the only way that EDO could gain ground with the USMC

would be as a direct result of MES' inability to either deliver in upgrades or in production, both of which, Mr. Timmis said were very unlikely.

(b) On September 11, 2007, David Luxton again confirmed with Paul Timmis, Danny Osadca and Blair Geddes that the USMC might start to adopt EDO systems only if the modification upgrade was not successful and if MES could not meet the USMC's production demands.

(c) On September 14, 2007, David Luxton again specifically asked Paul Timmis whether there was anything else that needed to be done to protect the USMC as a permanent client. Paul Timmis said nothing about the USMC's plans to conduct a head-to-head test or the implications associated with this test.

(d) On September 14, 2007, David Luxton questioned Paul Timmis about reports that the CVRJ had become the preferred supplier of ECM for all time and that the USMC had performance issues with the Chameleon and may switch to EDO. Paul Timmis dismissed those reports as being inaccurate and reprehensible.

15. As described in paragraph 14 above, Paul Timmis responded to such inquiries and said nothing about the upcoming head-to-head test or its implications. In addition, the inquiries described in paragraphs 14(a) and 14(b) above were also posed to Messrs. Osadca and Geddes, who also said nothing about the upcoming head-to-head test or the implications of the test.

16. Paul Timmis, Danny Osadca and Blair Geddes were the individuals at MES who withheld the disclosure with the intention to induce Allen-Vanguard to complete the transaction. These individuals were aware that Allen-Vanguard was relying upon the representations made with

respect to the continuation of the existing arrangement with the USMC and that the pipeline of orders with the USMC represented a critical element of Allen-Vanguard's valuation of MES, the purchase price it was willing to pay to acquire MES, and whether it was willing to acquire MES at all.

17. Paul Timmis, Danny Osadca and Blair Geddes were the individuals at MES who intended to deceive Allen-Vanguard or who were reckless as to the truth or accuracy of their statements, and did deceive Allen-Vanguard.

18. The particulars of the fraudulent misrepresentations are described in paragraphs 22 to 30 and 42 to 58 of the Amended Statement of Claim and further particularized in paragraph 5 and 14 above. Allen-Vanguard relied on these representations by entering into the transaction, or alternatively, in negotiating the purchase price that it was willing to pay to acquire MES.

19. The particulars of the representations made by MES to Allen-Vanguard in its management presentations are described in paragraphs 42 to 58 of the Amended Statement of Claim and Paul Timmis, Danny Osadca and Blair Geddes are the individuals from MES who knew that the representations were false or misleading or were reckless as to their truth or accuracy.

20. Paul Timmis, Danny Osadca and Blair Geddes were the individuals at MES who knew about the intention of the USMC to subject the Chameleon ECM unit to competitive testing and the ramifications of this testing.

21. The full particulars with respect to the allegation that Allen-Vanguard would have paid a significantly reduced purchase price are set out in the Economic Loss Report of Allen-Vanguard's expert dated March 15, 2013.

May 15, 2013

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Lawyers for the Defendants

ALLEN-VANGUARD CORPORATION
Plaintiff

-and-

RICHARD L'ABBE et al.
Defendants

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

RESPONSE TO DEMAND FOR PARTICULARS

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2868070

This is Exhibit "R" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ALLEN-VANGUARD CORPORATION

Plaintiff

- and -

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of
SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and
SVG CAPITAL INC. (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

AMENDED STATEMENT OF DEFENCE

1. The defendants admit the allegations contained in paragraphs 3-5, 7-8, 12-14 ~~8-11~~, 20, and 32- 41 ~~17 and 19-28~~ of the Amended Statement of Claim.

2. The defendants deny the allegations contained paragraphs 2, 6, ~~7~~, 9-11, 15-19, 21-31, and 42-106 ~~12-16, 18 and 29-93~~ of the Amended Statement of Claim.

The Parties

3. The defendants were shareholders of Med-Eng Systems Inc. ("Med-Eng", referred to in the Amended Statement of Claim as "MES"), and are parties to a Share Purchase

Agreement, dated as of August 3, 2007 (the "Share Purchase Agreement") The defendants are referred to collectively as the "Offeree Shareholders."

4. While the Offeree Shareholders were the majority shareholders of Med-Eng, approximately 181 other shareholders (the "Minority Shareholders") owned approximately 21% of the issued and outstanding shares of Med-Eng on the date of the closing of the share purchase transaction, and the Minority Shareholders participated in the distribution of the proceeds of sale.

5. The Offeree Shareholders are also parties to an Escrow Agreement, made as of September 17, 2007 pursuant to the Share Purchase Agreement (the "Escrow Agreement").

6. The plaintiff, Allen-Vanguard Corporation, is a corporation incorporated under the laws of the Province of Ontario and was the purchaser of all of the issued and outstanding shares in the capital of Med-Eng. The plaintiff is hereinafter referred to as "Allen-Vanguard" or the "Purchaser".

7. Med-Eng is a corporation incorporated under the laws of the Province of Ontario and is the corporation whose shares were acquired from the Offeree Shareholders and other shareholders by Allen-Vanguard. Allen-Vanguard and Med-Eng are parties to the Share Purchase Agreement and to the Escrow Agreement.

8. Following the closing of the Share Purchase Agreement, Med-Eng was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007 (the "AVTI Amalgamation"). The name of the amalgamated corporation ~~is~~ was Allen-Vanguard Technologies Inc. ("Allen-

Vanguard Technologies"). Allen-Vanguard Technologies is hereinafter referred to as "Allen-Vanguard Technologies" or "Med-Eng".

9. Allen-Vanguard amalgamated with AVTI on January 1, 2011 (the "Allen-Vanguard Amalgamation"). The effect of the AVTI Amalgamation and the Allen-Vanguard Amalgamation was, among other things, that Med-Eng and Allen-Vanguard were merged and continued as Allen-Vanguard.

10. Pursuant to a Shareholders' Agreement, made as of April 19, 2000, as supplemented, between Med-Eng and all shareholders of Med-Eng, the Offeree Shareholders issued a Drag Along Notice, dated August 23, 2007, to the other shareholders, obliging them to sell their shares to the Purchaser.

11. The purchase price payable by Allen-Vanguard for the purchase of all of the shares of Med-Eng was $581 million, subject to adjustments as provided in the Share Purchase Agreement.

12. The purchase price was payable to all shareholders of Med-Eng, pursuant to Sections 2.02 and 2.04 of the Share Purchase Agreement, and not to the Offeree Shareholders alone. "Shareholders" is a defined term in the Share Purchase Agreement, which includes both the Offeree Shareholders and the Minority Shareholders.

Specific and Limited Representations, Warranties, Indemnification Given by Med-Eng under Share Purchase Agreement

13. In Section 3.01 of the Share Purchase Agreement, Med-Eng made representations and warranties to Allen-Vanguard with respect to certain matters relating to its status and business. All representations and warranties by Med-Eng are set forth in Section 3.01. The covenants of Med-Eng which are alleged to have been breached are set forth exclusively in Section 4.01. The material provisions of Section 3.01 state:

> 3.01 **Corporation's Representations and Warranties**
>
> The Corporation represents and warrants to the Purchaser that:
>
> ...
>
> *(2) Financial*
>
> (a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all material financial transactions of the Corporation and its Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.
>
> (b) The audited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on December 31, 2006, together with the report of KPMG LLP, chartered accountants, thereon and the notes thereto (collectively, the "Audited Financial Statements"), a copy of which is attached hereto as Schedule 3.01(2)(b) present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries as at December 31, 2006 and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.

(c) The unaudited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on the Balance Sheet Date [i.e. June 30, 2007], (collectively, the "Unaudited Financial Statements"), a copy of which is attached hereto as Schedule 3.01(2)(c) present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries as at the Balance Sheet Date and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.

(d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i) liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).

...

(f) Since the Balance Sheet Date there has been no Material Adverse Effect in respect of the Corporation or its Subsidiaries.

...

(3) Condition of Assets

...

(d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.

...

(g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

(4) Contracts and Commitments

...

(b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.

...

(6) Employees

...

(b) Neither the Corporation nor its Subsidiaries has any written employment contract with any person whomsoever, except as disclosed in Schedule 3.01(6)(b).

...

(i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any

employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

...

(8) Benefit Plans

...

(d) No fact, condition or circumstance exists that would materially affect the information contained in the documents provided pursuant to Section 3.01(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.

(e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.

...

(12) General

(a) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Corporation or its Subsidiaries):

(i) pending or threatened against or materially adversely affecting, or which could materially adversely affect, the

Corporation or its Subsidiaries or any of their assets,

(ii) before or by an Governmental Authority,

except such actions, suits or proceedings as are disclosed in Schedule 3.01(12)(a) and or to the Corporation's knowledge, there is no valid basis for any such action, suit or proceeding.

...

(c) The Corporation is conducting its business in material compliance with all Applicable Laws of Canada and of the Province of Ontario, the Corporation's Subsidiary, Med-Eng, Inc. is conducting its business in all material respects in compliance with all Applicable Laws of the United States and of the State of New York and the Corporation's Subsidiaries, 1252110 Alberta Ltd. and 1252144 Alberta Ltd., and the Partnership are conducting their respective businesses in compliance with all applicable laws of the Province of Alberta, except in each case where any such non-compliance would not have a Material Adverse Effect. The Corporation and its Subsidiaries have or, where applicable, have caused their contractors and agents to comply with Applicable Laws in those jurisdictions where business is being carried on by or on behalf of the Corporation or its Subsidiaries with a Governmental Authority. Except as set forth in 3.01(12)(c), (i) the Corporation has not been charged with and, to the knowledge of the Corporation, the Corporation is not now under investigation with respect to, a violation of any Applicable Law, (ii) the Corporation is not a party to or bound by any order, judgment, decree, injunction or of any Governmental Authority and (c) the Corporation has filed all material reports and has all material licenses and permits required to be filed with any Governmental Authority on or before the date hereof.

14. Section 7.02 of the Share Purchase Agreement states:

7.02 **Indemnification by the Corporation**

(1) Subject to the provisions of this Article 7, **the Corporation** will indemnify and save harmless the Purchaser

and the directors, officers, employees and agents of the Purchaser (collectively, the "Purchaser Indemnitees") from and against all Claims incurred by the Purchaser directly or indirectly resulting from (i) any breach of any covenant of the Corporation contained in this Agreement, (ii) any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 or (iii) the contravention of, non-compliance with or other breach, on or before the Closing Date, by the Corporation or its Affiliates of the Teaming Agreement ("GD Teaming Agreement") between General Dynamics Armament and Technical Products ("GD") and the Corporation dated May 27, 2005, as amended.

(2) Notwithstanding any of the other provisions of this Agreement, the Corporation will not be liable to any Purchaser Indemnitee in respect of:

(a) any representation and warranty of the Corporation set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement unless any claim or demand by the Purchaser against the Corporation with respect thereto is given to the Corporation and the Offeree Shareholders by the Purchaser prior to December 21, 2008, except in the case of fraud, in which case there will be no time limit for the Purchaser to make a demand or claim against the Corporation in respect thereof; or

(b) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement:

(i) unless and until the aggregate of all Claims exceeds $4.0 million, and then only to the extent that such aggregate exceeds $2.0 million; or

(ii) in excess of the Indemnification Escrow Fund;

other than, in all cases, any Claim attributable to fraud.

(Emphasis added)

15. In respect of the claims made by Allen-Vanguard in this action, Section 7.02 (1) of the Share Purchase Agreement requires Med-Eng, but not the Offeree Shareholders, to indemnify and save harmless Allen-Vanguard from and against claims incurred by Allen-Vanguard resulting from:

(a) any breach of covenant of Med-Eng contained in the Share Purchase Agreement;

(b) any inaccuracy or misrepresentation in any representation or warranty of Med-Eng set forth in Section 3.01; or

(c) the contravention of, noncompliance with or other breach before September 17, 2007 by Med-Eng of the Teaming Agreement between General Dynamics Armament and Technical Products ("General Dynamics") and Med-Eng, dated May 27, 2005 (the "GD Teaming Agreement").

16. In respect of the claims made by Allen-Vanguard in this action, Section 7.02(2) of the Share Purchase Agreement limits the liability of Med-Eng to Allen-Vanguard under the Share Purchase Agreement. In particular, under Section 7.02(2), Med-Eng is not liable to Allen-Vanguard in respect of:

(a) any representation and warranty of Med-Eng set forth in Section 3.01 of the Share Purchase Agreement unless any claim or demand by Allen-Vanguard is given prior to December 21, 2008;

(b) any contravention of, noncompliance with or other breach, on or before September 17, 2007, of the GD Teaming Agreement, unless any claim or demand by Allen-Vanguard is given before December 21, 2008; and

(c) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before September 17, 2007, of the GD Teaming Agreement:

(i) unless and until the aggregate of all claims exceeds $4,000,000, and then only to the extent that such aggregate exceeds $2,000,000; or

(ii) in excess of the indemnification escrow amount of $40,000,000.

17. The Share Purchase Agreement does not prescribe any time limits or limit liability for claims of fraud made by Allen-Vanguard against Med-Eng.

Allen-Vanguard Has Failed to Make A Claim against Med-Eng

18. Section 7.02(6) of the Share Purchase Agreement states:

> (6) For greater certainty, the Indemnification Escrow Amount is available to the Purchaser to satisfy **Claims against the Corporation** which the Purchaser is entitled to make pursuant to Section 7.02(1) and (2). (Emphasis added)

19. Section 7.02(5) also provides that only successful Claims against Med-Eng give rise to a right of indemnification out of the Indemnification Escrow Fund:

> (5) The Indemnification Escrow Amount shall be that Purchaser's sole recourse in the event of a successful Claim made by the Purchaser against the Corporation or the Shareholders except in respect of liability of any Shareholder for a Claim based on the absence of, or deficiency in, the title of that Shareholder to its shares, or liability under any Claim attributable to fraud of that Shareholder.

20. Allen-Vanguard did not name Med-Eng as defendant in this action prior to the Allen-Vanguard Amalgamation and has therefore not made a claim against Med-Eng. Since Allen-Vanguard did not make a claim against Med-Eng and has made no allegation relating to (a) the absence or deficiency of title to shares; or (b) any Claim attributable to fraud of any Shareholder, it has not met the pre-condition to the right of indemnification out of the Indemnification Escrow Amount as contemplated by Section 7.02(5).

21. Since no relief was sought against Med-Eng in this action, and no facts have been alleged as against the Shareholders, Allen-Vanguard is not entitled to any indemnification for any amount out of the Indemnification Escrow Amount.

Effect of the AVTI Amalgamation and the Allen-Vanguard Amalgamation

22. As set out above, Allen-Vanguard has a contractual right to indemnification for successful claims against Med-Eng under section 7.02(1) of the Share Purchase Agreement. Med-Eng amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007, and the amalgamated corporation changed its name to AVTI. On January 1, 2011, AVTI amalgamated with and was continued under the name Allen-Vanguard Corporation, as is pleaded at paragraph 7 of the Amended Statement of Claim.

23. The effect of the AVTI Amalgamation and the Allen-Vanguard Amalgamation was to eliminate all previously existing intercompany claims, including any claims by Allen-Vanguard against Med-Eng. As such, any and all claims which Allen-Vanguard may have had against Med-Eng (or AVTI) have been extinguished by operation of law. This includes all claims of indemnification against the Indemnification Escrow Fund made in the Amended Statement of Claim.

No Right to Indemnification from Offeree Shareholders

24. Contrary to the allegations made in the Amended Statement of Claim, there is no contractual right of action under the Share Purchase Agreement by which the Offeree Shareholders are liable to indemnify Allen-Vanguard for claims of indemnification, based on alleged breaches of representations made by Med-Eng under Section 3.01 of the Share Purchase Agreement.

25. Under the Share Purchase Agreement, Med-Eng makes specific representations and warranties in Section 3.01. Allen-Vanguard's right of indemnification out of the Indemnification Escrow Fund arises only if Allen-Vanguard makes a successful claim against Med-Eng, not against the Offeree Shareholders or shareholders, for breaches of representations and warranties in Section 3.01.

26. The structure of the Share Purchase Agreement was the subject of specific negotiation and agreement between Allen-Vanguard and the Offeree Shareholders. Throughout the share purchase transaction, Allen-Vanguard was a sophisticated party that

was represented by legal counsel and other professional advisors. Allen-Vanguard, its legal counsel and other advisers knew that neither the Offeree Shareholders nor the Minority Shareholders could be held liable for breaches of representations contained in Section 3.01 under the Share Purchase Agreement. Further, Allen-Vanguard and its counsel knew, prior to the close of the share purchase transaction, that the only recourse available to Allen-Vanguard for indemnification under Section 7.02(1) of the Share Purchase Agreement was the Indemnification Escrow Fund.

27. To the extent Section 7.02(2) contains an exception to the limits of Med-Eng's liability for indemnification in instances of fraud, Allen-Vanguard and its counsel knew, when Allen-Vanguard entered into the Share Purchase Agreement, that this exception did not create a right of action or indemnification as against the Offeree Shareholders.

28. Shareholders of a corporation are not liable for any act, default, obligation or liability of the corporation. The Offeree Shareholders plead and rely on Section 92 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16.

29. In order for Allen-Vanguard to be entitled to seek indemnification from the Offeree Shareholders for successful claims against Med-Eng, the right to such indemnification must be explicitly set out in the Share Purchase Agreement. No such right to indemnification exists under the Share Purchase Agreement nor does one exist under any other contract between Allen-Vanguard and the Offeree Shareholders.

30. At paragraph 6 of Allen-Vanguard's Response to Demand for Particulars, Allen-Vanguard relies on Section 7.07 of the Share Purchase Agreement to allege that the Offeree Shareholders are directly liable to indemnify it for any fraudulent misrepresentations made by Med-Eng. Section 7.07 is a price adjustment clause, which creates no contractual right to indemnification:

> 7.07 **Adjustment to Purchase Price**
>
> All amounts payable by the Corporation or the Shareholders to Purchaser Indemnitee pursuant to Article 7 will be deemed to be a decrease to the Purchase Price. All amounts payable by the Purchaser to a Shareholder Indemnitee pursuant to Article 7 will be deemed to be an increase to the Purchase Price.

31. Section 7.07 states that amounts payable "by the Corporation or the Shareholders" will be deemed to be a decrease to the purchase price. It does not confer on Allen-Vanguard a right to indemnification from the Offeree Shareholders for successful claims against Med-Eng.

32. The purchase price was paid to all shareholders, and not to the Offeree Shareholders alone. As such, there is no contractual basis for Allen-Vanguard's allegation that Section 7.07, which makes no direct or indirect reference to the Offeree Shareholders, entitles Allen-Vanguard to claim damages directly from the defendants for claims incurred against Med-Eng.

Subsequent Conduct Supports Absence of Claim to Indemnification

33. Subsequent to the execution of the Share Purchase Agreement, Allen-Vanguard did not conduct itself in a manner that would suggest that the defendants owed it any form of indemnification, as alleged or at all.

34. In particular, when Allen-Vanguard made an application for protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), Allen-Vanguard filed three affidavits and a pre-filing Monitor's report. None of these court filings, nor any subsequent court filings, disclosed the existence of any claim to indemnification against the Offeree Shareholders, let alone the $650 million claim now advanced by Allen-Vanguard. Had this claim actually had that potential value, a hedge fund acting as plan sponsor would effectively be seeking to acquire an asset potentially worth almost three quarters of a billion dollars in return for a $20 million equity investment and the assumption of less than $75 million in debt. This fact would have been highly material and relevant to the CCAA Court, yet it was not disclosed.

35. Had such a claim validly existed, and if such a claim had any merit, Allen-Vanguard could or would have had equity value. Instead, based on representations made by Allen-Vanguard and its directors and officers, and with the knowledge, acquiescence and/or participation of the hedge fund plan sponsor, the CCAA Court extinguished the existing common equity of Allen-Vanguard. The CCAA Court reached this decision having been satisfied by sworn evidence that the debtor was so balance-sheet insolvent that there was no prospect of recovery for equity.

36. Allen-Vanguard's failure to disclose a claim against the Offeree Shareholders to the CCAA Court, subsequent to the execution of the Share Purchase Agreement, demonstrates the parties' intent in drafting the indemnification provisions of the Share Purchase Agreement. The parties did not intend for Allen-Vanguard to have a right to indemnification from the Offeree Shareholders. Allen-Vanguard's conduct further demonstrates that its claim is entirely without merit.

~~Closing of~~ Share Purchase Agreement Transaction

37. Allen-Vanguard expressed a desire to purchase Med-Eng as early as 2005.

38. Beginning in 2006, Med-Eng engaged in a limited auction process, with the intention of selling all outstanding common shares in the company. CIBC World Markets ("CIBC") was engaged by the board of directors of Med-Eng to facilitate the auction process.

39. Allen-Vanguard was not identified by CIBC or Med-Eng as a suitable potential purchaser, nor was it invited to bid on the company. Allen-Vanguard entered the limited auction process in its late stages and Allen-Vanguard aggressively pursued its goal of becoming the winning bidder.

40. Allen-Vanguard formally indicated its intention to offer $600 million to purchase all outstanding shares of Med-Eng on June 28, 2007. It subsequently confirmed this intention by submitting its final proposal with respect to the acquisition of Med-Eng on July 17, 2007 and its final revised proposal on July 27, 2007.

41. Contrary to the allegations in Allen-Vanguard's Amended Statement of Claim, the purchase price offered by Allen-Vanguard was based on its determination to win the limited auction by becoming the highest bidder. It was not predicated on any or specific representations and warranties made or withheld by Med-Eng.

42. At no time between June 28, 2007 and the close of the share purchase transaction did Allen-Vanguard attempt to negotiate or offer a lower purchase price, nor did it suggest that part of the purchase price be contingent on the future profitability of Med-Eng, even as revenue forecasts changed and new information about Med-Eng came to light during the performance of Allen-Vanguard's due diligence. Had Allen-Vanguard expressed the intention of offering a lower purchase price, it would have run the risk of being a losing bidder in the auction process. Had it offered to pay any part of the purchase price on a contingent basis, Med-Eng would have refused to accept such an offer.

43. Allen-Vanguard was a highly motivated purchaser. Its executive management team stood to receive lucrative monetary bonuses upon the completion of the transaction. Allen-Vanguard's executive team, comprised of David Luxton, Rob Ryan and Elisabeth Preston, each had their employment agreements amended in 2007 to provide for the payment of bonuses of $3,000,000, $750,000 and $400,000 respectively as compensation for Allen-Vanguard's successful acquisition of Med-Eng. They too were highly motivated. Further, Preston divested all of her shares in Allen-Vanguard within a month of closing, while Ryan divested the vast majority of his shares at the same time, with both insiders profiting

significantly from the temporarily elevated share price of Allen-Vanguard following its purchase of Med-Eng.

44. The share purchase transaction closed on September 17, 2007.

Establishment of Indemnification Escrow Fund

45. Pursuant to Section 2.04 of the Share Purchase Agreement, Allen-Vanguard and the Offeree Shareholders agreed to enter into the Escrow Agreement to provide for the deposit of funds, which were part of the purchase price under the Share Purchase Agreement, into escrow to be held as security for any claims for indemnification made by Allen-Vanguard pursuant to Section 7.02 of the Share Purchase Agreement.

46. Pursuant to Section 2.1 of the Escrow Agreement, an escrow fund was created into which the shareholders of Med-Eng deposited an amount, to be held by Computershare Trust Company of Canada ("Computershare") in accordance with the terms of the Escrow Agreement, and defined in the Escrow Agreement as:

> $40,000,000 (the "Indemnification Escrow Fund"); the Indemnification Escrow Fund, as (i) increased by any interest earned or accrued on the cash portion thereof further to the Authorized Investments made in accordance with Section 2.3, and (ii) reduced by any distributions made in accordance with Section 4.1, is referred to herein as the "Indemnification Escrow Fund"

47. Section 4.1 of the Escrow Agreement states:

> 4.1 **Distributions out of the Indemnification Escrow Fund**
>
> (a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.
>
> (b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a "Notice of Claim") to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.
>
> (c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written notice (an "Objection Notice") setting forth the reasons for the objection.
>
> (d) If the Offeree Shareholders do not deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the dollar amount of the Claim claimed in the Notice of Claim shall be deemed established for all purposes of this Agreement and the Share Purchase Agreement and, at the end of such 30 days' period, the Escrow Agent shall pay such amount to the Purchaser from the Indemnification Escrow Fund. The Escrow Agent shall pay such amount in the form of Take Back Notes plus interest accrued thereon in accordance with their terms until all Take Back Notes have been delivered from the Indemnification Escrow Fund before any payments are made in cash. The Escrow Agent shall not, and shall not be required to, inquire into or consider whether a Notice of Claim complies with the requirements of the Share Purchase Agreement.

(e) If the Offeree Shareholders deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the Escrow Agent shall make payment of the non-disputed portion of the Notice of Claim as provided in Section 4.1(d) above and shall make payment with respect to the disputed portion of the Notice of Claim only in accordance with (i) joint written instructions of the Purchaser and the Offeree Shareholders, or (ii) a final non-appealable order of a court of competent jurisdiction. The Escrow Agent shall act on any such court order without further inquiry or question.

(f) On December 21, 2008, the Indemnification Escrow Fund shall be reduced by the value (if any) of any Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement which remain pending as of such date, and the Escrow Agent shall distribute the remaining amount to the Shareholders (in the proportions set forth on Schedule 4.1(f)) on, or as soon as possible after, such date. Any amount remaining in the Indemnification Escrow Fund after all Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement are resolved shall be distributed by the Escrow Agent to the Shareholders (in the proportions set forth on Schedule 4.1(f)) as soon as possible after such resolution.

(g) For greater certainty, the aggregate liability of the Shareholders and the Company with respect to any and all Claims made under Section 7.02 or 7.04 of the Share Purchase Agreement shall not exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof and the aggregate amount of any distributions made by the Escrow Agent to the Purchaser under this Section 4.1 shall in no event exceed $40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof.

48. Interest on any payment made out of the Indemnification Escrow Fund is governed by the terms of the Escrow Agreement and recovery of additional interest under sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 is therefore precluded.

Allen-Vanguard's Notice of Claim

49. On September 10, 2008, Allen-Vanguard delivered an undated notice of claim pursuant to the Escrow Agreement. The notice of claim did not set out a reasonably detailed description of the basis for the claims of Allen-Vanguard, but nevertheless asserted an entitlement to the entire Indemnification Escrow Fund for alleged breaches of representations and warranties by Med-Eng under Section 3.01 of the Share Purchase Agreement and for alleged breaches of covenants in Section 4.01 of the Share Purchase Agreement.

50. On September 17, 2008 the Offeree Shareholders requested particulars of Allen-Vanguard's claims. Allen-Vanguard refused to provide the requested particulars.

51. By notice of objection, dated October 1, 2008, and delivered by the Offeree Shareholders on October 6, 2008, the Offeree Shareholders disputed each and all of the claims set forth in the notice of claim.

Allen-Vanguard Limited to Provable Claims against the Indemnification Escrow Fund

52. In paragraph 1 (a) of the Amended Statement of Claim, Allen-Vanguard claims indemnification and/or damages for fraud and/or negligent misrepresentation and breach of contract in the amount of $650,000,000~~40,000,000~~.

53. With respect to its claim to indemnification, Allen-Vanguard is limited by the terms of the Share Purchase Agreement, absent fraud, to "Claims":

(a) as defined in Section 1.1 of the Escrow Agreement;

(b) limited to those claims by Allen-Vanguard resulting directly or indirectly from any breach of any covenant contained in the Share Purchase Agreement;

(c) limited to those claims by Allen-Vanguard resulting from any inaccuracy or misrepresentation in any representation or warranty of Med-Eng set forth in Section 3.01 of the Share Purchase Agreement;

(d) made by December 21, 2008 in accordance with Section 4.1 of the Escrow Agreement;

(e) against the Indemnification Escrow Fund established pursuant to Section 2.1 of the Escrow Agreement; and

(f) which are allowed by a final non-appealable order of a court of competent jurisdiction.

Allen-Vanguard is not entitled to indemnification for claims arising out of any representation, warranty, term, condition, undertaking or collateral agreement not expressly set forth in the Share Purchase Agreement. Section 8.06 of the Share Purchase Agreement states:

> 8.06 **Entire Agreement**
>
> This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto.

> There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

54. The Offeree Shareholders deny that representations or warranties of Med-Eng set out in Section 3.01 of the Share Purchase Agreement contained any inaccuracies or misrepresentation. Allen-Vanguard is not therefore entitled to indemnification for any Claims out of the Indemnification Escrow Fund or otherwise.

55. The Offeree Shareholders further plead and rely upon Section 7.06 of the Share Purchase Agreement, which states in material part:

> 7.06 **Exclusive Remedy**
>
> From and after the completion of the sale and purchase of Shares herein contemplated, ... the rights of indemnity set forth in this Article 7 are the sole and exclusive remedies of each party in respect of any inaccuracy or misrepresentation in any representation or warranty, or breach of covenant or other obligation by another party under this Agreement. Accordingly, the parties waive, from and after the Closing, any and all rights, remedies and claims that one party may have against another party, whether at law, under any statute or in equity (including claims for contribution or other rights of recovery arising under any Environmental Law, claims for breach of contract, breach of representation and warranty, negligent representation and all claims for breach of duty), or otherwise, directly or indirectly, relating to the provisions of this Agreement or the transaction contemplated by this Agreement ... as expressly provided for in this Article 7 and other than those arising with respect to any fraud. This Article 7 will remain in full force and effect in all circumstances and will not be terminated by any breach (fundamental, negligent or otherwise) by any party of its representations, warranties, covenants or other obligations under this Agreement or under

any Closing document or by any termination or rescission of this Agreement by any party.

56. With respect to its claim for damages for fraudulent and/or negligent misrepresentation and breach of contract, the Offeree Shareholders state:

(a) Allen-Vanguard has made no allegations of fraud, negligent misrepresentation or breach of contract against the Offeree Shareholders;

(b) the Offeree Shareholders are therefore not liable to Allen-Vanguard for any alleged damages suffered allegedly as a result of fraud, negligent misrepresentation or breach of contract;

(c) to the extent that Allen-Vanguard has advanced claims for damages arising out of fraud, negligent misrepresentation or breach of contract against Med-Eng and its former management, Allen-Vanguard is not entitled to any relief whatsoever since it has failed or neglected to add Med-Eng or any individual of Med-Eng's former management as parties to this action.

57. Under the Share Purchase Agreement, shareholders are severally and not jointly liable for claims for indemnification under Section 7.02(3). Similarly, under Section 3.02 of the Share Purchase Agreement, each Offeree Shareholder made representations and warranties "for itself and not jointly." The Offeree Shareholders deny that Allen-Vanguard is entitled to any indemnification from the defendants based on the allegations at issue in this action. In the alternative, however, Allen-Vanguard's claim for indemnification must lie against all shareholders, severally and not jointly.

58. In any event, the Offeree Shareholders deny that they, Med-Eng or Med-Eng's former management are liable to Allen-Vanguard for fraud, negligent misrepresentation or breach of contract. The Offeree Shareholders deny in their entirety the allegations of fraud, negligent misrepresentation and breach of contract, and seek an order of full indemnity costs against Allen-Vanguard for making these allegations without any or proper evidentiary foundation, in bad faith and contrary to the express terms of the Share Purchase Agreement.

59. Furthermore, in respect to its claims for damages for negligent misrepresentation and breach of contract, Allen-Vanguard waived all such claims in Section 7.06 of the Share Purchase Agreement.

No Representation or Warranty regarding Future Profitability

60. Med-Eng made no representations regarding the future financial profitability of Med-Eng. Med-Eng made no representations regarding customer relationships, expected bookings, or revenue and earnings.

61. Section 3.04 of the Share Purchase Agreement provides:

> The representations and warranties of the Corporation, each Offeree Shareholder and the Purchaser set forth in Sections 3.01, 3.02 and 3.03, respectively, are the only representations and warranties made by such party. THE CORPORATION AND EACH OFFEREE SHAREHOLDER SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING THE FURTHER PROFITABILITY OF THE CORPORATION FOLLOWING THE CLOSING DATE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN SECTIONS 3.01, 3.02 AND 3.03, THE CORPORATION, EACH OFFEREE SHAREHOLDER AND THE PURCHASER, RESPECTIVELY, MAKE NO REPRESENTATION, WARRANTY OR

GUARANTEE, EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER. [Emphasis in original.]

62. There are no representations and warranties in the Share Purchase Agreement with respect to any of the following, as alleged at paragraphs 42-58 ~~29-45~~ of the Amended Statement of Claim:

(a) expected bookings, revenue and earnings;

(b) backlog, except for Contracts as set forth in Section 3.01(4)(a);

(c) orders which were in the pipeline; and

(d) the probability of securing any order or contract.

63. Med-Eng made no representations regarding the retention of any customers or the future supply of products to any customers. Contrary to the allegations contained in paragraphs 21 to 30 of the Amended Statement of Claim, the Offeree Shareholders deny that Med-Eng withheld any knowledge or information it had with regard to planned testing of Med-Eng's ECM Chameleon unit. In the alternative, the Offeree Shareholders deny that Med-Eng intentionally or recklessly withheld disclosure of the intention of its largest and most important customer to conduct such testing. The Offeree Shareholders deny further that Med-Eng intended to deceive Allen-Vanguard in order to induce it to completing the transaction.

64. Med-Eng made full disclosure of all material facts regarding its relationship with its largest customer and any factors it was aware of which might cause that customer to switch

to a competing supplier. The Offeree Shareholders deny that Allen-Vanguard relied on any alleged misrepresentations, fraudulent or otherwise, to its detriment. Allen-Vanguard operated in the same industry as Med-Eng, was intimately familiar with the repeated and ongoing testing inherent in military procurement of ECM equipment, and had an opportunity to conduct due diligence by requesting information from both General Dynamics and Med-Eng's largest customer.

65. At paragraph 14 of Allen-Vanguard's Response to Demand for Particulars, Allen-Vanguard particularized the alleged "repeated, specific inquiries" made of Med-Eng management with respect to factors which might cause Med-Eng's largest customer to switch to a competing supplier. The first of these specific inquiries was alleged to have occurred on September 9, 2007, more than two months after Allen-Vanguard expressed its intention to offer $600 million to purchase all outstanding shares in Med-Eng and more than a month after it entered into the Share Purchase Agreement. The Offeree Shareholders deny that Allen-Vanguard relied on the response it received to these alleged inquiries in completing the transaction.

66. Med-Eng made full and frank disclosure in response to each of the specific inquiries set out in paragraph 14 to Allen-Vanguard's Response to Demand for Particulars. The Offeree Shareholders deny that Allen-Vanguard was deprived of an opportunity to address for itself the significance of the planned testing of the Chameleon ECM unit and the implications thereof.

67. Allen-Vanguard alleges that it only learned of the intention of Med-Eng's largest customer to perform certain testing of the Chameleon ECM unit following the close of the transaction. Notwithstanding this allegation, Allen-Vanguard continued to forecast the receipt of significant orders of Chameleon ECM units from this customer long after it allegedly learned of the planned testing.

68. The Offeree Shareholders deny that Med-Eng made any representations regarding orders in the pipeline from this customer during management presentations. The estimates provided to Allen-Vanguard regarding expected orders in the pipeline and the probabilities of securing them were not knowingly false, nor was Med-Eng reckless as to the truth or accuracy of its statements. Indeed, Allen-Vanguard continued to forecast similar projections following the close of the transaction for months and years after it allegedly became aware of the planned testing which it alleges Med-Eng failed to disclose.

Med-Eng Disclosed its Financial Condition in Accordance with the Share Purchase Agreement

69. Contrary to the allegations contained in paragraphs 42-58 ~~29-45~~ of the Amended Statement of Claim, Med-Eng did not misrepresent its financial condition at any time prior to the closing of the share purchase transaction.

70. Med-Eng disclosed its financial condition and its customer orders, as of June 30, 2007, in the Share Purchase Agreement and the Schedules thereto, as updated to the date of closing of the share purchase transaction.

71. Med-Eng was a party to the GD Teaming Agreement under which Med-Eng was required to contract through General Dynamics with U.S. military customers.

72. Med-Eng correctly reported all Contracts as required by Section 3.01(4)(a) of the Share Purchase Agreement.

Med-Eng Disclosed its Contingent and Other Liabilities in Accordance with the Share Purchase Agreement

73. Med-Eng disclosed contingent and other liabilities of Med-Eng in the Share Purchase Agreement and in the Schedules thereto, updated to the date of closing.

(i) Information Request from the U.S. Defence Contract Management Agency

74. Schedule 3.01(2)(d), as updated, relating to liabilities, includes a statement to the effect that the U.S. Defence Contract Management Agency ("DCMA") through Public Works and Government Services Canada ("PWGSC") had requested information in order to determine whether Med-Eng's prices quoted to General Dynamics on April 4, 2007 were fair and reasonable.

75. Med-Eng disclosed the DCMA's request (relayed to Med-Eng in a June 18, 2007 e-mail from a representative of PWGSC on behalf of DCMA) on or before August 3, 2007 at Schedule 3.01(2)(d) to the Share Purchase Agreement.

76. Med-Eng responded to all of PWGSC's requests for information.

(ii) Tax Liabilities

77. As required by Section 2.03(2) of the Share Purchase Agreement, Med-Eng delivered a statement setting out the working capital as at the month end before the closing date and setting out an estimate of the working capital as at the close of business on the day before the closing date. The certificate included a provision for income taxes payable (receivable), which provision was based on the calculation provided by Med-Eng's external tax advisors.

78. Following the closing of the transaction, pursuant to Section 2.03(3), Allen-Vanguard prepared and delivered to the Offeree Shareholders an unaudited statement setting out working capital as at the close of business on the day before the closing date which reflected an increase , as calculated by the Purchaser, in the amount of working capital of $1,030,000, payable to the former shareholders of Med-Eng.

79. The calculation of working capital payable to the former shareholders of Med-Eng was based, in part, upon the deduction of certain fees paid to CIBC World Markets in association with the transaction, under section 9(1) of the *Income Tax Act*. Contrary to paragraphs 68-71 of the Amended Statement of Claim, Med-Eng did not obtain an opinion which specifically cautioned against the deduction of these fees.

80. Further, following the close of the transaction Med-Eng did indeed benefit from the deduction of the fees paid to CIBC, a tax position which has not been challenged by the Canada Revenue Agency. Neither Med-Eng nor Allen-Vanguard suffered any damages relating to this deduction.

~~The Offeree Shareholders have no knowledge of any filing position relating to alleged deductions taken by Med-Eng in any tax return filed by Med-Eng with Canada Revenue Agency.~~

(iii) Warranty Claims

81. As represented by Med-Eng in Section 3.01(3)(g) of the Share Purchase Agreement, there were no material warranty claims against Med-Eng at the time of the closing of the share purchase transaction.

82. Med-Eng disclosed to Allen-Vanguard, before closing, the full extent of its knowledge of all quality control and manufacturing issues.

Med-Eng Disclosed the Status of its Contracts and Commitments in Accordance with the Share Purchase Agreement

83. Med-Eng represented at Section 3.01(4)(b) of the Share Purchase Agreement that it was not in default or breach, in any material respect, under any contract to which it was a party and that all of its contracts were in all material respects, in good standing.

84. With respect to the allegations contained at paragraphs 79-86 ~~66-73~~ of the Amended Statement of Claim regarding General Dynamics' allegations that Med-Eng had committed breaches under the GD Teaming Agreement, Med-Eng disclosed to Allen-Vanguard the Show Cause and Cure Notice from General Dynamics dated August 30, 2007. Med-Eng made further disclosure with respect to potential liabilities and potential litigation in Schedule 3.01(2)(d) of the Share Purchase Agreement and in Schedule 3.01(12)(a) of the Officer's Certificate delivered at closing pursuant to Section 5.01(a) of the Share Purchase Agreement.

85. Section 7.02(1)(iii) of the Share Purchase Agreement limits indemnification with respect to contravention of, non-compliance with or any other breach of the GD Teaming Agreement by Med Eng to conduct which took place on or before the closing date of the transaction (September 17, 2007).

Med-Eng Disclosed the Details of Employee Compensation in Accordance with the Share Purchase Agreement

86. Med-Eng disclosed the status of employee compensation, remuneration and benefits in the Share Purchase Agreement and the Schedules thereto, as updated at the time of closing.

87. Med-Eng did not breach its covenant in Section 4.01(e) of the Share Purchase Agreement. Med-Eng did not amend or waive any of the provisions of any of the employment contracts and other arrangements for any of the employees of Med-Eng and its subsidiaries earning annual base salary in excess of $200,000, other than as required by such contracts or arrangements.

88. Med-Eng did not promise to any employee that increased compensation would be paid following the closing of the share purchase transaction.

89. Paul Timmis ("Timmis") did not promise any employee that he would seek increased compensation on any employee's behalf and did not guarantee that increased compensation would be paid. In any event, Timmis did not have authority to bind Med-Eng as to employee compensation as he was neither an officer nor a director of the company.

90. Before the closing of the share purchase transaction, Med-Eng, with Allen-Vanguard's knowledge, negotiated an amended retention bonus with Timmis based on Timmis' significant contribution to the share purchase transaction.

91. The full cost of Timmis' amended retention bonus and certain other retention bonuses was borne by the shareholders as provided in Section 4.06 of the Share Purchase Agreement.

No Entitlement to Damages

92. The Offeree Shareholders deny that Allen-Vanguard relied on any alleged misrepresentations of Med-Eng to its detriment.

93. In any event, Allen-Vanguard's claim with respect to any alleged misrepresentations is limited to those representations and warranties made in the Share Purchase Agreement.

94. The defendants deny that Allen-Vanguard has suffered any damages as a result of any alleged breaches of the Share Purchase Agreement, which alleged breaches are denied.

95. Allen-Vanguard alleges that it spiralled into insolvency in the months following the transaction due to the misrepresentations, breaches of representations, warranties and covenants of Med-Eng.

96. The Offeree Shareholders deny all allegations that any misrepresentations, breaches of representations, warranties and covenants of Med-Eng caused Allen-Vanguard to spiral

into insolvency. Intervening events caused or contributed to Allen-Vanguard's insolvency, including but not limited to:

(a) the highly-leveraged nature of the share purchase transaction,

(b) Allen-Vanguard's mismanagement of its own business and that of Med-Eng,

(c) the termination of Paul Timmis and other key personnel,

(d) the changing political and financial climate, and

(e) a general failure to meet the demands and expectations of its customers, in contrast to the customer-focused strategy of Med-Eng under the direction of its former management.

97. Allen-Vanguard is estopped from asserting anything to the contrary of that which it represented to the CCAA Court as being relevant factors leading to its insolvency. Allen-Vanguard's position in this action is a collateral attack on the Initial Order and the Sanction Order made by the CCAA Court, which orders were made on the strength of the representations as described above. To give effect to such a position would constitute an abuse of the Court's process.

98. Further, the Offeree Shareholders deny that Allen-Vanguard is entitled to damages equal or equivalent to the purchase price paid for the shares of Med-Eng, based on the nature of the allegations set forth in the Amended Statement of Claim. Allen-Vanguard has not claimed rescission. The damages claimed are excessive, remote and not reasonably foreseeable.

99. Further, the damages claimed are not those of Allen-Vanguard, but are instead those of the former shareholders and investors of Allen-Vanguard, whose interests were severely compromised or extinguished entirely by the Sanction Order under the CCAA.

100. Allen-Vanguard further alleges in the alternative that it would have paid a significantly reduced purchase price had it been aware of the true state of Med-Eng's affairs, with part of the purchase price to be paid on a contingent basis. The Offeree Shareholders deny that Med-Eng was willing to consider any offer containing any contingent payment and deny that Med-Eng would have completed or entertained such a transaction.

101. In the alternative, Allen-Vanguard has failed to mitigate its damages in accordance with Section 7.05 of the Share Purchase Agreement. In the further alternative, Allen-Vanguard has fully mitigated any alleged losses allegedly arising out of alleged breaches of the Share Purchase Agreement by Med-Eng.

Request for Full Indemnity Costs

102. Allen-Vanguard has made unfounded allegations of fraudulent and negligent misrepresentation against Med-Eng and the former management of Med-Eng without any or proper foundation. The allegations have been made in bad faith, recklessly and without regard to the facts or the reputations of the former management of Med-Eng. The Offeree Shareholders therefore request that the action be dismissed with costs on a full indemnity basis.

June 28, 2013~~February 10, 2009~~

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Lawyers for the Defendants

ALLEN-VANGUARD CORPORATION
Plaintiff

and

RICHARD L'ABBÉ, ET AL.
Defendants

Court File No: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

AMENDED STATEMENT OF DEFENCE

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This is Exhibit "S" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No.: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

REPLY

1. The Plaintiff, Allen-Vanguard Corporation ("Allen-Vanguard"), admits the allegations contained in paragraphs 3, 5, 6, 8, 12, 14, 18, 46, 47, 51, 52, 61, 74 and 95 of the Amended Statement of Defence.

2. Allen-Vanguard denies all other allegations contained in the Amended Statement of Defence, except as expressly admitted herein.

3. Allen-Vanguard repeats and relies on the allegations made in its Amended Statement of Claim, including the definitions therein.

Allen-Vanguard's Claims Properly Asserted Against Offeree Shareholders

4. Allen-Vanguard's claims are properly asserted against the Offeree Shareholders. Under the terms of the Share Purchase Agreement, it is the Offeree Shareholders who are directly liable to indemnify Allen-Vanguard for the breaches of representations, warranties and covenants made by MES, up to $40,000,000.00, and they are further liable for any damages caused to Allen-Vanguard as a result of any fraud committed by or on behalf of MES.

5. Contrary to the assertions in the Amended Statement of Defence, Allen-Vanguard's claims are not claims against MES. The terms of the Share Purchase Agreement and Escrow Agreement provide that Allen-Vanguard's claims are to be asserted against the Offeree Shareholders. This is what was agreed to by the parties, is consistent with the structure of the transaction and reflects the parties' intentions.

6. To suggest that Allen-Vanguard must assert its claims against MES (and thereby sue the entity it was purchasing, and now itself) is commercially absurd, not supported by the transaction documents and was not intended by the parties.

7. Pursuant to the terms of the Share Purchase Agreement and Escrow Agreement, Allen-Vanguard was entitled to deliver a Notice of Claim for the Indemnification Escrow Amount, provided that it did so before December 21, 2008. The Escrow Agreement expressly provides that the Notice of Claim is to be served on the Offeree Shareholders and the Escrow Agent. It is not to be served on MES.

8. "Claims" is defined in section 1.1 of the Escrow Agreement as follows:

> **1.1 Definitions**
>
> "**Claims**" means **all losses, damages, expenses, liabilities** (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements incurred by [Allen-Vanguard] **directly or indirectly resulting from any breach of any covenant of the Corporation** or any Shareholder contained in the Share Purchase Agreement **or from any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 of the Share Purchase Agreement** or of any Shareholder set out in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b) of the Share Purchase Agreement.
>
> [Emphasis added]

9. Allen-Vanguard's Claims are not intended to be asserted against MES, but rather against the Offeree Shareholders for any losses or damages **resulting from** a breach or misrepresentation committed by MES.

10. Further, only the Offeree Shareholders are entitled to deliver a Notice of Objection to the Claim. MES has no right to object. The Agreements reflect the commercial reality that MES was the purchased entity, now owned by Allen-Vanguard, and subsequent claims were to be asserted against the Offeree Shareholders.

11. On October 6, 2008, the Offeree Shareholders delivered a Notice of Objection dated October 1, 2008, disputing each of the claims set out in the Notice of Claim. Nowhere in the Notice of Objection did the Offeree Shareholders maintain that Allen-Vanguard's claims resulting from MES' breaches of representations and warranties and misrepresentations were to be asserted against MES.

12. On the contrary, all of the transaction documents make it clear that the Offeree Shareholders are liable to indemnify Allen-Vanguard as a result of any breaches of representations and warranties up to the Indemnification Escrow Amount, except in all cases of fraud.

13. Indeed, pursuant to the terms of the Share Purchase Agreement, and as expressly admitted in the Amended Statement of Defence, in the event that Allen-Vanguard has a claim for fraud, there is no temporal or monetary limitation to such claim.

14. As a result, Allen-Vanguard's Notice of Claim expressly reserved its rights to assert any claims it had in respect of fraud.

15. Contrary to the allegations contained in paragraphs 19-21 of the Amended Statement of Defence, Allen-Vanguard is not required to name MES as a Defendant in the action in order to obtain indemnification and/or damages under the Share Purchase Agreement.

16. Section 7.02(2)(b) of the Share Purchase Agreement specifically provides that Allen-Vanguard's claims are limited to the Indemnification Escrow Amount "other than, **in all cases**, any Claim attributable to fraud". This provision, combined with section 7.06 and the definition of "Claims" in the Share Purchase Agreement means that if MES has committed a fraud, then the Offeree Shareholders are liable to indemnify Allen-Vanguard for such fraud and there is no monetary limit associated with the fraud claim.

17. This intention is further supported by the language of section 7.07 of the Share Purchase Agreement, which provides that "all amounts payable by the Corporation or the Shareholders to [Allen-Vanguard] pursuant to Article 7 will be deemed to be a decrease to the Purchase Price".

18. Section 7.07 necessarily requires the Offeree Shareholders (on behalf of all of the MES Shareholders) to indemnify Allen-Vanguard for any Claims it has for MES' breaches of representations and warranties and fraud. It provides that any amount "payable" by MES under the indemnification provisions of Article 7 (which includes any claim for fraud) is "deemed" to be a decrease to the Purchase Price, as defined in the Share Purchase Agreement. This amounts to indemnification by the Offeree Shareholders given that they completed the transaction on behalf of all MES Shareholders and benefitted from the proceeds accordingly.

19. In addition and in any event, pursuant to section 8.10 of the Share Purchase Agreement, all of Allen-Vanguard's rights and remedies under the Share Purchase Agreement are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise.

20. The Offeree Shareholders relied on MES to make representations to Allen-Vanguard to induce Allen-Vanguard to purchase their shares in MES. Having relied upon MES to effect the sale of the Offeree Shareholders' shares in MES and by taking the benefit of any proceeds associated with the sale, they are in law responsible for the breaches of representations and warranties and fraudulent misrepresentations committed by MES.

21. The Offeree Shareholders are required under the Share Purchase Agreement to indemnify Allen-Vanguard out of the Escrow Fund for breaches of the specified representations and warranties made by MES up to $40,000,000.00 and for a potentially greater amount in cases of fraud, all of which is to be accounted for as a reduction to the Purchase Price.

Minority Shareholders

22. Contrary to the allegations contained in paragraph 32 of the Amended Statement of Defence, Allen-Vanguard is entitled to seek indemnification and/or damages from the Offeree Shareholders in the form of a reduction to the Purchase Price even though the proceeds from the transaction were ultimately distributed to all of the MES Shareholders.

23. The Offeree Shareholders were the signatories to the Share Purchase Agreement on behalf of all the MES Shareholders. Allen-Vanguard's rights and remedies are therefore properly sought against the Offeree Shareholders as the contracting parties to the Share Purchase Agreement.

24. Allen-Vanguard is not obliged to pursue its claims for indemnification and/or damages against all of the minority shareholders. To the extent that the Offeree Shareholders permitted the distribution of the proceeds of the transaction to the minority shareholders, that is a matter for the Offeree Shareholders to pursue.

25. However, the Offeree Shareholders have deliberately chosen not to seek contribution from the minority shareholders. This is an admission that the Offeree Shareholders, as the signatories to the Share Purchase Agreement on behalf of all Shareholders, are the parties who are liable to reduce the Purchase Price in the event that a determination is made that MES committed breaches of representations and warranties or fraudulent misrepresentations resulting in an amount being payable by MES under Article 7 of the Share Purchase Agreement.

Allen-Vanguard's Management

26. The Amended Statement of Defence makes a number of irrelevant and incorrect allegations about the employment agreements and compensation arrangements for members of Allen-Vanguard's executive management team, all of which are denied in any event.

27. Contrary to the suggestion at paragraph 43 of the Amended Statement of Defence that members of Allen-Vanguard's executive management team were personally motivated to complete the transaction by "lucrative monetary bonuses", there were no employment or any other agreements in place prior to the closing of the transaction that provided for the payment of such bonuses upon Allen-Vanguard's acquisition of MES. Members of Allen-Vanguard's executive management team also did not receive bonuses in the amounts described in the Amended Statement of Defence as compensation for completing the transaction.

28. Allen-Vanguard was motivated to acquire MES, but the price offered by Allen-Vanguard to acquire MES was directly related to the specific representations and warranties made by MES, including fraudulent misrepresentations made by MES.

Subsequent Amalgamations

29. Allen-Vanguard denies that either the amalgamation which created AVTI in October, 2007 or AVTI's subsequent amalgamation with Allen-Vanguard in January, 2011 has extinguished or could possibly extinguish any of its claims against the Offeree Shareholders.

30. Allen-Vanguard's Claims are not "intercompany claims" as pleaded in paragraph 23 of the Amended Statement of Defence, since its claims are against the vendors of MES (i.e. the Offeree Shareholders who received the proceeds from the transaction and were the parties who

benefitted from the breaches of representations and warranties and fraudulent misrepresentations committed by MES).

31. The allegation that the subsequent amalgamation of MES following the closing of the transaction extinguishes Allen-Vanguard's claims makes no commercial sense because it would:

(a) require Allen-Vanguard to claim against MES (the wholly-owned subsidiary corporation which it purchased pursuant to the terms of the Share Purchase Agreement and from which there could be no recovery);

(b) prevent Allen-Vanguard from completing any corporate reorganization involving MES until its claim was finally resolved; and

(c) create a circumstance in which Allen-Vanguard could inadvertently extinguish a claim before discovering that such a claim even existed.

Allen-Vanguard's Conduct Following the Closing of the Transaction

32. As set out in its Amended Statement of Claim, Allen-Vanguard became aware of material information following the closing of the transaction which ought to have been disclosed to it by MES management prior to closing. When Allen-Vanguard learned of this information and came to appreciate the implications of such information, it adjusted its subsequent projections accordingly.

33. Contrary to the allegations contained in paragraphs 67 and 68 of the Amended Statement of Defence, Allen-Vanguard did not continue to forecast projections that were similar to the projections which had been represented to it by MES and its management prior to closing.

Allen-Vanguard's CCAA Application

34. Contrary to the allegations contained in paragraphs 33-36 of the Amended Statement of Defence, as at December 16, 2009, Allen-Vanguard was insolvent and its claims in this action are and were irrelevant to the determination by the Court to sanction Allen-Vanguard's Plan of Arrangement and Reorganization. The Sanction Order was made on the basis that it was in the best interests of Allen-Vanguard and its economic stakeholders and employees to restructure its debt obligations and allow it to continue to carry on business as a going concern.

35. In addition, there is no merit to the Offeree Shareholders' contention that the position taken by Allen-Vanguard in this action is a collateral attack on the Initial Order and the Sanction Order made by the CCAA Court in December, 2009. Both Allen-Vanguard's position and the allegations it has made in this action are entirely consistent with the representations that were made to the CCAA Court.

36. If there is any collateral attack on the Sanction Order, it arises from the Offeree Shareholders' assertion in their Amended Statement of Defence that the Sanction Order in any way prohibits Allen-Vanguard from pursuing its rights and remedies against the parties who caused its insolvency.

Damages Suffered by Allen-Vanguard

37. Contrary to the allegations contained in paragraphs 98 and 99 of the Amended Statement of Defence, none of the damages claimed by Allen-Vanguard are those of its former shareholders or investors. The damages claimed in this action are the damages sustained by Allen-Vanguard

as a direct result of the breaches of representations and warranties and fraudulent misrepresentations committed by MES.

38. Allen-Vanguard is not obliged to seek rescission of the Share Purchase Agreement. It is entitled to accept repudiation of the Share Purchase Agreement and seek indemnification and/or damages accordingly.

August 22, 2013

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

ALLEN-VANGUARD CORPORATION
Plaintiff

-and-

RICHARD L'ABBÉ et al
Defendants

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

REPLY

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

This is Exhibit "T" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

COURT FILE NO.: 08-43544
08-43188
08-41899

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ALLEN-VANGUARD CORPORATION v. L'ABBE et al
L'ABBE et al v. ALLEN-VANGUARD CORPORATION et al
TIMMIS v. ALLEN-VANGUARD CORPORATION et al

COUNSEL: Ronald G. Slaght Q.C. & Eli Lederman, for Allen-Vanguard

Thomas G. Conway & Christopher Hutchison,
for the offeree shareholders

Aaron Rubinoff for Paul Timmis

BEFORE: MASTER MACLEOD

ORDER & DIRECTION

[1] As counsel are aware, I released a decision in February permitting Allan-Vanguard to amend its pleadings. This was under appeal at the time of the appearance on May 16th, 2013 but RSJ Hackland has now released his ruling. Consequently the amendment has been granted and the offeree shareholders are now facing a claim of $650 million.

[2] As a term of my order I granted the opposing parties the right to make submissions regarding terms that should be imposed because of the amendments. That was the purpose of the hearing on May 16th and several terms were requested. Principal amongst those was the question of adjourning the trial.

[3] It is important to provide immediate direction. Though Mr. Slaght and Mr. Lederman strongly object to any adjournment of the trial they quite properly point out that the decision must be made now as it will be even more damaging if the trial is adjourned later in the year. Consequently I see no option but to adjourn the matter if it is the intention of the parties to try all of the issues.

[4] I am conscious of the letter received this morning advising me that notwithstanding the firmly stated intention of counsel for the offeree shareholders to move to add parties if the amendment was granted, Mr. Conway now anticipates his clients may not give him those instructions. It appears therefore that we need not be concerned with additional parties. Nevertheless the offeree shareholders have persuaded me that there will be further production and discovery disputes necessitating motions and it will be impractical to hold the parties to the September dates.

[5] It must be remembered that this trial date was set in December of 2011 at the request of both parties but in particular of the offeree shareholders. This was done despite the fact that none of these actions were ready for trial for three principal reasons. Firstly this was

expected to be a long trial although the estimate of six weeks was not extraordinarily long. There have been much longer trials and that in itself would not have justified setting the trial date two years in advance. A second consideration was the extremely busy schedules of both Mr. Slaght and Mr. Conway and the difficulty of co-ordinating large blocks of time in their respective schedules. Finally the parties had written to the Regional Senior Justice asking that the trial judge be designated well in advance and be a judge with expertise and interest in complex commercial matters. Those reasons remain sound and they are reasons why even if the adjournment is granted a new date should be set immediately. Of course Mr. Rubinoff is also involved now since I have ordered the Timmis matter tried together with the other proceedings.

[6] When the order was made setting the date, however, it was made contingent on the action being set down for trial and all necessary pre-trial requirements being met. While fixed trial dates are intended to be just that, they must yield to the imperative of achieving a just result. Even if parties are not added to the litigation, the amendment effects a fundamental change to the exposure of the offeree shareholders and it also adds issues that were either not before the court previously or which now attract enhanced significance.

[7] For example it is now pleaded that the misrepresentations of Med-Eng and the completion of the purchase based on those misrepresentations caused Allen-Vanguard to spiral into insolvency. This potentially puts in issue the management of Allen-Vanguard, the financial situation of Allen-Vanguard and its other subsidiaries, subsequent events and the CCAA proceedings. Even though fraud and damages were previously pleaded, the offeree shareholders did not have to concern themselves with damages at large beyond the $40 million in the escrow fund. Now they are faced with a damage report including two hypothetical scenarios. Given the disagreements that have already taken place over production and discovery and indeed the issues that remain outstanding it is inevitable there will be further time consuming motion activity before this case as now constituted can be tried.

[8] On the other hand there was some discussion at the hearing concerning the possibility of bifurcating the trial and Mr. Conway wishes to bring a summary judgment motion. I have ruled that it is not possible based on the wording of the SPA alone to determine that there are no circumstances that would permit recovery of more than $40 million from the offeree shareholders. RSJ Hackland has come to the same conclusion. In his decision he notes that it may be necessary to consider parol evidence. Of course the admission of parol evidence requires that the court first find that the exceptions to the "parol evidence rule" apply and the nature and extent of the evidence that will then be admitted is itself open to argument. I am inclined to agree with the submissions of Mr. Slaght that it is quite unlikely that a judge will make that kind of decision on a summary judgment motion.

[9] On the other hand it might be possible to try that question. The question is whether or not the SPA caps the liability of the offeree shareholders even if there was fraud providing it is not fraud on the part of those shareholders. Counsel could agree to try that issue.

[10] There are other threshold questions. Allen Vanguard must prove that there were misrepresentations. They must prove that the misrepresentations were relied upon and that it was reasonable to do so in the face of Allen-Vanguard's own due diligence. In

order to have any possibility of a claim above the amount in the escrow fund they must prove that the misrepresentations were fraudulent. Losing on any one of those issues is either fatal or would confine the remedy to the escrow fund.

[11] I wish to provide the parties with the opportunity to salvage the dates set aside in September as well as the two day pre-trial tentatively scheduled for July. Thus I am directing counsel to confer and to determine if it is feasible to agree to an order under Rule 6.1 and to try certain limited issues. For that purpose the court will continue to hold the scheduled trial date until the next case conference on June 12th, 2013.

[12] In any event the offeree shareholders must now prepare their amended defence and it will be necessary to deal with the scope of additional productions. The remaining privilege issues regarding the outstanding productions must be resolved and remaining discoveries must be scheduled. The offeree shareholders must determine how to respond to the expert report.

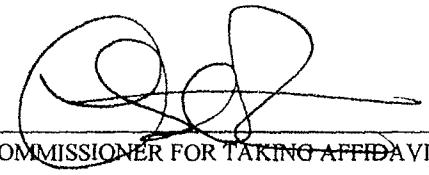
[13] These issues will be discussed and further direction provided at the next scheduled case conference.

[14] In summary the September trial will be adjourned. The court will however continue to hold the dates available and also to hold the pre-trial dates in July available pending further direction at the upcoming case conference. Counsel are to confer and to determine if trial of an issue in September would be feasible and in particular whether trial of an issue might be an alternative to spending time and resources on a summary judgment motion.

Master Calum MacLeod

Date: May 30th, 2013

This is Exhibit "U" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

COURT FILE NO.: 08-43188
08-43544
08-41899

DATE: July 9, 2013

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: L'ABBE et al v. ALLEN-VANGUARD CORPORATION et al
ALLEN-VANGUARD CORPORATION v. L'ABBE et al
TIMMIS v. ALLEN

BEFORE: Master MacLeod

COUNSEL: Thomas G. Conway & Chris Hutchison for the "offeree shareholders"
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Aaron Rubinoff for Paul Timmis
Phone: (613) 566-2837 **Fax:** (613) 238-8775 **Email:** arubinoff@perlaw.ca

ENDORSEMENT

1. The offeree shareholders and Allen-Vanguard have each proposed timetables. Unfortunately they are different. This is principally because of the planned motions – for summary judgment on the one hand and to stay summary judgment on the other.

2. There is also the question of the privilege motion which was adjourned from today. Quite sensibly the parties have agreed to postpone that until the pleadings are once again closed. There may also be privilege issues in connection with the summary judgment motion since the offeree shareholders will be seeking to introduce evidence about the intention of the parties in negotiating the share purchase agreement and it has yet to be determined how Allen-Vanguard will respond to that.

3. Counsel for Allen-Vanguard urges the court to fix a new trial date for October of 2014. I am not prepared to fix a new date and make it peremptory until one of the parties is prepared to set the matter down for trial or at least the path to trial is clear and uncluttered by substantial controversies that are likely to derail the schedule. That said, even if the trial is now 10 weeks, it could readily be accommodated in October of 2014 and provided the date is confirmed by March or April of 2014 it will remain a viable date. The offeree shareholders agree to work towards that target.

4. The parties have each decided to bring motions that are guaranteed to build delay into the schedule. Statistically the majority of such motions are unsuccessful. On the other hand the benefit to the successful party if the motions achieve their objective is obvious. Thus it appears there will be a summary judgment motion and then a motion to stay the summary judgment motion prior to delivery of the responding materials. This is the plan but I have invited counsel to consider whether or not this is the optimum way to proceed.

5. In addition, though the motion to stay is within my jurisdiction, there may be merit in having it heard by the judge who would be hearing the summary judgment motion. Thought will also be required about the materials needed for the stay motion because one of the criteria on such a motion is the question of the apparent merits of the underlying summary judgment motion. See for example *Stever v. Rainbow International Carpet,* 2013 ONSC 1574; (2013) 115 O.R. (3d) 138 (S.C.J.) It therefore appears likely to me that once the materials have actually been served new issues are likely to emerge and some may disappear. Given the track record to date I would also be amazed if there were not controversies arising from cross examination on affidavits that will have to be reviewed.

6. Given the uncertainties that the motions will introduce, though this does not mean that other steps in the proceeding should be put on hold, there is a certain futility to trying to schedule too far into the future at this point in time. There will be a case conference in September and additional conferences have been scheduled through the fall.

7. I have advised the parties there are currently no dates left for long motions before judges before the end of this year. Counsel also have certain trial commitments. I will recommend to RSJ Hackland that a single judge should be appointed to hear all judges' motions and to designate that judge. Once I know the answer to that I will be able to provide the parties with potential dates for motions in October or December. The timetable may have to be adjusted as a result.

8. The question of appointing a neutral e-discovery expert as a discovery monitor remains open. While that might be relief requested on the privilege motion I am told, there is also the possibility that this step should be taken in advance of that motion so that the parties and the court would have the benefit of neutral review and a report to the court. I invite counsel to consider this further.

9. **THE COURT THEREFORE ORDERS AS FOLLOWS:**

    1. The parties are to work towards a targeted trial date in October of 2014. The viability of this date will be reviewed at the beginning of next year and the date confirmed no later than the beginning of April depending on the status of the action at that time.

    2. The following dates are added to the timetable (or amended as the case may be):

        1. Allen-Vanguard's reply to the amended defence will be due on **July 30th, 2013.**

2. Revised affidavits of documents are to be served by **August 23rd, 2013.**

3. Allen-Vanguard's response to the written submissions of the offeree shareholders regarding costs thrown away and the motion to set aside the costs of the amendment motion will be due on **August 9th, 2013.**

4. The offeree shareholders are to serve their motion material for the privilege motion by **September 6th, 2013.**

5. Subject to further order or agreement, Allen-Vanguard is to serve responding material for the privilege motion by **September 30th, 2013.**

6. The offeree shareholders are to serve the material for the summary judgment motion no later than **October 16th, 2013.**

7. Allen-Vanguard is to serve its motion material to stay the summary judgment motion by **October 31st, 2013.**

3. Although the next case conference is not scheduled until September, the parties may request an earlier date and I will make myself available.

Master Calum MacLeod

DATE: July 9, 2013

This is Exhibit "V" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

COURT FILE NO.: 08-43188
08-43544
08-41899

DATE: October 2, 2013

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: L'ABBE et al v. ALLEN-VANGUARD CORPORATION et al
ALLEN-VANGUARD CORPORATION v. L'ABBE et al
TIMMIS v. ALLEN

BEFORE: Master MacLeod

COUNSEL: Chris Hutchison, for the "offeree shareholders"
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Aaron Rubinoff, for Paul Timmis
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ENDORSEMENT

1. The amended pleadings have now been served and there have been revised affidavits of documents.

2. There is already a timetable in place for the exchange of materials for the privilege motion, the summary judgment motion and the stay motion but dates have not been set for those motions.

3. There has been a recent request for documents by the offeree shareholders and Allen Vanguard has not yet responded to this. The response will be provided shortly and of course this may give rise to a further need for adjudication.

4. Allen Vanguard would like to have a deadline for the completion of discoveries. I agree this is an appropriate goal as is rescheduling the trial but I am of the view it is premature until the timing of these motions is clear and the parties can assess what cross examinations on affidavits (if any) will be required.

5. I have set December 10th, 2013 as the date for the privilege motion before me. Four hours will be set aside. As there is an early morning case conference scheduled then subject to further direction the motion will be scheduled to commence at 9:00 or 9:30.

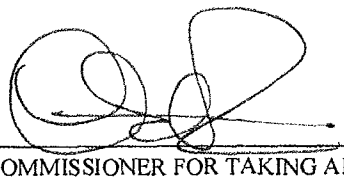
6. RSJ Hackland has agreed to hear the stay motion and the summary judgment motion. It is probable there should be a conference call with him to schedule those matters but I will speak with him today and advise counsel how he wishes to proceed.

7. We will review the practicality of scheduling the discoveries and setting the trial date at each of the next case conferences with a view to having a timetable in place as soon as possible. Counsel are of course encouraged to discuss these matters on an ongoing basis.

Master Calum MacLeod

DATE: October 2, 2013

This is Exhibit "W" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING AFFIDAVITS

cavanagh LLP/s.r.l.
LITIGATION COUNSEL / BOUTIQUE DE LITIGE

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Assistant: Ellie Côté
Direct Line: 613.780.2015
E-mail: ecote@cavanagh.ca

October 10, 2013

VIA EMAIL

Mr. Eli Lederman
Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide Street West, Suite 2600
Toronto ON M5H 3P5

Dear Mr. Lederman:

RE: RICHARD L'ABBÉ, ET AL. V. ALLEN-VANGUARD CORPORATION, ET AL.; CFN. 08-CV-43188
ALLEN-VANGUARD CORPORATION V. RICHARD L'ABBÉ, ET AL.; CFN. 08-CV-43544
OUR MATTER ID: 1267-001

Yesterday, a representative of our client, GrowthWorks Canadian Fund Ltd ("GrowthWorks"), informed us that GrowthWorks had made an application and obtained an Initial Order under the *Companies' Creditors Arrangement Act* (the "CCAA"). We enclose a copy of the Initial Order of Mr. Justice Newbould, made October 1, 2013.

As you will note from your review of the Initial Order, paragraph 14 states that "any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court." This includes the above-referenced actions.

We are still in the process of assessing the implications of the Initial Order obtained by Growthworks with respect to the ongoing litigation between Allen-Vanguard Corporation and the Offeree Shareholders, but for the time being the actions are stayed and we will not be delivering motion materials or taking any other steps until the stay is lifted.

We intend to advise Master MacLeod of the above-referenced stay. We enclose a copy of the letter that we will be sending to Master MacLeod.

We hope that you will agree that our proposal to address this development at the next case conference is appropriate.

Yours very truly,

Thomas G. Conway

TGC/CJH

Encl.

This is Exhibit "X" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER FOR ~~TAKING AF~~FIDAVITS

cavanagh LLP/s.r.l.
LITIGATION COUNSEL | BOUTIQUE DE LITIGE

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E-mail: ecote@cavanagh.ca

October 10, 2013

VIA EMAIL

Case Management Centre
Superior Court of Justice
161 Elgin Street, Room 5022
Ottawa ON K2P 2K1

Attention: Case Management Master Calum MacLeod

Dear Master MacLeod:

RE: ALLEN-VANGUARD CORPORATION V. RICHARD L'ABBÉ, ET AL.; CFN. 08-CV-43544
OUR MATTER ID: 1267-001

Yesterday, a representative of one of our clients, Growthworks Canadian Fund Ltd ("Growthworks"), informed us that GrowthWorks has made an application and obtained an Initial Order under the *Companies' Creditors Arrangement Act* (the "CCAA") from the Superior Court of Justice on October 1, 2013. We enclose for your reference a copy of the Initial Order, made by Mr. Justice Newbould on October 1, 2013. You will see from the Initial Order, the CCAA proceeding is on the Commercial List in Toronto.

In accordance with paragraph 14 of the Initial Order, "any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court."

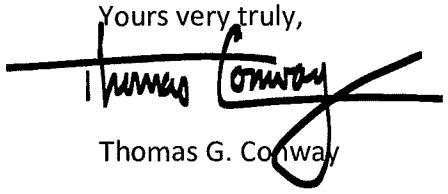
We have informed Lenczner Slaght of this development. We have also stated to them that, in light of this development, we cannot serve any motion materials or take any active steps in this litigation until we sort out the issues with GrowthWorks, the monitor or the presiding judge in the CCAA proceedings.

We hope that the delay will be minimal, but we do not have enough information at the moment to estimate the length of the delay. Subject to any direction you may have, we propose to address this development at the next scheduled case conference. At that time, we

hope to be in a position to address any necessary adjustments to the case management timetable.

We hope that you will find this proposed approach to be satisfactory.

Yours very truly,



Thomas G. Conway

CJH/ec

c: Mr. Eli Lederman (Via Email)

Encl.

This is Exhibit "Y" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.

A COMMISSIONER ~~FOR TAKING~~ AFFIDAVITS

Lenczner Slaght

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October 11, 2013

Eli S. Lederman
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VIA EMAIL

Master Calum MacLeod
Ontario Superior Court of Justice
Ottawa Court House
161 Elgin Street
Ottawa, ON K2P 2K1

Dear Master MacLeod:

RE: Allen-Vanguard Corporation v. Richard L'Abbé, et al.
Court File Nos. 08-CV-43544 and 08-CV-43188
Our File No.: 39177

We are in receipt of Mr. Conway's letter dated October 10, 2013. We did not have an opportunity to respond directly to Mr. Conway, hence we are directing this letter to you.

Although the Initial Order dated October 1, 2013 stays proceedings against Growthworks Canadian Fund Ltd., there is of course no stay of this proceeding against the Schroder Defendants, Mr. L'Abbe or 1062455 Ontario Inc.

As a result, there is no basis for these defendants not to comply with the timetable set by this Court. Those Offeree Shareholders are still required to deliver their motion material for the summary judgment motion by October 16, 2013 and there is no reason why that deadline should not be complied with.

The fact that all defendants are represented by Mr. Conway is not a factor that has any bearing on the obligations of the unaffected defendants to meet this Court's requirements.

We are certainly prepared to convene a Case Conference to discuss the implications of the Initial Order on the proceedings against Growthworks. However, the Initial Order has no impact on the continuation of the proceedings against the remaining defendants.

In the circumstances, we expect to receive the motion material of the unaffected Offeree Shareholders by October 16, 2013.

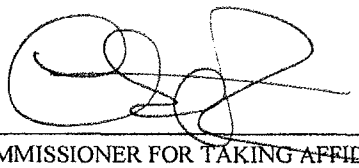
In addition, we are still awaiting the delivery of the Offeree Shareholders' motion material for the privilege motion and we would ask that these also be delivered by October 16, 2013.

Yours very truly,

Eli S. Lederman
ESL/tr

cc: Thomas G. Conway
Christopher J. Hutchison
Calina N. Ritchie
Ronald G. Slaght
Ian MacLeod

This is Exhibit "Z" referred to in the Affidavit of David E. Luxton sworn before me this 28th day of October, 2013.



A COMMISSIONER FOR TAKING ~~AFFIDA~~VITS

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October 15, 2013

VIA EMAIL

Mr. Eli Lederman
Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide Street West, Suite 2600
Toronto ON M5H 3P5

Dear Mr. Lederman:

RE: RICHARD L'ABBÉ, ET AL. V. ALLEN-VANGUARD CORPORATION, ET AL.; CFN. 08-CV-43188
ALLEN-VANGUARD CORPORATION V. RICHARD L'ABBÉ, ET AL.; CFN. 08-CV-43544
OUR MATTER ID: 1267-001

This letter responds to yours of October 13, 2013, addressed to Master Calum MacLeod.

In our view, your letter asks Master MacLeod to interpret the order of Mr. Justice Newbould, made in the CCAA proceeding. The order of Mr. Justice Newbould makes no reference to this action specifically, but applies to all proceedings in which GrowthWorks is named as a party. On a plain reading, the order applies to any such proceeding generally, and makes no express exceptions for other parties that might be involved in proceedings in which GrowthWorks is named as a party.

Your interpretation of Mr. Justice Newbould's order may well be correct, but regrettably it is not for Master MacLeod to say. If you are not correct, you are asking Master MacLeod to interpret and vary the order of a judge. A Master does not have the jurisdiction to vary the order of a judge of the Superior Court.

As you know from the terms of Mr. Justice Newbould's order itself, there is, as is usual in CCAA proceedings, provision for another hearing to consider whether the Initial Order should be continued or varied in any material way. In our view, your concerns, which we share, should be addressed in that forum.

As you will note, the Initial Order expires at the end of October, so we hope that we will know by then what GrowthWorks' continued involvement in the above-noted actions will be.

A related issue, to which your letter makes only passing reference, is that of our joint retainer with the Offeree Shareholders. You do not appear to give this issue any serious consideration, but as you well know, we have been acting for all of the Offeree Shareholders on a joint retainer and must therefore receive the same instructions from all of them. At the moment, the court order prevents us from taking any further steps in the proceeding on behalf of GrowthWorks. As a consequence, until GrowthWorks' status in the above-noted proceedings is clarified, we cannot take any fresh steps on behalf of any of our clients.

I can assure you again that our clients are as anxious as yours is to move these proceedings along. We are hoping to have this issue resolved at the earliest possible opportunity, and to that end have been in contact with McCarthy Tétrault, counsel to GrowthWorks in the CCAA proceedings. You might consider contacting McCarthy Tétrault yourself to impress upon them the urgency of having this issue resolved.

Yours very truly,

Thomas G. Conway

TGC