



**Supplement to the Second Report to  
Court of KSV Restructuring Inc. as  
Proposal Trustee of Allied Track  
Services Inc.**

**April 1, 2021**

## Contents

	<b>Page</b>
1.0 Introduction .....	1
1.1 Purposes of this Report.....	1
1.2 Restrictions .....	2
2.0 Amendments to the APA .....	2
3.0 ATEC Priority Dispute.....	3
4.0 DIP Amendment.....	4
5.0 Bankruptcy .....	5
6.0 Conclusion and Recommendation .....	5

## Appendices

<b>Appendix</b>	<b>Tab</b>
Second Report of the Proposal Trustee, dated March 9, 2021 (without appendices).....	A
A&R Asset Purchase Agreement, dated April 1, 2021.....	B
Blackline of A&R APA vs. Original APA.....	C
DIP Amendment, dated April 1, 2021.....	D



COURT FILE NO.: 32-2705503

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
ALLIED TRACK SERVICES INC.,  
A CORPORATION INCORPORATED UNDER THE LAWS  
OF ONTARIO

SUPPLEMENT TO THE SECOND REPORT OF KSV RESTRUCTURING INC. AS  
PROPOSAL TRUSTEE OF  
ALLIED TRACK SERVICES INC.

APRIL 1, 2021

## 1.0 Introduction

1. This report (the “Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as proposal trustee (the “Proposal Trustee”) in connection with a Notice of Intention to Make a Proposal (“NOI”) filed by Allied Track Services Inc. (“Allied” or the “Company”) on January 21, 2021 pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*.
2. This Report is submitted as a supplement to the Second Report of the Proposal Trustee, dated March 9, 2021 (the “Second Report”), a copy of which is attached (without appendices) as Appendix “A”. This Report should be read in conjunction with the Second Report, and capitalized terms used but not otherwise defined in this Report have the meanings given to them in the Second Report.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) update the Court regarding the amendments made to the APA that have resulted in the Amended and Restated Asset Purchase Agreement dated April 1, 2021 (“A&R APA”);
  - b) advise the Court of a priority dispute raised by Allied Track Equipment Company LLC (“ATEC”) and the arrangements made to address the concerns raised by ATEC;

- c) discuss the terms of an amendment to a term sheet dated January 21, 2021 (the “DIP Term Sheet”) between the Company and the Agent (the “DIP Lender”) pursuant to which, among other things, the maximum amount of the debtor-in-possession facility (the “DIP Facility”) is to be increased from \$3 million to \$5 million (the “DIP Amendment”);
- d) recommend that the Court issue an order:
  - approving the Transaction and vesting title in and to the purchased assets described in the A&R APA in the Purchaser, or as it may direct, free and clear of all liens, claims and encumbrances, upon the Proposal Trustee filing a certificate confirming, among other things, the completion of the Transaction;
  - authorizing the Proposal Trustee to hold the “Escrowed Amount” in escrow, pending agreement of 2700902 Ontario Inc. (“2700902”) and ATEC, or further order of the Court;
  - approving the DIP Amendment and increasing the DIP Lender’s Charge by \$2 million to an aggregate maximum amount of \$5 million;
  - empowering and authorizing the Proposal Trustee to file an assignment in bankruptcy on behalf of the Company, and appointing KSV as the trustee in bankruptcy in respect of same; and
  - granting certain ancillary relief related to the foregoing.

## 1.2 Restrictions

1. This Report is subject to the restrictions and qualifications set out in section 1.2 of the Second Report, which are incorporated herein by reference.

## 2.0 Amendments to the APA<sup>1</sup>

1. The original APA contemplated satisfaction of the Purchase Price by a combination of the Purchaser assuming a portion of the debts and liabilities outstanding immediately prior to closing and the Purchaser paying a cash component to cover the Wind Down Amount. The Purchaser also had the option under the original APA to pay the Priority Payables (estimated to be \$1.8 million), or, with the consent of the Vendor and the Proposal Trustee, assume the Priority Payables in a priority position superior to any and all other indebtedness of the Purchaser. Subsequent to entering into the original APA, it was determined that this purchase price allocation would create tax inefficiencies for the Purchaser.

---

<sup>1</sup> Capitalized terms not otherwise defined in this section shall have the meanings ascribed to them in the A&R APA.

2. On April 1, 2021, the Company and the Purchaser entered into the A&R APA, a copy of which, and a copy of a blackline against the original APA, are attached as Appendices “B” and “C”, respectively. The A&R APA, among other things, modified the payment of the Purchase Price such that the Purchase Price will now be satisfied by: (i) the Purchaser issuing an interest bearing promissory note (the “Purchaser Note”) to the Company in the amount of \$15 million, (ii) the Purchaser issuing to the Company certain shares in the capital of the Purchaser (the “Purchaser Shares”), (iii) the Purchaser paying a cash amount into escrow (defined as the “Escrowed Amount”) to account for a priority dispute discussed below, and (iv) the Purchaser assuming certain liabilities. There are no changes to the treatment of the Priority Payables or the Wind-Down Amount in the A&R APA.
3. As a post-closing matter, the Company will immediately assign all of its right, title and interest in the Purchaser Note and the Purchaser Shares to the Agent.
4. The primary purpose of the amendments to the APA is to maximize tax efficiencies for the Purchaser resulting from the Transaction. In addition to the tax restructuring, the Escrowed Amount has been added to the A&R APA to accommodate claims made by ATEC, discussed below in Section 3.0.
5. In the Proposal Trustee’s view, the majority of the changes to the APA that have resulted in the A&R APA are internal tax structuring matters and the revisions do not affect the rights or interests of the Company’s stakeholders. The addition of the Escrowed Amount, which affects ATEC (a third party), will enable the Transaction to close without prejudice to ATEC’s claims and without prejudice to the claims and interests of any other third-party stakeholder.
6. Moreover, in the Proposal Trustee’s view, the changes to the APA are not material to the conduct or integrity of the SISP. Had the A&R APA been tabled as the stalking horse bid in the SISP against which potential bidders made offers, the Proposal Trustee does not believe that the process would have resulted any differently.
7. Accordingly, the Proposal Trustee continues to recommend the Transaction, as formalized in the A&R APA, for the reasons set out in section 3.7 of the Second Report.

### **3.0 ATEC Priority Dispute**

1. Following the service of the Company’s motion record seeking the approval of the Transaction and the service of the Second Report, the Proposal Trustee was contacted by a representative of ATEC regarding certain equipment in respect of which ATEC has PPSA registrations (the “ATEC Equipment”).
2. The Security Opinions attached as Appendix “D” to the Second Report provided legal conclusions regarding the validity and enforceability of the Agent’s security, including the Agent’s security with respect to the ATEC Equipment, however the Security Opinions expressly do not opine on the priority of that security interest. The searches attached to the Security Opinions include ATEC’s registrations.

3. The nature of the concerns raised by ATEC regarding the ATEC Equipment is related to ATEC's priority as against 2700902. The Proposal Trustee has been in discussions with ATEC's counsel and with the Purchaser's and 2700902's counsel regarding these priority issues, including assisting with assembling the facts necessary to determine the relative priorities to the ATEC Equipment. The dispute is a complicated factual and legal matter involving several geographical jurisdictions and multiple time periods.
4. The resolution of the priority dispute over the ATEC Equipment is unlikely to be resolved prior to the anticipated closing date of the Transaction. Accordingly, the A&R APA provides that the Escrowed Amount will be deposited with the Proposal Trustee, and will stand in the place and stead of the ATEC Equipment for the purposes of ATEC's priority claims. This will permit the Transaction to close, and for the dispute regarding the ATEC Equipment to be negotiated or adjudicated on a timeline commensurate with the factual complexity of the issues.
5. The Escrowed Amount is in the amount of \$5 million, which slightly exceeds the total amount owed to ATEC by the Company. The Escrowed Amount is a monetization of a portion of the Installment Contract Debt owing to 2700902 that was otherwise going to be assumed by the Purchaser, and therefore does not represent a change in the aggregate purchase consideration. The only parties affected by this change are ATEC and 2700902, both of which have been consulted about the Escrowed Amount and both of which the Proposal Trustee understands are supportive.
6. If ATEC has priority to some or all of the ATEC Equipment, a portion of the Escrowed Amount equal to the value of such ATEC Equipment will be paid to ATEC. If ATEC does not have priority to the ATEC Equipment (or has priority to ATEC Equipment the value of which is less than the Escrowed Amount), then the Escrowed Amount (or the applicable remainder of the Escrowed Amount) will be distributed to 2700902. In either case, the disposition of the dispute over the ATEC Equipment does not affect other stakeholders, and no other creditor is prejudiced.
7. Based on the foregoing, the Proposal Trustee supports and recommends the proposed use of the Escrowed Amount to address the dispute with respect to the ATEC Equipment.

#### **4.0 DIP Amendment**

1. A copy of the DIP Amendment is attached as Appendix "D".
2. Pursuant to the terms of the DIP Amendment, the maximum availability under the DIP Facility is to be increased by \$2 million to \$5 million, and the maturity date of the facility has been extended to May 21, 2021.
3. Due to the delay in closing the Transaction and in order to fund the Company's business in the ordinary course to the end of March 2021, the Company required funding from the DIP Lender of approximately \$250,000 greater than the amount currently authorized under the DIP Term Sheet (\$3 million). This amount was required to pay critical operating costs, including payroll and vendors.

4. The Proposal Trustee supported the funding of this amount in advance of the return of this motion on the basis that it was critical to the business and the fact that the DIP Lender is the Purchaser. The Proposal Trustee is also of the view that funding this amount in advance of Court approval reduced the risk of operational disruption, which could have adversely affected the Transaction and the Company's stakeholders.
5. The Proposal Trustee recommends the Court issue an order approving the DIP Amendment because:
  - a. the Company requires additional funding to continue to operate the business while the Purchaser works to close the Transaction;
  - b. funding the business without disruption is in the interest of completing the Transaction, which will maximize recoveries and offer continued employment for approximately 21 salaried employees;
  - c. the DIP Lender requires that these advances have the priorities and protections afforded to the DIP advances to date in these proceedings; and
  - d. no stakeholder is prejudiced by the DIP Amendment, including the retroactive approval of the amounts funded in excess of the approved DIP limit.

## 5.0 Bankruptcy

1. The Proposal Trustee's views on the proposed bankruptcy of Allied are contained in Section 6 of the Second Report and are unchanged.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(d) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
ALLIED TRACK SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**





**Second Report to Court of  
KSV Restructuring Inc. as Proposal  
Trustee of Allied Track Services Inc.**

**March 9, 2021**

## Contents

	<b>Page</b>
1.0 Introduction .....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions .....	3
1.3 Currency .....	3
1.4 Court Materials .....	3
2.0 Background .....	3
3.0 SISP .....	5
3.1 Marketing Process .....	5
3.2 Bid Deadline .....	5
3.3 SISP Results.....	5
3.4 The APA .....	6
3.5 Assignment Order .....	9
3.6 Security Opinion .....	9
3.7 Transaction Recommendation .....	9
4.0 Company's Request for an Extension.....	10
5.0 Cash Flow Forecast.....	11
6.0 Bankruptcy .....	11
7.0 Update on Company's Activities .....	12
8.0 Proposal Trustee's Activities.....	12
9.0 Conclusion and Recommendation .....	13

## Appendices

<b>Appendix</b>	<b>Tab</b>
Court Order dated January 22, 2021 .....	A
Stalking Horse Asset Agreement dated January 21, 2021 .....	B
Blakes and TDS Security Opinions .....	C
Cash Flow Forecast and Management's Report on Cash Flow .....	D
Proposal Trustee's Report on Cash Flow .....	E



COURT FILE NO.: 32-2705503

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
ALLIED TRACK SERVICES INC.,  
A CORPORATION INCORPORATED UNDER THE LAWS  
OF ONTARIO

SECOND REPORT OF KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE OF  
ALLIED TRACK SERVICES INC.

MARCH 9, 2021

## 1.0 Introduction

1. This report (the "Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as proposal trustee (the "Proposal Trustee") in connection with a Notice of Intention to Make a Proposal ("NOI") filed by Allied Track Services Inc. ("Allied" or the "Company") on January 21, 2021 pursuant to subsection 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA").
2. The principal purpose of the Company's restructuring proceedings is to create a stabilized environment to allow the Company to enter a transaction for the sale of its business and assets (the "Allied Business").
3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") issued January 22, 2021 (the "January 22 Order"), among other things:
  - a. a sale and investment solicitation process (the "SISP") and related bid and auction procedures were approved;
  - b. a Stalking Horse Asset Purchase Agreement dated January 21, 2021 (the "APA") with 2806401 Ontario Inc. (the "Purchaser"), an entity related to Bridging Finance Inc. (the "Agent"), the Company's principal secured creditor, was approved, solely for the purpose of acting as the stalking horse bidder in the SISP;
  - c. the deadline to file a proposal and the corresponding stay of proceedings was extended to April 6, 2021; and

- d. an Administration Charge (up to the maximum amount of (\$500,000), DIP Lender's Charge (up to the maximum amount of \$3,000,000), and Directors' Charge (up to the maximum amount of \$1,500,000) were granted (each as defined in the January 22 Order).

A copy of the January 22 Order is attached as Appendix "A".

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) summarize the results of the SISP;
  - b) summarize a proposed transaction (the "Transaction") between the Company and the Purchaser, for the sale of substantially all of the Company's assets, operations and undertakings pursuant to the APA;
  - c) report on the Company's cash flow projection for the period March 8, 2021 to May 21, 2021 (the "Cash Flow Forecast");
  - d) provide the Court with an update on the Company's and the Proposal Trustee's activities during these proceedings;
  - e) discuss the rationale for authorizing the Proposal Trustee to file an assignment in bankruptcy on behalf of the Company;
  - f) recommend that the Court issue orders:
    - approving the Transaction and vesting title in and to the purchased assets described in the APA in the Purchaser, or as it may direct, free and clear of all liens, claims and encumbrances, upon the Proposal Trustee filing a certificate confirming, among other things, the completion of the Transaction;
    - approving the Proposal Trustee's activities as set out in this Report and the First Report of the Trustee dated January 21, 2021 (the "First Report");
    - extending the deadline for the Company to file a proposal from April 6, 2021 to May 21, 2021, as well as extending the stay of proceedings through to and including such date; and
    - empowering and authorizing the Proposal Trustee to file an assignment in bankruptcy on behalf of the Company, and appointing KSV as the trustee in bankruptcy in respect of same.

## 1.2 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company, the Company's books and records and discussions with the Company's management. The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.
3. An examination of the Cash Flow Forecast as outlined in the *Chartered Professional Accountants Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based upon the Company's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.
4. References in this Report to the impact of COVID-19 on the Company are based on preliminary enquiries and assumptions using available data. Consumer, supply chain, governmental and other macro-economic factors related to COVID-19 will affect the Company and such changes may be material. The full impact of COVID-19 is unknown and cannot be qualitatively or quantitatively assessed at this time.

## 1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

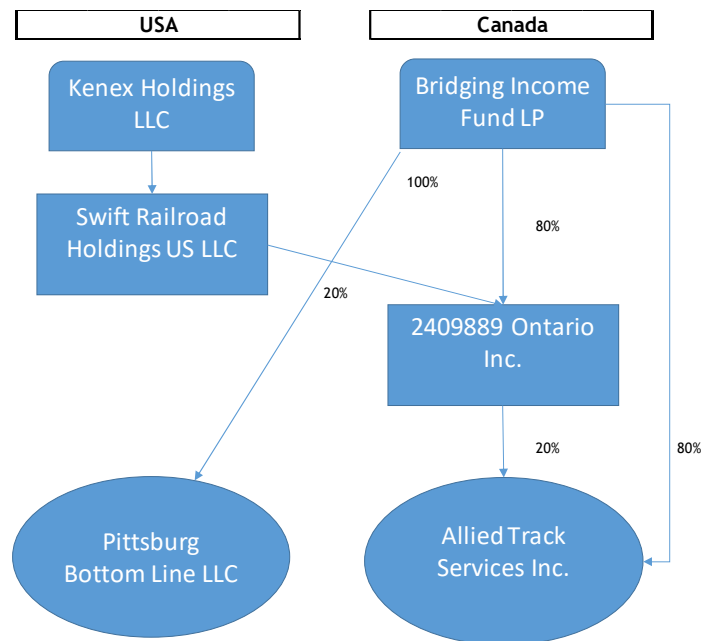
## 1.4 Court Materials

1. Court materials filed in these proceedings, including copies of affidavits of Andrew Stuart Jones, the Company's Chief Executive Officer, sworn on January 21, 2021 and March 8, 2021, can be found on the Proposal Trustee's website at <https://www.ksvadvisory.com/insolvency-cases/case/allied-track-services>.

## 2.0 Background

1. The Company was founded in Ontario in 1987 and is a railroad maintenance service provider, offering an array of services including track maintenance and repair, construction, bridging, civil engineering, flagging, signalling and related services.
2. The Company leases its head office in Grimsby, Ontario. The Company also operates from leased locations in Nipissing, Ontario, Calgary, Alberta, Springfield, Manitoba and Kamloops, British Columbia.

- The Company is 80% owned by Bridging Income Fund LP and 20% owned by 2409889 Ontario Inc. ("240"). Bridging Income Fund LP owns 80% of 240 and, as a result, directly and indirectly, owns 96% of the shares of the Company. A copy of the Company's organizational chart is below:



- In 2017, Bridging Income Fund LP acquired Pittsburg Bottom Line LLC ("Bottom Line"), a Texas-based rail bridge contractor to compliment the Company's services and offerings. Bottom Line is an affiliate of the Company.
- 240, Swift Railroad Holdings US LLC ("Swift") and Bottom Line are all guarantors of the Company's obligations owing to the Agent. None of the guarantors are a party to these proceedings, and no insolvency proceedings have been initiated in respect of Swift or Bottom Line in the USA.
- The Company's employee base fluctuates seasonally. At the commencement of these proceedings, the Company employed 27 salaried full-time employees and 20 hourly, part-time employees. The majority of the Company's employees are in Ontario. The Company's British Columbia, Manitoba, Ontario, Saskatchewan and Alberta based part-time employees are unionized, while all others are non-unionized.
- The Company's operations are generally comprised of two divisions: track maintenance and signalling. The track maintenance division has incurred significant losses, which has led to the Company being unable to satisfy its obligations, including to the Agent.

## **3.0 SISP**

### **3.1 Marketing Process**

1. In accordance with the January 22 Order, Bottom Line's business and assets were marketed concurrently with the Allied Business through the SISP. Prospective purchasers interested in acquiring the Allied Business and Bottom Line business were required to provide a purchase price allocation between Allied's and Bottom Line's business and assets.
2. A summary of the activities undertaken in the SISP is as follows:
  - a) following the issuance of the January 22 Order, the Proposal Trustee distributed an interest solicitation letter to potential purchasers and investors detailing the acquisition opportunity ("Teaser");
  - b) the Teaser was sent to 106 prospective purchasers, comprised of Canadian and US operators, financial groups and other strategic parties;
  - c) included with the Teaser was a form of confidentiality agreement ("CA") that interested parties were required to execute in order to obtain access to an online data room that was managed by the Proposal Trustee. Parties that signed the CA also were provided with a Confidential Information Memorandum prepared by the Proposal Trustee providing additional details about the SISP opportunity;
  - d) the data room contained historical and projected financial information and other relevant information, including real property leases and all material contracts and agreements. A soft copy of the APA was also made available in the data room; and
  - e) the bidding procedures also provided that a "Qualified Bid" must provide for minimum consideration of approximately \$104.8 million, unless otherwise waived by the Proposal Trustee after consultation with Bottom Line, Allied and the Agent.

### **3.2 Bid Deadline**

1. Pursuant to the January 22 Order, the bid deadline was February 24, 2021 (the "Bid Deadline").
2. In order to allow the Proposal Trustee and the Company to compare the offers submitted in the SISP, all interested parties were encouraged to submit offers in the standard form of the template purchase and sale agreement provided by the Company and to blackline any changes made to that form of agreement.

### **3.3 SISP Results**

1. A summary of the results of the SISP is as follows:
  - a) twelve parties executed the CA and were provided access to the data room;
  - b) four parties requested and received management meetings; and

- c) at the time of the Bid Deadline, two non-binding written letters of intent were received by the Proposal Trustee, neither of which provided for consideration in an amount sufficient to satisfy the Agent's secured debt. Despite the requirement in the SISP, no binding offers were received. An additional written offer was submitted seeking to purchase certain of the heavy equipment owned by Allied Track Equipment Company LLC for an amount significantly less than the Agent's secured debt.
2. The Proposal Trustee also received a verbal expression of interest for a potential transaction regarding the Bottom Line business only. However the proposed terms of such transaction were not acceptable to the Agent, and no formal offer was submitted.

### 3.4 The APA<sup>1</sup>

1. A copy of the APA is attached as Appendix "B".
2. The key terms and conditions of the APA are provided below. Readers are encouraged to refer to the APA attached hereto for specific terms and details.
  - **Purchaser:** 2806401 Ontario Inc.;
  - **Purchase Price:** estimated to be \$104.873 million, made up of the following amounts:
    - a) an amount equal to the Bridging Debt (estimated to be \$88.653 million);
    - b) an amount equal to the Installment Contract Debt;
    - c) an amount required to satisfy the Priority Payables;
    - d) an amount equal to the Assumed Liabilities. The Assumed Liabilities include the DIP Facility which is expected to be approximately \$2.7 million as of the Closing Date; and
    - e) an amount required to satisfy the Wind Down Amount (estimated to be \$100,000).
  - **Purchased Assets:** all of the Company's assets used in the Allied Business, other than the Excluded Assets.
  - **Excluded Assets:**
    - a) any contracts, agreements and/or understandings to which the Company is a party other than those contracts that are assigned to the Purchaser; and

---

<sup>1</sup> Capitalized terms in this section have the meaning provided to them in the Agreement.



- b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance, capitalization or existence of the Vendors.
- **Assumed Liabilities:** all of the Company's obligations relating to:
  - a) the Bridging Debt and the Installment Contract Debt;
  - b) the Purchased Assets arising and accruing in respect of the period after the Time of Closing and not related to any default existing at, prior to or as a consequence of Closing;
  - c) the obligations and Liabilities of the Vendor with respect to the Transferred Employees;
  - d) the DIP Facility; and
  - e) any other Liability which the Purchaser agrees in writing to assume on or before the Closing Date.
- **Excluded Liabilities:** other than the Assumed Liabilities and the Contract Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfill any Liability or obligation of the Vendor or in connection with the Purchased Assets or the Business.
- **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
- **Closing:** the date that is three (3) Business Days after the conditions of Closing are satisfied or waived, or such other date that the Parties, acting reasonably, may mutually agree.
- **Material Conditions:**
  - For the Benefit of both Parties
    - (i) the Approval and Vesting Order in the form appended to the Agreement shall have been issued and entered and shall not have been stayed, amended, modified, reversed or dismissed as at the Closing Date;
    - (ii) no provision of any applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect; and
    - (iii) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the transactions contemplated by the Agreement.

#### For the Benefit of the Purchaser

- (i) the representations and warranties of the Company contained in the Agreement shall be true and correct as of the Closing Date in all material respects;
- (ii) the Company shall have fulfilled or complied with all covenants contained in the Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date;
- (iii) the Company shall not be and shall not have become a bankrupt under the BIA;
- (iv) the Company shall have obtained consents from the counterparties to the Consent Required Contracts that have been designated as Assigned Contracts from the counterparties to those agreements and shall have delivered such consents to the Purchaser; and
- (v) the Assignment Order, if requested by the Purchaser, shall have been issued and entered in form and substance satisfactory to the Purchaser.

#### For the Benefit of the Company

- (i) the representations and warranties of the Purchaser contained in the Agreement shall be true and correct as of the Closing Date in all material respects; and
  - (ii) the Purchaser shall have fulfilled or complied with all covenants contained in the Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date.
- **Termination:** the Agreement can be terminated:
    - (i) by mutual consent of the Company and the Purchaser;
    - (ii) if any of the conditions in favour of the Purchaser or the Company are not waived or satisfied;
    - (iii) by the Purchaser or the Company if the Approval and Vesting Order, once granted, shall have been amended or modified in a manner adverse to such party, or if it is stayed, reversed, dismissed or ceases to be in full force and effect;
    - (iv) by the Purchaser if the Assignment Order, if requested and once granted, shall have been amended or modified in a manner adverse to the Agent, or if it is stayed, reversed or ceases to be in full force and effect; or
    - (v) automatically if the Closing has not occurred by 11:59 p.m. on the Outside Date.

### **3.5 Assignment Order**

1. The Purchaser has indicated that it requires certain of Allied's material contracts to be assigned to the Purchaser upon Closing. The Purchaser understands it will need to cure any monetary amounts owing in respect of such consent-required contracts for them to be assigned. All counterparties to the contracts that are proposed to be assigned will be served with the motion materials.

### **3.6 Security Opinion**

1. Because the Bridging Debt is being assumed as part of the Transaction, the Proposal Trustee instructed its counsel, Blakes Cassels & Graydon LLP ("Blakes"), to perform a review of the Agent's security to determine its enforceability and validity. As part of its review, Blakes engaged Thompson Dorfman Sweatman LLP ("TDS") to perform a review of the Agent's security in Manitoba. Copies of the Blakes and TDS security opinions are attached hereto as Appendix "C" (the "Security Opinions").
2. As set out in detail in the Security Opinions, Blakes and TDS have concluded that in respect of the provinces of British Columbia, Alberta, Manitoba and Ontario, the Agent holds a valid and enforceable security interest in the personal property of Allied pledged to the Agent, subject to the standard assumptions and qualifications contained in the Security Opinions.
3. The Security Opinions note a typographical error in the General Security Agreement issued by Allied in favour of the Agent, dated March 8, 2017, which typographical error is not material, misleading or sufficient to invalidate the security granted.

### **3.7 Transaction Recommendation**

1. The Proposal Trustee recommends that the Court issue an order approving the Transaction, including the Assignment Order, for the following reasons:
  - a) the SISP was conducted fairly and transparently, in accordance with the terms approved by the Court pursuant to the January 22 Order, including the timelines it established, which allowed multiple parties to perform due diligence. No interested parties requested an extension to the process;
  - b) the book value of the assets of Allied and Bottom Line was approximately \$40.7 million as at December 31, 2020, which is significantly less than the secured debt owing to the Agent;
  - c) the Transaction contemplates the continuation of the Company's operations, which, among other things, will preserve approximately 95 jobs and both customer and supplier relationships;
  - d) the market was widely canvassed during the SISP, pursuant to an open, Court approved process in which good faith efforts were made to sell or otherwise dispose of the assets to any and all interested parties;

- e) no alternative offers superior to the Transaction were received as a result of the SISP, and accordingly the consideration to be received pursuant to the Transaction is superior to the consideration that would be received under any other offer;
- f) absent the Transaction, given the absence of alternative bids, a protracted marketing period would be necessary. The ongoing professional fees and other costs of such a process would erode the recoveries with no certainty that a superior transaction could be completed;
- g) the terms of the APA are commercially reasonable;
- h) based on the information the Proposal Trustee has reviewed, the Purchaser should be able to fulfil the Company's obligations under the Assigned Contracts; and
- i) for the foregoing reasons, the Transaction would be either more beneficial to the creditors of the Company than a sale or disposition under bankruptcy, or in the case of creditors who would receive no distributions under either scenario, the result of the Transaction and the result of a bankruptcy would be the same.

#### **4.0 Company's Request for an Extension**

1. The Company's deadline to file a proposal is currently April 6, 2021. The Company is requesting an extension of this deadline until May 21, 2021 so that it can complete the Transaction.
2. The Company is expecting to close the Transaction prior to April 6, 2021, but is requesting the extension as a contingency so that if there are delays in Closing, the Company does not need to incur the costs of returning to Court to request an extension. There are also a number of procedural and administrative tasks that the Company will be required to complete prior to and following the Closing. The requested extension will ensure that the Company is able to complete these tasks under the supervision of the Proposal Trustee.
3. The Proposal Trustee supports the request for an extension of the deadline to file a proposal for the following reasons:
  - a) the Company has been acting, and continues to act, in good faith and with due diligence;
  - b) no creditor will be prejudiced by the extension;
  - c) it will provide additional time to complete the Transaction, should the need arise, and avoid the need for an additional court attendance in such a scenario;
  - d) as of the date of this Report, neither the Company nor the Proposal Trustee is aware of any party opposed to an extension;

- e) the Company is projected to have sufficient liquidity to fund its operations until May 21, 2021; and
- f) while it is unlikely that the Company will file a proposal before the expiry of the extended deadline, or at all, the extension requested will make it more likely that the Company would be able to file a viable proposal once the Transaction has closed.

## 5.0 Cash Flow Forecast

1. The Company has prepared a cash flow forecast for the period of the requested extension. The Company's Cash Flow Forecast for the period March 8, 2021 to May 21, 2021, together with Management's Report on the Cash Flow Statement, is provided in Appendix "D".
2. The Cash Flow Forecast reflects that the Company will have sufficient liquidity until May 21, 2021. The total commitment under the DIP Facility is \$3 million. The current amount outstanding under the DIP Facility is approximately \$1.6 million. The total amount expected to be drawn under the DIP Facility as of May 21, 2021 is approximately \$2.8 million.
3. Based on the Proposal Trustee's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee's Report on the Company's Cash Flow Statement is attached as Appendix "E".

## 6.0 Bankruptcy

1. Following completion of the Transaction and the transition of Allied's employees and management to the Purchaser, the Company is expected to have no remaining employees, and potentially no directors. It may accordingly become prudent to assign the Company into bankruptcy to facilitate final wind-down steps in accordance with the procedures in the BIA.
2. In the event that a bankruptcy becomes necessary or desirable, and in the event that at such time the Company does not have the ability to assign itself into bankruptcy, it would be more efficient for the Proposal Trustee to initiate the bankruptcy process than waiting until the deadline to file a proposal elapses so that the bankruptcy is deemed to occur.
3. Accordingly, to avoid a further attendance before this Court or force the Company to have to wait-out the deadline to file a proposal, the Proposal Trustee supports the Company's request for an order empowering and authorizing the Proposal Trustee to file an assignment in bankruptcy on behalf of the Company.
4. In the event of a bankruptcy (whether filed proactively by the Company or Proposal Trustee, or occurring automatically due to the failure of the Company to file a proposal), the Proposal Trustee is optimally suited to act as trustee in bankruptcy (the "Bankruptcy Trustee").

5. The Proposal Trustee has extensive knowledge of the Company's operations, finances, books and records and stakeholders as a result of its tenure as Proposal Trustee. In order to fulfil the role of Bankruptcy Trustee, another licenced insolvency trustee would be required to wastefully expend resources obtaining the knowledge that the Proposal Trustee already has.
6. Accordingly, the Proposal Trustee acting as Bankruptcy Trustee would be the most efficient and reasonable result, and to the Proposal Trustee's knowledge would not prejudice any creditor. The Proposal Trustee supports the Company's request for the Court to authorize the Proposal Trustee to act as Bankruptcy Trustee, subject to affirmation at the first meeting of creditors.

## **7.0 Update on Company's Activities**

1. The Company's activities since the commencement of the proceedings have included:
  - a) communicating with suppliers to secure goods and services during these proceedings and to address payment terms;
  - b) considering and implementing cost-saving initiatives;
  - c) corresponding regularly with representatives of the Proposal Trustee regarding operational and restructuring issues;
  - d) addressing employee-related matters, including terminating several employees;
  - e) reviewing and disclaiming a lease agreement;
  - f) corresponding with the Agent and providing the required reporting; and
  - g) facilitating the SISP and working with the Proposal Trustee in this regard.

## **8.0 Proposal Trustee's Activities**

1. The Proposal Trustee's activities from the date of the First Report have included:
  - a) corresponding regularly with the Company's senior executives regarding various matters in these proceedings;
  - b) mailing statutory notices of the proceedings to the Company's creditors;
  - c) continuing to assist the Company with communications to suppliers, customers and other parties;
  - d) responding to creditor inquiries;
  - e) monitoring the Company's receipts and disbursements;
  - f) reviewing the Company's weekly borrowing base reporting to the Agent;
  - g) reviewing the Company's funding requests;

- h) assisting the Company to prepare updated cashflow forecasts;
- i) assisting the Company with communications to employee unions regarding the transition of employees to the Purchaser;
- j) engaging with Blakes, the Proposal Trustee's legal counsel, and Bennett Jones LLP ("Bennett Jones"), counsel to the Company, concerning various matters in these proceedings;
- k) corresponding with the Company and Bennett Jones regarding the disclaimer of lease agreements;
- l) carrying out the SISP, including working with potential bidders, negotiating confidentiality agreements, facilitating the data room and other diligence materials, considering and responding to inquiries and requests from potential bidders and other stakeholders, and assessing proposals submitted;
- m) corresponding with the Company regarding the SISP;
- n) dealing with the Company's creditors and arranging for the continuation of services post filing;
- o) facilitating information requests from interested parties; and
- p) coordinating with Blakes and TDS regarding the review and analysis of the Agent's security over the assets of the Company and the Security Opinions; and
- q) preparing this Report.

## 9.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(f) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
ALLIED TRACK SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “B”**



## AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

This amended and restated asset purchase agreement is dated April 1, 2021 between Allied Track Services Inc. (the “**Vendor**”) and 2806401 Ontario Inc. (the “**Purchaser**”, collectively with the Vendor, the “**Parties**” and either one, a “**Party**”).

### RECITALS:

- (a) The Vendor filed a notice of intention to make a proposal (the “**NOI**”) under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”);
- (b) The Vendor and the Purchaser entered into a Stalking Horse Asset Purchase Agreement dated January 21, 2021 (the “**Original Agreement**”), under which the Vendor agreed to sell substantially all of the assets used in the Business and to assign certain Liabilities, and the Purchaser agreed to purchase such assets and assume such Liabilities upon the terms and conditions contained in the Original Agreement;
- (c) The Vendor obtained an order from the Court pursuant to the BIA that, among other things, authorized the Vendor to enter into the Original Agreement and to conduct a marketing and sale process in accordance with the Stalking Horse Sales Process (as defined in the Original Agreement) (the “**Sale Process Order**”);
- (d) The Stalking Horse Sales Process has been run in accordance with the Original Agreement and the Sale Process Order, and the Stalking Horse Bid under the Original Agreement has been determined to be the Winning Bid (as defined in the Original Agreement); and
- (e) The Vendor and the Purchaser desire to amend and restate the Original Agreement, to provide for the sale by the Vendor of substantially all of the assets used in the Business to, and the purchase of such assets and assumption of certain Liabilities by, the Purchaser upon the terms and conditions contained in this Agreement.

In consideration of the above and for other good and valuable consideration, the Parties agree as follows.

### ARTICLE 1 INTERPRETATION

#### Section 1.1 Definitions.

As used in this Agreement, including the recitals hereto, the following terms have the following meanings:

“**Accounts Receivable**” shall have the meaning defined in Section 2.1(c).

**“Administration Charge”** means the charge granted by the Court to secure the fees and expenses of the Administrative Professionals;

**“Administrative Professionals”** means the Vendor’s legal counsel, the Proposal Trustee, the Proposal Trustee’s legal counsel, and a Trustee in Bankruptcy and its counsel, if one is appointed.

**“Agreement”** means this amended and restated asset purchase agreement, including all schedules annexed hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

**“Approval and Vesting Order”** means an approval and vesting order of the Court in form and substance acceptable to the Parties, acting reasonably, that, among other things, approves this Agreement and the transactions contemplated hereby, and vests in and to the Purchaser the Purchased Assets free and clear of and from any and all Encumbrances other than Permitted Encumbrances.

**“Assigned Contract”** means:

- (a) each Collective Agreement; and
- (b) any other contract to which the Vendor is a party and the benefit of which is assigned to the Purchaser in accordance with Article 4 or by way of an Assignment Order.

**“Assignment Order”** means an order of the Court requiring the assignment to the Purchaser of contracts (designated by the Purchaser) to which the Vendor is a party, in form and substance satisfactory to the Purchaser and the Vendor, each acting reasonably.

**“Assumed Installment Contract Debt”** shall have the meaning defined in Section 5.2(b)(ii).

**“Assumed Installment Contract Debt Amount”** means (a) the amount of the Installment Contract Debt, less (b) the Escrowed Amount.

**“Assumed Liabilities”** shall have the meaning defined in Section 3.1.

**“Bankruptcy Costs”** means the costs of any bankruptcy of the Vendor under the BIA that may be required on the termination of the Proposal Proceedings.

**“BIA”** shall have the meaning defined in the Recitals.

**“Bridging Debt”** means all indebtedness of the Vendor owing to Bridging Finance Inc., as agent, whether pursuant to: (i) a letter agreement dated March 8, 2017 as amended and restated by letter agreement dated November 15, 2017, as amended; (ii) the DIP Facility; or (iii) otherwise.

**"Business"** means the businesses operated by the Vendor, which consists of (i) track production, repair and installation, and (ii) signal maintenance, rehabilitation and construction.

**"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Toronto, Ontario.

**"Closing"** shall have the meaning defined in Section 11.1.

**"Closing Date"** means the date that is three (3) Business Days after the conditions of Closing in Article 10 of this Agreement are satisfied or waived, or such earlier or later date that the Parties, acting reasonably, may mutually agree.

**"Closing Date Assumed Liabilities"** means the Assumed Liabilities solely to the extent such liabilities constitute current liabilities of the Vendor payable on, accruing to, or arising prior to the Closing Date.

**"Closing Date Assumed Liabilities Amount"** means the aggregate book amount of the Closing Date Assumed Liabilities as agreed by the Parties in accordance with Section 5.3.

**"Collective Agreement"** means any collective agreement, letter of understanding, letter of intent or other written communication or contract with any trade union, association that may qualify as a trade union, council of trade unions, employee bargaining agent or affiliated bargaining agent, which would cover any of the employees of the Vendor.

**"Consent Required Contracts"** means the contracts to which the Vendor is a party and which are not assignable in whole or in part without the consent, approval or waiver of the party or parties thereto other than the Vendor.

**"Contract Assumed Liabilities"** shall have the meaning defined in Section 4.1(2).

**"Court"** means the Ontario Superior Court of Justice (Commercial List).

**"Cure Payment"** means a payment solely required to comply with subsection 84.1(5) of the BIA to cure any existing monetary default or breach of the Vendor under any contract which is to become an Assigned Contract as at the date such contract becomes an Assigned Contract.

**"Debt Settlement Transactions"** shall have the meaning defined in Section 9.7.

**"Directors"** means collectively, anyone who is or was, or may be deemed to be or have been, whether by statute, operation of Law or otherwise, a director or a *de facto* director of the Vendor;

**“Directors’ Charge”** means the charge granted by the Court in favour of the Vendor’s Directors and Officers securing the Vendor’s indemnity obligations to those Directors and Officers;

**“DIP Charge”** means the charge granted by the Court to secure all amounts owed to Bridging Finance Inc., as agent, pursuant to the terms of the DIP Facility;

**“DIP Facility”** means the credit facility made available to the Vendor pursuant to a DIP Term Sheet between Bridging Finance Inc., as agent, and the Vendor, as borrower, dated January 21, 2021;

**“Employee Plans”** means all the employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, retirement, pension, registered retirement savings, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers or employees of the Vendor maintained, sponsored or funded by the Vendor, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered.

**“Encumbrances”** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, license, right of first refusal or first offer, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant, execution, levies, or other financial or monetary claims or encumbrances of any nature (whether at Law or equity), and any contract, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing.

**“Escrowed Amount”** means \$5,000,000;

**“ETA”** shall have the meaning defined in Section 6.1.

**“Excluded Assets”** shall have the meaning defined in Section 2.2.

**“Excluded Liabilities”** shall have the meaning defined in Section 3.2(1).

**“Governmental Authority”** means: (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international, multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**“GST/HST”** means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA.

**“Installment Contract Debt”** means all indebtedness of the Vendor owing to 2700902 Ontario Inc., pursuant to an Installment Sale Contract No. 4915 between the

Vendor and Progress Rail Equipment Leasing Corporation which was subsequently assigned by Progress Equipment Leasing Corporation to Bridging Finance Inc., as agent, pursuant to an Assignment and Assumption Agreement dated June 6, 2019 and further assigned by Bridging Finance Inc., as agent, to 2700902 Ontario Inc. pursuant to an Assignment and Assumption Agreement dated June 11, 2019.

**"Intellectual Property"** means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (vii) computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs; and (viii) any other intellectual property and industrial property.

**"Issued Preferred Shares"** means 35,000,000 Preferred Shares in the capital of the Purchaser, such shares to be retractable at the option of the holder for an aggregate redemption amount of \$35,000,000, subject to such terms as the Parties may agree prior to Closing, acting reasonably.

**"Issued Shares"** means, collectively, (a) the Issued Preferred Shares, and (b) 30,000,000 Common Shares in the capital of the Purchaser, subject to equitable adjustment in the event of any stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares, or any similar event, in respect of the Purchaser occurring prior to the Closing.

**"ITA"** shall have the meaning defined in Section 6.3.

**"Laws"** means any principle of common law and all applicable: (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws; (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Authority; and (iii) to the extent that they are treated as binding by the Governmental Authority or have the force of law, policies, guidelines, notices and protocols of any Governmental Authority.

**"Liability"** means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or

determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in or under statute, contract, tort, strict liability or otherwise), and includes all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation) (collectively, "**Liabilities**").

"**Material Contracts**" means, collectively:

- (a) the contracts, licenses and agreements listed in Schedule "A"; and
- (b) any other contract, license or agreement to which the Vendor is at any time a party or pursuant to which the Vendor has at any time acquired rights and would reasonably be expected to be material to the Business.

"**NOI**" shall have the meaning defined in the Recitals.

"**Notice**" shall have the meaning defined in Section 13.1.

"**Officers**" means collectively, anyone who is or was, or may be deemed to be or have been, whether by statute, operation of Law or otherwise, an officer or a *de facto* officer of the Vendor;

"**Ordinary Course**" means, with respect to the Vendor, an action consistent with the past practices of the Vendor prior to the filing of the NOI and taken in the ordinary course of the normal day-to-day business and operations of the Vendor, provided that such action is in compliance, in all material respects, with applicable Laws (provided that it is required to comply with the requirements of the NOI proceedings).

"**Outside Date**" means May 21, 2021, or such later date as may be agreed to in writing by the Parties.

"**Parties**" shall have the meaning defined in the Recitals.

"**Permitted Encumbrances**" means all security interests and other interests arising exclusively from the Assumed Liabilities, Contract Assumed Liabilities, the Bridging Debt and the Installment Contract Debt.

"**Person**" includes an individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government (including any Governmental Authority) or any other entity, whether or not having legal status.

"**Post-Closing Obligations**" shall have the meaning defined in Section 5.2.

"**Proposal Proceedings**" means the NOI proceedings that have been or will be commenced by the Vendor under the BIA.

"**Proposal Trustee's Certificate**" shall have the meaning defined in Section 11.1(3).

**“Priority Payables”** means all amounts owing (including all amounts accrued but not yet payable) by the Vendor as of the Closing Date which rank *pari passu* or in priority to either of the Bridging Debt or the Installment Contract Debt, including, without limitation:

- (a) all source deductions relating to salary, wages, bonuses and other compensation of all employees;
- (b) all GST/HST related to the Business;
- (c) any amounts secured by, or to be secured by, the Administration Charge; and
- (d) any amounts secured by, or to be secured by, the Directors’ Charge

**“Proposal Trustee”** means KSV Restructuring Inc., pursuant to its appointment as proposal trustee of the Vendor under the BIA.

**“Purchase Price”** shall have the meaning defined in Section 5.1.

**“Purchased Assets”** shall have the meaning defined in Section 2.1.

**“Purchaser”** shall have the meaning defined in the Recitals.

**“Purchaser Note”** means an interest bearing promissory note issued by the Purchaser to the Vendor with a principal amount equal to the Purchaser Note Amount, upon commercially reasonable terms (including with respect to security) to be agreed prior to Closing by the Parties acting reasonably.

**“Purchaser Note Amount”** means \$15,000,000.

**“Sales Process Order”** shall have the meaning defined in the Recitals.

**“Tangible Personal Property”** means, collectively, all furniture, fixtures, equipment, inventory, leasehold improvements, machinery, tools, vehicles, office equipment, racking, supplies, computers, telephones and other tangible personal property.

**“Tax”** means: (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers’ compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines,

additions to tax or other additional amounts imposed by any Governmental Authority on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Party.

**“Time of Closing”** means 12:01 a.m. (Toronto time) on the Closing Date, or such other time as the Parties may agree.

**“Transfer Taxes”** shall have the meaning defined in Section 6.2.

**“Transferred Employees”** means all Unionized Employees and all non-union employees of the Vendor who accept offers of employment given in accordance with this Agreement from the Purchaser.

**“Trustee in Bankruptcy”** means the trustee (as defined in the BIA) appointed over the estate of the Vendor pursuant to the BIA, in the event that the Vendor makes or is deemed to have made an assignment in bankruptcy, or where an application for a bankruptcy order concerning the Vendor is made by a party other than the Vendor.

**“Unionized Employees”** means employees of the Vendor who are employed under the terms of a Collective Agreement.

**“Vendor”** shall have the meaning defined in the Recitals.

**“Wind Down Amount”** means the amount necessary to fund the costs to wind down and complete the Proposal Proceedings after the Closing Date, including, without limitation, any Bankruptcy Costs.

**“Wind Down Estimate”** means an estimate of the Wind Down Amount that is prepared by the Proposal Trustee, in form and substance satisfactory to the Purchaser, acting reasonably.

## **Section 1.2 Date for Any Action.**

If the date on which any action is required to be taken hereunder by a Party is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

## **Section 1.3 Gender and Number.**

Any reference in this Agreement to gender includes all genders. Words importing the singular number only shall include the plural and vice versa.



#### **Section 1.4 Headings, etc.**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

#### **Section 1.5 Currency.**

All references in this Agreement to dollars or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

#### **Section 1.6 Certain Phrases, etc.**

In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". Unless otherwise specified, the words "Article" and "Section" followed by a number mean and refer to the specified Article or Section of this Agreement.

#### **Section 1.7 Statutes.**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

#### **Section 1.8 Schedules.**

The schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.

## **ARTICLE 2 PURCHASED ASSETS**

#### **Section 2.1 Purchased Assets.**

Subject to the terms and conditions of this Agreement, except for the Excluded Assets, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, on the Closing Date, effective as of the Time of Closing, all undertakings, property and assets of the Vendor, including any and all assets that relate to or are used in connection with the operation of the Business (collectively, the "**Purchased Assets**"), including but not limited to the following assets, free and clear of all Encumbrances (other than Permitted Encumbrances):

- (a) all cash on hand, cash equivalents and bank deposits;
- (b) all Tangible Personal Property;
- (c) all accounts receivable, notes receivable and other debts due or accruing due to the Vendor (the "**Accounts Receivable**");

- (d) all prepaid expenses and deposits;
- (e) all customer files;
- (f) the benefit of all of the Assigned Contracts, provided that such benefit shall not be sold, transferred and assigned until the relevant Assigned Contract becomes an Assigned Contract in accordance with Article 4 or pursuant to an Assignment Order;
- (g) all Intellectual Property owned or licensed by the Vendor;
- (h) the proceeds of any and all refunds that may be due to the Vendor from Canada Revenue Agency and from any provincial tax authorities;
- (i) all consents, whether express or implied, granted in favour of the Vendor in accordance with *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada) (commonly known as “Canada’s Anti-Spam Law” or “CASL”);
- (j) to the extent transferrable, all orders, authorizations, approvals, licenses or permits of any Governmental Authority, owned, held or used by the Vendor;
- (k) all information in any form relating to, or used in connection with, the Business, including books of account, financial and accounting information and records, personnel records (other than records with respect to former employees or employees who do not become Transferred Employees), sales and purchase records, customer and supplier lists, business reports, operating guides and manuals, plans and projections, marketing and advertising materials, corporate records, and all other documents, files, correspondence and other information (whether in written, printed, electronic or computer printout form, or stored on computer discs or other data and software storage and media devices), which for greater certainty, shall not include the books and records set out in Section 2.2;
- (l) all customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations;
- (m) all claims, actions, causes of action, indemnities, warranties (including supplier warranties), guarantees, rights of recovery, rights of set-off and rights of recoupment of the Vendor;
- (n) all telephone numbers;
- (o) all proceeds payable to the Vendor upon any policies of insurance; and

- (p) the goodwill of the Business, including the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor (including all business names related thereto).

## **Section 2.2 Excluded Assets.**

Notwithstanding anything herein contained to the contrary, the Purchaser shall not purchase the Vendor's right, title and interest in and to the following assets (collectively, the "**Excluded Assets**"):

- (a) the benefit of any contracts, agreements and/or understandings to which the Vendor is a party other than those contracts that are assigned to the Purchaser pursuant to Article 4 or an Assignment Order; and
- (b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance, capitalization or existence of the Vendor.

The Purchaser may, at its option, prior to Closing, exclude any of the Purchased Assets from the transactions contemplated hereby by delivering to the Vendor written notice of same, whereupon such asset(s) shall be deemed to form part of the Excluded Assets provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

## **ARTICLE 3 ASSUMED LIABILITIES**

### **Section 3.1 Assumed Liabilities.**

Subject to the Closing, and except for the Excluded Liabilities, the Purchaser agrees to assume, as of the Time of Closing, all of the Vendor's obligations and Liabilities (and no other obligations or Liabilities) relating to (collectively, the "**Assumed Liabilities**"):

- (a) the Purchased Assets arising and accruing in respect of the period after the Time of Closing and not related to any default existing at, prior to or as a consequence of Closing (which excludes all obligations and Liabilities in connection with the Assigned Contracts, the assumption of obligations and Liabilities of which is dealt with pursuant to Article 4);
- (b) the obligations and Liabilities of the Vendor with respect to the Transferred Employees that are expressly assumed by the Purchaser pursuant to this Agreement; and
- (c) any other Liability which the Purchaser agrees in writing to assume on or before the Closing Date.

### **Section 3.2 Excluded Liabilities.**

- (1) Other than the Assumed Liabilities and the Contract Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfill any Liability or obligation of the Vendor or in connection with the Purchased Assets or the Business (the “**Excluded Liabilities**”), whether known, unknown, direct, indirect, absolute, contingent or otherwise arising out of facts, circumstances or events, in existence on or prior to the Time of Closing (with respect to the Assumed Liabilities) or, subject to Article 4, on or prior to the date on which a contract to which the Vendor is a party becomes an Assigned Contract, respectively (with respect to the Contract Assumed Liabilities).
- (2) Without limiting the generality of Section 3.2(1), the Purchaser shall not assume and shall have no obligation in respect of (i) any of the Excluded Assets or (ii) except as expressly provided herein, any Liabilities of the Vendor for Taxes other than as set out in Section 6.1 and Section 6.2.

## **ARTICLE 4 ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND LEASES**

### **Section 4.1 Assignment of Assigned Contracts.**

- (1) On or prior to Closing, the Purchaser may, in its sole discretion, designate any contract to which the Vendor is a party to become an Assigned Contract, provided however that any Consent Required Contract shall be so designated by the Purchaser no later than seven (7) days prior to obtaining the Approval and Vesting Order.
- (2) Subject to Section 4.2, on Closing the Vendor shall be deemed to have assigned the benefit of any Assigned Contract and the Purchaser shall be deemed to have assumed, all of the Vendor’s obligations and Liabilities relating to such Assigned Contract arising and accruing in respect of the period after Closing and not related to any default existing at, prior to or as a consequence of the Closing or of the assignment of such Assigned Contract (collectively, the “**Contract Assumed Liabilities**”), in each case without payment of any additional consideration.

### **Section 4.2 Consent Required Contracts.**

- (1) Nothing in this Agreement shall be construed as an agreement to assign any Consent Required Contract, unless the consent, approval or waiver required to assign such Consent Required Contract has been given or an Assignment Order has been made with respect to such Consent Required Contract.
- (2) The Vendor and the Purchaser shall use reasonable commercial efforts to obtain the consents, approvals and waivers required for the assignment of the Consent Required Contracts that are designated as Assigned Contracts. Other than the payment of Cure Payments in accordance with this Agreement, which the Purchaser shall be required to pay, the Purchaser and the Vendor shall be under no obligation

to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain any consent, approval or waiver for any Consent Required Contract.

- (3) Upon request by the Purchaser, such request to be made no later than seven (7) days prior to obtaining the Approval and Vesting Order, the Vendor shall obtain the Assignment Order, should the Purchaser and Vendor not otherwise obtain any of the consents provided for in Section 4.2(2) above.

## **ARTICLE 5 PURCHASE PRICE**

### **Section 5.1 Purchase Price.**

The aggregate purchase price for the Purchased Assets shall be made up of the following amounts (in the aggregate, the “**Purchase Price**”), in each case exclusive of Transfer Taxes:

- (a) an amount equal to the value of the Bridging Debt owing immediately prior to the Time of Closing;
- (b) an amount equal to the Installment Contract Debt;
- (c) an amount required to satisfy the Priority Payables;
- (d) an amount equal to the Closing Date Assumed Liabilities Amount; and
- (e) an amount required to satisfy the Wind Down Amount.

### **Section 5.2 Payment of Purchase Price.**

The Purchase Price shall be satisfied by the Purchaser as follows, and the Vendor hereby directs the Purchaser to satisfy the Purchase Price in accordance with this Section 5.2 and this shall be the Purchaser’s good and sufficient authority for so doing:

- (a) as to the amount referred to in Section 5.1(a), by:
  - (i) the Purchaser issuing to the Vendor the Purchaser Note; and
  - (ii) the Purchaser issuing to the Vendor the Issued Shares as fully paid and non-assessable shares in the capital of the Purchaser;
- (b) as to the amount referred to in Section 5.1(b), by:
  - (i) wire transfer of immediately available funds in an amount equal to the Escrowed Amount to the Proposal Trustee on Closing to be dealt with as set out in the Approval and Vesting Order; and

- (ii) the Purchaser assuming a portion of the Installment Contract Debt equal to the Assumed Installment Contract Debt Amount, applied first to principal amount and second (if applicable) to accrued but unpaid interest (the "**Assumed Installment Contract Debt**");
- (c) as to the amount referred to in Section 5.1(c), by:
  - (i) wire transfer of immediately available funds to the Vendor on Closing; or
  - (ii) with the consent of the Vendor and the Proposal Trustee, which may be withheld at the discretion of either party (acting reasonably), by assumption of any Priority Payables not paid in such manner on Closing, assumed in a priority position superior to any and all other indebtedness of the Purchaser, as reasonably determined among the Purchaser, the Vendor and the Proposal Trustee;
- (d) as to the amount referred to in Section 5.1(d), by the Purchaser assuming the Closing Date Assumed Liabilities; and
- (e) as to the amount referred to in Section 5.1(e), by wire transfer of immediately available funds to the Proposal Trustee on Closing.

For greater certainty, the assumption by the Purchaser of the Assumed Liabilities other than the Closing Date Assumed Liabilities (the "**Post-Closing Obligations**") has been taken into account with respect to the determination of the aggregate Purchase Price payable pursuant to this Article 5 and the assumption of such Post-Closing Obligations by the Purchaser does not constitute separate or additional consideration hereunder in respect of the Purchased Assets.

**Section 5.3 Allocation of Purchase Price.** The Parties shall agree upon the allocation of the Purchase Price in respect of the Purchased Assets, both acting reasonably, prior to Closing or by such other date as the Parties agree. The Parties shall each report the purchase and sale of the Purchased Assets for all federal, provincial and local tax purposes in accordance with the agreed upon allocation and this Agreement.

**Section 5.4 Wind Down Amount.**

Prior to Closing, the Proposal Trustee will deliver to the Purchaser the Wind Down Estimate. If the Wind Down Amount exceeds the Wind Down Estimate, the Purchaser shall deliver to the Vendor by wire transfer such additional funds as are required to fund the Wind Down Amount within three (3) Business Days of written request by the Vendor to the Purchaser. If the Wind Down Amount is lower than the Wind Down Estimate, the Vendor shall notify the Purchaser of such excess and deliver to the Purchaser by wire transfer such excess funds as soon as reasonably practicable.

**Section 5.4 Adjustment of Purchase Price.** Except as otherwise provided in this Agreement, the Purchase Price shall not be adjusted in any manner whatsoever.

## **ARTICLE 6 TAX MATTERS**

### **Section 6.1 ETA Elections.**

The Purchaser and the Vendor shall, if applicable, jointly elect under subsection 167(1) of the *Excise Tax Act* (Canada) (the “ETA”) and any equivalent or comparable corresponding provision under any applicable provincial or territorial legislation, in the form prescribed for the purposes of each such provision, in respect of the sale and transfer of the Purchased Assets and the Purchaser shall file such elections with the applicable tax authorities within the time and in the manner required by the applicable Law. Notwithstanding such elections, in the event it is determined by a Governmental Authority that there is a Liability of the Purchaser to pay, or of the Vendor to collect and remit, GST/HST (or similar provincial or territorial value-added or multi-staged Tax) in respect of the purchase and sale of the Purchased Assets hereunder, the Purchaser shall forthwith pay such GST/HST (and any similar provincial or territorial value-added or multi-staged Tax) to the applicable Governmental Authority, or to the Vendor for remittance to the appropriate Governmental Authority, as the case may be, and shall indemnify and save harmless the Vendor from any penalties and interest which may be payable by or assessed against the Vendor (or its representatives, agents, employees, directors or officers) under the ETA (and any applicable provincial or territorial legislation) in respect thereof.

### **Section 6.2 Transfer Taxes.**

Subject to any available elections or exemptions contemplated by Section 6.1, the Purchaser shall be liable for and shall pay all federal and provincial sales taxes, transfer taxes, excise taxes, value-added taxes and all other similar Taxes or other like charges of any jurisdiction (“**Transfer Taxes**”) (for greater certainty, excluding all income or capital taxes of the Vendor) properly payable in connection with the transfer of the Purchased Assets by the Vendor to the Purchaser.

### **Section 6.3 Income Tax Elections.**

- (1) The Purchaser and the Vendor shall, if applicable, elect jointly in the prescribed form under section 22 of the *Income Tax Act* (Canada) (the “ITA”) and the corresponding provisions of any other applicable provincial Tax statute as to the sale of the Accounts Receivable forming part of the Purchased Assets and designate in such election an amount equal to the portion of the Purchase Price allocated to the Accounts Receivable pursuant to Section 5.3. This election, or these elections, shall be made within the time prescribed for such elections.
- (2) The Purchaser and the Vendor shall, if applicable, jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the

time period permitted under the ITA and under any other applicable provincial statute as to such amount paid by the Vendor to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.

- (3) The Purchaser and the Vendor shall also execute and deliver such other Tax elections and forms as they may mutually agree upon.

## **ARTICLE 7 EMPLOYEE MATTERS**

### **Section 7.1 Successor Employer**

Effective as of the Closing Date, the Purchaser shall become the successor employer under the Collective Agreements, shall continue the employment of all Unionized Employees, and shall: (i) recognize from and after the Closing Date the unions set forth in Schedule "B" as the sole and exclusive collective bargaining agents for the Unionized Employees; and (ii) accept and be bound by the terms and conditions of the Collective Agreements applicable to the Unionized Employees, except that the Purchaser and the applicable collective bargaining agent shall be free (upon mutual agreement) to change the terms and conditions of the Unionized Employees or otherwise modify the applicable Collective Agreement.

### **Section 7.2 Offers to Non-Union Employees.**

- (1) No less than three (3) Business Days in advance of the Closing Date, the Purchaser may, but shall not be obligated to offer employment to any of the Vendor's employees (other than Unionized Employees) to be effective on the Closing Date, conditional on Closing, on terms and conditions that are, in the aggregate, no less favourable than the terms and conditions on which such employees are employed immediately before the Closing Date. Such offers of employment shall recognize the non-union employee's past service with the Vendor for all purposes.
- (2) Nothing in this Section 7.2, express or implied, (i) is intended to or shall confer upon any Person, including any employee of the Vendor, other than the Parties and their respective successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (ii) shall establish or constitute an amendment, termination or modification of, or an undertaking to establish, amend, terminate or modify, any Employee Plan, or (iii) shall create any obligation on the part of the Purchaser to employ any Transferred Employee for any period following the Closing Date.



### **Section 7.3 Employee Plans.**

- (1) The Purchaser shall assume the Employee Plans. The Purchaser, on the one hand, and the Vendor, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause the Purchaser to assume sponsorship of and responsibility for administration and operation of such Employee Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Employee Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing. The Vendor and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.3(1) including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.
- (2) Nothing in the provisions of this Section 7.3 express or implied, (i) is intended to or shall confer upon any Person, including any employee of the Vendor, other than the Parties and their respective successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (ii) shall establish or constitute an amendment, termination or modification of, or an undertaking to establish, amend, terminate or modify, any Employee Plan, or (iii) shall create any obligation on the part of the Purchaser to employ any Transferred Employee for any period following the Closing Date.

### **Section 7.4 Employee Liability.**

- (1) The Vendor shall be liable for all salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of all employees of the Vendor for the period prior to the Closing Date.
- (2) The Vendor shall be liable for statutory notice of termination or payment in lieu of notice obligations and statutory severance obligations in respect of any non-union employees of the Vendor who do not accept the Purchaser's offer of employment.
- (3) Without limiting the Purchaser's obligations in respect of the Transferred Employees, the Purchaser shall be responsible for:
  - (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of the Transferred Employees by the Purchaser for the period on and after the Closing Date; and
  - (b) all statutory notice of termination or payment in lieu of notice obligations and statutory severance obligations in respect of the termination by the Purchaser of the employment of any Transferred Employee arising on or after the Closing Date.

**ARTICLE 8  
REPRESENTATIONS AND WARRANTIES**

**Section 8.1 Vendor's Representations and Warranties.**

The Vendor represents and warrants as follows to the Purchaser at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the purchase of the Purchased Assets and the assumption of the Assumed Liabilities and the Contract Assumed Liabilities:

- (1) **Incorporation and Qualification.** The Vendor is a corporation duly incorporated and existing under the Laws of its jurisdiction of incorporation and, subject to the granting of the Sale Process Order, has the corporate power to enter into and perform its obligations under this Agreement.
- (2) **Authority to Complete.** Subject to obtaining the Approval and Vesting Order prior to Closing, on Closing the Vendor shall have the power and authority to complete the transactions contemplated hereby, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order.
- (3) **Enforceability of Obligations.** Subject to the entry of the Sale Process Order, the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated hereby, this Agreement constitutes a valid and legally binding obligation of the Vendor enforceable against the Vendor in accordance with its terms.
- (4) **Residence.** The Vendor is not a non-resident of Canada for purposes of the ITA.
- (5) **Registration.** The Vendor is registered under Part IX of the ETA and its registration number is 105104392 RT0001.
- (6) **Brokers and Finders.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Vendor.

**Section 8.2 Purchaser's Representations and Warranties.**

The Purchaser represents and warrants as follows to the Vendor at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Vendor is relying on such representations and warranties in connection with the sale by the Vendor of the Purchased Assets:

- (1) **Incorporation and Qualification.** The Purchaser is an entity duly incorporated and existing under the Laws of its jurisdiction of incorporation and has the corporate power to enter into and perform its obligations under this Agreement.

- (2) **Corporate Authority.** The execution and delivery of and performance by the Purchaser of this Agreement and the consummation of the transactions contemplated by it have been authorized by all necessary corporate action on the part of the Purchaser.
- (3) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser, enforceable against it in accordance with its terms subject only to: (A) as of the date hereof, any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and (B) as of the Closing Date, the issuance of the Approval and Vesting Order.
- (4) **Registration.** The Purchaser will, prior to Closing, be registered under Part IX of the ETA and under comparable provincial legislation in each other province where the Purchaser is required to be registered for purposes of any election to be made pursuant to Section 6.1.
- (5) **Brokers and Finders.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Purchaser.
- (6) **Issued Shares.** Upon Closing, the Issued Shares to be issued by the Purchaser to the Vendor will be duly authorized and, upon their issuance, will be validly issued, fully paid and non-assessable shares in the capital of the Purchaser.

### **Section 8.3 Survival.**

The representations and warranties contained in this Agreement shall merge on Closing.

### **Section 8.4 No Other Representations or Warranties of the Vendor; "As Is, Where Is".**

- (1) The representations and warranties given by the Vendor in Article 8 are the sole and exclusive representations and warranties of the Vendor in connection with this Agreement and the transactions contemplated by it. Except for the representations and warranties given by the Vendor in Article 8, the Purchaser did not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied (by operation of Law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith.
- (2) The Purchaser hereby acknowledges and agrees as follows:

- (a) except as expressly provided herein, the Purchased Assets are being purchased on an “as is, where is” basis; and
- (b) except as expressly set forth in this Agreement, the Vendor and the Proposal Trustee make no representations, or warranties in favour of the Purchaser concerning the Purchased Assets, which the Purchaser acknowledges are being acquired on an “as is, where is” basis, whether express or implied, statutory or collateral, arising by operation of Laws or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (Ontario) or other Laws do not apply to the transactions contemplated herein and are hereby waived by the Purchaser.

## **ARTICLE 9 COVENANTS**

### **Section 9.1 Conduct of Business in the Ordinary Course.**

Subject to Section 9.7, during the period up to the Closing Date, the Vendor shall use commercially reasonable efforts to (i) conduct the Business in the Ordinary Course consistent with past practice; (ii) maintain and preserve intact its current Business organization and operations; and (iii) preserve the rights, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having relationships with the Business, in each case except to the extent required to allow the Vendor to comply with any of its obligations under this Agreement, subject in all cases to any limitation imposed by being subject to the commercial proposal process under the BIA and any Court order relating thereto. Except with the prior written consent of the Purchaser, the Vendor shall not enter into, amend, disclaim, restate or allow there to occur a default under any Material Contract.

### **Section 9.2 Actions to Satisfy Closing Conditions.**

The Vendor and the Purchaser agree to use their respective commercially reasonable efforts to take, or cause to be taken, all actions and make all such filings and submissions, and obtain such authorizations, which are necessary or advisable in order to (i) fulfil their respective obligations under this Agreement; and (ii) assist with the satisfaction of and ensure all conditions for the benefit of the other Party provided for in Section 10.2, Section 10.3 and Section 10.4 are satisfied.

### **Section 9.3 Access.**

Subject to applicable Laws, the Vendor shall (i) upon reasonable notice, permit the Purchaser and its employees, agents, counsel, accountants or other representatives, to have reasonable access during normal business hours to (A) the Purchased Assets, including all books and records whether retained by the Vendor or otherwise, (B) all contracts and leases to which the Vendor is a party, (C) personnel files relating to the employees of the Vendor (which shall be maintained in strict confidence by the Purchaser and only used for the

purpose of considering and/or making employment offers to employees), and (D) the senior personnel of the Vendor, so long as the access does not unduly interfere with the ordinary conduct of the Business; and (ii) furnish to the Purchaser or its employees, agents, counsel, accountants or other such representatives such financial and operating data and other information with respect to the Purchased Assets as the Purchaser from time to time reasonably requests.

#### **Section 9.4 Access to Books and Records.**

For a period of 6 years from the Closing Date or for such longer period as may be required by Law, the Purchaser will use its reasonable commercial effects, without any Liability to the Vendor, to retain all original books and records relating to the Purchased Assets that are transferred to the Purchaser under this Agreement. So long as any such books and records are retained by the Purchaser pursuant to this Agreement, the Vendor, the Proposal Trustee, any receiver or Trustee in Bankruptcy appointed in respect of the Vendor and their respective representatives shall have the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. The Purchaser has the right to have its representatives present during any such inspection.

#### **Section 9.5 Use of Business Name.**

On or promptly following the Closing Date, and except as may be required for purposes of the NOI proceedings, the Vendor shall discontinue use of the name "Allied Track" and any variation thereof, except where legally required to advise that its name has been changed to another name or to refer to the historical fact that the Vendor previously conducted the Business under the "Allied Track" name, and the Vendor shall, subject to the Court's approval, as soon as reasonably practicable following Closing, file articles of reorganization to change the corporate name of the Vendor to another name not confusingly similar to its present name. Subject to the Court's approval, the Approval and Vesting Order shall authorize and direct the appropriate Governmental Authority to accept such articles of reorganization, notwithstanding the insolvency of the Vendor.

#### **Section 9.6 Post-Closing Accounts Receivable.**

Within three (3) Business Days following the Closing Date, and prior to any assignment in bankruptcy, the Vendor shall deliver a notice, in a form satisfactory to the Purchaser and duly executed by the Vendor, to the account debtors of the Accounts Receivable included in the Purchased Assets regarding the transfer of the accounts receivable and directing that all further payments thereunder be made to the Purchaser. Any Accounts Receivable forming part of the Purchased Assets collected by the Vendor or any trustee-in-bankruptcy appointed with respect to the Vendor (or other proceeds collected or derived from a Purchased Asset by the Vendor or such trustee-in-bankruptcy), other than the Purchase Price paid hereunder, from and after the Closing Date shall be held in trust for the benefit of the Purchaser, and such funds shall not form part of the Vendor's estate or otherwise made available to the Vendor's stakeholders, and, upon receipt following the

Closing, shall promptly be paid to, and for the benefit of, the Purchaser in accordance with its rights under this Agreement.

#### **Section 9.7 Debt Settlement Transactions**

The Parties agree that, notwithstanding Section 9.1, the Vendor may effect the transactions described in Schedule "C" (as such steps may be amended in accordance with Schedule "C", the "**Debt Settlement Transactions**").

### **ARTICLE 10 CONDITIONS OF CLOSING**

#### **Section 10.1 Approval and Vesting Order**

The Vendor shall forthwith bring a motion to the Court to obtain the Approval and Vesting Order and, if granted, shall proceed with completing the transactions contemplated hereby forthwith.

#### **Section 10.2 Conditions for the Benefit of both Parties.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date:

- (1) **No Court Orders.** No provision of any applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect;
- (2) **Approval and Vesting Order.** The Approval and Vesting Order shall have been issued and entered and shall not have been stayed, amended, modified, reversed or dismissed as at the Closing Date; and
- (3) **Proceedings by Governmental Authority.** No motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the transactions contemplated by this Agreement.

#### **Section 10.3 Conditions for the Benefit of the Purchaser.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date;
- (2) **Covenants.** The Vendor shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material

respects at or prior to the Closing Date, including delivery by the Vendor of the documents and instruments contemplated by Section 11.2;

- (3) **No Bankruptcy.** The Vendor shall not be and shall not have become a bankrupt under the BIA;
- (4) **Consents.** The Vendor shall have obtained consents from the counterparties to the Consent Required Contracts that have been designated as Assigned Contracts from the counterparties to those agreements and shall have delivered such consents to the Purchaser; and
- (5) **Assignment Order.** The Assignment Order, if requested by the Purchaser, shall have been issued and entered in form and substance satisfactory to the Purchaser.

#### **Section 10.4 Conditions for the Benefit of the Vendor.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which are for the exclusive benefit of the Vendor and which may be waived, in whole or in part, by the Vendor in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date; and
- (2) **Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date, including delivery by the Purchaser of the documents and instruments contemplated by Section 11.3.

### **ARTICLE 11 CLOSING**

#### **Section 11.1 General.**

- (1) The completion of the transactions of purchase, sale and assumption contemplated by this Agreement (the “Closing”) shall take place electronically on the Closing Date.
- (2) As soon as practicable following the execution of this Agreement, the Vendor shall file motion materials seeking the issuance of the Approval and Vesting Order, provided that the Purchaser has had a reasonable opportunity to review and comment upon such materials, acting reasonably, in advance of filing with the Court. The Vendor shall serve notice of the motion seeking the issuance and entry of the Approval and Vesting Order on all Persons determined reasonably necessary by the Purchaser and shall provide reasonable advance notice of any Court appearances so that the Purchaser may make arrangements to attend if it so desires.

- (3) The Parties hereby acknowledge and agree that the Proposal Trustee shall be entitled in accordance with the Approval and Vesting Order to file a certificate, substantially in the form attached to the Approval and Vesting Order (the “**Proposal Trustee’s Certificate**”), with the Court upon receiving written confirmation from the Vendor and the Purchaser that all conditions of Closing have been satisfied or waived.

**Section 11.2 Vendor’s Closing Deliveries.**

At the Closing, the Vendor shall execute and/or deliver or cause to be delivered to the Purchaser the following:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- (b) a true and complete copy of the Approval and Vesting Order, as entered by the Court;
- (c) if requested by the Purchaser, a true and complete copy of the Assignment Order, as entered by the Court;
- (d) true and complete copies of the Assigned Contracts to which the Vendor is a party, to the extent not delivered prior to Closing;
- (e) such executed Tax elections as are required pursuant to Article 6;
- (f) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Liabilities, the Assumed Installment Contract Debt and any Priority Payables to be assumed in accordance with Section 5.2(c);
- (g) a true and complete copy of the Proposal Trustee’s Certificate executed by the Proposal Trustee (such Proposal Trustee’s Certificate to be filed with the Court by the Proposal Trustee following Closing and a copy of such filed Proposal Trustee’s Certificate shall be delivered to the Purchaser promptly thereafter); and
- (h) any other documents necessary or desirable in the opinion of the Purchaser, acting reasonably.

**Section 11.3 Purchaser’s Closing Deliveries.**

At the Closing, the Purchaser shall execute and/or deliver or cause to be delivered to the Vendor, or as the Vendor may direct, the following:

- (a) the payments contemplated by Section 5.2;
- (b) the Purchaser Note;
- (c) the Issued Shares;



- (d) evidence of payment of any applicable Transfer Taxes;
- (e) such executed Tax elections as are required pursuant to Article 6;
- (f) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Liabilities, the Assumed Installment Contract Debt and any Priority Payables to be assumed in accordance with Section 5.2(c); and
- (g) any other documents necessary or desirable in the opinion of the Vendor, acting reasonably.

## **ARTICLE 12 TERMINATION**

### **Section 12.1 Termination of Agreement.**

This Agreement may be terminated by notice in writing given prior to or on the Closing Date be terminated:

- (a) by mutual consent of the Vendor and the Purchaser;
- (b) by either Party upon written notice to the other Party if the conditions set out in Section 10.2 are not satisfied performed or mutually waived on or before the Outside Date;
- (c) by the Purchaser or the Vendor if the Approval and Vesting Order, once granted, shall have been amended or modified in a manner adverse to such Party, or if it is stayed, reversed, dismissed or ceases to be in full force and effect;
- (d) by the Purchaser if the Assignment Order, if requested and once granted, shall have been amended or modified in a manner adverse to the Purchaser, or if it is stayed, reversed or ceases to be in full force and effect;
- (e) automatically if the Closing has not occurred by 11:59 p.m. on the Outside Date.

### **Section 12.2 Effect of Termination.**

- (1) In the event that the Agreement is terminated in accordance with Section 12.1, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement, effective as of the date of such termination and such termination shall be without Liability to the Purchaser and the Vendor, including without limitation in respect of any Liabilities accrued from the date of execution of this Agreement to the date of termination.
- (2) Under no circumstances shall either of the Parties, their representatives or their respective directors, officers, employees or agents be liable for any special, punitive,

exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

**Section 12.3 Dispute Resolution.**

If any dispute arises with respect to any matter related to the transactions contemplated herein or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

**ARTICLE 13  
MISCELLANEOUS**

**Section 13.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “**Notice**”) must be in writing, sent by personal delivery, courier or electronic mail and addressed:

(a) to the Vendor:

Allied Track Services Inc.  
169 S Service Rd,  
Grimsby, ON L5M 4H6

Attention: Andy Jones  
Email: andy.jones@alliedtrack.ca

with a copy to Vendor’s counsel:

Bennett Jones LLP  
100 King Street West, Suite 3400  
Toronto, ON M5X 1A5

Attention: Sean Zweig and Jesse Mighton  
Email: zweigs@bennettjones.com

mightonj@bennettjones.com

with a copy to the Proposal Trustee:

KSV Restructuring Inc.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

Attention: Noah Goldstein  
Email: ngoldstein@ksvadvisory.com

with a copy to the Proposal Trustee's counsel:

Blake, Cassels & Graydon LLP  
199 Bay Street, Suite 4000  
Toronto, ON M5L 1A9

Attention: Chris Burr  
Email: chris.burr@blakes.com

(b) to the Purchaser:

Bridging Finance Inc.  
77 King Street West, Suite 2925  
Toronto, ON M5K 1K7

Attention: Graham Marr, Senior Managing Director  
Email: gmarr@bridgingfinance.ca

with a copy to Purchaser's counsel:

Chaitons LLP  
5000 Yonge Street  
Toronto, ON M2N 7E9

Attention: Harvey Chaiton and Seth Mandell  
Email: harvey@chaitons.com  
seth@chaitons.com

A Notice is deemed to be given and received if sent by personal delivery, courier or electronic mail, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

### **Section 13.2 Assignment.**

Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Parties. Notwithstanding the foregoing, on Closing the Purchaser shall be entitled to direct title to any of the Purchased Assets to one or more Persons provided

that such persons shall agree to be jointly and severally liable with the Purchaser in respect of its liabilities and obligations under this Agreement.

**Section 13.3 Survival.**

Any provision of this Agreement which contemplates performance or the existence of obligations after the Closing Date shall not be deemed to be merged into or waived by the execution, delivery or performance of this Agreement or documents delivered in connection herewith or Closing, but shall expressly survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement and shall be binding upon the Party or Parties obligated thereby (including any trustee-in-bankruptcy appointed in respect of such Party) in accordance with the terms of this Agreement.

**Section 13.4 Time of the Essence.**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser.

**Section 13.5 Enurement.**

This Agreement becomes effective when executed by the Vendor and the Purchaser. After that time, it will be binding upon and enure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

**Section 13.6 Entire Agreement.**

This Agreement and the other documents executed in connection herewith constitutes the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

**Section 13.7 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

**Section 13.8 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser.

**Section 13.9 Further Assurances.**

- (1) From the Closing Date, each of the Parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Purchased Assets, the Assumed Liabilities and the Contract Assumed Liabilities to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.
- (2) Notwithstanding Section 13.9(1) or anything else contained in this Agreement, after Closing the Vendor shall not be required to delay making an assignment in bankruptcy under the BIA if it determines, in its sole discretion, to do so.

**Section 13.10 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 13.11 Governing Law.**

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

**Section 13.12 Jurisdiction.**

The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising under or related to this Agreement.


**Section 13.13 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by email or other electronic means is as effective as a manually executed counterpart of this Agreement.

**[signature page follows]**

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

**ALLIED TRACK SERVICES INC.**

By:   
\_\_\_\_\_  
Name: Andy Jones  
Title: Director

**2806401 ONTARIO INC.**


By: \_\_\_\_\_  
Name: Graham Marr  
Title:

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

**ALLIED TRACK SERVICES INC.**

By: \_\_\_\_\_  
Name: Andy Jones  
Title: Director

**2806401 ONTARIO INC.**

By:  \_\_\_\_\_  
Name: Graham Marr  
Title:

**Schedule "A"**

**Material Contracts**

See attached.



<u>Contract Description</u>	<u>Counterparty</u>
<p>Master Service Agreement entered into among Canadian National Railway Company and Allied Track Services Inc. (DocuSign Envelope ID: 3C1BF82B-65C4-4EF1-975C-E91338AA7D54)</p>	<p><b>CANADIAN NATIONAL RAILWAY COMPANY</b>  12th Floor, Station 20A  935 de la Gauchetière Street West,  Montréal, QB H3B 2M9</p> <p>Attention: Manmit Aujla</p>
<p>Statement of Work for a Fixed Pricing Scope entered into among Canadian National Railway Company and Allied Track Services Inc. (re: to replace and upgrade existing Signals and Communications infrastructure between Mile 143.5 to Mile 151.80 on the New Westminster Subdivision, DocuSign Envelope ID: 08A08A22-9713-43A4-AD7B-CE7A86D53F59)</p>	<p><b>CANADIAN NATIONAL RAILWAY COMPANY</b>  12th Floor, Station 20A  935 de la Gauchetière Street West,  Montréal, QB H3B 2M9</p> <p>Attention: Manmit Aujla</p>
<p>Supplemental Conditions for S&amp;C General Services - Fixed Price Scope entered into among Canadian National Railway Company and Allied Track Services Inc. (DocuSign Envelope ID: 03F43428-0BCE-40B1-A0C0-6C08694744CA)</p>	<p><b>CANADIAN NATIONAL RAILWAY COMPANY</b>  12th Floor, Station 20A  935 de la Gauchetière Street West,  Montréal, QB H3B 2M9</p> <p>Attention: Manmit Aujla</p>
<p>Supplemental Conditions for S&amp;C General Services - Time and Material Scope entered into among Canadian National Railway Company and Allied Track Services Inc. (DocuSign Envelope ID: F3D91AC8-ACAB-4C4D-9EC0-CDE40D2DE5A0)</p>	<p><b>CANADIAN NATIONAL RAILWAY COMPANY</b>  12th Floor, Station 20A  935 de la Gauchetière Street West,  Montréal, QB H3B 2M9</p> <p>Attention: Manmit Aujla</p>
<p>Supplemental Conditions for Track Maintenance Services – Time and Material Scope entered into among Canadian National Railway Company and Allied Track Services Inc. (DocuSign Envelope ID: 5848B77C-B895-4898-AAAE-C5FF2E84F57C)</p>	<p><b>CANADIAN NATIONAL RAILWAY COMPANY</b>  12th Floor, Station 20A  935 de la Gauchetière Street West,  Montréal, QB H3B 2M9</p>

<u>Contract Description</u>	<u>Counterparty</u>
	Attention: Manmit Auja
Amendment Agreement Number 4 for Contract 5600019497 dated Jan 1, 2021 between Canadian Pacific Railway Company and Allied Track Services - Signals TR&E	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Amendment Agreement Number 4 (Signals Construction Support) for Contract 5600019619 dated Jan 1, 2021 between Canadian Pacific Railway Company and Allied Track Services	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Amendment Agreement Number 4 (Signals Maintainer Support) for Contract 5600019619 dated Jan 1, 2021 between Canadian Pacific Railway Company and Allied Track Services	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Purchase Order dated Feb 13, 2020 between Canadian Pacific Railway and Allied Track Services - 2020 TR&E Support New	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Services Agreement (Flagging Mac Tunnel) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Contract ID #700004625 (Thermite welding support Cochrane) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose

<u>Contract Description</u>	<u>Counterparty</u>
Contract ID #700004797 (2021 TR&E Support West) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Contract ID #700004924 (Rail Train Support - Cascade Sub) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Contract ID #700005030 (Crossing Warning System Testing) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Contract ID #700005345 (CTC & Crossing hardware installation) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Contract ID #700006329 (Broken Rail Detection - Wetaskiwin/Hardisty) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Contract ID #700006847 (TR&E Support Central) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Contract ID #700007197 (TR&E Support Ontario) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9

<u>Contract Description</u>	<u>Counterparty</u>
	Attention: Kim Primrose
Contract ID #700007216 (Broken Rail Detection - Prairie North Line Weta) between Canadian Pacific Rail and Allied Track Services Inc.	<b>CANADIAN PACIFIC RAILWAY</b> 7550 Ogden Dale Rd SE Calgary, AB T2C 4X9  Attention: Kim Primrose
Construction Services Agreement dated March 2, 2020 between Vale Canada Limited and Allied Track Services	<b>VALE CANADA LIMITED</b> 18 Rink St Copper Cliff, ON P0M 1N0  Attention: Daniel da Matta
Lease Agreement dated February 24, 2015 between Auto Gene Industries North Bay Inc. (as landlord) and Allied Track Services Inc. (as tenant) re: 1891 Seymour Street (North Section), North Bay, ON	<b>AUTO GENE INDUSTRIES NORTH BAY INC.</b> c/o Lucienti, Orlando & Ellis LLP 373 Main Street West North Bay, ON  Attention: Sandro Orlando (orlando@loelaw.ca)
Lease Agreement dated December 1, 2020 between McNeil Family Holdings Inc. (as landlord) and Allied Track Services Inc. (as tenant) re: 169 South Service Road West, Grimsby, ON	<b>MCNEIL FAMILY HOLDINGS INC.</b>  Attention: Robert McNeil (1bobmcneil@gmail.com)
Lease Agreement between Cal. A. Farmer Holdings Ltd. (as landlord) and Allied Track Services Inc. (as tenant) re: 760 Highway 17 East, North Bay, ON (storage area)	<b>CAL. A. FARMER</b> P.O. Box 1251, 760 Highway 17 East North Bay, ON P1B 8K5  Fax: 705-472-3697

<u>Contract Description</u>	<u>Counterparty</u>
Lease Agreement re: #3-7450 Dallas Drive, Kamloops British Columbia (Office)	<b>J&amp;N GUINN HOLDINGS LTD.</b> 7450 Dallas Drive Kamloops, British Columbia, V2C 6X2  Attention: Jim Guinn (jimguinn@gmail.com)
Lease Agreement re: 8170 Dallas Drive, Kamloops British Columbia (Storage Yard)	<b>WINMOR PROPERTIES LTD.</b> 103B-1428 Lorne Street Kamloops, British Columbia, V2C 1X4  Attention: Derek Moroz (derek@minmore.ca)
Lease Agreement re: 2-22 Don Valley Parkway, Springfield, Manitoba	<b>MJ ROOFING LTD</b>   Attention: (marc@mjroofing.net)
General Service Agreement (monthly inspections) dated March 2020 between Stanpac Inc. and Allied Track Services Inc.	<b>STANPAC INC.</b> 2660 Industrial Park Rd Smithville, ON L0R 2A0  Attention: Spencer Brown
General Service Agreement (monthly inspections) dated July 20, 2020 between Sanimax and Allied Track Services Inc.	<b>SANIMAX</b> 800 Parkdale Ave N Hamilton, ON L8H 7T6  Attention: Mark Lynch
General Service Agreement (monthly inspections) dated July 22, 2020 between SLM Recycling and Allied Track Services Inc.	<b>SLM RECYCLING</b> 555 Brown Rd, Welland, ON L3B 5N4  Attention: Kyle Duncan
General Service Agreement (monthly inspections) dated September 2020 between CRC Can Roof Corporation Inc. and Allied Track Services Inc.	<b>CANROOF CORPORATION INC.</b> 560 Commissioners St Toronto, ON M4M 1A7  Attention: John Cordeiro

<u>Contract Description</u>	<u>Counterparty</u>
General Service Agreement (monthly inspections) dated October 13, 2020 between Atlas Roofing Toronto and Allied Track Services Inc.	<p><b>ATLAS ROOFING CORP</b> 55 Akron Rd, Etobicoke, ON M8W 1T3</p> <p>Attention: Peter Hardat</p>
Service Agreement (monthly inspections) between Verbio Diesel and Allied Track Services Inc.	<p><b>VERBIO DIESEL CANADA</b> 1 St Clair Dr Welland, ON L3B 6A7</p> <p>Attention: Yvan Parent</p>
CGC Blanket Agreement # B665072 dated August 4, 2020 between CGC Inc. and Allied Track Services Inc.	<p><b>CGC INC.</b> 55 3rd Line Hagersville, ON N0A 1H0</p> <p>Attention: Tracey Bartlett</p>
General Maintenance Agreement between Vale Canada Ltd. and Allied Track Services Inc.	<p><b>VALE CANADA LIMITED</b> 187 Davis St Port Colborne, ON L3K 5W2</p> <p>Attention: Jim McCollum</p>
General Maintenance and Switching Agreement dated September 26, 2018 between 2427811 Ontario Inc. (o/a Ingenia Polymers) and Allied Track Services Inc.	<p><b>INGENIA POLYMERS</b> 565 Greenwich St Brantford, ON N3T 5M8</p> <p>Attention: Anwar Hussain</p>
Equipment Rental Agreement dated June 12, 2019 (Unit# N4200D, N4212D) between Danella Rental Systems Inc. and Allied Track Services Inc.	<p><b>DANELLA RENTAL SYSTEMS, INC.</b> 14101 East Moncrieff Place Aurora, Colorado, USA 80011</p> <p>Attention: Matt Wyche (mwyche@danella.com)</p>

<u>Contract Description</u>	<u>Counterparty</u>
Contract #C9697 - Rental Agreement dated April 24, 2017	<p><b>CALMONT LEASING LTD.</b>  2091 Logan Avenue  Winnipeg, MB R2R 0J1</p> <p>Attention: Jennifer Tonne  (jennifer.tonne@calmont.ca)</p>
Contract #C13083 - Rental Agreement dated March 23, 2018	<p><b>CALMONT LEASING LTD.</b>  2091 Logan Avenue  Winnipeg, MB R2R 0J1</p> <p>Attention: Jennifer Tonne  (jennifer.tonne@calmont.ca)</p>
Contract #800-503308-001 - Master Lease Agreement dated March 17, 2016 between LBC Capital (as successor to CIT Financial Ltd.) and Allied Track Services Inc.	<p><b>LBC Capital</b>  5035 South Service Road  P.O. Box 5060  Burlington, ON L7R 4C8</p> <p>Attention: Roberta Adams  (insurance.tracking@lbccapital.ca)</p>
Vehicle Financing dated September 30, 2016, Reg #5322490	<p><b>FORD CREDIT CANADA LIMITED</b>  P.O. Box 2400  Edmonton, AB T5J 5C7</p> <p>c/o</p> <p><b>GRIMSBY FORD</b>  455 South Service Road  Grimsby, ON L3M 4E8</p> <p>Fax: 289-309-1544</p>

<u>Contract Description</u>	<u>Counterparty</u>
Equipment Lease Agreement #445808 dated August 21, 2018 between Meridian OneCap Credit Corp. and Allied Track Services Inc.	<p><b>MERIDIAN ONECAP CREDIT CORP.</b> 800-40 Sheppard Avenue West Toronto, ON M2N 6K9</p> <p>Attention: John Little (john.little@m1cap.ca)</p>
<ul style="list-style-type: none"> <li>• Equipment Invoice #310000398 dated August 12, 2020</li> <li>• Equipment Invoice #310000399 dated August 12, 2020</li> <li>• Equipment Invoice #310000400 dated October 28, 2020</li> </ul>	<p><b>FALCON EQUIPMENT LTD.</b> 18412 96 Avenue Surrey, British Columbia V4N 3P8</p> <p>Attention: Eric Poersch (epoersch@falconequip.com)</p>
<ul style="list-style-type: none"> <li>• Equipment Invoice #310000398 dated August 12, 2020</li> <li>• Equipment Invoice #310000399 dated August 12, 2020</li> <li>• Equipment Invoice #310000400 dated October 28, 2020</li> </ul>	<p><b>VAL105 / VALIANT FINANCIAL SERVICES</b> 210<sup>th</sup> Street, Suite 426 Langley, British Columbia V1M 2Y2</p> <p>Attention: Andrew Mallory (amallory@valiantfinancial.ca)</p>
Equipment Lease to Own Agreement (VIN 3GTU2PEJXJG336547) dated August 28, 2018	<p><b>WHEATON CHEVROLET BUICK CADILLAC GMC LTD.</b> 2867 Douglas Street Victoria, British Columbia V8T 4M7</p> <p>Attention: Mark Cofell (wheaton.markc@gmail.com)</p>
Platinum Autocare Agreement #7580581 dated August 28, 2018	<p><b>PLATINUM AUTOCARE</b> 320 Sioux Road Sherwood Park, AB T8A 3X6</p> <p>Attention: Mark Cofell (wheaton.markc@gmail.com)</p>



<u>Contract Description</u>	<u>Counterparty</u>
<p>All equipment and vehicle lease agreements and related ancillary agreements, undertakings and insurance policies between Queenston Chevrolet Buick GMC and Allied Track Services Inc. including without limitation:</p> <ul style="list-style-type: none"> <li>• #114295 dated February 19, 2020</li> <li>• #115610 dated June 16, 2020</li> <li>• #114533 dated March 12, 2020</li> <li>• #110147 dated April 29, 2019</li> <li>• #110146 dated April 29, 2019</li> <li>• #110917 dated June 7, 2019</li> <li>• #111159 dated June 21, 2019</li> <li>• #111576 dated July 17, 2019</li> <li>• #111576 dated July 17, 2019</li> <li>• #111966 dated August 14, 2019</li> <li>• #114222 dated February 21, 2020</li> <li>• #114295 dated February 21, 2020</li> <li>• #114529 dated March 11, 2020</li> <li>• #117395 dated October 28, 2020</li> <li>• #112456 dated September 9, 2019</li> <li>• #113562 dated December 12, 2019</li> <li>• #111965 dated August 14, 2019</li> <li>• #98385 dated April 26, 2017</li> <li>• #99610 May 30, 2017</li> <li>• #108923 dated February 5, 2019</li> </ul>	<p><b>QUEENSTON CHEVROLET BUICK GMC, A DIVISION OF SETAY MOTORS INC.</b>  2260 Rymal Road East  Heritage Group RPO, P.O. Box 99051  Hamilton, ON L8J 2P7</p> <p>Fax: 905-692-2597</p>

<u>Contract Description</u>	<u>Counterparty</u>
<p>Agreement to provide technology consulting and relate services dated April 27, 2017 between Professional Computer Management Inc. and Allied Track Services Inc.</p>	<p><b>PROFESSIONAL COMPUTER MANAGEMENT INC.</b>  1040 South Service Road, Suite 105  Stoney Creek, ON L8E 6G3</p> <p>Attention: Ed VanderLaan  (evanderlaan@pcm.ca)</p>
<p>Agreement for Sentinel Network Support Program, Platinum Plan dated May 1, 2017 between Professional Computer Management Inc. and Allied Track Services Inc.</p>	<p><b>PROFESSIONAL COMPUTER MANAGEMENT INC.</b>  1040 South Service Road, Suite 105  Stoney Creek, ON L8E 6G3</p> <p>Attention: Ed VanderLaan  (evanderlaan@pcm.ca)</p>
<p>Software and Services Proposal dated January 26, 2016 between Maestro Technologies Inc. and Allied Track Services Inc.</p>	<p><b>MAESTRO TECHNOLOGIES INC.</b>  9040 Leslie St, Suite 224  Richmond Hill, ON L4B 3M4</p> <p>Attention: Vicki Grondin  (vgrondin@maestro.ca)</p>
<p>Purchase Order bearing Tracking No: JP-9222020-719 REV1 dated September 22, 2020 and accepted October 14, 2020 between Allied Track Services Inc. and Pieridae Alberta Production Ltd.</p>	<p><b>PIERIDAE ALBERTA PRODUCTION LTD.</b>  3100, 308-4 Avenue SW  Calgary, AB T2P 0H7</p> <p>Attention: Derrick Frechette  (derrick.frechette@pieridaeenergy.com)</p>

**Schedule "B"**

**Unions**

See attached.

1. Labourers International Union of North America, Ontario Provincial District Council on behalf of its affiliated Local Unions 183, 493, 527, 607, 625, 837, 1036, 1059 and 1089

## Schedule "C"

### Debt Settlement Transactions

The Debt Settlement Transactions shall consist of the steps set out below, as such steps may be amended from time to time in accordance with the immediately following paragraph. Capitalized terms used but not defined in this Schedule "C" have the meanings ascribed to them in the amended and restated asset purchase agreement to which this Schedule "C" is appended (the "**Purchase Agreement**").

Either Party may, from time to time prior to the date that is three Business Days prior to the Closing Date, deliver to the other Party and the Proposal Trustee a notice in writing (a "**Debt Settlement Transaction Notice**") setting out any amendments that such Party proposes to make to the Debt Settlement Transactions set out in this Schedule "C". Provided the other Party and Proposal Trustee consent thereto, the revised Debt Settlement Transactions set out in any such Debt Settlement Transaction Notice shall replace the Debt Settlement Transactions set out below (as amended by any prior Debt Settlement Transaction Notice), the Vendor and Purchaser shall forthwith amend this Schedule "C" to reflect such revised steps, and the Proposal Trustee shall forthwith post the amended Schedule "C" on its website for the NOI proceedings.

1. Upon request by Bridging Finance Inc., as agent under the Bridging Debt (the "**Agent**") in its sole discretion, the Vendor shall enter into an agreement with the Agent in form and substance acceptable to the Agent and the Vendor, providing for the forgiveness of a portion of the Bridging Debt (to be determined by the Agent in its sole discretion) effective as of prior to the Time of Closing.
2. Prior to the Time of Closing, the Vendor may pay, or cause to be paid, to the Agent, in partial payment and satisfaction of the Bridging Debt, any amount received from Pittsburg Bottom Line LLC in respect of any debt owing by Pittsburg Bottom Line LLC to the Vendor, provided that the amount of the Bridging Debt is thereby reduced by such amount.
3. Following Closing, the Vendor shall assign all of its right, title and interest in the Purchaser Note and Issued Shares to the Agent (or to the lenders under the Bridging Debt) in payment and satisfaction of the Bridging Debt, and the Purchaser shall consent to and register any such assignment.

## **Appendix “C”**

## ~~STALKING HORSE~~ AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

This ~~stalking horse~~ amended and restated asset purchase agreement is dated ~~January 21~~ April 1, 2021 between Allied Track Services Inc. (the "Vendor") and 2806401 Ontario Inc. (the "Purchaser", collectively with the Vendor, the "Parties" and either one, a "Party").

### RECITALS:

- (a) The Vendor ~~has or will file~~ filed a notice of intention to make a proposal (the "NOI") under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA");
- (b) The Vendor ~~wishes~~ and the Purchaser entered into a Stalking Horse Asset Purchase Agreement dated January 21, 2021 (the "Original Agreement"), under which the Vendor agreed to sell substantially all of the assets used in the Business and to assign certain Liabilities, and the Purchaser ~~has~~ agreed to purchase such assets and assume such Liabilities upon the terms and conditions contained in ~~this~~ the Original Agreement; ~~and~~
- (c) The Vendor ~~intends to seek~~ obtained an order from the Court pursuant to the BIA ~~in form and substance attached as Schedule "C"~~ that, among other things, authorizes ed the Vendor to enter into ~~this~~ the Original Agreement and to conduct a marketing and sale process in accordance with the Stalking Horse Sales Process (as defined in the Original Agreement) (the "Sale Process Order");
- (d) The Stalking Horse Sales Process has been run in accordance with the Original Agreement and the Sale Process Order, and the Stalking Horse Bid under the Original Agreement has been determined to be the Winning Bid (as defined in the Original Agreement); and
- (e) The Vendor and the Purchaser desire to amend and restate the Original Agreement, to provide for the sale by the Vendor of substantially all of the assets used in the Business to, and the purchase of such assets and assumption of certain Liabilities by, the Purchaser upon the terms and conditions contained in this Agreement.

In consideration of the above and for other good and valuable consideration, the Parties agree as follows.

### ARTICLE 1 INTERPRETATION

#### Section 1.1 Definitions.

As used in this Agreement, including the recitals hereto, the following terms have the following meanings:

**"Accounts Receivable"** shall have the meaning defined in Section 2.1(c).

**"Administration Charge"** means the charge, ~~if~~ granted by the Court, to secure the fees and expenses of the Administrative Professionals;

**"Administrative Professionals"** means the Vendor's legal counsel, the Proposal Trustee, the Proposal Trustee's legal counsel, and a Trustee in Bankruptcy and its counsel, if one is appointed.

**"Agreement"** means this amended and restated asset purchase agreement, including all schedules annexed hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

**"Approval and Vesting Order"** means an approval and vesting order of the Court in form and substance acceptable to the Parties, acting reasonably, that, among other things, approves this Agreement and the transactions contemplated hereby, and vests in and to the Purchaser the Purchased Assets free and clear of and from any and all Encumbrances other than Permitted Encumbrances.

**"Assigned Contract"** means:

- (a) each Collective Agreement; and
- (b) any other contract to which the Vendor is a party and the benefit of which is assigned to the Purchaser in accordance with Article 4 or by way of an Assignment Order.

**"Assignment Order"** means an order of the Court requiring the assignment to the Purchaser of contracts (designated by the Purchaser) to which the Vendor is a party, in form and substance satisfactory to the Purchaser and the Vendor, each acting reasonably.

**"Assumed Installment Contract Debt" shall have the meaning defined in Section 5.2(b)(ii).**

**"Assumed Installment Contract Debt Amount" means (a) the amount of the Installment Contract Debt, less (b) the Escrowed Amount.**

**"Assumed Liabilities"** shall have the meaning defined in Section 3.1.

**"Bankruptcy Costs"** means the costs of any bankruptcy of the Vendor under the BIA that may be required on the termination of the Proposal Proceedings.

**"BIA"** shall have the meaning defined in the Recitals.

~~**"Bid Deadline"** means 5:00 p.m. on February 15, 2021, extendable at the discretion of Proposal Trustee for up to ten (10) days, as set out in Schedule "A".~~



**"Bridging Debt"** means all indebtedness of the Vendor owing to Bridging Finance Inc., as agent, whether pursuant to: (i) a letter agreement dated March 8, 2017 as amended and restated by letter agreement dated November 15, 2017, as amended; (ii) the DIP Facility; or ~~(iii)~~ otherwise.

**"Business"** means the businesses operated by the Vendor, which consists of (i) track production, repair and installation, and (ii) signal maintenance, rehabilitation and construction.

**"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Toronto, Ontario.

**"Closing"** shall have the meaning defined in Section 11.1.

**"Closing Date"** means the date that is three (3) Business Days after the conditions of Closing in Article 10 of this Agreement are satisfied or waived, or such earlier or later date that the Parties, acting reasonably, may mutually agree.

**"Closing Date Assumed Liabilities" means the Assumed Liabilities solely to the extent such liabilities constitute current liabilities of the Vendor payable on, accruing to, or arising prior to the Closing Date.**

**"Closing Date Assumed Liabilities Amount" means the aggregate book amount of the Closing Date Assumed Liabilities as agreed by the Parties in accordance with Section 5.3.**

**"Collective Agreement"** means any collective agreement, letter of understanding, letter of intent or other written communication or contract with any trade union, association that may qualify as a trade union, council of trade unions, employee bargaining agent or affiliated bargaining agent, which would cover any of the employees of the Vendor.

**"Consent Required Contracts"** means the contracts to which the Vendor is a party and which are not assignable in whole or in part without the consent, approval or waiver of the party or parties thereto other than the Vendor.

**"Contract Assumed Liabilities"** shall have the meaning defined in Section 4.1(2).

**"Court"** means the Ontario Superior Court of Justice (Commercial List).

**"Cure Payment"** means a payment solely required to comply with subsection 84.1(5) of the BIA to cure any existing monetary default or breach of the Vendor under any contract which is to become an Assigned Contract as at the date such contract becomes an Assigned Contract.

**"Debt Settlement Transactions" shall have the meaning defined in Section 9.7.**

**“Directors”** means collectively, anyone who is or was, or may be deemed to be or have been, whether by statute, operation of Law or otherwise, a director or a *de facto* director of the Vendor;

**“Directors’ Charge”** means the charge, ~~if~~ granted by the Court, in favour of the Vendor’s Directors and Officers securing the Vendor’s indemnity obligations to those Directors and Officers;

**“DIP Charge”** means the charge, ~~if~~ granted by the Court, to secure all amounts owed to Bridging Finance Inc., as agent, pursuant to the terms of the DIP Facility;

**“DIP Facility”** means the credit facility made available to the Vendor pursuant to a DIP Term Sheet between Bridging Finance Inc., as agent, and the Vendor, as borrower, dated January 21, 2021;

**“Employee Plans”** means all the employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, retirement, pension, registered retirement savings, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers or employees of the Vendor maintained, sponsored or funded by the Vendor, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered.

**“Encumbrances”** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, license, right of first refusal or first offer, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant, execution, levies, or other financial or monetary claims or encumbrances of any nature (whether at Law or equity), and any contract, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing.

**“Escrowed Amount” means \$5,000,000;**

**“ETA”** shall have the meaning defined in Section 6.1.

**“Excluded Assets”** shall have the meaning defined in Section 2.2.

**“Excluded Liabilities”** shall have the meaning defined in Section 3.2(1).

**“Governmental Authority”** means: (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international, multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**"GST/HST"** means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA.

**"Installment Contract Debt"** means all indebtedness of the Vendor owing to 2700902 Ontario Inc., pursuant to an Installment Sale Contract No. 4915 between the Vendor and Progress Rail Equipment Leasing Corporation which was subsequently assigned by Progress Equipment Leasing Corporation to Bridging Finance Inc., as agent, pursuant to an Assignment and Assumption Agreement dated June 6, 2019 and further assigned by Bridging Finance Inc., as agent, to 2700902 Ontario Inc. pursuant to an Assignment and Assumption Agreement dated June 11, 2019.

**"Intellectual Property"** means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (vii) computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs; and (viii) any other intellectual property and industrial property.

**"Issued Preferred Shares" means 35,000,000 Preferred Shares in the capital of the Purchaser, such shares to be retractable at the option of the holder for an aggregate redemption amount of \$35,000,000, subject to such terms as the Parties may agree prior to Closing, acting reasonably.**

**"Issued Shares" means, collectively, (a) the Issued Preferred Shares, and (b) 30,000,000 Common Shares in the capital of the Purchaser, subject to equitable adjustment in the event of any stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares, or any similar event, in respect of the Purchaser occurring prior to the Closing.**

**"ITA"** shall have the meaning defined in Section 6.3.

**"Laws"** means any principle of common law and all applicable: (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws; (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Authority; and (iii) to the extent that they are

treated as binding by the Governmental Authority or have the force of law, policies, guidelines, notices and protocols of any Governmental Authority.

**“Liability”** means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in or under statute, contract, tort, strict liability or otherwise), and includes all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation) (collectively, **“Liabilities”**).

**“Material Contracts”** means, collectively:

- (a) the contracts, licenses and agreements listed in Schedule “BA”; and
- (b) any other contract, license or agreement to which the Vendor is at any time a party or pursuant to which the Vendor has at any time acquired rights and would reasonably be expected to be material to the Business.

**“NOI”** shall have the meaning defined in the Recitals.

**“Notice”** shall have the meaning defined in Section 13.1.

**“Officers”** means collectively, anyone who is or was, or may be deemed to be or have been, whether by statute, operation of Law or otherwise, an officer or a *de facto* officer of the Vendor;

**“Ordinary Course”** means, with respect to the Vendor, an action consistent with the past practices of the Vendor prior to the filing of the NOI and taken in the ordinary course of the normal day-to-day business and operations of the Vendor, provided that such action is in compliance, in all material respects, with applicable Laws (provided that it is required to comply with the requirements of the NOI proceedings).

**“Outside Date”** means ~~April 5~~May 21, 2021, or such later date as may be agreed to in writing by the Parties.

**“Parties”** shall have the meaning defined in the Recitals.

**“Permitted Encumbrances”** means all security interests and other interests arising exclusively from the Assumed Liabilities, Contract Assumed Liabilities, the Bridging Debt and the Installment Contract Debt.

**“Person”** includes an individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government (including any Governmental Authority) or any other entity, whether or not having legal status.

"Post-Closing Obligations" shall have the meaning defined in Section 5.2.

"Proposal Proceedings" means the NOI proceedings that have been or will be commenced by the Vendor under the BIA.

"Proposal Trustee's Certificate" shall have the meaning defined in Section 11.1(3).

"Priority Payables" means all amounts owing (including all amounts accrued but not yet payable) by the Vendor as of the Closing Date which rank *pari passu* or in priority to either of the Bridging Debt or the Installment Contract Debt, including, without limitation:

(a) all source deductions relating to salary, wages, bonuses and other compensation of all employees;

(b) all GST/HST related to the Business;

~~(c) any amounts secured by, or to be secured by, the DIP Charge;~~

(c) ~~(d)~~ any amounts secured by, or to be secured by, the Administration Charge; and

(d) ~~(e)~~ any amounts secured by, or to be secured by, the Directors' Charge

"Proposal Trustee" means KSV Restructuring Inc., pursuant to its ~~proposed~~ appointment as proposal trustee of the Vendor under the BIA.

"Purchase Price" shall have the meaning defined in Section 5.1.

"Purchased Assets" shall have the meaning defined in Section 2.1.

"Purchaser" shall have the meaning defined in the Recitals.

~~"Qualified Bid" has the meaning given in the Stalking Horse Sales Process.~~

~~"Stalking Horse Sales Process" means the sales process attached as Schedule "A"~~  
Purchaser Note" means an interest bearing promissory note issued by the Purchaser to the Vendor with a principal amount equal to the Purchaser Note Amount, upon commercially reasonable terms (including with respect to security) to be agreed prior to Closing by the Parties acting reasonably.

"Purchaser Note Amount" means \$15,000,000.

"Sales Process Order" shall have the meaning defined in the Recitals.

~~"Stalking Horse Bid" shall have the meaning defined in Section 10.1(a).~~

**“Tangible Personal Property”** means, collectively, all furniture, fixtures, equipment, inventory, leasehold improvements, machinery, tools, vehicles, office equipment, racking, supplies, computers, telephones and other tangible personal property.

**“Tax”** means: (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers’ compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Party.

**“Time of Closing”** means 12:01 a.m. (Toronto time) on the Closing Date, or such other time as the Parties may agree.

**“Transfer Taxes”** shall have the meaning defined in Section 6.2.

**“Transferred Employees”** means all Unionized Employees and all non-union employees of the Vendor who accept offers of employment given in accordance with this Agreement from the Purchaser.

**“Trustee in Bankruptcy”** means the trustee (as defined in the BIA) appointed over the estate of the Vendor pursuant to the BIA, in the event that the Vendor makes or is deemed to have made an assignment in bankruptcy, or where an application for a bankruptcy order concerning the Vendor is made by a party other than the Vendor.

**“Unionized Employees”** means employees of the Vendor who are employed under the terms of a Collective Agreement.

**“Vendor”** shall have the meaning defined in the Recitals.

**“Wind Down Amount”** means the amount necessary to fund the costs to wind down and complete the Proposal Proceedings after the Closing Date, including, without limitation, any Bankruptcy Costs.

**“Wind Down Estimate”** means an estimate of the Wind Down Amount that is prepared by the Proposal Trustee, in form and substance satisfactory to the Purchaser, acting reasonably.

~~“Winning Bidder” shall have the meaning defined in Section 10.1(c).~~

## **Section 1.2 Date for Any Action.**

If the date on which any action is required to be taken hereunder by a Party is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

## **Section 1.3 Gender and Number.**

Any reference in this Agreement to gender includes all genders. Words importing the singular number only shall include the plural and vice versa.

## **Section 1.4 Headings, etc.**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

## **Section 1.5 Currency.**

All references in this Agreement to dollars or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

## **Section 1.6 Certain Phrases, etc.**

In this Agreement (i) the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”, and (ii) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. Unless otherwise specified, the words “Article” and “Section” followed by a number mean and refer to the specified Article or Section of this Agreement.

## **Section 1.7 Statutes.**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

## **Section 1.8 Schedules.**

The schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.

## ARTICLE 2 PURCHASED ASSETS

### Section 2.1 Purchased Assets.

Subject to the terms and conditions of this Agreement, except for the Excluded Assets, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, on the Closing Date, effective as of the Time of Closing, all undertakings, property and assets of the Vendor, including any and all assets that relate to or are used in connection with the operation of the Business (collectively, the “**Purchased Assets**”), including but not limited to the following assets, free and clear of all Encumbrances (other than Permitted Encumbrances):

- (a) all cash on hand, cash equivalents and bank deposits;
- (b) all Tangible Personal Property;
- (c) all accounts receivable, notes receivable and other debts due or accruing due to the Vendor (the “**Accounts Receivable**”);
- (d) all prepaid expenses and deposits;
- (e) all customer files;
- (f) the benefit of all of the Assigned Contracts, provided that such benefit shall not be sold, transferred and assigned until the relevant Assigned Contract becomes an Assigned Contract in accordance with Article 4 or pursuant to an Assignment Order;
- (g) all Intellectual Property owned or licensed by the Vendor;
- (h) the proceeds of any and all refunds that may be due to the Vendor from Canada Revenue Agency and from any provincial tax authorities;
- (i) all consents, whether express or implied, granted in favour of the Vendor in accordance with *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada) (commonly known as “Canada’s Anti-Spam Law” or “CASL”);
- (j) to the extent transferrable, all orders, authorizations, approvals, licenses or permits of any Governmental Authority, owned, held or used by the Vendor;
- (k) all information in any form relating to, or used in connection with, the Business, including books of account, financial and accounting information and records, personnel records (other than records with respect to former employees or employees who do not become Transferred Employees), sales



and purchase records, customer and supplier lists, business reports, operating guides and manuals, plans and projections, marketing and advertising materials, corporate records, and all other documents, files, correspondence and other information (whether in written, printed, electronic or computer printout form, or stored on computer discs or other data and software storage and media devices), which for greater certainty, shall not include the books and records set out in Section 2.2;

- (l) all customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations;
- (m) all claims, actions, causes of action, indemnities, warranties (including supplier warranties), guarantees, rights of recovery, rights of set-off and rights of recoupment of the Vendor;
- (n) all telephone numbers;
- (o) all proceeds payable to the Vendor upon any policies of insurance; and
- (p) the goodwill of the Business, including the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor (including all business names related thereto).

## **Section 2.2 Excluded Assets.**

Notwithstanding anything herein contained to the contrary, the Purchaser shall not purchase the Vendor's right, title and interest in and to the following assets (collectively, the "Excluded Assets"):

- (a) the benefit of any contracts, agreements and/or understandings to which the Vendor is a party other than those contracts that are assigned to the Purchaser pursuant to Article 4 or an Assignment Order; and
- (b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance, capitalization or existence of the Vendor.

The Purchaser may, at its option, prior to Closing, exclude any of the Purchased Assets from the transactions contemplated hereby by delivering to the Vendor written notice of same, whereupon such asset(s) shall be deemed to form part of the Excluded Assets provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

**ARTICLE 3**  
**ASSUMED LIABILITIES**

**Section 3.1 Assumed Liabilities.**

Subject to the Closing, and except for the Excluded Liabilities, the Purchaser agrees to assume, as of the Time of Closing, all of the Vendor's obligations and Liabilities (and no other obligations or Liabilities) relating to (collectively, the "Assumed Liabilities"):

- (a) the Purchased Assets arising and accruing in respect of the period after the Time of Closing and not related to any default existing at, prior to or as a consequence of Closing (which excludes all obligations and Liabilities in connection with the Assigned Contracts, the assumption of obligations and Liabilities of which is dealt with pursuant to Article 4);
- (b) the obligations and Liabilities of the Vendor with respect to the Transferred Employees that are expressly assumed by the Purchaser pursuant to this Agreement;
- ~~(c) the DIP Facility and all security with respect thereto, either, in the sole discretion of Bridging Finance Inc., as agent, in its capacity as lender thereunder, by assumption thereof or refinancing thereof pursuant to exit financing; and~~
- (c) ~~(d)~~ any other Liability which the Purchaser agrees in writing to assume on or before the Closing Date.

**Section 3.2 Excluded Liabilities.**

- (1) Other than the Assumed Liabilities and the Contract Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfill any Liability or obligation of the Vendor or in connection with the Purchased Assets or the Business (the "Excluded Liabilities"), whether known, unknown, direct, indirect, absolute, contingent or otherwise arising out of facts, circumstances or events, in existence on or prior to the Time of Closing (with respect to the Assumed Liabilities) or, subject to Article 4, on or prior to the date on which a contract to which the Vendor is a party becomes an Assigned Contract, respectively (with respect to the Contract Assumed Liabilities).
- (2) Without limiting the generality of Section 3.2(1), the Purchaser shall not assume and shall have no obligation in respect of (i) any of the Excluded Assets or (ii) except as expressly provided herein, any Liabilities of the Vendor for Taxes other than as set out in Section 6.1 and Section 6.2.

**ARTICLE 4**  
**ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND LEASES**

**Section 4.1 Assignment of Assigned Contracts.**

- (1) On or prior to Closing, the Purchaser may, in its sole discretion, designate any contract to which the Vendor is a party to become an Assigned Contract, provided however that any Consent Required Contract shall be so designated by the Purchaser no later than seven (7) days prior to obtaining the Approval and Vesting Order.
- (2) Subject to Section 4.2, on Closing the Vendor shall be deemed to have assigned the benefit of any Assigned Contract and the Purchaser shall be deemed to have assumed, all of the Vendor's obligations and Liabilities relating to such Assigned Contract arising and accruing in respect of the period after Closing and not related to any default existing at, prior to or as a consequence of the Closing or of the assignment of such Assigned Contract (collectively, the "**Contract Assumed Liabilities**"), in each case without payment of any additional consideration.

**Section 4.2 Consent Required Contracts.**

- (1) Nothing in this Agreement shall be construed as an agreement to assign any Consent Required Contract, unless the consent, approval or waiver required to assign such Consent Required Contract has been given or an Assignment Order has been made with respect to such Consent Required Contract.
- (2) The Vendor and the Purchaser shall use reasonable commercial efforts to obtain the consents, approvals and waivers required for the assignment of the Consent Required Contracts that are designated as Assigned Contracts. Other than the payment of Cure Payments in accordance with this Agreement, which the Purchaser shall be required to pay, the Purchaser and the Vendor shall be under no obligation to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain any consent, approval or waiver for any Consent Required Contract.
- (3) Upon request by the Purchaser, such request to be made no later than seven (7) days prior to obtaining the Approval and Vesting Order, the Vendor shall obtain the Assignment Order, should the Purchaser and Vendor not otherwise obtain any of the consents provided for in Section 4.2(2) above.

**ARTICLE 5**  
**PURCHASE PRICE**

**Section 5.1 Purchase Price.**

The aggregate purchase price for the Purchased Assets shall be made up of the following amounts (in the aggregate, the "**Purchase Price**"), in each case exclusive of Transfer Taxes:

- (a) an amount equal to the value of the Bridging Debt owing immediately prior to the Time of Closing;
- (b) an amount equal to the Installment Contract Debt;
- (c) an amount required to satisfy the Priority Payables;
- (d) an amount equal to the Closing Date Assumed Liabilities Amount; and
- (e) an amount required to satisfy the Wind Down Amount.

## **Section 5.2 Payment of Purchase Price.**

The Purchase Price shall be satisfied by the Purchaser as follows, and the Vendor hereby directs the Purchaser to ~~make the payments of~~satisfy the Purchase Price in accordance with this Section 5.2 and this shall be the Purchaser's good and sufficient authority for so doing:

- (a) as to the amounts referred to in Section 5.1(a), by:
  - (i) the Purchaser issuing to the Vendor the Purchaser Note; and
  - (ii) the Purchaser issuing to the Vendor the Issued Shares as fully paid and non-assessable shares in the capital of the Purchaser;
- (b) as to the amount referred to in Section 5.1(b), by :
  - (i) wire transfer of immediately available funds in an amount equal to the Escrowed Amount to the Proposal Trustee on Closing to be dealt with as set out in the Approval and Vesting Order; and
  - (ii) the Purchaser assuming a portion of the ~~Bridging Debt and Installment Contract Debt~~ equal to the Assumed Installment Contract Debt Amount, applied first to principal amount and second (if applicable) to accrued but unpaid interest (the "Assumed Installment Contract Debt");
- (c) ~~(b)~~ as to the amount referred to in Section 5.1(c), by:
  - (i) wire transfer of immediately available funds to the Vendor on Closing; or
  - (ii) with the consent of the Vendor and the Proposal Trustee, which may be withheld at the discretion of either party (acting reasonably), by assumption of any Priority Payables not paid in such manner on Closing, assumed in a priority position superior to any and all other indebtedness of the Purchaser, as reasonably determined among the Purchaser, the Vendor and the Proposal Trustee;

(d) ~~(e)~~ as to the amount referred to in Section 5.1(d), by the Purchaser assuming the Closing Date Assumed Liabilities; and

(e) ~~(d)~~ as to the amount referred to in Section 5.1(e), ~~payable~~ by wire transfer of immediately available funds to the Proposal Trustee ~~funds~~ on Closing.

For greater certainty, the assumption by the Purchaser of the Assumed Liabilities other than the Closing Date Assumed Liabilities (the "Post-Closing Obligations") has been taken into account with respect to the determination of the aggregate Purchase Price payable pursuant to this Article 5 and the assumption of such Post-Closing Obligations by the Purchaser does not constitute separate or additional consideration hereunder in respect of the Purchased Assets.

**Section 5.3 Allocation of Purchase Price.** The Parties shall agree upon the allocation of the Purchase Price in respect of the Purchased Assets, both acting reasonably, prior to Closing or by such other date as the Parties agree. The Parties shall each report the purchase and sale of the Purchased Assets for all federal, provincial and local tax purposes in accordance with the agreed upon allocation and this Agreement.

**Section 5.4 Wind Down Amount.**

Prior to Closing, the Proposal Trustee will deliver to the Purchaser the Wind Down Estimate. If the Wind Down Amount exceeds the Wind Down Estimate, the Purchaser shall deliver to the Vendor by wire transfer such additional funds as are required to fund the Wind Down Amount within three (3) Business Days of written request by the Vendor to the Purchaser. If the Wind Down Amount is lower than the Wind Down Estimate, the Vendor shall notify the Purchaser of such excess and deliver to the Purchaser by wire transfer such excess funds as soon as reasonably practicable. ~~Section 5.4~~

Section 5.4 ~~Section 5.5~~ **Adjustment of Purchase Price.** Except as otherwise provided in this Agreement, the Purchase Price shall not be adjusted in any manner whatsoever.

**ARTICLE 6  
TAX MATTERS**

**Section 6.1 ETA Elections.**

The Purchaser and the Vendor shall, if applicable, jointly elect under subsection 167(1) of the *Excise Tax Act* (Canada) (the "ETA") and any equivalent or comparable corresponding provision under any applicable provincial or territorial legislation, in the form prescribed for the purposes of each such provision, in respect of the sale and transfer of the Purchased Assets and the Purchaser shall file such elections with the applicable tax authorities within the time and in the manner required by the applicable Law. Notwithstanding such elections, in the event it is determined by a Governmental Authority that there is a Liability of the Purchaser to pay, or of the Vendor to collect and remit, GST/HST (or similar provincial or territorial value-added or multi-staged Tax) in respect of the purchase and sale of the Purchased Assets hereunder, the Purchaser shall forthwith pay

such GST/HST (and any similar provincial or territorial value-added or multi-staged Tax) to the applicable Governmental Authority, or to the Vendor for remittance to the appropriate Governmental Authority, as the case may be, and shall indemnify and save harmless the Vendor from any penalties and interest which may be payable by or assessed against the Vendor (or its representatives, agents, employees, directors or officers) under the ETA (and any applicable provincial or territorial legislation) in respect thereof.

## **Section 6.2 Transfer Taxes.**

Subject to any available elections or exemptions contemplated by Section 6.1, the Purchaser shall be liable for and shall pay all federal and provincial sales taxes, transfer taxes, excise taxes, value-added taxes and all other similar Taxes or other like charges of any jurisdiction (“**Transfer Taxes**”) (for greater certainty, excluding all income or capital taxes of the Vendor) properly payable in connection with the transfer of the Purchased Assets by the Vendor to the Purchaser.

## **Section 6.3 Income Tax Elections.**

- (1) The Purchaser and the Vendor shall, if applicable, elect jointly in the prescribed form under section 22 of the *Income Tax Act* (Canada) (the “**ITA**”) and the corresponding provisions of any other applicable provincial Tax statute as to the sale of the Accounts Receivable forming part of the Purchased Assets and designate in such election an amount equal to the portion of the Purchase Price allocated to the Accounts Receivable pursuant to Section 5.3. This election, or these elections, shall be made within the time prescribed for such elections.
- (2) The Purchaser and the Vendor shall, if applicable, jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial statute as to such amount paid by the Vendor to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.
- (3) The Purchaser and the Vendor shall also execute and deliver such other Tax elections and forms as they may mutually agree upon.

## **ARTICLE 7 EMPLOYEE MATTERS**

### **Section 7.1 Successor Employer**

Effective as of the Closing Date, the Purchaser shall become the successor employer under the Collective Agreements, shall continue the employment of all Unionized

Employees, and shall: (i) recognize from and after the Closing Date the unions set forth in Schedule "~~D~~B" as the sole and exclusive collective bargaining agents for the Unionized Employees; and (ii) accept and be bound by the terms and conditions of the Collective Agreements applicable to the Unionized Employees, except that the Purchaser and the applicable collective bargaining agent shall be free (upon mutual agreement) to change the terms and conditions of the Unionized Employees or otherwise modify the applicable Collective Agreement.

### **Section 7.2 Offers to Non-Union Employees.**

- (1) No less than three (3) Business Days in advance of the Closing Date, the Purchaser may, but shall not be obligated to offer employment to any of the Vendor's employees (other than Unionized Employees) to be effective on the Closing Date, conditional on Closing, on terms and conditions that are, in the aggregate, no less favourable than the terms and conditions on which such employees are employed immediately before the Closing Date. Such offers of employment shall recognize the non-union employee's past service with the Vendor for all purposes.
- (2) Nothing in this Section 7.2, express or implied, (i) is intended to or shall confer upon any Person, including any employee of the Vendor, other than the Parties and their respective successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (ii) shall establish or constitute an amendment, termination or modification of, or an undertaking to establish, amend, terminate or modify, any Employee Plan, or (iii) shall create any obligation on the part of the Purchaser to employ any Transferred Employee for any period following the Closing Date.

### **Section 7.3 Employee Plans.**

- (1) The Purchaser shall assume the Employee Plans. The Purchaser, on the one hand, and the Vendor, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause the Purchaser to assume sponsorship of and responsibility for administration and operation of such Employee Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Employee Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing. The Vendor and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.3(1) including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.
- (2) Nothing in the provisions of this Section 7.3 express or implied, (i) is intended to or shall confer upon any Person, including any employee of the Vendor, other than the Parties and their respective successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (ii) shall establish or

constitute an amendment, termination or modification of, or an undertaking to establish, amend, terminate or modify, any Employee Plan, or (iii) shall create any obligation on the part of the Purchaser to employ any Transferred Employee for any period following the Closing Date.

#### **Section 7.4 Employee Liability.**

- (1) The Vendor shall be liable for all salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of all employees of the Vendor for the period prior to the Closing Date.
- (2) The Vendor shall be liable for statutory notice of termination or payment in lieu of notice obligations and statutory severance obligations in respect of any non-union employees of the Vendor who do not accept the Purchaser's offer of employment.
- (3) Without limiting the Purchaser's obligations in respect of the Transferred Employees, the Purchaser shall be responsible for:
  - (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of the Transferred Employees by the Purchaser for the period on and after the Closing Date; and
  - (b) all statutory notice of termination or payment in lieu of notice obligations and statutory severance obligations in respect of the termination by the Purchaser of the employment of any Transferred Employee arising on or after the Closing Date.

### **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

#### **Section 8.1 Vendor's Representations and Warranties.**

The Vendor represents and warrants as follows to the Purchaser at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the purchase of the Purchased Assets and the assumption of the Assumed Liabilities and the Contract Assumed Liabilities:

- (1) **Incorporation and Qualification.** The Vendor is a corporation duly incorporated and existing under the Laws of its jurisdiction of incorporation and, subject to the granting of the Sale Process Order, has the corporate power to enter into and perform its obligations under this Agreement.
- (2) **Authority to Complete.** Subject to obtaining the Approval and Vesting Order prior to Closing, on Closing the Vendor shall have the power and authority to complete the transactions contemplated hereby, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order.



- (3) **Enforceability of Obligations.** Subject to the entry of the Sale Process Order, the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated hereby, this Agreement constitutes a valid and legally binding obligation of the Vendor enforceable against the Vendor in accordance with its terms.
- (4) **Residence.** The Vendor is not a non-resident of Canada for purposes of the ITA.
- (5) **Registration.** The Vendor is registered under Part IX of the ETA and its registration number is 105104392 RT0001.
- (6) **Brokers and Finders.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Vendor.

## **Section 8.2 Purchaser's Representations and Warranties.**

The Purchaser represents and warrants as follows to the Vendor at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Vendor is relying on such representations and warranties in connection with the sale by the Vendor of the Purchased Assets:

- (1) **Incorporation and Qualification.** The Purchaser is an entity duly incorporated and existing under the Laws of its jurisdiction of incorporation and has the corporate power to enter into and perform its obligations under this Agreement.
- (2) **Corporate Authority.** The execution and delivery of and performance by the Purchaser of this Agreement and the consummation of the transactions contemplated by it have been authorized by all necessary corporate action on the part of the Purchaser.
- (3) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser, enforceable against it in accordance with its terms subject only to: (A) as of the date hereof, any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and (B) as of the Closing Date, the issuance of the Approval and Vesting Order.
- (4) **Registration.** The Purchaser will, prior to Closing, be registered under Part IX of the ETA and under comparable provincial legislation in each other province where the Purchaser is required to be registered for purposes of any election to be made pursuant to Section 6.1.

- (5) **Brokers and Finders.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Purchaser.
- (6) **Issued Shares. Upon Closing, the Issued Shares to be issued by the Purchaser to the Vendor will be duly authorized and, upon their issuance, will be validly issued, fully paid and non-assessable shares in the capital of the Purchaser.**

### **Section 8.3 Survival.**

The representations and warranties contained in this Agreement shall merge on Closing.

### **Section 8.4 No Other Representations or Warranties of the Vendor; "As Is, Where Is".**

- (1) The representations and warranties given by the Vendor in Article 8 are the sole and exclusive representations and warranties of the Vendor in connection with this Agreement and the transactions contemplated by it. Except for the representations and warranties given by the Vendor in Article 8, the Purchaser did not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied (by operation of Law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith.
- (2) The Purchaser hereby acknowledges and agrees as follows:
- (a) except as expressly provided herein, the Purchased Assets are being purchased on an "as is, where is" basis; and
  - (b) except as expressly set forth in this Agreement, the Vendor and the Proposal Trustee make no representations, or warranties in favour of the Purchaser concerning the Purchased Assets, which the Purchaser acknowledges are being acquired on an "as is, where is" basis, whether express or implied, statutory or collateral, arising by operation of Laws or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (Ontario) or other Laws do not apply to the transactions contemplated herein and are hereby waived by the Purchaser.

## ARTICLE 9 COVENANTS

### **Section 9.1      Conduct of Business in the Ordinary Course.**

~~During~~Subject to Section 9.7, during the period up to the Closing Date, the Vendor shall use commercially reasonable efforts to (i) conduct the Business in the Ordinary Course consistent with past practice; (ii) maintain and preserve intact its current Business organization and operations; and (iii) preserve the rights, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having relationships with the Business, in each case except to the extent required to allow the Vendor to comply with any of its obligations under this Agreement, subject in all cases to any limitation imposed by being subject to the commercial proposal process under the BIA and any Court order relating thereto. Except with the prior written consent of the Purchaser, the Vendor shall not enter into, amend, disclaim, restate or allow there to occur a default under any Material Contract.

### **Section 9.2      Actions to Satisfy Closing Conditions.**

The Vendor and the Purchaser agree to use their respective commercially reasonable efforts to take, or cause to be taken, all actions and make all such filings and submissions, and obtain such authorizations, which are necessary or advisable in order to (i) fulfil their respective obligations under this Agreement; and (ii) assist with the satisfaction of and ensure all conditions for the benefit of the other Party provided for in Section 10.2, Section 10.3 and Section 10.4 are satisfied.

### **Section 9.3      Access.**

Subject to applicable Laws, the Vendor shall (i) upon reasonable notice, permit the Purchaser and its employees, agents, counsel, accountants or other representatives, to have reasonable access during normal business hours to (A) the Purchased Assets, including all books and records whether retained by the Vendor or otherwise, (B) all contracts and leases to which the Vendor is a party, (C) personnel files relating to the employees of the Vendor (which shall be maintained in strict confidence by the Purchaser and only used for the purpose of considering and/or making employment offers to employees), and (D) the senior personnel of the Vendor, so long as the access does not unduly interfere with the ordinary conduct of the Business; and (ii) furnish to the Purchaser or its employees, agents, counsel, accountants or other such representatives such financial and operating data and other information with respect to the Purchased Assets as the Purchaser from time to time reasonably requests.

### **Section 9.4      Access to Books and Records.**

For a period of 6 years from the Closing Date or for such longer period as may be required by Law, the Purchaser will use its reasonable commercial effects, without any Liability to the Vendor, to retain all original books and records relating to the Purchased Assets that are transferred to the Purchaser under this Agreement. So long as any such books and records are retained by the Purchaser pursuant to this Agreement, the Vendor, the Proposal Trustee, any receiver or Trustee in Bankruptcy appointed in respect of the

Vendor and their respective representatives shall have the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. The Purchaser has the right to have its representatives present during any such inspection.

#### **Section 9.5 Use of Business Name.**

On or promptly following the Closing Date, and except as may be required for purposes of the NOI proceedings, the Vendor shall discontinue use of the name "Allied Track" and any variation thereof, except where legally required to advise that its name has been changed to another name or to refer to the historical fact that the Vendor previously conducted the Business under the "Allied Track" name, and the Vendor shall, subject to the Court's approval, as soon as reasonably practicable following Closing, file articles of reorganization to change the corporate name of the Vendor to another name not confusingly similar to its present name. Subject to the Court's approval, the Approval and Vesting Order shall authorize and direct the appropriate Governmental Authority to accept such articles of reorganization, notwithstanding the insolvency of the Vendor.

#### **Section 9.6 Post-Closing Accounts Receivable.**

Within three (3) Business Days following the Closing Date, and prior to any assignment in bankruptcy, the Vendor shall deliver a notice, in a form satisfactory to the Purchaser and duly executed by the Vendor, to the account debtors of the Accounts Receivable included in the Purchased Assets regarding the transfer of the accounts receivable and directing that all further payments thereunder be made to the Purchaser. Any Accounts Receivable forming part of the Purchased Assets collected by the Vendor or any trustee-in-bankruptcy appointed with respect to the Vendor (or other proceeds collected or derived from a Purchased Asset by the Vendor or such trustee-in-bankruptcy), other than the Purchase Price paid hereunder, from and after the Closing Date shall be held in trust for the benefit of the Purchaser, and such funds shall not form part of the Vendor's estate or otherwise made available to the Vendor's stakeholders, and, upon receipt following the Closing, shall promptly be paid to, and for the benefit of, the Purchaser in accordance with its rights under this Agreement.

#### **Section 9.7 Debt Settlement Transactions**

**The Parties agree that, notwithstanding Section 9.1, the Vendor may effect the transactions described in Schedule "C" (as such steps may be amended in accordance with Schedule "C", the "Debt Settlement Transactions").**

### **ARTICLE 10**

#### **~~SALES PROCESS AND~~ CONDITIONS OF CLOSING**

#### **Section 10.1 ~~Sales Process~~ Approval and Vesting Order**

~~(a) The Vendor shall bring a motion for the Sales Process Order on or before January 22, 2021. The Sales Process Order shall recognize the within offer by the Purchaser and Purchase Price as a baseline or "stalking horse bid" (the~~

~~"Stalking Horse Bid"). The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a Qualified Bid (in addition to the Stalking Horse Bid) can be obtained for the Purchased Assets.~~

~~(b) In the event that one or more Persons submits a Qualified Bid on or before the Bid Deadline, the Proposal Trustee shall conduct an auction for the determination and selection of a Winning Bid (the Person submitting such bid being the "Winning Bidder"). Upon the selection of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Vendor (subject to Court approval). The Vendor shall forthwith bring a motion following the selection of the Winning Bidder for an order approving the agreement reached with the Winning Bidder and to vest the purchased assets contemplated by such agreement in the Winning Bidder and, if granted, shall proceed with closing the transaction forthwith.~~

~~(c) Notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not the Winning Bidder, then upon the making of the order by the Court contemplated in Section 10.1(b) above to approve a transaction with such Winning Bidder, this Agreement shall be terminated and neither Party hereto shall have any further Liability or obligation, except as expressly provided for in this Agreement.~~

~~(d) If no Qualified Bids are received by the Bid Deadline (other than the Stalking Horse Bid), then the Stalking Horse Bid shall be deemed to be the Winning Bid, and the The Vendor shall forthwith bring a motion to the Court to obtain the Approval and Vesting Order and, if granted, shall proceed with completing the transactions contemplated hereby forthwith.~~

## **Section 10.2 Conditions for the Benefit of both Parties.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date:

- (1) **No Court Orders.** No provision of any applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect;
- (2) **Approval and Vesting Order.** The Approval and Vesting Order shall have been issued and entered and shall not have been stayed, amended, modified, reversed or dismissed as at the Closing Date; and
- (3) **Proceedings by Governmental Authority.** No motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the transactions contemplated by this Agreement.

### Section 10.3 Conditions for the Benefit of the Purchaser.

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date;
- (2) **Covenants.** The Vendor shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date, including delivery by the Vendor of the documents and instruments contemplated by Section 11.2;
- (3) **No Bankruptcy.** The Vendor shall not be and shall not have become a bankrupt under the BIA;
- (4) **Consents.** The Vendor shall have obtained consents from the counterparties to the Consent Required Contracts that have been designated as Assigned Contracts from the counterparties to those agreements and shall have delivered such consents to the Purchaser; and
- (5) **Assignment Order.** The Assignment Order, if requested by the Purchaser, shall have been issued and entered in form and substance satisfactory to the Purchaser.

### Section 10.4 Conditions for the Benefit of the Vendor.

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which are for the exclusive benefit of the Vendor and which may be waived, in whole or in part, by the Vendor in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date; and
- (2) **Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date, including delivery by the Purchaser of the documents and instruments contemplated by Section 11.3.

## ARTICLE 11 CLOSING

### Section 11.1 General.

- (1) The completion of the transactions of purchase, sale and assumption contemplated by this Agreement (the “**Closing**”) shall take place electronically on the Closing Date.
- (2) As soon as practicable following the ~~determination that~~execution of this Agreement ~~is the Winning Bid pursuant to the Stalking Horse Sales Process~~, the Vendor shall file motion materials seeking the issuance of the Approval and Vesting Order, provided that the Purchaser has had a reasonable opportunity to review and comment upon such materials, acting reasonably, in advance of filing with the Court. The Vendor shall serve notice of the motion seeking the issuance and entry of the Approval and Vesting Order on all Persons determined reasonably necessary by the Purchaser and shall provide reasonable advance notice of any Court appearances so that the Purchaser may make arrangements to attend if it so desires.
- (3) The Parties hereby acknowledge and agree that the Proposal Trustee shall be entitled in accordance with the Approval and Vesting Order to file a certificate, substantially in the form attached to the Approval and Vesting Order (the “**Proposal Trustee’s Certificate**”), with the Court upon receiving written confirmation from the Vendor and the Purchaser that all conditions of Closing have been satisfied or waived.

### Section 11.2 Vendor’s Closing Deliveries.

At the Closing, the Vendor shall execute and/or deliver or cause to be delivered to the Purchaser the following:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- (b) a true and complete copy of the Approval and Vesting Order, as entered by the Court;
- (c) if requested by the Purchaser, a true and complete copy of the Assignment Order, as entered by the Court;
- (d) true and complete copies of the Assigned Contracts to which the Vendor is a party, to the extent not delivered prior to Closing;
- (e) such executed Tax elections as are required pursuant to Article 6;
- (f) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Liabilities, the Assumed

[Installment Contract Debt and any Priority Payables to be assumed in accordance with Section 5.2\(c\);](#)

- (g) a true and complete copy of the Proposal Trustee's Certificate executed by the Proposal Trustee (such Proposal Trustee's Certificate to be filed with the Court by the Proposal Trustee following Closing and a copy of such filed Proposal Trustee's Certificate shall be delivered to the Purchaser promptly thereafter); and
- (h) any other documents necessary or desirable in the opinion of the Purchaser, acting reasonably.

**Section 11.3 Purchaser's Closing Deliveries.**

At the Closing, the Purchaser shall execute and/or deliver or cause to be delivered to the Vendor, or as the Vendor may direct, the following:

- (a) the payments contemplated by ~~Section 5.2(a), Section 5.2(b), Section 5.2(c) and Section 5.2(d);~~
- (b) [the Purchaser Note;](#)
- (c) [the Issued Shares;](#)
- (d) ~~(b)~~ evidence of payment of any applicable Transfer Taxes;
- (e) ~~(e)~~ such executed Tax elections as are required pursuant to Article 6;
- (f) ~~(d)~~ an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Liabilities, [the Assumed Installment Contract Debt and any Priority Payables to be assumed in accordance with Section 5.2\(c\);](#) and
- (g) ~~(e)~~ any other documents necessary or desirable in the opinion of the Vendor, acting reasonably.

**ARTICLE 12  
TERMINATION**

**Section 12.1 Termination of Agreement.**

This Agreement may by notice in writing given prior to or on the Closing Date be terminated:

- (a) by mutual consent of the Vendor and the Purchaser;



- (b) by either Party upon written notice to the other Party if the conditions set out in Section 10.2 are not satisfied performed or mutually waived on or before the Outside Date;
- (c) by the Purchaser or the Vendor if the Approval and Vesting Order, once granted, shall have been amended or modified in a manner adverse to such Party, or if it is stayed, reversed, dismissed or ceases to be in full force and effect;
- (d) by the Purchaser if the Assignment Order, if requested and once granted, shall have been amended or modified in a manner adverse to the Purchaser, or if it is stayed, reversed or ceases to be in full force and effect;
- (e) automatically if the Closing has not occurred by 11:59 p.m. on the Outside Date.

**Section 12.2 Effect of Termination.**

- (1) In the event that the Agreement is terminated in accordance with Section 12.1, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement, effective as of the date of such termination and such termination shall be without Liability to the Purchaser and the Vendor, including without limitation in respect of any Liabilities accrued from the date of execution of this Agreement to the date of termination.
- (2) Under no circumstances shall either of the Parties, their representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

**Section 12.3 Dispute Resolution.**

If any dispute arises with respect to any matter related to the transactions contemplated herein or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

**ARTICLE 13  
MISCELLANEOUS**

**Section 13.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “Notice”) must be in writing, sent by personal delivery, courier or electronic mail and addressed:

- (a) to the Vendor:

Allied Track Services Inc.  
169 S Service Rd,  
Grimsby, ON L5M 4H6

Attention: Andy Jones  
Email: andy.jones@alliedtrack.ca

with a copy to Vendor's counsel:

Bennett Jones LLP  
100 King Street West, Suite 3400  
Toronto, ON M5X 1A5

Attention: Sean Zweig and Jesse Mighton  
Email: zweigs@bennettjones.com

mightonj@bennettjones.com

with a copy to the Proposal Trustee:

KSV Restructuring Inc.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

Attention: Noah Goldstein  
Email: ngoldstein@ksvadvisory.com

with a copy to the Proposal Trustee's counsel:

Blake, Cassels & Graydon LLP  
199 Bay Street, Suite 4000  
Toronto, ON M5L 1A9

Attention: Chris Burr  
Email: chris.burr@blakes.com

(b) to the Purchaser:

Bridging Finance Inc.  
77 King Street West, Suite 2925  
Toronto, ON M5K 1K7

Attention: Graham Marr, Senior Managing Director  
Email: gmarr@bridgingfinance.ca

with a copy to Purchaser's counsel:

Chaitons LLP  
5000 Yonge Street  
Toronto, ON M2N 7E9

Attention: Harvey Chaiton and Seth Mandell  
Email: harvey@chaitons.com  
seth@chaitons.com

A Notice is deemed to be given and received if sent by personal delivery, courier or electronic mail, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

### **Section 13.2 Assignment.**

Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Parties. Notwithstanding the foregoing, on Closing the Purchaser shall be entitled to direct title to any of the Purchased Assets to one or more Persons provided that such persons shall agree to be jointly and severally liable with the Purchaser in respect of its liabilities and obligations under this Agreement.

### **Section 13.3 Survival.**

Any provision of this Agreement which contemplates performance or the existence of obligations after the Closing Date shall not be deemed to be merged into or waived by the execution, delivery or performance of this Agreement or documents delivered in connection herewith or Closing, but shall expressly survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement and shall be binding upon the Party or Parties obligated thereby (including any trustee-in-bankruptcy appointed in respect of such Party) in accordance with the terms of this Agreement.

### **Section 13.4 Time of the Essence.**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser.

**Section 13.5 Enurement.**

This Agreement becomes effective when executed by the Vendor and the Purchaser. After that time, it will be binding upon and enure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

**Section 13.6 Entire Agreement.**

This Agreement and the other documents executed in connection herewith constitutes the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

**Section 13.7 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

**Section 13.8 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser.

**Section 13.9 Further Assurances.**

- (1) From the Closing Date, each of the Parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Purchased Assets, the Assumed Liabilities and the Contract Assumed Liabilities to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.
- (2) Notwithstanding Section 13.9(1) or anything else contained in this Agreement, after Closing the Vendor shall not be required to delay making an assignment in bankruptcy under the BIA if it determines, in its sole discretion, to do so.

**Section 13.10 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 13.11 Governing Law.**

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

**Section 13.12 Jurisdiction.**

The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising under or related to this Agreement.

**Section 13.13 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by email or other electronic means is as effective as a manually executed counterpart of this Agreement.

[signature page follows]

**ALLIED TRACK SERVICES INC.**

By: \_\_\_\_\_  
Name: Andy Jones  
Title: Director

**2806401 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Graham Marr  
Title:

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

Schedule "A"

~~Stalking Horse Sales Process~~

~~See attached.~~

~~Schedule "B"~~

**Material Contracts**

See attached.



Schedule "C"

~~Sales Process Order~~

~~See attached.~~

Schedule ~~"D"~~B

Unions

See attached.

## Schedule "C"

### Debt Settlement Transactions

The Debt Settlement Transactions shall consist of the steps set out below, as such steps may be amended from time to time in accordance with the immediately following paragraph. Capitalized terms used but not defined in this Schedule "C" have the meanings ascribed to them in the amended and restated asset purchase agreement to which this Schedule "C" is appended (the "Purchase Agreement").

Either Party may, from time to time prior to the date that is three Business Days prior to the Closing Date, deliver to the other Party and the Proposal Trustee a notice in writing (a "Debt Settlement Transaction Notice") setting out any amendments that such Party proposes to make to the Debt Settlement Transactions set out in this Schedule "C". Provided the other Party and Proposal Trustee consent thereto, the revised Debt Settlement Transactions set out in any such Debt Settlement Transaction Notice shall replace the Debt Settlement Transactions set out below (as amended by any prior Debt Settlement Transaction Notice), the Vendor and Purchaser shall forthwith amend this Schedule "C" to reflect such revised steps, and the Proposal Trustee shall forthwith post the amended Schedule "C" on its website for the NOI proceedings.

1. Upon request by **Bridging Finance Inc.**, as agent under the Bridging Debt (the "Agent") in its sole discretion, the Vendor shall enter into an agreement with the Agent in form and substance acceptable to the Agent and the Vendor, providing for the forgiveness of a portion of the Bridging Debt (to be determined by the Agent in its sole discretion) effective as of prior to the Time of Closing.
2. Prior to the Time of Closing, the Vendor may pay, or cause to be paid, to the Agent, in partial payment and satisfaction of the Bridging Debt, any amount received from Pittsburg Bottom Line LLC in respect of any debt owing by Pittsburg Bottom Line LLC to the Vendor, provided that the amount of the Bridging Debt is thereby reduced by such amount.
3. Following Closing, the Vendor shall assign all of its right, title and interest in the Purchaser Note and Issued Shares to the Agent (or to the lenders under the Bridging Debt) in payment and satisfaction of the Bridging Debt, and the Purchaser shall consent to and register any such assignment.

Document comparison by Workshare 10.0 on Thursday, April 1, 2021 2:39:38 PM

Input:	
Document 1 ID	file:///C:/Users/fosterj/AppData/Local/Temp/Workshare/wmtemp6780/Stalking Horse Asset Purchase Agreement (Data Room Copy).DOC
Description	Stalking Horse Asset Purchase Agreement (Data Room Copy)
Document 2 ID	file:///C:/Users/fosterj/AppData/Local/Temp/Workshare/wmtemp6780/Amended and Restated Asset Purchase Agreement - Allied Track.DOC
Description	Amended and Restated Asset Purchase Agreement - Allied Track
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	101
Deletions	75
Moved from	1
Moved to	1
Style changes	0

Format changes	0
Total changes	178

## **Appendix “D”**

## **AMENDMENT NO. 1 TO THE DIP LOAN AGREEMENT**

This amending agreement (this "**Agreement**") is made as of April 1, 2021, between Allied Track Services Inc., a corporation governed by the laws of Ontario (the "**Borrower**"), and Bridging Finance Inc., a corporation governed by the laws of Canada, as agent (the "**Lender**").

### **WHEREAS:**

- A. The Borrower and the Lender entered into an interim financing credit facility loan agreement dated January 21, 2021 (the "**DIP Loan Agreement**");
- B. The Borrower and the Lender have agreed to make certain amendments to the DIP Loan Agreement on and subject to the terms and conditions set out in this Agreement;

**NOW THEREFORE** in consideration of the premises and the agreements set out herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower and the Lender agree as follows:

### **ARTICLE 1 INTERPRETATION**

#### **Section 1.1 Definitions**

Unless otherwise defined herein, capitalized terms used in this Agreement, including in the recitals hereto, shall have the meaning ascribed to such terms in the DIP Loan Agreement.

#### **Section 1.2 References to the DIP Loan Agreement**

Upon execution of this Agreement, the DIP Loan Agreement shall be deemed to have been amended as of the date hereof. The terms "hereof", "herein", "this DIP Loan Agreement", "the DIP Loan Agreement" and similar terms used in the DIP Loan Agreement, shall mean and refer to, from and after the date hereof, the DIP Loan Agreement as amended by this Agreement.

#### **Section 1.3 Continued Effectiveness**

Nothing contained in this Agreement shall be deemed to be a waiver by the Lender of compliance by the Borrower with any covenant or agreement contained in the DIP Loan Agreement, or a waiver of any default or event of default under the DIP Loan Agreement, and each of the parties hereto agrees that the DIP Loan Agreement as amended by this Agreement shall remain in full force and effect, and time shall remain of the essence.

#### **Section 1.4 Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the Borrower and the Lender and their respective successors and permitted assigns.

### **Section 1.5 Currency**

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

### **Section 1.6 Invalidity of any Provisions**

Any provision of this Agreement, which is prohibited by the laws of any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition in such jurisdiction without invalidating the remaining terms and provisions hereof and no such invalidity shall affect the obligation of the Borrower to pay the debts, liabilities and obligations of the Borrower under the Facility.

### **Section 1.7 Captions and Headings**

The inclusion of headings preceding the text of the sections of this Agreement and the headings following each Article in this Agreement are intended for convenience of reference only and shall not affect in any way such construction or interpretation thereof.

## **ARTICLE 2 AMENDMENTS**

### **Section 2.1 Amendments**

The DIP Loan Agreement is hereby amended as follows:

- (a) the paragraph titled "**Facility**" on page 1 of the DIP Loan Agreement is amended by deleting "up to the maximum principal amount of \$3,000,000" and replacing it with "up to the maximum principal amount of \$5,000,000"; and
- (b) the paragraph titled "**Repayment**" beginning on page 1 of the DIP Loan Agreement is amended by deleting "(vi) April 6, 2021" and replacing it with "(vi) May 21, 2021".

## **ARTICLE 3 CONDITIONS PRECEDENT**

### **Section 3.1 Conditions Precedent**

This Agreement shall not become effective until each of the following conditions precedent are satisfied or waived by the Lender:

- (a) this Agreement shall have been duly executed and delivered to the Lender; and
- (b) on or before April 7, 2021, the Court shall have approved an order, in form and substance acceptable to the Lender, approving this Agreement, increasing the amount of the Interim Financing Charge to \$5,000,000, and approving the sale transaction contemplated by an amended and restated purchase agreement (the



"Sale Agreement") between the Borrower and 2806401 Ontario Inc. (the "Purchaser") and, upon completion of the Sale Agreement, vesting in the Purchaser, or as it may direct, all of the Borrower's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement).

#### **ARTICLE 4 MISCELLANEOUS**

##### **Section 4.1 Governing Law**

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

##### **Section 4.2 Time of the Essence**

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

##### **Section 4.3 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

*[The remainder of this page has been left intentionally blank]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first set out above.

**BRIDGING FINANCE INC., as Agent**



By: \_\_\_\_\_

Name: Graham Marr

Title: President

I have authority to bind the Corporation

**ALLIED TRACK SERVICES INC.**

By: \_\_\_\_\_

Name: Andrew Stuart Jones

Title: Director

I have authority to bind the Corporation

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first set out above.

**BRIDGING FINANCE INC., as Agent**

By: \_\_\_\_\_

Name: Graham Marr

Title: President

I have authority to bind the Corporation

**ALLIED TRACK SERVICES INC.**

By: \_\_\_\_\_

Name: Andrew Stuart Jones

Title: Director

I have authority to bind the Corporation