

COURT FILE NUMBER 25-3002847

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.  
1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF INFARM INDOOR URBAN  
FARMING CANADA INC.

APPLICANT INFARM INDOOR URBAN FARMING CANADA INC.

**DOCUMENT AFFIDAVIT (SALE APPROVAL & SEALING)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**McMILLAN LLP**  
1700, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

**Attention:** Adam Maerov/Preet Saini  
**Telephone:** 403.215.2752/ 403.531.4716  
**Facsimile:** 403-531-4720  
**Email:** [adam.maerov@mcmillan.ca](mailto:adam.maerov@mcmillan.ca)  
[preet.saini@mcmillan.ca](mailto:preet.saini@mcmillan.ca)  
**File Number:** 300427

**AFFIDAVIT OF EREZ GALONSKA**

**Sworn March 11, 2024**

I, **EREZ GALONSKA**, of the City of London in the United Kingdom MAKE OATH  
AND SAY THAT:

1. This affidavit is sworn further to the affidavit of Amit Matthew Shoresch sworn in this action on November 2, 2023 ("**Shoresch Affidavit**"), and my affidavits sworn on December 21, 2023, and February 13, 2024.
2. I am the founder and Chief Executive Officer of Infarm Canada and have been authorized by Infarm Canada to swear this Affidavit.
3. Capitalized terms not defined in this affidavit shall take the meanings ascribed in the Shoresch Affidavit.



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### The Business of Infarm Canada

4. Infarm Canada is in the business of vertical farming. Vertical farming is the practice of growing crops in vertically stacked layers. Infarm Canada sells vertical farming equipment to allow indoor and outdoor farming and sells produce prepared using its equipment. Infarm Canada promotes sustainable and pesticide free produce using its supplies and methods.
5. Infarm Canada is an Alberta corporation continued from British Columbia.
6. Infarm Canada formerly had operations in (i) Calgary, Alberta, (ii) Vancouver, British Columbia, and (iii) Hamilton, Ontario.
7. The operations in Calgary and Vancouver ceased prior to the commencement of these insolvency proceedings. Hamilton is Infarm Canada's only remaining operating facility. At present, Infarm Canada employs approximately 30 employees in Hamilton.

### The Proposed Transaction and APA

8. Infarm Technologies Limited (the "**Purchaser**") is a UK company and, since December 29, 2023, has been the sole shareholder of Infarm Indoor Urban Farming Canada Inc. ("**Infarm Canada**").
9. The Purchaser has agreed to acquire certain of the assets of Infarm Canada pursuant to an asset purchase agreement dated March 11, 2024 (the "**APA**"), a copy of which is attached as **Exhibit "A"**.
10. The transaction contemplated by the APA (the "**Transaction**") contains the following key terms (capitalized terms as defined in the APA):
  - (a) The Purchase Price consists of three elements. First, Debt Consideration in the amount of seven million Euros (€7,000,000.00) to be paid by the Purchaser pursuant to a payment direction letter (the "**Payment Direction Letter**"). Second, the Monetary Purchase Consideration, which will be used to pay in cash all Priority Payables, including amounts secured by the Administration Charge. The Monetary Purchase Consideration is currently estimated to be in the amount of \$250,000 but will be equal to the amount of the Priority Payables as of the Closing Date, which will fluctuate from time to time and as a result, may be different as at that time. The third element is the assumption of certain liabilities of Infarm Canada by the Purchaser. These liabilities include all Priority Payables not satisfied by the Monetary Purchase Consideration, which include all obligations and liabilities described under Sections 81.3 and 81.4 of the BIA, Cure Costs (as defined therein) to remedy monetary defaults of Infarm Canada under certain contracts sought to be assigned, and all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.
  - (b) A copy of the Payment Direction Letter is attached as **Exhibit "B"**. The Payment Direction Letter provides for:
    - (i) Infarm Canada's principal secured creditor, TriplePoint Capital LLC ("TPC") will lend the Purchaser seven million Euros (€7,000,000.00) for payment of the Debt Consideration under a new credit facility;
    - (ii) The Purchaser will pay seven million Euros (€7,000,000.00) towards the Debt Consideration portion of the Purchase Price; and



E. 6



- (iii) Infarm Canada will pay seven million Euros (€7,000,000.00) to TPC in satisfaction of a portion of the secured indebtedness owed by Infarm Canada to TPC pursuant to the guarantee dated April 29, 2020 between TPC, Infarm Canada, and Infarm – Indoor Farming GmbH (the former parent of Infarm Canada prior to the UK transaction in the Administration Proceedings) (the “**Pre-Filing Guarantee**”). Infarm Canada will continue to owe five hundred thousand Euros (€500,000) plus further accruing interest and legal costs and expenses to TPC pursuant to the Pre-Filing Guarantee.
- (c) Following the closing of the transactions contemplated by the Payment Direction Letter and the APA, the secured obligations currently owed by Infarm Canada to TPC will have been reduced by seven million Euros (€7,000,000.00), Infarm Canada will have received payment of the estimated amount of outstanding Priority Payables, and the Purchaser will have assumed the Assumed Obligations.
- (d) The Purchased Assets include the Vendor’s right, title and interest in and to the property, assets and undertaking used in or in relation to the Business of the Vendor, which includes all of the assets located at the Hamilton Facility and owned by the Vendor as well three contracts, including the Lease at the Hamilton Facility.
- (e) The Purchased Assets do not include:
- (i) movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets located at, in or in the vicinity of the Vendor’s Other Premises located at its former locations in BC, Alberta, and Nova Scotia; or
  - (ii) the Previously Acquired Assets, which were purchased by the Purchaser pursuant to an Agreement for the Sale and Purchase of the Business and Assets Infarm – Indoor Urban Farming GmbH (in Administration) between Infarm – Indoor Urban Farming GmbH (in Administration), Gordon Thomson and Damian Webb, and the Purchaser dated December 29, 2023.
- (f) The Transaction is subject to granting of the approval and vesting order (“**AVO**”) sought by Infarm Canada.
- (g) The contemplated Closing Date is three (3) Business Days after the granting of the AVO or such earlier or later date as may be agreed.

#### **Factors Supporting Approval of the Proposed Transaction**

11. It is Infarm Canada’s assessment that the Purchase Price in the APA significantly exceeds any offers that would likely be received for the Purchased Assets on the open market. The Purchased Assets consist primarily of equipment that is niche to the urban farming business. In addition, the Purchased Assets are unlikely to be of any use to any other potential purchasers without the Previously Acquired Assets (as defined in the APA) that were owned by Infarm Parent and sold by that entity to the Purchaser in the Administration Proceedings in the UK. These Previously Acquired Assets include tangible components of the urban farming business at the Hamilton Facility and intellectual property owned by Infarm Parent required to operate the Hamilton Facility.
12. The proposed Transaction is in the best interests of Infarm Canada and its creditors. No prospective purchaser is likely to pay greater consideration than the Purchase Price. It is also very



unlikely that any prospective purchaser will be able to continue operating the Hamilton Facility given the matters described in the preceding paragraph.

13. Infarm Canada understands that the current intention is for the Purchaser to enter into employment contracts with all existing employees of Infarm Canada on the same or substantially same terms such that the proposed Transaction will provide for the continued employment of all existing employees. Ceasing operations in Hamilton would result in the loss of employment for approximately thirty employees that are contemplated to continue their employment with the Purchaser. Infarm Canada's primary secured creditor, TPC, is supportive of the Transaction, notwithstanding that it will suffer a substantial shortfall in its recovery of Infarm Canada's secured debt.

14. As previously noted, the Purchased Assets exclude movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets located at Infarm Canada's former leased premises in Calgary.

15. Good faith efforts were made, prior to Infarm Canada filing the NOI, to sell or otherwise dispose of the assets of Infarm Parent and Infarm Canada, including the Purchased Assets. Specifically, a sale process was conducted in the UK by the UK Administrator, a party experienced in the marketing and sale of distressed assets. That process consisted of various steps, including but not limited to the following (together, the "**Pre-Filing Process**"):

- (a) Approximately 131 potential purchasers (strategic and financial) were contacted about the sales process.
- (b) Teasers were sent out initially in June, 2023.
- (c) A virtual data room containing information pertaining to each division of Infarm, including the Canadian division, was created and made available to 17 potential purchasers who signed non-disclosure agreements.
- (d) Indicative offers were initially requested by July 19, 2023 but potential purchasers were advised that the deadline would be extended to July 26, 2023.
- (e) An information overview package was made available to prospective purchasers that signed non-disclosure agreements along with access to a data room for due diligence purposes. The information overview package was clear regarding the global nature of Infarm Parent's business, including its Canadian operations. A copy of the information overview document is attached as **Exhibit "C"**.
- (f) Prospective purchasers had the option of acquiring all or a portion of Infarm Parent's assets, including individual divisions such as the Infarm Canada division.
- (g) The offer by the Purchaser for the Infarm Parent assets alone was the most favourable received in that process and was approved by the Administrator.

16. I am advised by Andrew Basi of the Proposal Trustee's office that the Proposal Trustee has reviewed the marketing efforts undertaken in the Pre-Filing Process and separately conducted an independent appraisal of the tangible assets at the Hamilton Facility. I understand that that appraisal will be attached as a confidential appendix to the Fourth Report (the "**Confidential Appraisal**"). Infarm Canada has not viewed the Confidential Appraisal. However, I understand that the Proposal Trustee is





17. TPC sourced funds as discretionary advances to Infarm Canada throughout these proceedings and has advanced a total of approximately \$860,000 to fund Infarm Canada since the NOI was filed. Without this funding, Infarm Canada would not have been able to operate or provide continued employment over the course of the NOI proceedings. As a result of the lack of liquidity available to Infarm Canada, and given the results of the Pre-Filing Process, Infarm Canada determined that a further sales process would not be feasible and in any event, would not result in a bid in excess of the transaction currently before the Court.

19. Infarm Canada may have no funding beyond April 8, 2024 to operate if TPC does not agree to fund any shortfall for a further extension to file a proposal. This lack of liquidity may cause Infarm Canada to fail to meet its operating expenses. This lack of liquidity creates urgency associated with obtaining approval of and completing the proposed Transaction.

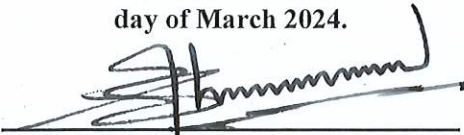
20. A temporary sealing Order over the Confidential Appraisal until closing of the Transaction is necessary to protect important commercial interests in the event that the Transaction fails to close and Infarm Canada's assets need to be marketed for sale.

22. I make this Affidavit in support of an application by Infarm Canada for approval of the APA and Transaction and to temporarily seal the Confidential Appraisal.

Page 5 of 5

E.6

This is Exhibit "A" referred to in the  
Affidavit of Erez Galonska  
Sworn before me this 11<sup>th</sup>  
day of March 2024.



A Notary Public in and for London,  
United Kingdom

SAJO THOMAS  
Notary Public England and Wales  
First Floor, 6 Flitcroft Street  
West End, London WC2H 8DJ England  
Phone: (+ 44) 0795 2336643  
Email: [sajo@sthomasnotarypublic.com](mailto:sajo@sthomasnotarypublic.com)  
Protocol Number 11909 Date 11 MARCH 2024





**INFARM INDOOR URBAN FARMING CANADA INC.**

as Vendor

and

**INFARM TECHNOLOGIES LIMITED**

as Purchaser

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**ASSET PURCHASE AGREEMENT**

March 11, 2024

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## ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of March 11, 2024, between INFARM INDOOR URBAN FARMING CANADA INC., a corporation continued under the laws of the Province of Alberta (the “Vendor”) and INFARM TECHNOLOGIES LIMITED, a corporation incorporated under the laws of England and Wales (the “Purchaser”).

### RECITALS:

- (1) On October 26, 2023, the Vendor filed a Notice of Intention to Make a Proposal pursuant to section 50.4(9) of the BIA, naming KSV Restructuring Inc. as trustee (the “Trustee”).
- (2) Pursuant to an order of the Court of King’s Bench of Alberta in Bankruptcy and Insolvency (the “Court”) dated November 24, 2023 the time period for the Vendor to file a proposal to its creditors (the “Proposal Period”) was extended to January 9, 2024. By order of the Court dated January 8, 2024 the Proposal Period was further extended to February 23, 2024, and by subsequent order of the Court dated February 22, 2024 the Proposal Period was further extended to April 8, 2024.
- (3) The Vendor desires to sell all of its right, title and interest in and to certain of its assets and the Purchaser has agreed to purchase such right, title and interest subject to the terms and conditions set forth in this Agreement, including approval of the Court, and the applicable provisions of the BIA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

## ARTICLE 1 INTERPRETATION

### Section 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

“Accounts Receivable” means, on any date, all accounts receivable (including amounts deposited in the Vendor’s accounts in any financial institution) and tax refunds generated in the operation of the Vendor’s Business, together with any unpaid interest or fees accrued thereon which are outstanding on such date and the full benefit of all security or collateral for such amounts (including, without limitation, the Vendor’s right, title and interest in and to the RBC Cash Collateral), including recoverable advances and deposits, but excluding any amounts owing to the Vendor as at the Closing Time from any of its shareholders or Affiliates, or from any other Person who does not deal at arm’s length with it.



**“Administration Charge”** means the Administration Charge as defined in the Order of Justice Dunlop granted on November 10, 2023 in Court of King’s Bench Court File Number 25-3002847/B301-002847.

**“Affiliate”** has the meaning given to the term “affiliate” in the *Business Corporations Act* (Ontario).

**“Agreement”** means this asset purchase agreement, as amended from time to time.

**“Applicable Law”** means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event.

**“Approval and Vesting Order”** means an order by the Court substantially in the form attached as **Schedule D** hereto, authorizing the Transaction and vesting in the Purchaser all the right, title and interest of the Vendor in and to the Purchased Assets free and clear of all claims and encumbrances other than Permitted Encumbrances.

**“Assignment Order”** means an order or orders of the Court pursuant to section 84.1 and 66(1.1) of the BIA and other applicable provisions of the BIA, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the BIA Proceedings or the insolvency of the Vendor and (iii) the vesting in the Purchaser of all right, title and interest of the Vendor in such Consent Required Contracts.

**“Assumed Obligations”** has the meaning set out in Section 2.4.

**“BIA”** means the *Bankruptcy and Insolvency Act* (Canada).

**“BIA Proceedings”** means the proceedings under the BIA to which the Vendor is subject.

**“Benefit Plans”** means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of the Vendor with respect to some or all of the Employees and which provide for or relate to (i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or (ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments

or expenses, life insurance, accident, death or survivor's benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses and perquisites or similar employment benefits.

**"Books and Records"** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by, and in the possession of the Vendor, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Purchased Assets, and, for greater certainty, excluding the minute books and corporate records of the Vendor and any of the foregoing relating exclusively to the Excluded Assets.

**"Business"** mean the business of the debtor carried on from the Leased Premises.

**"Business Day"** means a day on which banks are open for business in Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

**"Claims"** means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person.

**"Closing"** means the successful completion of the Transaction.

**"Closing Date"** means the date that is three (3) Business Days after the date the Approval and Vesting Order is obtained, or such other earlier or later date as may be agreed by the Parties.

**"Closing Time"** means 2:00 p.m. (Toronto time) on the Closing Date.

**"Consent Required Contract"** has the meaning set out in Section 2.2(a).

**"Contracts"** means all of the contracts and other written agreements to which the Vendor is a party constituting part of the Purchased Assets, including, for greater certainty, all Contracts listed in Appendix I to **Schedule "A"** to this Agreement.

**"Court"** has the meaning set out in recital (2) hereto.

**"Cure Costs"** means the monetary defaults of the Vendor in relation to the Consent Required Contracts and the quantum of which, having been determined by the Vendor in consultation with the Consent Required Contract counterparty, acting reasonably and in consultation with the Trustee, shall be acceptable to the Purchaser, acting reasonably.



**"Debt Consideration"** means the sum of Seven Million Euros (€7,000,000.00) to be satisfied by delivery of the Payment Direction Letter on Closing;

**"Employee"** means an individual who is employed by the Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave.

**"Encumbrances"** means all caveats, encumbrances, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

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

**"Excluded Assets"** means all of the Vendor's right, title and interest, in and to those assets and rights set forth in **Schedule B**.

**"Excluded Equipment"** means any equipment or machinery and any parts and components thereof, that are Excluded Assets.

**"Governmental Authority"** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

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

**"Intellectual Property"** means all intellectual property of the Vendor used by or currently being developed for use in the business of the Vendor, and all rights of any of the Vendor therein, including all claims for past infringement, worldwide, whether registered or unregistered, including without limitation:

- a) all patents, patent applications and other patent rights, including provisional and continuation patents;
- b) all registered and unregistered trademarks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
- c) registered and unregistered copyrights and mask works, including all copyright in and to computer software programs and applications and registrations of such copyright;

- d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- e) industrial designs; and
- f) trade secrets and proprietary information not otherwise listed in (a) through (e) above, including, without limitation, all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, mask works, circuit topography, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded or unrecorded.

**“Landlord”** means collectively, Greycan 8 Properties Limited Partnership by its general partner Greycan 8 Properties Inc. and Hamilton Airport Lands Limited Partnership by its general partner 11035380 Canada Inc.

**“Lease”** means the Commercial Lease dated August 4, 2020, between the Vendor and the Landlord with respect to the Leased Premises;

**“Leased Premises”** means 50 Aeropark Boulevard, Unit 1, Hamilton, Ontario, as more particularly described in the Lease;

**“Login Credentials”** means the login credentials for any software or programs that form part of the Purchased Assets.

**“Monetary Purchase Consideration”** means the cash amount equal to the Priority Payables in an amount currently estimated at Two Hundred and Fifty Thousand Canadian Dollars (\$250,000.00);

**“Non-Assignable Interests”** means any Purchased Assets which, by their nature cannot be legally or practically sold and assigned by the Vendor to the Purchaser hereunder, including without limitation any Consent Required Contracts for which an Assignment Order or counterparty consent has not been obtained;

**“Ordinary Course of Business”** means the ordinary course of Business of the Vendor with respect to the Purchased Assets consistent with the conduct of such Business on the date hereof and consistent with the Orders of the Court in the BIA Proceedings.

**“Outside Date”** means June 22, 2024.

**“Party”** means the Purchaser or the Vendor.



**"Payment Direction Letter"** means the payment direction letter in agreed form to be entered into between Triplepoint Capital LLC, the Trustee and the Vendor with effect and conditional on Closing;

**"Permitted Encumbrances"** means those Encumbrances set forth in Schedule C.

**"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

**"Priority Payables"** means amounts secured by the Administration Charge and amounts payable by the Vendor which are secured by liens (including deemed trusts) that encumber the Purchased Assets and rank prior to the interests of the Purchaser arising by operation of any applicable statutory law.

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

**"Purchased Assets"** means all of the Vendor's right, title and interest, in and to the property, assets and undertaking used in or in relation to the Business of the Vendor, including without limitation all assets set forth in **Schedule A** hereto, but excluding Excluded Assets.

**"Purchaser"** has the meaning set out in the recitals hereto.

**"RBC"** means Royal Bank of Canada, Royal Bank Mortgage Corporation, The Royal Trust Company, or Royal Trust Corporation of Canada.

**"RBC Cash Collateral"** means amounts standing to the credit of the Vendor's account no. 00130190668 005 maintained at the Royal Bank of Canada, Royal Bank Mortgage Corporation, RBC (including any replacements, amendments, renewals, or substitutions made in respect of such account, and any accretions thereto or proceeds thereof).

**"Representative"** means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates.

**"Sales Taxes"** means all taxes imposed under Sales Tax Legislation.

**"Sales Tax Legislation"** means Part IX of the *Excise Tax Act* and the regulations made under such legislation.

**"Storage Premises"** means the storage facilities leased by the Vendor from 3D Warehousing & Logistics, located at 1817 Burlington Street East, Hamilton, ON L8H 3LS.

**"Transaction"** means the transaction of purchase and sale contemplated by this Agreement.

**"Transfer Taxes"** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Taxes but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

**"Transition Employees"** means the Employees of the Vendor designated by the Purchaser not less than five Business Days before the Closing Date to remain employed by the Vendor after the Closing Date.

**"Trustee"** has the meaning set out in recital (1) hereto.

**"Trustee's Certificate"** means the certificate of the Trustee certifying that the Trustee has received written confirmation in form and substance satisfactory to the Trustee from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Trustee has received the Monetary Purchase Consideration.

**"Vendor"** has the meaning set out in the recitals hereto.

**"Vendor's Other Premises"** means the premises located at: (1) Unit# 118 ,7727 Beedie Way, Delta, British Columbia, V4G 1C2; (2) Unit 120, 11810 Barlow Trail NE, Building D, Calgary, Alberta, T3J 3T9; (3) Unit 108, 10 Thornhill Drive, Dartmouth, Nova Scotia, B3B 1S1; and (4) Unit #3536 – 78 Avenue NW, Edmonton, Alberta T6B 2X9.

## **Section 1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **Section 1.3 General Construction.**

The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof. The expression "Section" or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.



#### **Section 1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

#### **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 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 1.7 Schedules**

The following Schedules are incorporated in and form part of this Agreement:

- Schedule A – Purchased Assets
- Schedule B – Excluded Assets
- Schedule C – Permitted Encumbrances
- Schedule D – Form of Approval and Vesting Order

### **ARTICLE 2 SALE AND PURCHASE AND ASSIGNMENT**

#### **Section 2.1 Sale and Purchase of Assets**

Subject to the terms and conditions hereof, at the Closing Time, the Vendor hereby agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, the Purchased Assets, free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order.

#### **Section 2.2 Assignment of Contracts**

In the event that there are any Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and such consents, approvals or waivers have not yet been obtained as of the Closing Date, then:

- a) nothing in this Agreement will be construed as an assignment of any such Contract (each a "**Consent Required Contract**");
- b) until the Approval and Vesting Order is granted, the Vendor shall use its commercially reasonable efforts to obtain any such consent, approval or waiver

and the Purchaser shall provide its reasonable cooperation to assist the Vendor in obtaining any such consent, approval or waiver;

- c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the service of the motion for the Approval and Vesting Order, the Purchaser may request that the Vendor bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts together with the motion for the Approval and Vesting Order, or at such later date as may be designated by the Purchaser;
- d) Pending obtaining consent or Assignment Order, the Vendor shall hold the Consent Required Contract as a Non-Assignable Interest, and shall use commercially reasonable efforts to continue to perform its obligations under the Consent Required Contract at the Purchaser's cost, including engaging the Purchaser as its agent to do so; and
- e) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or the assignment of such Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

With respect to each Consent Required Contract, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing.

### **Section 2.3 "As is, Where is"**

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 5.2, no representation, warranty or condition has or will be given by the Vendor concerning completeness or accuracy of such descriptions.

Notwithstanding anything contained in this Section 2.3, the Vendor confirms that it shall be in possession of and shall deliver all Login Credentials to the Purchaser on the Closing Date.



#### **Section 2.4 Assumed Obligations**

The Purchaser shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendor (the "**Assumed Obligations**") after the Closing:

- a) All Priority Payables outstanding at the Closing Time, but only by the amount that their value exceeds the Monetary Purchase Consideration;
- b) all obligations and liabilities described under Sections 81.3 and 81.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
- c) all debts, liabilities and obligations under the Contracts (to the extent assigned or transferred to the Purchaser on Closing) for the period from and after the Closing Time;
- d) the obligation and liability of the Vendor to pay Cure Costs in respect of any Contract; and
- e) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.

#### **Section 2.5 Excluded Obligations**

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendor, including, without limiting the generality of the foregoing:

- a) all debts, liabilities, obligations or Claims related to any Benefit Plans, Employees or any Excluded Asset;
- b) all debts, liabilities and obligations related to any Purchased Asset arising out of or related to the period prior to the Closing Time;
- c) all obligations and liabilities owing by the Vendor to any Affiliate;
- d) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser;
- e) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes); and
- f) all debts, liabilities and obligations of the Vendor arising under this Agreement.

### **ARTICLE 3 PURCHASE CONSIDERATION**

#### **Section 3.1 Purchase Consideration**

The aggregate purchase price (the "**Purchase Consideration**") payable by the Purchaser to the Trustee on behalf of the Vendor for the Purchased Assets is the sum of: (i) the Monetary Purchase Consideration, (ii) the Debt Consideration, and without duplication, (iii) the Assumed Obligations.

#### **Section 3.2 Satisfaction of Purchase Consideration**

Provided that all conditions precedent to Closing have been satisfied or waived in accordance with Article 7, the Purchase Consideration shall be paid and satisfied on Closing as follows:

- a) as to the amount of the Debt Consideration, by the entering into of the Payment Direction Letter;
- b) as to the Monetary Purchase Consideration, by wire transfer in immediately available funds paid to the Trustee; and
- c) as to the dollar value of the Assumed Obligations, by the assumption by the Purchaser of the Assumed Obligations.

#### **Section 3.3 Transfer Taxes**

(1) The Parties agree that:

- a) the Purchase Consideration is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay at the Closing Time any and all applicable Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets;
- b) subject to Section 3.3(1)c), the Purchaser shall pay at the Closing Time any applicable Transfer Taxes on the Purchaser's acquisition of the Purchased Assets; and
- c) if applicable, the Vendor and the Purchaser shall jointly elect that no Sales Taxes be payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Excise Tax Act, prepared by the Purchaser and made jointly by the Purchaser and the Vendor, in compliance with the requirements of the Sales Tax Legislation. The Purchaser shall indemnify the Vendor for any Sales Tax, interest and penalties applicable to the Vendor on the sale of the Purchased Assets caused by the Purchaser's failure to file a valid election under section 167 of the Excise Tax Act in the prescribed time.



(2) If requested by the Purchaser, the Vendor shall make:

- a) a joint election(s) to have the rules in section 22 of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable; and
- b) a joint election(s) to have the rules in subsection 20(24) of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Vendor in respect of undertakings which arise from the operation of the business to which the Purchased Assets related and to which paragraph 12(1)(a) of the Income Tax Act applies.

#### **ARTICLE 4 SALE PROCEDURES**

##### **Section 4.1 Sale Procedures**

- a) The Vendor and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- b) The Vendor and the Purchaser acknowledge and agree that the Trustee or the Vendor shall apply to the Court by no later than March 21, 2024, or such other date as they may agree, for the Approval and Vesting Order, inter alia, approving this Agreement and authorizing the transactions contemplated herein, and the parties will use commercially reasonable efforts to have the Approval and Vesting Order issued.

#### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

##### **Section 5.1 Purchaser's Representations**

The Purchaser represents and warrants to the Vendor as of the date hereof and acknowledges that, as of the Closing Time, the Vendor is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- b) the Purchaser has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;

- c) neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms; and
- d) The Purchaser is a "trade agreement investor" and is not "state-owned enterprises", each as determined in accordance with the *Investment Canada Act* (Canada) (including the regulations thereunder).

### **Section 5.2 Vendor's Representations**

The Vendor, represents and warrant to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledges that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) the Vendor is a corporation duly confirmed, organized and subsisting under the laws of the Province of Alberta;
- b) the Vendor is not a non-resident of Canada for purposes of the *Income Tax Act* or the *Excise Tax Act*, as applicable;
- c) to the best of the Vendor's actual knowledge, and without investigation, no notices of termination have been received by the Vendor under any customer or vendor contracts of the Vendor since October 26, 2023;
- d) on the Closing Date, the Vendor shall be in possession of active and accurate Login Credentials and shall be able to transfer such Login Credentials to the Purchaser; and
- e) subject to obtaining the Approval and Vesting Order and, if applicable, the Assignment Order, the Vendor has the requisite power and authority to enter into this Agreement and to complete the Transaction contemplated hereunder.

### **Section 5.3 Limitations**

With the exception of the Vendor's representations and warranties in Section 5.2 and the Purchaser's representations and warranties in Section 5.1, none of the Vendor or the Purchaser, or their respective Representatives, nor any of their respective officers, directors or Employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendor, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.



## **ARTICLE 6 COVENANTS**

### **Section 6.1 Conduct of Business in the Ordinary Course**

- (1) The Vendor shall use commercially reasonable efforts to conduct its business in the Ordinary Course of Business except to the extent consented to by the Purchaser in writing or required to allow the Vendor to comply with its obligations under this Agreement, subject in all cases to any limitation imposed by being subject to BIA Proceedings and any Court order.
- (2) Without limiting the generality of Section 6.1(1), the Vendor shall, subject to the exception in section 6.1(1), use its commercially reasonable efforts to:
  - a) remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the Ordinary Course of Business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business,
  - b) not dispose of any of the Purchased Assets,
  - c) not disclaim any Contract that is material to the business of the Vendor; and
  - d) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, such consent not to be unreasonably withheld, or an order of the Court, and provided that such consent of the Purchaser shall be deemed to have been given with respect to any request for such a consent to which the Purchaser fails to respond within two (2) Business Days after such request is made.

### **Section 6.2 Actions to Satisfy Closing Conditions**

- (1) The Vendor agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to satisfy all of the conditions set forth in Section 7.1 and Section 7.3.
- (2) The Vendor agrees prior to the Closing Date to take all such actions as are within its power to control and shall use its commercially reasonable efforts to assist the Purchaser with the transition of customer and supplier relationships from the Vendor to the Purchaser. The Purchaser agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.2 and Section 7.3.

**ARTICLE 7**  
**CONDITIONS PRECEDENT**

**Section 7.1 Conditions Precedent in favour of the Purchaser**

- (1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:
  - a) all representations and warranties of the Vendor contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
  - b) the Vendor shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.3;
  - c) all stays of proceedings provided for in the BIA Proceedings, including in any Court orders granted therein, shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which is not prejudicial to the Purchaser or which does not adversely affect the Purchaser's rights under this Agreement or the Purchased Assets; and
  - d) The Purchaser shall have entered into employment agreements with the Transition Employees on terms acceptable to the Purchaser in its sole discretion.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 7.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 7.1 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendor to terminate this Agreement.

**Section 7.2 Conditions Precedent in favour of the Vendor**

- (1) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed:
  - a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
  - b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.2.



- (2) The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 7.2 may be waived by the Vendor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set forth in Section 7.2 is not satisfied or performed on or prior to the Outside Date, the Vendor may elect on written notice to the Purchaser to terminate the Agreement.

### **Section 7.3 Conditions Precedent in favour of both the Purchaser and the Vendor**

- (1) The obligations of the Vendor and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:
- a) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
  - b) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction;
  - c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
  - d) the Vendor and Purchaser shall have agreed in writing as to how the sum of the Monetary Purchase Consideration and the Debt Consideration shall be allocated on Closing amongst the Purchased Assets.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser. If the conditions set out in this Section 7.3 are not satisfied performed or mutually waived on or before the Outside Date, any Party shall have the option to terminate this Agreement upon written notice to the other Party.

## **ARTICLE 8 CLOSING**

### **Section 8.1 Closing**

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Shibley Righton LLP, 250 University Ave., Suite 700, Toronto, Ontario, M5H 3E5, or as otherwise determined by mutual agreement of the Parties in writing and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time and, in any event, prior to the Outside Date.

## **Section 8.2 Purchaser's Deliveries on Closing**

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- a) the Monetary Purchase Consideration in accordance with Section 3.2b);
- b) payment of Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, the election(s) referred to in Section 3.3(1)c) executed by the Purchaser;
- c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;
- d) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all respects the covenants to be performed by it prior to the Closing Time; and
- e) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

## **Section 8.3 Vendor's Deliveries on Closing**

At or before the Closing Time, the Vendor shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing in accordance with Section 8.4(1);
- b) the Approval and Vesting Order;
- c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;
- d) a true and complete copy of all Assignment Order(s), if any, entered by the Court;
- e) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendor contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendor have performed in all material respects the covenants to be performed by them prior to the Closing Time;



- f) if applicable, the election(s) referred to in Section 3.3(1)c) executed by the Vendor;
- g) the executed Trustee's Certificate;
- h) such other necessary deeds, conveyances, assurances, transfers and assignments and any other instruments necessary to transfer the Purchased Assets to the Purchaser; and
- i) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

#### **Section 8.4 Possession of Assets**

- (1) On Closing, the Purchaser shall take possession of the Purchased Assets where situated at Closing. The Purchaser acknowledges that the Vendor has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied or waived by the Purchaser or Vendor, as applicable, and the Purchaser has satisfied all delivery requirements outlined in Section 8.2. The Purchaser shall promptly notify the Vendor of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Vendor, or to such other Person as the Vendor may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendor shall have no obligation to remove any Excluded Equipment from any premises that constitute part of Purchased Assets. All right, title and interest in any such Excluded Equipment which is not sold or removed from such premises after three months following Closing shall vest in the Purchaser (unless already the property of the Purchaser) unless the Purchaser objects to such title transfer in which case, right, title and interest shall continue to vest in the Vendor but the Purchaser shall be entitled to dispose of such Excluded Equipment at the Purchaser's expense.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendor. In the event of material (exceeding \$100,000) damage by fire or other hazard to the Purchased Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by notice in writing.

#### **Section 8.5 Dispute Resolution**

If any dispute arises with respect to any matter related to the Transaction 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 or as mutually agreed by the Vendor and the Purchaser.

#### **Section 8.6 Termination**

- (1) This Agreement shall automatically terminate at any time prior to the Closing Time by mutual written agreement of the Vendor and the Purchaser and on consent of the Trustee.
- (2) This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:
  - a) a condition precedent has not been satisfied or waived pursuant to and in accordance with Article 7 and a Party entitled to terminate this Agreement as a result thereof has delivered written notice of termination pursuant to Article 7 (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement); or
  - b) Closing shall not have occurred on or prior to the Outside Date in accordance with Section 7.3 and any of the Parties shall have delivered written notice of termination to the other Parties terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement).

#### **Section 8.7 Effects of Termination and Closing**

- (1) If this Agreement is terminated pursuant to Section 8.6, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of this Section 8.7 (Effects of Termination and Closing), each of which will survive termination.
- (2) Under no circumstance shall any 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.

### **ARTICLE 9 GENERAL**

#### **Section 9.1 Access to Books and Records**

- (1) For a period of two years from the Closing Date or for such longer period as may be reasonably required for the Vendor (or any trustee in bankruptcy of the estate of the Vendor) to comply with Applicable Law, the Purchaser will retain all original Books and Records 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 (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendor, including the Trustee) has 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.

## **Section 9.2 Notice**

- (1) Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:

- a) in the case of the Purchaser, as follows:

**InFarm Technologies Inc.**

**Attention:** Erez Galonska  
**Email:** erez@infarm.com

- b) in the case of the Vendor, as follows:

**InFarm Indoor Urban Farming Canada Inc.**

**Attention:** Adam Maerov and Preet Saini  
**Email:** adam.maerov@mcmillan.ca and preet.saini@mcmillan.ca

- c) in each case, with a further copy to the Trustee, as follows:

**KSV Restructuring Inc.**

**Attention:** Robyn Gurofsky  
**Email:** rgurofsky@fasken.com

- (2) Any such notice or other communication, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

## **Section 9.3 Time**

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 9.4 Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

#### **Section 9.5 Personal Information**

The Purchaser hereby acknowledges that it is aware, and that it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its Representatives pursuant to this Agreement and/or the Transaction. The Purchaser agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

#### **Section 9.6 Benefit of Agreement**

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

#### **Section 9.7 Entire Agreement**

This Agreement, the attached Schedules hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

#### **Section 9.8 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

#### **Section 9.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Court and the courts of the Province of Ontario.

#### **Section 9.10 Commission**

The Purchaser agrees to indemnify the Vendor and its Representatives against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendor shall indemnify the Purchaser and its Representatives for any third party or agent or broker fees or other



commissions payable by the Vendor on the Purchase Consideration or otherwise in connection with the Transaction.

#### **Section 9.11 Assignment by Purchaser**

This Agreement may not be assigned by the Purchaser without the prior written consent of the Vendor and the Trustee, which consent may be withheld in the Vendor and the Trustee's sole and absolute discretion; provided, however that the Purchaser shall be permitted to assign the benefit of all or a portion of this Agreement prior to the issuance of the Approval and Vesting Order to an Affiliate thereof in circumstances where (i) prior notice of such assignment is provided to the Vendor and the Trustee, (ii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment, and (iii) such assignment shall not release the Purchaser from any obligation or liability hereunder in favour of the Vendor and the Purchaser shall acknowledge and confirm its continuing obligations and liabilities in favour of the Vendor in form and substance satisfactory to the Vendor; for greater certainty, the Purchaser shall be permitted to assign the right to buy all or a portion of the Purchased Assets to one or more Affiliates and such assignment shall be permitted so long as the requirements of this Section 9.11 are complied with. This Agreement may not be assigned by the Vendor.

#### **Section 9.12 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

#### **Section 9.13 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 facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

#### **Section 9.14 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

#### **Section 9.15 Trustee's Certificate**

The Parties acknowledge and agree that the Trustee shall be entitled to deliver to the Purchaser, and file with the Court, the executed Trustee's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Trustee shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from both Parties that all conditions

of Closing in favour of such Party have been satisfied or waived (other than the payments contemplated in Section 3.3 and the delivery of the executed Trustee's Certificate), the Trustee may deliver the executed Trustee's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Trustee's written confirmation of receipt of the payments contemplated in section 3.2 to be delivered to it, and (ii) upon the Trustee's written confirmation that all such funds have been received, the Trustee's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

#### **Section 9.16 Trustee's Capacity**

The Vendor and the Purchaser acknowledge and agree that the Trustee, acting in its capacity as Trustee of the Vendor, will have no liability, in its personal capacity or otherwise, in connection with this Agreement whatsoever as Trustee.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]**



IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

**INFARM TECHNOLOGIES LIMITED**

By:  *Erez Galonska*  
S6GSY2FCK6U8FPLK

Name: Erez Galonska

Title: Chief Executive Officer

I have authority to bind the Corporation

VENDOR:

**INFARM INDOOR URBAN FARMING  
CANADA INC.**

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

Title: Authorized Signing Officer

I have authority to bind the Corporation

### Schedule A – Purchased Assets

- (1) All movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets, if any (excluding those that are subject to capital leases), in addition to all computer hardware used in connection with the business and located in or in the vicinity of the Leased Premises, save for any such items (in this Schedule A, the “**Previously Acquired Assets**”) which have already been purchased by the Purchaser pursuant to an Agreement for the Sale and Purchase of the Business and Assets Infarm – Indoor Urban Farming GmbH (in Administration) between Infarm – Indoor Urban Farming GmbH (in Administration), Gordon Thomson and Damian Webb, and the Purchaser dated December 29, 2023;
- (2) all Books and Records;
- (3) all inventory of the Vendor used in the carrying on of its business, save for Previously Acquired Assets;
- (4) the benefit of (i) all customer contracts or agreements of the Vendor (including, but not limited to those referenced in Appendix 1; and (ii) all contracts or other agreements listed in Appendix 1 to this Schedule A in each case, as amended, extended, assigned or otherwise modified (in this Schedule A, the “**Assumed Contracts**”);
- (5) all Accounts Receivable;
- (6) all prepaid expenses to the extent necessary for the operation of the business from and after the Closing;
- (7) all supplies owned by the Vendor and used in connection with the business, save for Previously Acquired Assets;
- (8) all Intellectual Property owned or licensed by the Vendor and used in or relating to the carrying on of the business, including Intellectual Property developed by the Vendor’s employees, save for Previously Acquired Assets;
- (9) 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 (in each case, solely to the extent related to any of the Accounts Receivables and/or Assumed Contracts);
- (10) all government licenses, approvals, permits or similar used in connection with the business;
- (11) all goodwill associated with the business or the Purchased Assets, including the right to carry on the business in continuation of the Vendor;
- (12) Cash collateral posted by the Vendor pursuant to (a) a Cash Collateral Agreement dated November 6, 2020, and (b) a Royal Bank of Canada Credit Agreement dated October 26, 2020, each with the Royal Bank of Canada, as security for a letter of credit in the amount of \$367,218.00 favour of the Landlord in connection with the Lease; and



- (13) All tangible assets of every kind, nature and description of the Vendor located within the Province of Ontario and outside of the Leased Premises, including without limitation those situated within the Storage Premises.

### **Appendix 1 to Schedule A – Assumed Contracts**

- (1) The Lease;
- (2) The Service Agreement between the Vendor and Schaefer System International Ltd. dated December 12, 2023;
- (3) All supplier contracts to which the Vendor is a party; and
- (4) All customer contracts to which the Vendor is a party, including but not limited to any and all contracts with Pure Greens Incorporated.



### **Schedule B – Excluded Assets**

1. Benefit Plan; and
2. All movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets located in or in the vicinity of the Vendor's Other Premises.

### Schedule C – Permitted Encumbrances

PPSA File Number	Registration Number	Secured Party	Collateral Description
500553126	20231122 0923 2467 0392	RIGO LIFT TRUCK LIMITED	ONE LINDE ELECTRIC FORKLIFT MD#E25-C? SERIAL#A11347H00028? UNIT#R17631 C/W BATTERY #R15511? CHARGER #R18725
769588884	20210201 1945 1531 8081	DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.	2004 RAYMOND EZR45TT – V.I.N. EZCO4929757  ALL PERSONAL PROPERTY OF THE DEBTOR DESCRIBED HEREIN BY VEHICLE IDENTIFICATION NUMBER OR SERIAL NUMBER, AS APPLICABLE, WHEREVER SITUATED, TOGETHER WITH ALL PARTS AND ACCESSORIES RELATING THERETO, ALL ATTACHMENTS, ACCESSORIES AND ACCESSIONS THERETO OR THEREON, ALL REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS OF ALL OR ANY PART OF THE FOREGOING AND ALL PROCEEDS IN ANY FORM DERIVED THEREFROM
781169796	20220316 1702 1462 9538	CONCENTRA BANK	2021 LINDE EWR30 PALLET JACK SERIAL # A11101Y00149  PROCEEDS INCLUDING BUT NOT LIMITED TO GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, INSURANCE AND ALL OTHER PROCEEDS ARISING DIRECTLY OR INDIRECTLY FROM THE DISPOSITION, EXCHANGE, LOSS, REPLACEMENT, RENEWAL, DESTRUCTION OF OR DEALING WITH THE COLLATERAL
793250559	20230512 1134 2467 0378	RIGO LIFT TRUCK LIMITED	ONE NEW NILFISK SCRUBBER MODEL#SC901? SERIAL#4000304206? UNIT#20870

All of RBC's right, title and interest in and to the RBC Cash Collateral.



**Schedule D – Form of Approval and Vesting Order**

---

[Attached]

**Schedule A to Form of Approval and Vesting Order – Form of Trustee’s Certificate**

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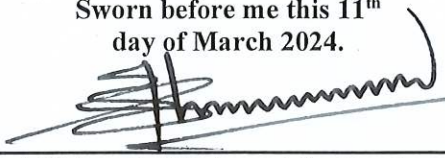
[Attached]





E.F

This is Exhibit "B" referred to in the  
Affidavit of Erez Galonska  
Sworn before me this 11<sup>th</sup>  
day of March 2024.

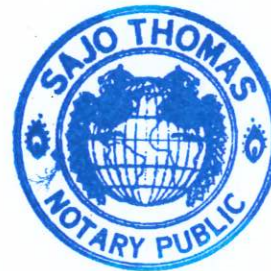


A Notary Public in and for London,  
United Kingdom



SAJO THOMAS  
Notary Public England and Wales  
First Floor, 6 Flitcroft Street  
West End, London WC2H 8DJ England  
Phone: (+ 44) 0795 2336643  
Email: sajo@sthomasnotarypublic.com

Protocol Number 11909 Date 11 March 2024





**Acquisition Payment Direction Letter (Debt Consideration)**

**Re: Infarm Indoor Urban Farming Canada Inc. ("Infarm Canada")**

TriplePoint Capital LLC ("TPC")  
2755 Sand Hill Road, Ste.150, Menlo Park  
CA94025 United States of America

TriplePoint Private Venture Credit Inc. ("TPPVC")  
2755 Sand Hill Road, Ste.150, Menlo Park  
CA94025 United States of America

Infarm Canada  
c/o McMillan LLP  
1700, 427 - 7th Avenue S.W.  
Calgary, AB, Canada T2P 4K9

InFarm Technologies Limited ("**Purchaser**")  
1 Warwick Street, London, United Kingdom, W1B  
5LR

March 2X, 2024

Dear Sirs

**Payment Directions.**

**1 References and definitions**

**1.1** Reference is made to the following documents:

- (a) an amended and restated plain English growth capital loan and security agreement originally dated 28 November 2017 (as amended from time to time, most recently on 13 December 2023 ("**Existing Infarm GmbH Loan**") between, amongst others, (1) Infarm-Indoor Urban Farming GmbH ("**Infarm GmbH**"), as borrower, and (2) TPC and TPPVC, (together "**Triplepoint**"), as lenders;
- (b) a Plain English continuing guaranty and security agreement dated 29 April 2020 made between (1) Infarm Canada, (2) infarm – Indoor Urban Farming USA Inc, as guarantors and grantors and (3) TPC as beneficiary/chargor ("**Canadian Guaranty and Security Agreement**");
- (c) an English law debenture dated December 29, 2023 made between (1) the Purchaser and (2) TPC (**the "Purchaser TriplePoint Debenture"**);
- (d) a Canadian law security agreement dated December 29, 2023 made between (1) the Purchaser and (2) TPC ("**NewCo Canadian Security Agreement**");
- (e) a business and assets transfer agreement in respect of the sale and purchase of the business and certain assets (as more particularly described therein) of Infarm GmbH dated December 29, 2023 made between (1) Infarm GmbH in Administration, (2) Damian Webb and Gordon Thomson, each of RSM UK Restructuring Advisory LLP as joint Administrators of Infarm GmbH and (3) the Purchaser;
- (f) a plain English growth capital loan and security agreement ("**New TriplePoint Facility**") dated December 29, 2023 and made between (1) the Purchaser (2) TPC and TPPVC as lenders and (3) TPC as collateral agent (TPC and TPPVC in their capacity as Lenders under the TriplePoint Facility being the "**TriplePoint New Lenders**");
- (g) an Asset Purchase Agreement dated as of March 11, 2024 (the "**APA**") in respect of the sale of the Purchased Assets (as defined in the APA, the "**Purchased Assets**") between (1) InFarm Canada as seller and (2) the Purchaser as purchaser.

**1.2** References to a paragraph in this Payment Direction Letter shall be construed as a reference to the paragraph of this Payment Direction Letter so numbered.

**1.3** Headings shall not affect the construction of this Payment Direction Letter.

## **2 Proposed transactions**

- 2.1 the Purchaser has agreed to acquire the Purchased Assets from Infarm Canada in accordance with the terms of the APA and subject to Court approval in the *Bankruptcy and Insolvency Act* (Canada) proceedings in respect of Infarm Canada.
- 2.2 the Purchaser has agreed to borrow €7,000,000, being part of the consideration payable under the APA by the Purchaser, under the New TriplePoint Facility.
- 2.3 TPC has consented to Infarm Canada selling and transferring the Purchased Assets which are subject to the Canadian Guaranty and Security Agreement, to the Purchaser, by way of the APA.

## **3 Existing indebtedness and Infarm Canada Guaranty Obligation**

- 3.1 The indebtedness of Infarm GmbH to TriplePoint under the Existing Infarm GmbH Loan as at the date of this Payment Direction Letter is €7,500,000 inclusive of all accrued unpaid interest, end of term payments and TriplePoint's legal fees and expenses payable by Infarm GmbH under the terms of the Existing Infarm GmbH Loan or the TriplePoint Infarm GmbH Security.
- 3.2 Pursuant to the terms of the Canadian Guaranty and Security Agreement, Infarm Canada has guaranteed all of the indebtedness and obligations of Infarm GmbH to Triplepoint under the Existing Infarm GmbH Loan, and has granted security over all of Infarm Canada's property, assets and undertaking, including the Purchased Assets, in favour of TPC as security for Infarm Canada's guarantee obligations thereunder.

## **4 Directions**

- 4.1 TriplePoint New Lenders confirm the availability of €7,000,000, under Part 3 of the New TriplePoint Facility.
- 4.2 the Purchaser refers to the New TriplePoint Facility and hereby requests draw down in the sums of:  
(1) €7,000,000 which is to be advanced, at the request of the Purchaser, in its entirety to the Purchaser for the purpose of paying the Debt Consideration (as that term is defined in the APA) payable under the APA.
- 4.3 TriplePoint New Lenders refer to the New TriplePoint Facility and hereby release the sum of €7,000,000 to the Purchaser pursuant to paragraphs 4.1 and 4.2.
- 4.4 the Purchaser hereby acknowledges receipt of the payment specified in paragraph 4.3, and directs payment of €7,000,000 to Infarm Canada with the intent such sum shall be utilised for the purposes set out in paragraph 4.2.
- 4.5 In accordance with the terms of the APA, the consideration payable by the Purchaser on Closing is:  
(1) Debt Consideration in the amount of €7,000,000, (2) Monetary Purchase Consideration of Cdn.\$250,000 and (3) assumption of the Assumed Liabilities (as defined in the APA) (collectively, the "**Purchase Consideration**").
- 4.6 Infarm Canada hereby acknowledges receipt of the €7,000,000 Debt Consideration specified in paragraph 4.4 and confirm that the Purchaser's obligation to pay the Debt Consideration portion of the Purchase Consideration due on Closing in accordance with section 3.2 of the APA has been fully discharged.



- 4.7 Infarm Canada hereby directs the payment of the sum, equal to €7,000,000, received by Infarm Canada under paragraphs 4.5 and 4.6 to be paid to TPC, as part payment of the liability of Infarm Canada to TPC pursuant to the Canadian Guaranty and Security Agreement.
- 4.8 TPC acknowledges receipt of the sum of €7,000,000 paid as set out in paragraph 4.7, as part payment of part of the amount due from Infarm Canada pursuant to the Canadian Guaranty and Security Agreement.
- 4.9 In addition, TPC agrees that it shall, at the request and cost of the Purchaser, execute all such further documents that may reasonably be required in order to release the Purchased Assets acquired by the Purchaser from the security constituted by the Canadian Guaranty and Security Agreement or any other security that may exist in connection with Infarm Canada's liabilities to TPC.

## **5 Accounting records**

- 5.1 the Purchaser agrees to make all appropriate entries in the accounting records to show:
- (a) the receipt by it of €7,000,000 pursuant to paragraph 4.4;
  - (b) the payment by it of €7,000,000 Debt Consideration, in accordance with paragraph 4.5.
- 5.2 Infarm Canada agrees to make all appropriate entries in its accounting records to show:
- (a) the receipt of €7,000,000 pursuant to paragraph pursuant to paragraph 4.6;
  - (b) the payment of €7,000,000 to TPC pursuant to paragraph 4.7,
- and Infarm Canada acknowledges and agrees that Infarm Canada continues to owe €500,000 plus further accruing interest and legal costs and expenses to TriplePoint pursuant to the Canadian Guaranty and Security Agreement, which sums remain secured by the Canadian Guaranty and Security Agreement.
- 5.3 TriplePoint New Lenders agree to make all appropriate entries in its accounting records to show the advance by them of €7,000,000 to the Purchaser, pursuant to paragraphs 4.3 and 4.4.
- 5.4 TriplePoint agrees to make all appropriate entries in its accounting records to show the receipt by it of €7,000,000 from Infarm Canada, pursuant to paragraph 4.8, which is applied as part payment of the liability of Infarm Canada to TPC pursuant to the Canadian Guaranty and Security Agreement.

## **6 Net/cashless payments**

Notwithstanding the provisions of paragraph 5 but without prejudice to paragraph 6, the parties agree that:

- 6.1 the payment due from TriplePoint New Lenders under paragraph 4.3 and which is directed by the Purchaser to be paid to Infarm Canada and further which is confirmed to have been received by Infarm Canada under paragraph 4.6; and
- 6.2 the payment which is to be made by Infarm Canada to TPC under paragraph 4.7 and further which is confirmed to have been received by TPC under paragraph 4.8,
- shall be netted off and effected on a cashless basis, in each case.

## 7 General

- 7.1 This Payment Direction Letter and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Province of Alberta.
- 7.2 The courts of the Provinces of Alberta and Ontario, Canada shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Payment Direction Letter or its subject matter or formation (including non-contractual disputes or claims).
- 7.3 This Payment Direction Letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Payment Direction Letter.

TRIPLEPOINT CAPITAL LLC, a company )  
incorporated in the State of Delaware, acting )  
by Kevin Thorne, who, under the laws of that )  
jurisdiction is lawfully authorised to bind that )  
company:

Signature \_\_\_\_\_

Name \_\_\_\_\_  
**Authorised Signatory**

TRIPLEPOINT PRIVATE VENTURE CREDIT )  
INC. a company incorporated in the State of )  
Maryland, acting by Kevin Thorne, who, under )  
the laws of that jurisdiction is lawfully )  
authorised to bind that company:

Signature \_\_\_\_\_

Name \_\_\_\_\_  
**Authorised Signatory**

INFARM TECHNOLOGIES LIMITED )  
)  
)  
)

Signature \_\_\_\_\_

Name **EREZ GALONSKA**  
**Director**

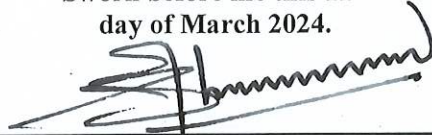
INFARM URBAN INDOOR FARMING )  
CANADA INC. )  
)  
)

Signature \_\_\_\_\_

Name **EREZ GALONSKA**  
**Director**

E. L

This is Exhibit "C" referred to in the  
Affidavit of Erez Galonska  
Sworn before me this 11<sup>th</sup>  
day of March 2024.



A Notary Public in and for London,  
United Kingdom



**SAJO THOMAS**  
Notary Public England and Wales  
First Floor, 6 Flitcroft Street  
West End, London WC2H 8DJ England  
Phone: (+ 44) 0795 2336643  
Email: [sajo@sthomasnotarypublic.com](mailto:sajo@sthomasnotarypublic.com)  
Protocol Number 11909 Date 11 March 2024







STRICTLY PRIVATE AND CONFIDENTIAL

## INFORMATION OVERVIEW

Infarm

July 2023

THE POWER OF BEING UNDERSTOOD  
AUDIT | TAX | CONSULTING

**inform**  
FRESH TASTE FOR PEOPLE AND PLANET

**RSM**

# OVERVIEW

## Background

- Infarm was founded in 2013 in Berlin by the brothers Erez and Guy Galonska, together with Osnat Michaeli who built operations in Europe and North America.
- Infarm was an early entrant in the vertical farming space, growing herbs and leafy vegetables in urban environments.
- This technique greatly reduces the resource usage typical of agriculture by significantly reducing the need for land and water. It also brings food closer to the end consumer thus providing food security in climatically destabilised world, characterised by a heavily disrupted global supply chain.
- Since its inception it has received backing by prominent VC funds allowing the Group to incur the high up-front costs typical of the sector and make significant investments in R&D.
- Vertical farming is an energy-intensive business as it requires electricity for LED lights, ventilation and temperature controls. Due to recent volatility in energy costs Infarm's margins have suffered.
- As a consequence Infarm has embarked on a restructuring program to reduce cash burn and exit specific geographical markets. Currently Infarm's only active operations are in Toronto, Canada. However Infarm owns a full suite of plant and machinery assets in Germany, Denmark and the UK and therefore the capability to recommence vertical farming in those locations. Alternatively, these assets are capable of being relocated to other jurisdictions.

## Infarm's impact



214,000 sqm / 2.3m sqft land saved to date

95%  
Less Water



153m litres / 35.7m gallons water saved to date

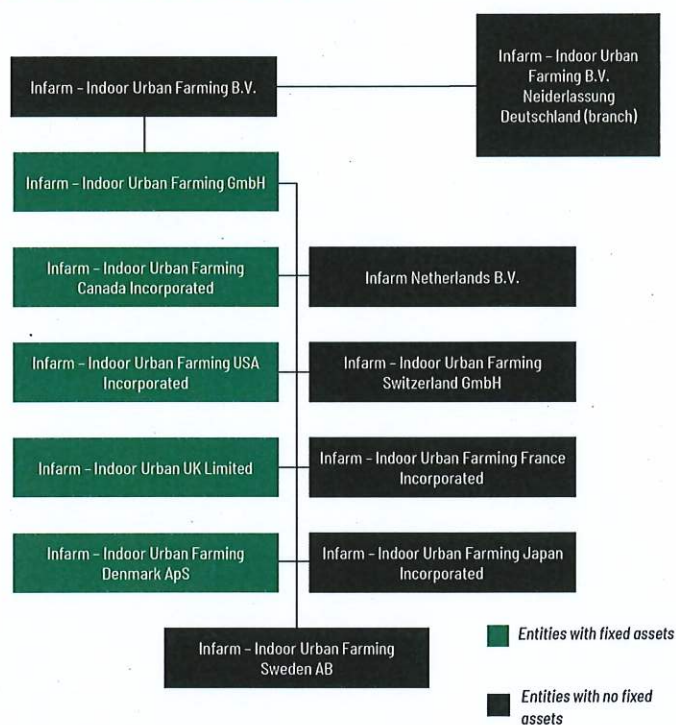
95%  
Less Miles



3m kms / 19m miles transportation saved to date



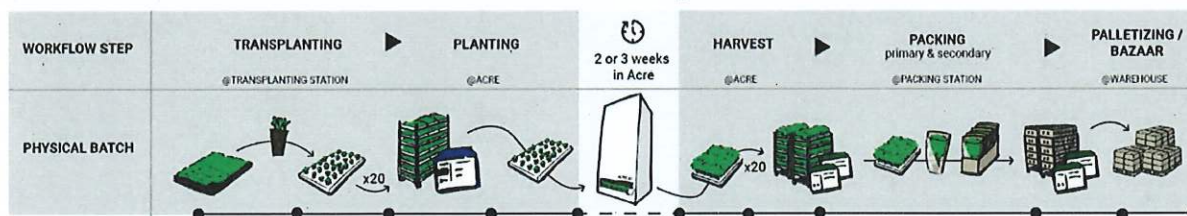
## Organisation structure and transaction perimeter



# OPERATIONS AND R&D

## Infarm's product life cycle

### JOURNEY OF A SINGLE GROWING BATCH



## Historic Investment in R&D - driving innovation at Infarm

- Tech strategy at the intersection of Crop Science, Data Science and Software
- The unique AI modelling platform in the industry is able to automatically control the farming systems to optimize harvest performance.
- Developing, maintaining and operating a large scale, decentralised and global farming end-to-end ecosystem. Continuously collecting data to improve quality, yield and reduce costs.

## Hardware

- Modular system that allows for effective scaling and fast roll-out in multiple regions, and that uses automation to achieve high consistency and reduce manual labour.
- Initially developed in-house and later designed with a strategic supplier; no in-house hardware manufacturing.
- Granted two Hardware patents:
  1. Light & Air Growing Bench, allowing for superior airflow and increased growing m2
  2. Automated Irrigation & Fertigation Station removing the need for system wide plumbing

## Software and IoT

- Crop science is at the core of Infarm's strategy; software enables the Company to perform scenario analysis and crop modelling, adapt recipes and automate quantitative measurements and predictions of plant growth and health.
- Proprietary software (full ownership of design and development) that managed Infarm's network of farms by monitoring, controlling crop operation and providing real-time performance analytics.
- Comprehensive monitoring and real-time alerting allowed Infarm to collect and report large volumes of proprietary data and synthesizes this into growing instructions and recipes
  - >1350 active farms monitored every 10 seconds 24/7;
  - >20 data points per batch, from plant morphology traits to farm environmental data;
  - ~80B data points collected that are constantly providing business insights;
  - Sending an average of >100 critical alerts/day that may affect harvest performance.



# MARKET

## Agriculture technology market

- The agri-tech industry comprises businesses developing technologies that improve the efficiency, sustainability and resilience of agriculture operations by leveraging a combination of software, biotech inputs or hardware.
- Vertical farming applies such technologies to the controlled environment for production, i.e. ventilation systems, irrigation systems and temperature controls.
- According to a report from Market Data Forecast, the European vertical farming market is expected to grow by 22% annually, reaching a value of \$2.3bn by 2026.
- Based on Infarm's crop assortment and those regions served historically, in the mid-term there is an opportunity to reach markets worth over USD\$7bn; this figure is estimated to be higher if growers were to a) enter new markets such as the Middle East and/or b) introduce new crops within their offering.

## Key vertical farming drivers



**Climate change:** Extreme and unpredictable weather conditions impact traditional agricultural production. Agriculture technology allows for controlled environments, where factors such as temperature and humidity can be closely monitored to maximise harvest performance and yield.



**Change in consumer preference:** Consumers are increasingly demanding locally grown and organic produce. With vertical farming technology, year-round fresh and pesticide-free crops can be offered.



**Scarce resources:** Conventional farming methods require large amounts of water and land, both of which are scarce. By using advanced technology and stacked growing areas, vertical farming provides a solution as it requires c.95% less land and water.



## Indoor farming competitive landscape



# STRATEGY

- Significantly broader product range vs. competitors, including c.75 SKUs across nine categories.
- Higher vitamin contents in Herbs, indicating a high quality product.
- Pricing set at mid-point between standard and organic produce.
- Positive response to Infarm products from consumer research, with 96% positive purchase intent in the US.

## Next steps

Infarm has undergone a restructuring programme to reduce cash burn, and exit specific geographical markets as a result of deteriorating trading conditions driven by energy cost volatility.

The Group has discontinued its operations in all countries except from Canada, where Infarm continues to trade from its base in Toronto.

Assets in Germany, Denmark, UK, and Canada (Calgary) are available for sale with the capability to recommence vertical farming in those locations or relocating these to other jurisdictions. Any reasonable transaction structure will be considered; to that end, Infarm's historical trading performance is presented in the next page albeit not representative of future operations in light of the divestments made.

## Sector opportunities



**Current trends:** Indoor farming provides a solution to many current key trends around food security, local production, healthy diet, and environmentally friendly operations; as such, it is an exciting and attractive sector to be in.



**Scalability:** Infarm has already incurred the high up-front costs of this capital intensive industry and was able to build a market presence in multiple countries.



**High demand:** The Company had partnered with some of the top retailers globally, testifying that demand for locally produced crops and herbs is strong.



**New markets:** the Middle East for instance provides an opportunity for vertical farming asset operators to achieve sustainable profits: in fact, this is a region where energy is relatively cheap and governments' objectives include boosting food security through more localised supply chains.



**New crops:** potential for cross-selling with clients.



**Automation:** This adds to the potential to improve profitability by reducing manual labour costs which, together with energy costs, are the most significant overheads of a vertical farming business.

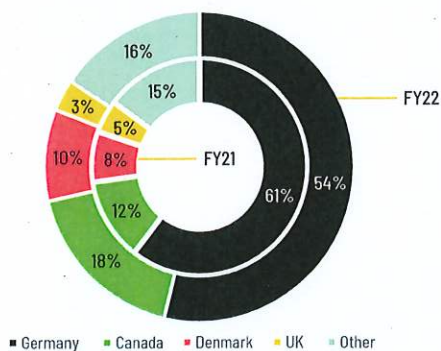


**Licensing:** a trade or asset buyer could license the use of proprietary technology to 3<sup>rd</sup> party farms allowing them to access global markets faster and with less capital investment, simply by connecting to Infarm's cloud-based 'brain'.

# FINANCIALS

EUR'000	FY20 (stat. acc.)	FY21 (stat. acc.)	FY22 (mgmt. acc.)
<b>P&amp;L</b>			
Revenue	3,829	8,069	9,885
<b>Net loss</b>	<b>(74,556)</b>	<b>(127,803)</b>	<b>(110,337)</b>
<b>Balance Sheet</b>			
Fixed assets	46,172	95,916	94,531
Current assets	56,024	31,266	45,990
Total liabilities	75,186	175,669	83,858
<b>Net assets</b>	<b>27,010</b>	<b>(48,487)</b>	<b>56,663</b>

FY21 and FY22 Historic Revenues generation capabilities - split by country



## Historical trading

- Historical trading is hereby presented to show the revenue-generating capabilities of Infarm's assets: the business was able to grow from c.EUR3.8m in FY20 to c. EUR9.8m in FY22.
- Infarm has a historical track record of winning significant contracts for blue chip customers.

## Toronto operations

- Trading commenced in H1 2020 utilising first generation vertical farming technology dedicated to a single customer. Subsequent construction and rationalisation of operating expenditure in 2022 to fulfil a new customer contract.
- Construction of the current facility commenced at the Toronto facility in Q1 2022 and has a maximum capacity of 25 Acres. Operations are being deployed in a phased approach with 16 Acres already operational with the remaining 9 Acres expected to go live in Q1 2024.
- Started to generate Revenue from the new contract Jan-23 with a step-increase expected after Q2 2023 in line with the phased activation of Acres. Revenues projected to stabilise at a level of c.EUR639k per month once the farm is fully operational with all 25 Acres active.
- May 23 forecast revenue, based on actual invoices, achieved original budget of c.EUR290k. Forecast to breakeven at EBITDA level from Jul-23 and achieve stable monthly EBITDA of c.EUR255k from Jan-24 onwards.

## Toronto activation plan





# FINANCIALS

Entity	Acres	Assets – discontinued operations	Assets – continuing operations	Total
Canada*	34	7,880	18,345	26,225
Germany	26	17,663	-	16,393
UK	4	2,214	-	2,214
Denmark	17	11,625	-	11,625
Netherlands	1	2,361	-	2,294
US	0	585	-	585
<b>Total</b>	<b>82</b>	<b>42,298</b>	<b>18,345</b>	<b>60,643</b>

Entity	Acres	Assets – discontinued operations	Assets – continuing operations	Total
Toronto	22	-	18,345	18,345
Calgary	12	7,880	-	7,880
<b>Total</b>	<b>34</b>	<b>7,880</b>	<b>18,345</b>	<b>26,225</b>

\*Canada entity is comprised of entities in Toronto and Calgary.

## Breakdown of assets: no. of units and cost (EUR'000)

Asset type	# of units	Total cost
Acres	82	33,679
Crac units	146	10,017
Nursery Chambers	93	9,163
WCSs Gakon	19	2,761
Tranplanter	3	1,062
WCS Chiller	9	892
Carton erector	2	683
WCSs Richel	5	583
Tray seal	2	581
Seeding line	6	380
Other assets with individual value < EUR300k		840
<b>Total</b>		<b>60,643</b>

## The value of Infarm's assets

### Tangible fixed assets

- Physical assets (Plant & Machinery) to operate a vertical farm at a total cost of c.EUR61m.
- More than half of the cost of the assets, c.EUR34m is made up by 82 Acre Farm modules that were deployed across EU and North America.
- This type of equipment can support the production of herbs, lettuces, salads and other leafy greens products, in any climate, at commercial scale.
- Benefits of such farm modules also include:
  - Highest possible yields – fully controlled and monitored environment
  - Modular and quick installation – scalable and can fit in most warehouse buildings
  - Fully automated cultivation – no human intervention, no scissor lifts

### Intangible fixed assets / R&D Spend

- Infarm also has full ownership of the design and development of its proprietary Controlled Environment Agriculture ('CEA') software platform.
- The software has built-in reporting capabilities: therefore, the value of the software also resides in the proprietary data historically captured and stored in the company data warehouse. This is processed by Infarm's internal data management system which sets the parameters for recipes that maximise yield and minimise resources and costs. These are the result of years of R&D to perfect the growing methods for the best conditions within the controlled environment.

#### **RSM UK Corporate Finance LLP**

25 Farringdon Street  
London  
EC4A 4AB  
United Kingdom  
T +44 (0)20 3201 8000  
rsmuk.com

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