
Second Report to Court of
the Receiver of
blutip Power Technologies Ltd.

April 19, 2012

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Court File No.: CV-12-9622-00CL

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

BETWEEN:

CCM Master Qualified Fund, Ltd.

Applicant

-and-

blutip Power Technologies Ltd.

Respondent

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

SECOND REPORT OF THE RECEIVER

April 19, 2012

1.0 Introduction

Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on February 28, 2012 (the "Receivership Order"), Duff & Phelps Canada Restructuring Inc. ("D&P") was appointed receiver ("Receiver") of the properties, assets and undertakings (collectively, the "Assets") of blutip Power Technologies Ltd. (the "Company"). A copy of the Receivership Order and Endorsement dated February 28, 2012 is attached as Appendix "A".

This report ("Report") is filed by D&P in its capacity as Receiver.

The primary purpose of these receivership proceedings is to allow for the Company's business and Assets to be marketed for sale pursuant to a Court-supervised "stalking horse" sale process ("Sale Process").

1.1 Purposes of this Report

The purposes of this Report are to:

- Provide background information concerning the Company and these receivership proceedings;
- Summarize the results of the Sale Process;
- Summarize a proposed transaction (the "Recommended Transaction") between the Receiver and CCM Master Qualified Fund Ltd. ("CCM"), whereby the Receiver is recommending the sale of substantially all of the Company's business and Assets pursuant to an asset purchase agreement dated March 9, 2012 between the Receiver and CCM (the "Stalking Horse Agreement" or the "APA");
- Provide an overview of the Receiver's activities since March 9, 2012, the date up to which its activities were previously approved; and
- Recommend that the Court issue an order or orders:
 - a) Approving the Recommended Transaction;
 - b) Approving the APA and authorizing the Receiver to execute all other ancillary documents and agreements required to complete the Recommended Transaction;
 - c) Vesting title in the Purchased Assets (as defined in the APA) in the assignee of CCM (the "Purchaser")¹ free and clear of all liens, claims and encumbrances;
 - d) Approving the Receiver's activities, as described in this Report; and
 - e) Discharging the Receiver upon the filing of a discharge certificate with this Honourable Court (the "Discharge Certificate").

1.2 Currency

All currency references in this Report are to Canadian dollars, unless otherwise noted.

¹ CCM has advised that it may not know the identity of its assignee prior to the issuance of the recommended order. Accordingly, the Receiver is requesting that the recommended order provide that the Purchased Assets will vest in an assignee of CCM to be designated in writing to the Receiver in accordance with the APA prior to the closing of the Recommended Transaction.

2.0 Background

The Company is a publicly listed² technology company (TSX-V: BPR) based in Mississauga, Ontario. The Company engages in the research, development and sale of hydrogen generating systems and combustion controls. Its products include hydrogen generating systems that inject small amounts of hydrogen gas, on demand, into the combustion chamber of a vehicle's engine. These products enrich the fuel-air charge of an internal combustion engine with hydrogen produced through electrolysis and improve combustion of the fuel-air mixture. The result is improved fuel economy in large diesel engines, reducing the greenhouse gas output and carbon footprint of such engines, and cost savings for engine operators.

The Company presently employs nine individuals. The Company's workforce is not unionized and the Company does not maintain any pension plans.

2.1 Intellectual Property

The Company is in its development phase. It has invested in the research and development of hydrogen generating systems and control technology resulting in proprietary, patented and patent-pending technology.

The Receiver is aware of certain proprietary and damage claims made by third parties against the Company, including with respect to certain of its intellectual property. The Receiver has corresponded with each of these claimants over the course of these proceedings. The Receiver has advised that, *inter alia*, any transaction, including the Recommended Transaction, would be on an "as is, where is" basis and would seek to convey the Receiver's and the Company's right, title and interest, if any, in the Assets, including the Company's intellectual property. The Receiver will serve each of these parties with its sale approval motion materials.

3.0 Secured Creditors

3.1 CCM

CCM is the Company's sole secured creditor and the stalking horse bidder in these proceedings. The Stalking Horse Agreement is a credit bid and, accordingly, the proposed purchase price is to be satisfied in part by granting a credit to the Receiver and the Company against the secured debt owing to CCM, as discussed further below.

² Effective on or around February 8, 2012, the TSX Venture Exchange suspended the Company from trading for failing to maintain exchange listing requirements.

At the commencement of these proceedings, the Company's indebtedness to CCM totaled approximately \$3.4 million, before costs. As at the date of this Report, CCM has advanced an additional \$240,000 under a term sheet dated February 27, 2012 between the Receiver and CCM, as extended by an agreement dated March 9, 2012 (the "Term Sheet"), in order to fund the Company's operations and the costs of these proceedings. The Term Sheet expires on May 15, 2012. Advances under the Term Sheet are secured by the Receiver's Borrowings Charge (as defined in the Receivership Order). The Receiver has issued Receiver's Certificates evidencing CCM's post-filing advances.

Prior to the commencement of these proceedings, Blake, Cassels & Graydon LLP ("Blakes"), the Receiver's counsel, provided an opinion ("Opinion") on the validity and enforceability of CCM's security. Subject to the standard assumptions and qualifications contained in the Opinion, Blakes is of the view that the security granted by the Company in favour of CCM, as registered pursuant to the PPSA, creates a valid and perfected security interest in the business and assets of the Company.

3.2 Other

The Receiver is aware of the following other potential secured claims against the Company:

1. The Receiver has been advised that Blutip Financial Corporation, a third party unrelated to the Company, has asserted a claim, based on disputed facts, that it has priority over CCM's security based on equitable principles. The claim has not been adjudicated.
2. Royal Bank of Canada ("RBC") issued letters of credit totaling \$25,000 secured by a GIC held by the Company. On the expiry of the letters of credit, the GIC was released to the Receiver. RBC, through counsel, later stated that obligations owing by the Company pursuant to certain credit cards were also secured by the security granted to RBC. The Receiver's counsel advised RBC's counsel that the Receiver was of the view that any residual claim by RBC was unsecured as the GIC had been released and disbursed in accordance with the Receivership Order.

The Receiver will serve Blutip Financial Corporation and RBC with its sale approval motion materials.

4.0 Sale Process

4.1 Overview

Pursuant to an order of the Court made on March 15, 2012 (the "Bidding Procedures Order"), the Sale Process was approved, including authorization of the Receiver's execution of the Stalking Horse Agreement and approval of the bidding procedures appended thereto (the "Bidding Procedures"). A copy of the Bidding Procedures Order and Endorsement dated March 15, 2012 is attached as Appendix "B". A copy of Mr. Justice Brown's Reasons of Decision dated March 15, 2012 relating to the Bidding Procedures Order is attached as Appendix "C".

The Sale Process is summarized as follows:

- The Stalking Horse Agreement was entered into so as to set a minimum floor price in respect of the sale of the Assets.
- The Receiver then marketed the Assets, soliciting bids for the Assets superior to the Stalking Horse Agreement, as follows:
 - The Receiver prepared an investment profile ("IP") that was circulated to approximately 145 prospective purchasers, including targets identified by the Company and those identified by the Receiver;
 - Attached to the IP was a form of confidentiality agreement ("CA") that interested parties were required to sign in order to obtain additional information, including a confidential information memorandum ("CIM") prepared by the Receiver and access to an online data room. In total, seven prospective purchasers (including CCM) executed the CA and received the CIM;
 - Throughout the Sale Process, the Receiver followed up with all prospective purchasers in order to confirm their receipt of the IP and CA and to respond to any preliminary Sale Process queries;
 - On March 20, 2012, an advertisement regarding this opportunity was placed in the national edition of *The Globe and Mail* newspaper;
 - The Receiver assembled information in an online data room. The data room contained financial, product and intellectual property information, as well as a copy of the Stalking Horse Agreement and Bidding Procedures and information regarding litigation and property claims commenced and/or asserted against the Company; and
 - Over the course of the Sale Process, the Receiver facilitated due diligence requests by interested parties, including updating the data room with information and correspondence, as required.

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- Pursuant to the Bidding Procedures, all interested parties were required to submit an offer by the "Bid Deadline" of 10:00 a.m. on April 16, 2012.
 - The Bidding Procedures established certain criteria for an offer to be considered a "Qualified Bid".
 - If at least one Qualified Bid (other than the Stalking Horse Agreement) was submitted by the Bid Deadline, an auction was to be conducted by the Receiver on April 20, 2012 to determine the highest and/or best bid for the Assets.
 - If no Qualified Bid (other than the Stalking Horse Agreement) was submitted by the Bid Deadline, the auction would not take place, the Stalking Horse Agreement would be declared the "Successful Bid", and the Receiver would seek approval of and authority to consummate the Stalking Horse Agreement.

4.2 Sale Process Results

The Receiver did not receive any Qualified Bids on or prior to the Bid Deadline. Accordingly, on April 16, 2012, the Receiver advised CCM that the Stalking Horse Agreement was declared the "Successful Bid" in accordance with the Bidding Procedures and posted notice of such fact on its website established in connection with the receivership.

5.0 The Recommended Transaction

CCM has advised that it will be assigning its rights and obligations under the APA to the Purchaser, being an entity which CCM is in the process of incorporating.

A summary of the Recommended Transaction is as follows:

- The Purchaser will acquire substantially all of the Company's business and Assets, including the Company's patent portfolio, other intellectual property and accounts receivable, on an "as is, where is" basis free and clear of any and all liens and encumbrances.
- The Assets will be sold on a going concern basis so that the Company's business may be continued by the Purchaser.
- Pursuant to the APA, the Purchaser or CCM will, no later than ten days prior to the closing date, advise the Receiver of any contracts that it wishes to exclude from the Purchased Assets. One of the Company's key contracts is the lease for its premises. The Receiver understands that CCM and the landlord have commenced discussions regarding the lease.
- The Purchaser will offer employment to all of the Company's current employees on terms no less favourable to the employees than their current employment terms. The Purchaser will recognize prior service of employees to the extent required by law.

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- The Purchaser will assume certain liabilities, including: (i) any obligations incurred by the Receiver from operating the Company's business during the receivership proceedings, to the extent not paid or discharged on closing; (ii) all obligations secured by encumbrances ranking in priority to CCM's security to the extent not paid or discharged on closing; (iii) obligations under contracts assigned to the Purchaser arising on or after closing; (iv) obligations arising after the closing of the transaction relating to the business and the Assets; and (v) employee obligations with respect to transferred employees.
 - The purchase price is equal to the value of the Assumed Liabilities (as defined in the APA) plus CCM's secured debt outstanding: (i) under two secured, promissory notes issued by the Company to CCM (the "Notes")³; (ii) relating to CCM's costs of seeking and obtaining the Receivership Order (which are secured by CCM's security pursuant to paragraph 30 of the Receivership Order); and (iii) under the Term Sheet as evidenced by Receiver's Certificates (collectively, the "Purchase Price"). The Purchase Price is estimated to be approximately \$3.6 million, before the value of Assumed Liabilities or satisfaction of obligations secured by the Receiver's Charge.
 - The Recommended Transaction is in the form of a credit bid. CCM has advised that prior to the closing of the Recommended Transaction, it will assign its debt and security to the Purchaser so that the Purchaser may credit bid such secured debt. Accordingly, the Recommended Transaction contemplates that the Purchase Price will be satisfied by delivering credits, releases and/or waivers for the secured indebtedness outstanding under the Notes and the Term Sheet and for the costs of seeking and obtaining the Receivership Order and by the assumption by the Purchaser of the Assumed Liabilities.
 - It is a condition of closing that the Receiver shall have received sufficient funds to satisfy all obligations secured by the Receiver's Charge (as defined in the Receivership Order), either by way of Receiver's borrowings or through cash paid by the Purchaser, in either case to be added to the Purchase Price.
 - The APA is consistent with standard insolvency transactions, i.e. completed on an "as is, where is" basis with only basic market standard representations or warranties.
 - The only material conditions precedent to closing are the designation by CCM of the Purchaser, the necessary assignments by CCM to the Purchaser and Court approval.
 - The APA contemplates a target closing date of May 3, 2012, with the APA remaining irrevocable by the Purchaser until May 15, 2012.

A copy of the APA is attached as Appendix "D".

³ For the purposes of CCM's credit bid, the secured indebtedness under the Notes was decreased by \$103,500 to account for a prepaid interest adjustment. This issue was addressed in the Receiver's first report to Court, the Receiver's factum filed in connection with the Bidding Procedures Order and in Mr. Justice Brown's Reasons of Decision dated March 15, 2012 relating to the Bidding Procedures Order.

5.1 Expediency

Under the terms of the APA and Bidding Procedures, the Receiver is required to serve notice of a hearing to approve the sale of the Assets to the Purchaser by April 20, 2012 and to have such hearing conducted by the Court as soon as possible thereafter, and in any case, by May 1, 2012. Closing is to occur as soon as possible after the APA is approved by the Court. If the Receiver is unable to satisfy the conditions precedent to closing on or prior to May 15, 2012, the Purchaser is not obligated to complete the Recommended Transaction pursuant to a termination right more particularly set out in the APA.

Further, CCM has funded the Company's operations during the receivership. The Term Sheet expires on May 15, 2012 and is limited to a maximum of \$400,000. The Receiver is not aware of any additional sources of funding. Additional funding would be required to fund normal course operations, including bi-weekly payroll costs, and to fund several patent renewal fees that are coming due over the next few months. The value of the Assets could be significantly impaired should the patent renewal fees not be funded. Completion of the transaction on a timely basis will also eliminate the uncertainty surrounding the Company – this is particularly relevant to the potential customers. Accordingly, any further delay is likely to impair the business.

5.2 Recommendation

The Receiver recommends that this Court issue an order approving the Recommended Transaction, as contemplated by the APA, for the following reasons:

- In the Receiver's view, the Sale Process was commercially reasonable and was carried out in accordance with the Bidding Procedures Order;
- The most likely purchasers of the Assets were identified and contacted over the course of the Sale Process in a thorough effort to canvass the market and identify potential purchasers;
- Further marketing efforts are unlikely to result in the identification of a superior transaction and any delay to attempt to do so would jeopardize the Recommended Transaction and the ongoing operations of the Company;
- Absent closing of the Recommended Transaction, there will not be funding available to continue the Company's operations, including for payroll costs, ongoing customer trials and research and development activities. A transaction must be completed promptly in order for the business to continue on a going-concern basis;
- The Recommended Transaction contemplates the continuation of the Company's operations and preserves employment for all of the Company's current employees;

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- The Recommended Transaction eliminates the uncertainty regarding the status of the Company. In this regard, customer trials are ongoing and these potential customers require confirmation forthwith that the Company's business will continue in order to proceed with their trials and to make a determination in respect of the Company's technology;
 - The Recommended Transaction will largely bring these receivership proceedings to completion and minimize the costs related thereto. This is particularly important given the lack of funding available to continue to operate the business post May 15, 2012, the date on which the Term Sheet expires; and
 - The Recommended Transaction provides for the greatest recovery available for the estate – no other offers were submitted under the Sale Process and the value of the Recommended Transaction significantly exceeds the liquidation value of the Company's assets. Accordingly, the Receiver believes the Recommended Transaction is in the best interests of all relevant stakeholders, including employees, potential customers and the secured creditor.

Based on the foregoing, the Receiver respectfully recommends that this Court approve the APA and authorize and direct the Receiver to complete the transaction contemplated thereby, including executing any ancillary documents necessary to give effect to the Recommended Transaction.

6.0 Overview of the Receiver's Activities

The Receiver's activities up to March 9, 2012 were approved pursuant to the Bidding Procedures Order. The Receiver's activities since that date have included the following:

- Carrying out the Receiver's duties and responsibilities in accordance with the Receivership Order, including overseeing the Company's operations;
- Drafting all Sale Process materials, including the IP and the CIM;
- Compiling information for the data room;
- Carrying out the Sale Process in accordance with the Bidding Procedures Order (as described above);
- Facilitating due diligence requests submitted by prospective purchasers throughout the Sale Process;
- Dealing with cash management issues, including paying post-filing expenses from the receivership accounts;
- Dealing with the Company's payroll service provider on a bi-weekly basis;

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- Submitting funding requests to CCM and issuing Receiver's Certificates for post-filing advances in accordance with the Receivership Order and the Term Sheet;
 - Corresponding extensively with key stakeholders in these proceedings, including CCM, employees, suppliers, shareholders, certain parties asserting proprietary claims and/or their respective legal counsel;
 - Corresponding with the Company's landlord, as required;
 - Corresponding with legal counsel to the Receiver and CCM regarding various matters;
 - Corresponding with Bennett Jones LLP, the Company's intellectual property counsel, regarding the status of the Company's intellectual property;
 - Taking possession of the contents of the Company's safety deposit box;
 - Placing on the Receiver's website copies of materials filed in these proceedings;
 - Drafting this Report; and
 - Addressing all other matters pertaining to the administration of these receivership proceedings.

7.0 Discharge of the Receiver

The Receiver requests that it be discharged upon the filing of the Discharge Certificate as, subject to completion of the Recommended Transaction, its duties and responsibilities under the Receivership Order will have been materially completed, including the realization of substantially all of the Company's business and assets. As the Recommended Transaction is a credit bid, there are no distributions to be made following the closing and no other material post-closing matters.

The Receiver's objective in this regard is to avoid the costs of a subsequent motion in these proceedings solely for the purpose of seeking its discharge. The Receiver intends to file the Discharge Certificate once all sundry post-closing matters are dealt with. CCM, the only party with an economic interest in these proceedings, supports the discharge process.

The Receivership Order (Paragraph 18) provides that the Receiver and its counsel need only pass their accounts if CCM, any other party in interest or the Court request it. As at the date hereof, no party has requested the passing of such accounts. CCM, the only party with an economic interest, is satisfied with the expenses and disbursements incurred in the receivership and has provided funding for such costs, including professional fees.

8.0 Conclusion and Recommendation

Based on the foregoing, the Receiver respectfully recommends that this Court make an order granting the relief detailed in Section 1.1 of this Report.

* * *

All of which is respectfully submitted,

Duff & Phelps Canada Restructuring Inc.

**DUFF & PHELPS CANADA RESTRUCTURING INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
BLUTIP POWER TECHNOLOGIES LTD. AND NOT IN ITS PERSONAL CAPACITY**

APPENDIX “A”



Court File No.

CJ-12-9622-0006

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE MORAWETZ

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TUESDAY, THE 28th DAY
OF FEBRUARY, 2012

CCM MASTER QUALIFIED FUND, LTD.

Applicant

- and -

BLUTIP POWER TECHNOLOGIES LTD.

Respondent

APPOINTMENT ORDER

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") appointing Duff & Phelps Canada Restructuring Inc. as receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of Blutip Power Technologies Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of James Schuler sworn February 27, 2012 and the Exhibits thereto (the "Schuler Affidavit"), and on hearing the submissions of counsel for the Applicant and the proposed Receiver, no other parties appearing although duly served as appears from the affidavit of service of Arlene Mack sworn February 27, 2012 and the affidavit of service of Kevin MacEachern sworn February 27, 2012 and on reading the consent of Duff & Phelps to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA, Duff & Phelps is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and

negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$25,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except for (i) any validly perfected purchase money security interests and (ii) any statutory encumbrance existing as at the date of this Order in favour of any Person which is a "secured creditor" as defined in the BIA in respect of any amounts that are subject to a super-priority claim under the BIA, and subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that, at the request of the Applicant, any other party in interest or the Court, the Receiver and its legal counsel shall pass their accounts, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against their remuneration and disbursements.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, including without limitation pursuant to the Term Sheet attached as ~~Exhibit "E" to the Schuler Affidavit~~ ^{Schedule "B" hereto}, provided that the outstanding principal amount does not exceed \$400,000 (or such greater amount as this Court may by further Order

authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to validly perfected purchase money security interests, any statutory encumbrance existing as at the date of this Order in favour of any Person which is a "secured creditor" as defined in the BIA in respect of any amounts that are subject to a super-priority claim under the BIA, the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. **THIS COURT ORDERS** that the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day

following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

25. **THIS COURT ORDERS** that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at:

http://www.duffandphelps.com/services/investment_banking/Pages/RestructuringCases.aspx.

GENERAL

26. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.


28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. **THIS COURT ORDERS** that notwithstanding the immediately preceding paragraph, any motion to vary or amend the Receiver's Charge or the Receiver's Borrowings Charge must be brought and be returnable no later than March 20, 2012 and on not less than four (4) days' notice to the Receiver, the Applicant and any other party or parties likely to be affected by the order sought. The Receiver and any party which advances funds to the Receiver pursuant to paragraph 20 of this Order shall be entitled to rely on the priority granted to the Receiver's Charge and the Receiver's Borrowings Charge (as applicable) up to and including the day on which this Order is varied or modified.


ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 28 2012

NB

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Duff & Phelps Canada Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Blutip Power Technologies Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of ____, 20__ (the "**Order**") made in an action having Court file number ____-CL-____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Chicago, Illinois.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

**DUFF & PHELPS CANADA
RESTRUCTURING INC., solely in its
capacity as Receiver of the Property, and not
in its personal capacity**

Per: _____

Name: _____

Title: _____

Schedule "B"

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TERM SHEET

February 27, 2012

Duff & Phelps Canada Restructuring Inc.,
in its capacity as Receiver of Blutip Power Technologies Ltd.
200 King Street West
Suite 1002
Toronto, ON M5H 3T4

Attention: David Sieradzki

CCM Master Qualified Fund, Ltd. (the "Lender") intends to make an application before the Ontario Superior Court of Justice (Commercial List) (the "Court") to seek the appointment of Duff & Phelps Canada Restructuring Inc. ("Duff & Phelps") as receiver over the assets, property and undertaking (collectively, the "Assets") of Blutip Power Technologies Ltd. (the "Company") pursuant to the terms of an order of the Court, substantially in the form of that annexed hereto as Schedule "A". Once Duff & Phelps is appointed as receiver (Duff & Phelps in such capacity, the "Receiver") the Receiver will require funding to pay certain costs and expenses incurred by the Company and the Receiver. The Lender is pleased to make the following credit facility (the "Credit Facility") available to Duff & Phelps, once it is appointed as Receiver, on and subject to the following terms and conditions:

AMOUNT: CDN\$400,000.

PURPOSE: To fund the powers and duties conferred upon the Receiver by the Order (as hereinafter defined), including managing, operating, and carrying on the business of the Company, and paying the reasonable fees and expenses of the Receiver and its legal counsel.

USE OF PROCEEDS: Proceeds of the Credit Facility will be used by the Receiver to finance general working capital needs and for general operating purposes of the Company deemed commercially reasonable by the Receiver during the receivership, including without limitation, the professional fees and costs of the Receiver and its counsel. For greater certainty, the Advances (as hereinafter defined) shall not be used by the Receiver or the Company to make payments to creditors, including any government authorities or agencies in respect of amounts due or accruing due to such creditors prior to the date of the Receivership Order, unless permitted by the Receivership Order or a subsequent order of the Court.

INTEREST RATE: 10% per annum (the "Interest Rate"), calculated and compounded monthly not in advance on the last day of each month. During the continuation of an Event of Default the Interest Rate shall be increased by 2% per annum.

- AVAILABILITY Advances under the Credit Facility ("Advances") shall be made to the Receiver in Canadian dollars only and by way of receiver's certificates ("Receiver's Certificates"), substantially in the form of the certificate attached as Schedule "A" to the Order. The Receiver shall not permit the sum of the aggregate principal amount of the Canadian Dollar value of all outstanding Advances under the Credit Facility to, at any time, exceed CDN\$400,000.
- MATURITY DATE: The Credit Facility shall be repayable on April 30, 2012 or the day on which an Event of Default occurs, unless otherwise extended by written agreement of the Receiver and the Lender.
- NO LIABILITY: Duff & Phelps Canada Restructuring Inc. shall not have any personal liability to repay any principal amount or any interest, fee or other amount owing hereunder and the Lender's recourse with respect thereto shall be limited to the Assets and any proceeds thereof.
- CONDITIONS PRECEDENT: The Lender shall not be obliged to make any Advance under the Credit Facility unless the following conditions precedent have been satisfied or waived: (i) the Order has been issued by the Court; (ii) the Receiver has executed and returned a copy of this Term Sheet; (iii) the Receiver has delivered a Receiver's Certificate to the Lender by no later than 9:00 a.m. on the day that an Advance is to be made; and (iv) no Event of Default shall have occurred (collectively, the "Conditions Precedent").
- SECURITY: The Receiver's obligations under this Credit Facility shall be secured by the Receiver's Borrowing Charge as provided for in the Order and the Receiver's Certificates.
- EVENTS OF DEFAULT The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Term Sheet:
- (a) any termination of the stay of proceedings under the Order;
 - (b) failure by the Receiver to pay any principal amount outstanding hereunder when the same shall become due and payable hereunder;
 - (c) any termination of the appointment of the Receiver;
 - (d) a final order is entered whereby the Order is reversed, stayed, modified or amended without the express written consent of the Lender;

- (e) failure by the Receiver to pay any interest on any Advances made under the Credit Facility, any fees payable hereunder or any other amounts owing under the Facility when the same shall become due and payable; or
- (f) if a sales process for the business of the Company and the Assets is not commenced by an order of the Court approving such sales process (the "Sale Process Order") within 2 weeks of the date of the Order (unless otherwise extended by written agreement of the Receiver and the Lender), which Sale Process Order shall be in form and substance satisfactory to the Lender and the Receiver, acting reasonably and which Sale Process Order shall not have been varied, amended or altered, without the express written consent of the Lender, ~~not to be~~ ^{and with leave of the Court} unreasonably withheld.

REMEDIES:

Upon the occurrence of an Event of Default and at any time thereafter while an Event of Default is continuing, the Lender may declare, ^{or for} by giving notice to the Receiver, that the Credit Facility is terminated and cancelled and declare the Advances made to be immediately due and payable (whereupon the same shall become so payable, together with accrued interest thereon and any other sums then owed by the Receiver hereunder).

RECEIVER'S FEES: In addition to any amounts advanced under the Credit Facility and if required, the Lender agrees to pay the reasonable fees and expenses of the Receiver and those of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel in connection with their performance and duties under the Order and further orders of the Court made in the receivership proceedings of the Company; provided that in the event that the Credit Facility is terminated and cancelled upon the occurrence of an Event of Default as provided for herein (such date, the "Termination Date"), the Lender agrees to pay solely those such amounts that have been incurred to and including the Termination Date, even if such amounts are payable after the Termination Date. In the event that the Lender and the Receiver are unable to achieve a consensus as to the form and substance of the Sale Process Order, the Receiver shall be at liberty to apply to the Court for advice and directions, and the Lender agrees to pay the reasonable fees and expenses of the Receiver and those of its legal counsel, incurred at their standard rates and charges in connection with such motion for advice and directions.

GOVERNING LAW: This Term Sheet and each of the documents contemplated herein shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

COUNTERPARTS: This Term Sheet may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which

together shall constitute one and the same instrument. Signatures provided by facsimile machine shall be valid and binding.

NOTICES:

Any notice or other communication to be delivered hereunder must be in writing and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective parties as follows:

If to the Lender:

c/o Coghill Capital Management, LLC
One North Wacker Drive, Suite 4350
Chicago, IL 60606

Attention: James Schuler
Fax: (312)324-2001
Email: jschuler@coghillcapital.com

with a copy to:

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place, Suite 6100
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman
Fax: (416) 862-6666
Email: mwasserman@osler.com

If to the Receiver

Duff & Phelps Canada Restructuring Inc.
200 King Street West
Suite 1002
Toronto, Ontario M5H 3T4

Attention: David Sieradzki
Fax: (647) 497-9470
Email: david.sieradzki@duffandphelps.com

with a copy to:

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

Attention: Linc Rogers
Fax: (416) 863-2653
Email: linc.rogers@blakes.com

or to such other address as any party may from time to time notify the others in accordance with this Term Sheet. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a business day and the communication is so delivered, faxed or sent before 5:00 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

[Remainder of Page Intentionally Left Blank]

The Lender's commitment to provide the Credit Facility on the terms set out herein will remain binding on the Lender and open for acceptance by the Receiver until 5:00 p.m. (Toronto time) on February 29, 2012. If the above terms and conditions are acceptable to you, please execute and return a copy of this Term Sheet by email no later than 5:00 p.m. (Toronto time) on February 29, 2012.

**COGHILL CAPITAL MANAGEMENT, LLC in its
capacity as Investment Manager of CCM MASTER
QUALIFIED FUND, LTD.**

By: _____

Name:

Title:

We acknowledge and accept the within terms and conditions this ____ day of February, 2012.

**DUFF & PHELPS CANADA RESTRUCTURING
INC., in its capacity as Receiver of Blutip Power
Technologies Ltd., without personal or corporate
liability**

By: _____

Name:

Title:

SCHEDULE "A"
FORM OF ORDER

Applicant

Respondent

ONTARIO

**SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

APPOINTMENT ORDER

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
100 King Street West
Toronto, Canada M5X 1B8

Alexander F. Cobb (LSUC#45363F)
(416) 862-5964

Marc S. Wasserman (LSUC#44066M)
(416) 862-4908

Andrea M. Lockhart (LSUC#55444K)
(416) 862-6829
(416) 862-6666

Lawyers for the Applicant

CV-12-9622-00C

CCM MASTER QUALIFIED FUND, LTD. and BLUTIP POWER TECHNOLOGIES LTD.

Court File No:

Applicant

Respondent

Feb 28/12

A. Cobb
A. Lockhart

Feb 28 2012

] for COT.

L. Rogers for Duff & Phelps.

A Counsel to the Applicant filed
a Consent to Earlier Summons
of Security and a Consent executed by
Duff & Phelps to act as Receiver.
I am satisfied having reviewed the
Record that it is both just and
convenient to appoint a Receiver
under s 243 of the BIA in
making this determination.
I have taken into account
that there is no liquidity
> the debtor and that it is
unable to make payments and

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Proceeding commenced at Toronto

APPLICATION RECORD

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
100 King Street West
Toronto, Canada M5X 1B8

Alexander F. Cobb (LSUC#45363F)
(416) 862-5964

Marc S. Wasserman (LSUC#44066M)
(416) 862-4908

Andrea M. Lockhart (LSUC#55444K)
(416) 862-6829
(416) 862-6666

Lawyers for the Applicant



if court has no board. It is
 in the circumstances is required and
 this can be accomplished by the appointment
 of a Receiver.

The Applicant is granted. An
 order shall issue in the form
 presented, as amended. (The said sheet
 has been specifically amended
 so as to provide that leave of
 the Court is required to exercise
 remedies in the event of default)

[Signature]

APPENDIX “B”

Court File No. CV-12-9622-00CL

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

THE HONOURABLE MR.

JUSTICE BROWN

)
)
)

THURSDAY DAY, THE

15TH DAY OF MARCH, 2012

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

BETWEEN:

CCM MASTER QUALIFIED FUND, LTD.

Applicant

- and -

BLUTIP POWER TECHNOLOGIES LTD.

Respondent



BIDDING PROCEDURES ORDER

THIS MOTION made by Duff & Phelps Canada Restructuring Inc., in its capacity as court-appointed receiver (in such capacity, the "Receiver") of blutip Power Technologies Ltd. (the "Debtor") for an Order:

- a) abridging the time for service and validating the service of the Notice of Motion, the Motion Record and the First Report of the Receiver dated March 9, 2012 (the "First Report") so that this Motion is properly returnable today and dispensing with further service thereof;
- b) approving the First Report and the activities of the Receiver as described therein;
- c) authorizing and directing the Receiver to execute the agreement of purchase and sale of substantially all assets of the Debtor (the "Purchased Assets") between

- 2 -

the Receiver and CCM Master Qualified Fund, Ltd. (the "**Stalking Horse Bidder**") dated March 9, 2012 (the "**Stalking Horse Agreement**") attached hereto as Schedule "A" so as to set a minimum floor price in respect of the sale process for the Purchased Assets;

- d) approving and authorizing the payment of the Expense Reimbursement in the manner provided for in the Stalking Horse Agreement, in conjunction with the Bidding Procedures;
- e) approving the bidding procedures attached as Schedule "D" to the Stalking Horse Agreement (the "**Bidding Procedures**") to be used in conjunction with the solicitation of offers or proposals for the acquisition of the Purchased Assets;
- f) deeming the Stalking Horse Agreement to be a Qualified Bid (as defined in the Bidding Procedures) and accepted solely for the purposes of the Stalking Horse Bidder's right to participate in the Auction (as defined in the Bidding Procedures); and
- g) ordering that the Receiver's Charge and the Receiver's Borrowings Charge, each as defined in the Order of this Court dated February 28, 2012 (the "**Appointment Order**"), have the standard priority of such charges;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion, the First Report, the Stalking Horse Agreement and the Bidding Procedures, and on hearing the submissions of counsel for the Receiver and counsel for the Stalking Horse Bidder and on being advised that the Service List was served with the Motion Record herein;

1. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Stalking Horse Agreement or the Bidding Procedures.

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SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECEIVER'S ACTIVITIES

3. **THIS COURT ORDERS** that the First Report, the Sales Process (as defined therein) and the activities of the Receiver as described therein are hereby approved.

STALKING HORSE AGREEMENT

4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to execute the Stalking Horse Agreement.

5. **THIS COURT ORDERS** that the provisions of the Stalking Horse Agreement providing for payment of the Expense Reimbursement are hereby authorized and approved and the Receiver is hereby authorized and directed to pay to the Stalking Horse Bidder, in accordance with Section 7.2(c) of the Stalking Horse Agreement, the Expense Reimbursement from the proceeds of sale of a Successful Bid or a Back-Up Bid in the event that the Stalking Horse Agreement is terminated in accordance with Section 7.1(a) thereof.

BIDDING PROCEDURES

6. **THIS COURT ORDERS** that the Bidding Procedures are hereby approved and, if one or more Qualified Bids (other than the Stalking Horse Agreement) are received, the Receiver shall be authorized to conduct the Auction as contemplated therein.

7. **THIS COURT ORDERS** that the Stalking Horse Agreement is hereby deemed to be a Qualified Bid and accepted solely for the purposes of the Stalking Horse Bidder's right to participate in the Auction.

8. **THIS COURT ORDERS** that nothing herein approves the sale of the Purchased Assets on the terms set out in the Stalking Horse Agreement and that the validity of any sale of the Purchased Assets will be determined on a subsequent motion made to this Court.

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PRIORITY OF CHARGES

9. **THIS COURT ORDERS** that the Receiver's Charge (as defined in the Appointment Order) shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA").

10. **THIS COURT ORDERS** that the Receiver's Borrowings Charge (as defined in the Appointment Order) shall form a fixed and specific charge on the whole of the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 15 2012

SCHEDULE "A"**Stalking Horse Agreement**

See Tab 2D of Motion Record of the Receiver dated April 19, 2012

Applicant

Respondent

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

Proceeding commenced at Toronto

BIDDING PROCEDURES ORDER

BLAKE, CASSELS & GRAYDON LLP
Suite 4000, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

Linc Rogers LSUC No.: 43562N
Tel: (416) 863-4168

Christopher Burr LSUC No.: 55172H
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Jenna Willis LSUC No.: 58498U
Tel: (416) 863-3348

Fax: (416) 863-2653

Lawyers for the Court-appointed Receiver of
Blutip Power Technologies Ltd.

CCM MASTER QUALIFIED FUND, LTD. and BLUTIP POWER TECHNOLOGIES LTD.
Applicant Respondent

Court File No. CY-12-9622-0001

MARCH 15-10

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE MARCH 15, 2012)

BLAKE, CASSELS & GRAYDON LLP
Suite 4000, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

Linc Rogers LSUC No. 43562N
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Fax: (416) 863-2653

Lawyers for the Court-appointed Receiver of
Blutip Power Technologies Ltd.



Mar 15/12
For Reasons to follow, order granted. I have
signed the Bidding Provisions Order.
[Signature]
D.A. DRAWNT

APPENDIX “C”

CITATION: CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750
COURT FILE NO.: CV-12-9622-00CL
DATE: 20120315

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: CCM Master Qualified Fund, Ltd., Applicant

AND:

blutip Power Technologies Ltd., Respondent

BEFORE: D. M. Brown J.

COUNSEL: L. Rogers and C. Burr, for the Receiver, Duff & Phelps Canada Restructuring Inc.

A. Cobb and A. Lockhart, for the Applicant

HEARD: March 15, 2012

REASONS FOR DECISION

I. Receiver's motion for directions: sales/auction process & priority of receiver's charges

[1] By Appointment Order made February 28, 2012, Duff & Phelps Canada Restructuring Inc. ("D&P") was appointed receiver of blutip Power Technologies Ltd. ("Blutip"), a publicly listed technology company based in Mississauga which engages in the research, development and sale of hydrogen generating systems and combustion controls. Blutip employs 10 people and, as the Receiver stressed several times in its materials, the company does not maintain any pension plans.

[2] D&P moves for orders approving (i) a sales process and bidding procedures, including the use of a stalking horse credit bid, (ii) the priority of a Receiver's Charge and Receiver's Borrowings Charge, and (iii) the activities reported in its First Report. Notice of this motion was given to affected persons. No one appeared to oppose the order sought. At the hearing today I granted the requested Bidding Procedures Order; these are my Reasons for so doing.

II. Background to this motion

[3] The Applicant, CCM Master Qualified Fund, Ltd. ("CCM"), is the senior secured lender to Blutip. At present Blutip owes CCM approximately \$3.7 million consisting of (i) two convertible senior secured promissory notes (October 21, 2011: \$2.6 million and December 29, 2011: \$800,000), (ii) \$65,000 advanced last month pursuant to a Receiver's Certificate, and (iii)

- Page 2 -

\$47,500 on account of costs of appointing the Receiver (as per para. 30 of the Appointment Order). Receiver's counsel has opined that the security granted by Blutip in favour of CCM creates a valid and perfected security interest in the company's business and assets.

[4] At the time of the appointment of the Receiver Blutip was in a development phase with no significant sources of revenue and was dependant on external sources of equity and debt funding to operate. As noted by Morawetz J. in his February 28, 2012 endorsement:

In making this determination [to appoint a receiver] I have taken into account that there is no liquidity in the debtor and that it is unable to make payroll and it currently has no board. Stability in the circumstances is required and this can be accomplished by the appointment of a receiver.

[5] As the Receiver reported, it does not have access to sufficient funding to support the company's operations during a lengthy sales process.

III. Sales process/bidding procedures

A. General principles

[6] Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank v. Soundair*: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties.¹ Accordingly, when reviewing a sales and marketing process proposed by a receiver a court should assess:

- (i) the fairness, transparency and integrity of the proposed process;
- (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
- (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[7] The use of stalking horse bids to set a baseline for the bidding process, including credit bid stalking horses, has been recognized by Canadian courts as a reasonable and useful element

¹ (1991), 7 C.B.R. (3d) 1 (C.A.).

- Page 3 -

of a sales process. Stalking horse bids have been approved for use in other receivership proceedings,² BIA proposals,³ and CCAA proceedings.⁴

[8] Perhaps the most well-known recent example of the use of a stalking horse credit bid was that employed in the Canwest Publishing Corp. CCAA proceedings where, as part of a sale and investor solicitation process, Canwest's senior lenders put forward a stalking horse credit bid. Ultimately a superior offer was approved by the court. I accept, as an apt description of the considerations which a court should take into account when deciding whether to approve the use of a stalking horse credit bid, the following observations made by one set of commentators on the Canwest CCAA process:

To be effective for such stakeholders, the credit bid had to be put forward in a process that would allow a sufficient opportunity for interested parties to come forward with a superior offer, recognizing that a timetable for the sale of a business in distress is a fast track ride that requires interested parties to move quickly or miss the opportunity. The court has to balance the need to move quickly, to address the real or perceived deterioration of value of the business during a sale process or the limited availability of restructuring financing, with a realistic timetable that encourages and does not chill the auction process.⁵

B. The proposed bidding process

B.1 The bid solicitation/auction process

[9] The bidding process proposed by the Receiver would use a Stalking Horse Offer submitted by CCM to the Receiver, and subsequently amended pursuant to negotiations, as a baseline offer and a qualified bid in an auction process. D&P intends to distribute to prospective purchasers an interest solicitation letter, make available a confidential information memorandum to those who sign a confidentiality agreement, allow due diligence, and provide interested parties with a copy of the Stalking Horse Offer.

[10] Bids filed by the April 16, 2012 deadline which meet certain qualifications stipulated by the Receiver may participate in an auction scheduled for April 20, 2012. One qualification is that the minimum consideration in a bid must be an overbid of \$100,000 as compared to the Stalking Horse Offer. The proposed auction process is a standard, multi-round one designed to result in a Successful Bid and a Back-Up Bid. The rounds will be conducted using minimum incremental overbids of \$100,000, subject to reduction at the discretion of the Receiver.

² *Re Graceway Canada Co.*, 2011 ONSC 6403, para. 2.

³ *Re Parlay Entertainment Inc.*, 2011 ONSC 3492, para. 15.

⁴ *Re Brainhunter* (2009), 62 C.B.R. (5th) 41 (Ont. S.C.J.), para. 13; *Re White Birch Paper Holding Co.*, 2010 QCCS 4382, para. 3; *Re Nortel Networks Corp.* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J.), para. 2, and (2009), 56 C.B.R. (5th) 74 (Ont. S.C.J.); *Re Indalex Ltd.*, 2009 CarswellOnt 4262 (S.C.J.).

⁵ Pamela Huff, Linc Rogers, Douglas Bartner and Craig Culbert, "Credit Bidding – Recent Canadian and U.S. Themes", in Janis P. Sarra (ed.), *2010 Annual Review of Insolvency Law* (Toronto: Carswell, 2011), p. 16.

B.2 Stalking horse credit bid

[11] The CCM Stalking Horse Offer, or Agreement, negotiated with the Receiver contemplates the acquisition of substantially all the company's business and assets on an "as is where is" basis. The purchase price is equal to: (i) Assumed Liabilities, as defined in the Stalking Horse Offer, plus (ii) a credit bid of CCM's secured debt outstanding under the two Notes, the Appointment Costs and the advance under the Receiver's Certificate. The purchase price is estimated to be approximately \$3.744 million before the value of Assumed Liabilities which will include the continuation of the employment of employees, if the offer is accepted.

[12] The Receiver reviewed at length, in its Report and in counsel's factum, the calculation of the value of the credit bid. Interest under both Notes was fixed at 15% per annum and was prepaid in full. The Receiver reported that if both Notes were repaid on May 3, 2012, the anticipated closing date, the effective annual rate of interest (taking into account all costs which could be categorized as "interest") would be significantly higher than 15% per annum - 57.6% on the October Note and 97.4% on the December Note. In order that the interest on the Notes considered for purposes of calculating the value of the credit bid complied with the interest rate provisions of the *Criminal Code*, the Receiver informed CCM that the amount of the secured indebtedness under the Notes eligible for the credit bid would have to be \$103,500 less than the face value of the Notes. As explained in detail in paragraphs 32 through to 39 of its factum, the Receiver is of the view that such a reduction would result in a permissible effective annual interest rate under the December Note. The resulting Stalking Horse Agreement reflected such a reduction.

[13] The Stalking Horse Offer does not contain a break-fee, but it does contain a term that in the event the credit bid is not the Successful Bid, then CCM will be entitled to reimbursement of its expenses up to a maximum of \$75,000, or approximately 2% of the value of the estimated purchase price. Such an amount, according to the Receiver, would fall within the range of reasonable break fees and expense reimbursements approved in other cases, which have ranged from 1.8% to 5% of the value of the bid.⁶

C. Analysis

[14] Given the financial circumstances of Blutip and the lack of funding available to the Receiver to support the company's operations during a lengthy sales process, I accept the Receiver's recommendation that a quick sales process is required in order to optimize the prospects of securing the best price for the assets. Accordingly, the timeframe proposed by the Receiver for the submission of qualifying bids and the conduct of the auction is reasonable. The marketing, bid solicitation and bidding procedures proposed by the Receiver are likely to result in a fair, transparent and commercially efficacious process in the circumstances.

⁶ *Re Parlay Entertainment*, 2011 ONSC 3492, para. 12; *Re White Birch Paper Holding Co.*, 2010 QCCS 4915, paras. 4 to 7; *Re Nortel Networks Corp.* (2009), 56 C.B.R. (5th) 74 (Ont. S.C.J.), para. 12.

- Page 5 -

[15] In light of the reduction in the face value of the Notes required by the Receiver for the purposes of calculating the value of the credit bid and the reasonable amount of the Expense Reimbursement, I approved the Stalking Horse Agreement for the purposes requested by the Receiver. I accept the Receiver's assessment that in the circumstances the terms of the Stalking Horse Offer, including the Expense Reimbursement, will not discourage a third party from submitting an offer superior to the Stalking Horse Offer.

[16] Also, as made clear in paragraphs 7 and 8 of the Bidding Procedures Order, the Stalking Horse Agreement is deemed to be a Qualified Bid and is accepted solely for the purposes of CCM's right to participate in the auction. My order did not approve the sale of Blutip's assets on the terms set out in the Stalking Horse Agreement. As the Receiver indicated, the approval of the sale of Blutip's assets, whether to CCM or some other successful bidder, will be the subject of a future motion to this Court. Such an approach is consistent with the practice of this Court.⁷

[17] For those reasons I approved the bidding procedures recommended by the Receiver.

IV. Priority of receiver's charges

[18] Paragraphs 17 and 20 of the Appointment Order granted some priority for the Receiver's Charge and Receiver's Borrowings Charge. However, as noted by the Receiver in section 3.1 of its First Report, because that hearing was brought on an urgent, *ex parte* basis, priority over existing perfected security interests and statutory encumbrances was not sought at that time. The Receiver now seeks such priority.

[19] As previously noted, the Receiver reported that Blutip does not maintain any pension plans. In section 3.1 of its Report the Receiver identified the persons served with notice of this motion: (i) parties with registered security interests pursuant to the *PPSA*; (ii) those who have commenced legal proceedings against the Company; (iii) those who have asserted claims in respect of intellectual property against the Company; (iv) the Company's landlord, and (v) standard government agencies. Proof of such service was filed with the motion record. No person appeared on the return of the motion to oppose the priority sought by the Receiver for its charges.

[20] Although the Receiver gave notice to affected parties six days in advance of this motion, not seven days as specified in paragraph 31 of the Appointment Order, I was satisfied that secured creditors who would be materially affected by the order had been given reasonable notice and an opportunity to make representations, as required by section 243(6) of the *BIA*, that abridging the notice period by one day, as permitted by paragraph 31 of the Appointment Order, was appropriate and fair in the circumstances, and I granted the priority charges sought by the Receiver.

⁷ *Re Indalex Ltd.*, 2009 CarswellOnt 4262 (S.C.J.), para. 7; *Re Graceway Canada Co.*, 2011 ONSC 6403, para. 5; *Re Parlay Entertainment Inc.*, 2011 ONSC 3492, para. 58.

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[21] I should note that the Appointment Order contains a standard “come-back clause” (para. 31). Recently, in *First Leaside Wealth Management Inc. (Re)*, a proceeding under the *CCAA*, I wrote:

[49] In his recent decision in *Timminco Limited (Re)* (“Timminco I”) Morawetz J. described the commercial reality underpinning requests for Administration and D&O Charges in *CCAA* proceedings:

In my view, in the absence of the court granting the requested super priority and protection, the objectives of the *CCAA* would be frustrated. It is not reasonable to expect that professionals will take the risk of not being paid for their services, and that directors and officers will remain if placed in a compromised position should the Timminco Entities continue *CCAA* proceedings without the requested protection. The outcome of the failure to provide these respective groups with the requested protection would, in my view, result in the overwhelming likelihood that the *CCAA* proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings.

...

[51] In my view, absent an express order to the contrary by the initial order applications judge, the issue of the priorities enjoyed by administration, D&O and DIP lending charges should be finalized at the commencement of a *CCAA* proceeding. Professional services are provided, and DIP funding is advanced, in reliance on super-priorities contained in initial orders. To ensure the integrity, predictability and fairness of the *CCAA* process, certainty must accompany the granting of such super-priority charges. When those important objectives of the *CCAA* process are coupled with the Court of Appeal’s holding that parties affected by such priority orders be given an opportunity to raise any paramountcy issue, it strikes me that a judge hearing an initial order application should directly raise with the parties the issue of the priority of the charges sought, including any possible issue of paramountcy in respect of competing claims on the debtor’s property based on provincial legislation.⁸

[22] In my view those comments regarding the need for certainty about the priority of charges for professional fees or borrowings apply, with equal force, to priority charges sought by a receiver pursuant to section 243(6) of the *BIA*. Certainty regarding the priority of administrative and borrowing charges is required as much in a receivership as in proceedings under the *CCAA* or the proposal provisions of the *BIA*.

[23] In the present case the issues of the priority of the Receiver’s Charge and Receiver’s Borrowings Charge were deferred from the return of the initial application until notice could be given to affected parties. I have noted that Blutip did not maintain pension plans. I have found that reasonable notice now has been given and no affected person appeared to oppose the

⁸ 2012 ONSC 1299 (CanLII).

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granting of the priority charges. Consequently, it is my intention that the Bidding Procedures Order constitutes a final disposition of the issue of the priority of those charges (subject, of course, to any rights to appeal the Bidding Procedures Order). I do not regard the presence of a "come-back clause" in the Appointment Order as leaving the door open a crack for some subsequent challenge to the priorities granted by this order.

V. Approval of the Receiver's activities

[24] The activities described by the Receiver in its First Report were reasonable and fell within its mandate, so I approved them.

[25] May I conclude by thanking Receiver's counsel for a most helpful factum.

(original signed by)

D. M. Brown J.

Date: March 15, 2012

APPENDIX “D”

EXECUTION COPY

DUFF & PHELPS CANADA RESTRUCTURING INC., solely
in its capacity as court-appointed receiver of Blutip Power
Technologies Ltd. and not in its personal or corporate capacity

- and -

CCM MASTER QUALIFIED FUND, LTD., by its Investment Manager, COGHILL
CAPITAL MANAGEMENT, LLC, or its designee

ASSET PURCHASE AGREEMENT

March 9, 2012

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THIS ASSET PURCHASE AGREEMENT is made this ____ day of March, 2012

BETWEEN:

DUFF & PHELPS CANADA RESTRUCTURING INC., solely in its capacity as court-appointed receiver of the assets, undertakings and properties of **BLUTIP POWER TECHNOLOGIES LTD.** and not in its personal or corporate capacity,

(the "Receiver")

- and -

CCM MASTER QUALIFIED FUND, LTD., a company governed by the Laws of the Cayman Islands, by its Investment Manager, **COGHILL CAPITAL MANAGEMENT, LLC**, or its designee

(the "Purchaser").

RECITALS:

- A. The Receiver was appointed receiver, without security, of the assets, undertakings and properties of Blutip Power Technologies Ltd. ("**Blutip**") acquired for, or used in relation to a business carried on by Blutip, including all proceeds thereof (the "**Property**") pursuant to an order (as may be amended or restated from time to time, the "**Appointment Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 28, 2012;
- B. The Appointment Order authorizes the Receiver to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- C. The Purchaser has agreed to act as a "stalking horse bidder" in connection with the sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Property, meaning that, in the absence of the Receiver's acceptance of a bid for the Purchased Assets (as defined herein) made in accordance with the Bidding Procedures (as defined herein) which is superior to this Agreement (as determined by the Receiver in accordance with the Bidding Procedures), the Purchaser has agreed to purchase the Receiver's and Blutip's right, title and interest, if any, in and to Purchased Assets on the terms and subject to the conditions set forth in this Agreement, in accordance with the Bidding Procedures and subject to obtaining the Vesting Order (as defined herein);
- D. The Receiver will obtain the Stalking Horse and Bidding Procedures Order (as defined

- 2 -

herein) authorizing the Receiver to enter into this Agreement and authorizing the sales process with respect to the Receiver's and Blutip's right, title and interest, if any, in and to Purchased Assets pursuant to the Bidding Procedures.

THEREFORE the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Whenever used in this Agreement the following words and terms shall have the meanings set out below:

"Agreement" means this asset purchase agreement, including all schedules, and all amendments or restatements, as permitted, and references to **"Article"**, **"Section"** or **"Schedule"** mean the specified Article or Section of, or Schedule to, this Agreement;

"Ancillary Agreements" means a bills of sale, assignment and assumption agreement, assignment of intellectual property, and such other agreements, documents, assignments, or instruments of transfer and conveyance reasonably satisfactory in form and substance to the Purchaser and the Receiver; none of which shall contain any representations or warranties of the Receiver except for those provided herein;

"Appointment Costs" means the Purchaser's costs of seeking and obtaining the Appointment Order, up to and including entry and service of the Appointment Order, being \$47,500, which costs are secured by the Security pursuant to paragraph 30 of the Appointment Order;

"Appointment Date" means February 28, 2012;

"Appointment Order" has the meaning given in the Recitals;

"Assumed Liabilities" has the meaning given in Section 2.3;

"Auction" has the meaning given in Section 4.1(b);

"Back-Up Bid" has the meaning given in the Bidding Procedures;

"Bidding Procedures" has the meaning given in Section 4.1(b);

"Blutip" has the meaning given in the Recitals;

"Books and Records" means the books and records of Blutip relating to the Purchased Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media;

"Business" means the technology business of Blutip, which business relates to the improvement of engine fuel economy and the reduction of fuel particulates through the use of certain proprietary, patented and patent-pending fuel optimization and emissions control systems and all such other commercial activities incidental and ancillary thereto;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"CCM" means CCM Master Qualified Fund, Ltd.;

"Claims" includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes;

"Closing" means the completion of the transactions described in Section 2.1;

"Closing Certificate" has the meaning given in Section 8.6;

"Closing Date" has the meaning given in Section 6.1(a);

"Closing Time" has the meaning given in Section 6.1(b);

"Consent" means any approval, authorization, consent, order, license, permission, permit (including any environmental permit), qualification, exemption or waiver by any Governmental Authority or other Person;

"Contracts" means contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which Blutip is a party or by which Blutip is bound or under which Blutip has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied) relating to the Purchased Assets and/or the Business, as same may be amended and/or restated, and including any and all related quotations, orders, proposals or tenders which remain open for acceptance, warranties and guarantees and documents ancillary thereto;

"Court" has the meaning given in the Recitals;

"Credit Bid Amount" means the aggregate amount of: (i) the Note Credit Bid Amount, (ii) the Appointment Costs, and (iii) the Term Sheet Obligations. For greater certainty, any fees, costs or expenses of CCM (including legal fees) in connection with the Transaction, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement shall form part of the Expense Reimbursement and shall be excluded from the Credit Bid Amount;

"Encumbrances" means liens, hypothecs, charges, security interests, pledges, leases, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"Employees" means any and all (i) employees who are currently employed (including full-time,

part-time and temporary employees) in connection with the Business; and (ii) employees who are currently employed in connection with the Business who are on leaves of absence (including maternity leave, parental leave, disability leave, sickness leave, workers' compensation and other statutory leaves). For greater certainty, the term "**Employees**" shall not include contractors;

"**Excluded Assets**" means the assets listed in Schedule A;

"**Excluded Contract**" means any Contract which is identified in writing by the Purchaser to the Receiver as an excluded Contract prior to the Closing Date in accordance with Section 2.4(a);

"**Excluded Employee Obligations**" means any obligation to recognize the prior service of the Employees, or to deem such service to be service with the Purchaser for any purpose (including for notice of termination and termination and severance pay) other than as required in accordance with applicable Law;

"**Expense Reimbursement**" has the meaning given in Section 7.2(c);

"**Governmental Authorities**" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Intellectual Property**" means, with respect to the Receiver or Blutip, all rights in and to (a) patents, patent applications and patent disclosures, including without limitation, the Patents, (b) trademarks, trade names and corporate names and including all goodwill associated therewith, (c) works of authorship, copyrightable works, copyrights, (d) Internet addresses, domain names, websites and web pages, and (e) any and all other intellectual property and proprietary rights;

"**Laws**" means currently existing applicable statutes, by-laws, rules, regulations, orders, ordinances or judgments, in each case of any Governmental Authority having the force of law;

"**Note Credit Bid Amount**" means \$3,296,500, which represents the portion of the debt outstanding under the Notes which is secured by the Security and is being credit bid by the Purchaser;

"**Notes**" means, collectively, (a) the convertible senior secured promissory note issued by Blutip to CCM on October 21, 2011 in the principal amount of \$2,600,000; and (b) the convertible senior secured promissory note issued by Blutip to CCM on December 29, 2011 in the principal amount of \$800,000;

"**Parties**" means the Receiver and the Purchaser collectively, and "**Party**" means any one of them;

"**Patents**" means the patents and patent applications listed in Schedule C;

“Person” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

“Property” has the meaning given in the Recitals;

“Purchaser” has the meaning given in the Recitals;

“Purchase Price” has the meaning given in Section 2.5;

“Purchased Assets” means the tangible and intangible properties, assets, interests, rights, Claims and Contracts of the Receiver and/or Blutip related to the Business, wherever located, as of the Closing Date, including without limitation the following assets, if any, to the extent related to the Business:

- (a) all inventory and accounts receivable;
- (b) all Intellectual Property;
- (c) all furniture, fixtures and equipment;
- (d) all rights under non-disclosure or confidentiality, non-compete or non-solicitation agreements with employees and agents or with third parties;
- (e) any rights, Claims or causes of action for Claims arising out of the operation of the Business;
- (f) all goodwill and other intangibles; and
- (g) all other personal property not contemplated by the foregoing;

which for greater certainty does not include the Excluded Assets;

“Qualified Bids” has the meaning given in the Bidding Procedures;

“Receiver” has the meaning given in the Recitals;

“Receiver’s Certificate” has the meaning given in the Appointment Order;

“Sale Hearing” has the meaning given in Section 4.1(b);

“Sale Motion” has the meaning given in Section 4.1(b);

“Security” means, collectively, (i) the General Security Agreement granted by Blutip in favour of CCM dated October 21, 2011; and (ii) the Receiver’s Borrowings Charge, as defined in the Appointment Order;

“Stalking Horse and Bidding Procedures Order” has the meaning given in Section 4.1(c);

"Successful Bidder" has the meaning given in the Bidding Procedures;

"Target Closing Date" has the meaning given in Section 7.1(d);

"Tax" and **"Taxes"** includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

"Term Sheet" means the Term Sheet between CCM and the Receiver dated February 27, 2012 pursuant to which CCM committed to provide to the Receiver a credit facility in the amount of \$400,000 on the terms and conditions set out therein, as amended from time to time;

"Term Sheet Obligations" means all outstanding obligations of any kind pursuant to the Term Sheet, as evidenced by the Receiver's Certificates, and secured by the Security as of the Closing Date;

"Termination Date" has the meaning given in Section 7.1(e);

"Transaction" means the purchase and sale of all of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets contemplated by this Agreement;

"Transfer Taxes" has the meaning given in Section 8.3(c); and

"Vesting Order" has the meaning given in Section 4.1(d).

1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** – All references to money amounts are to lawful currency of Canada;
- (b) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the Laws of the Province of Ontario and the federal Laws of Canada applicable in the Province of Ontario;
- (c) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) **Including** – Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation";

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- (e) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party;
- (f) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders;
- (g) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances; and
- (h) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.3 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the Purchaser shall acquire the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets on an as is and where is basis. Any cost estimates, projections or other predictions contained or referred to in any other material that has been provided to the Purchaser or any of its affiliates, subsidiaries, agents or representatives are not and shall not be deemed to be representations or warranties of the Receiver or any of its affiliates, subsidiaries, agents, employees or representatives.

1.4 Schedules

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

<u>Schedule</u>	<u>Description</u>
Schedule A	– Excluded Assets
Schedule B	– Assumed Liabilities

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<u>Schedule</u>	<u>Description</u>
Schedule C	— Patents
Schedule D	— Bidding Procedures
Schedule E	— Stalking Horse and Bidding Procedures Order
Schedule F	— Claim

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement (which conditions, for greater certainty, include the issuance of the Stalking Horse and Bidding Procedures Order, the determination by the Receiver that this Agreement is the Successful Bid (as defined in and determined in accordance with the Bidding Procedures), and the issuance of the Vesting Order), the Receiver shall transfer, sell, convey, assign and deliver unto the Purchaser, and the Purchaser shall acquire and accept all of Blutip's and the Receiver's right, title and interest, if any, in and to the Purchased Assets, which will be, pursuant to the Vesting Order, free and clear of all Encumbrances.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the Excluded Assets and nothing herein shall be deemed to sell, transfer, assign or convey the Excluded Assets.

2.3 Assumed Liabilities

The Purchaser shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, the liabilities and obligations with respect to the Business and/or the Purchased Assets listed on Schedule B (collectively, the "Assumed Liabilities").

The Purchaser shall not assume or be liable for any Encumbrances, the Excluded Employee Obligations, or any other liabilities or obligations of any nature whatsoever, other than the Assumed Liabilities.

2.4 Assignment and Assumption of Contracts

- (a) The Purchaser covenants to the Receiver that, no later than ten (10) days prior to the Target Closing Date, the Purchaser shall advise the Receiver in writing as to which Contracts shall be Excluded Contracts. For greater certainty any exclusion of Contracts pursuant to this Section 2.4 shall not affect the Purchase Price.

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- (b) Subject to any rights of Consent by counterparties thereto, the terms and conditions of this Section 2.4 and the Vesting Order, the Contracts of Blutip, other than the Excluded Contracts, shall form part of the Purchased Assets assigned and transferred to the Purchaser at Closing, the consideration for which is included in the Purchase Price. The Purchaser will assume and agree to perform and discharge the Assumed Liabilities under the Contracts, other than the Excluded Contracts, pursuant to this Agreement and the applicable Ancillary Agreements.
- (c) At or prior to Closing, the Receiver shall use commercially reasonable efforts to obtain all necessary Consents to assign the Contracts (other than the Excluded Contracts) to the Purchaser. The Purchaser shall be responsible for the Receiver's reasonable routine and non-material out of pocket costs and expenses relating thereto (which, for greater certainty, shall include Transfer Taxes, fees or similar charges). If a counterparty to a Contract requires, as a condition to its Consent to the assignment of such Contract, payment of any monetary default which arose or is related to the period prior to the Appointment Date, such amounts shall be payable by the Purchaser.
- (d) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contract, to the extent such Contract is not assignable under applicable Law without the consent of any other Person party thereto where the Consent of such Person has not been given or received.
- (e) For greater certainty, if any necessary Consent is required to assign a Contract but not obtained, neither the Receiver nor the Purchaser shall be in breach of this Agreement nor shall the Purchase Price be adjusted or the Closing delayed.

2.5 Purchase Price

The purchase price for the Purchased Assets, exclusive of all applicable Transfer Taxes, shall be the aggregate of the following (the "**Purchase Price**");

- (a) the Credit Bid Amount; and
- (b) the Assumed Liabilities.

All applicable Transfer Taxes shall be paid by the Purchaser by certified cheque or bank draft, subject to the terms hereof and the availability of any exemptions or elections under any applicable legislation for such applicable Transfer Taxes.

2.6 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price on Closing by:

- (a) providing a credit to Blutip in the amount of the Note Credit Bid Amount against Blutip's obligations under the Notes;

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- (b) providing a credit to Blutip in the amount of the Appointment Costs against Blutip's obligations under paragraph 30 of the Appointment Order;
- (c) providing a credit to the Receiver in the amount of the Term Sheet Obligations against the Receiver's obligations under the Term Sheet as evidenced by the Receiver's Certificates;
- (d) delivering to the Receiver, for and on behalf of Blutip, fully executed releases and waivers with respect to all Appointment Costs, all amounts outstanding under the Notes, all amounts outstanding under the Term Sheet and all amounts outstanding under the Receiver's Certificates (in each case, including any accrued interest thereon and all fees thereunder); and
- (e) the assumption by the Purchaser of the Assumed Liabilities.

2.7 Purchase Price Allocation

No later than five (5) days before the Target Closing Date, the Purchaser shall prepare a written initial allocation of the Purchase Price in respect of each of the Purchased Assets. The Parties, acting reasonably, shall agree, prior to the Closing, on an allocation of the Purchase Price for Tax purposes.

2.8 Employees

- (a) Prior to but conditional on Closing and with effect as of the Closing Date, the Purchaser shall offer continuing employment to all Employees, such offers of employment to be on terms no less favourable as to salary or wages, benefits, hours of work, duties and working conditions than those in effect at Closing. The Receiver will cooperate with the Purchaser in giving notice to the Employees concerning such matters referred to in this Section 2.8(a) as are reasonable under the circumstances.
- (b) As of and following the Closing Date, the Purchaser shall assume and be responsible for all liabilities and obligations (other than the Excluded Employee Obligations), whether accrued after, on or before the Closing Date, with respect to those Employees who accept the Purchaser's offer of employment or who otherwise continue employment with the Purchaser and the Purchaser shall indemnify and save Blutip and the Receiver harmless in respect of all liabilities and obligations assumed by the Purchaser pursuant to this Section 2.8(b), including defending Blutip and the Receiver against any claims regarding such liabilities and obligations and paying all damages and all reasonable costs, expenses and legal fees.

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ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1 Representations and Warranties of the Receiver

The Receiver hereby represents and warrants to the Purchaser, as of the date hereof and as of the Closing Date, the matters set out below.

- (a) The Receiver has been appointed by the Court as receiver of the Property pursuant to the Appointment Order, a copy of which has been provided to the Purchaser.
- (b) Subject to the issuance of the Vesting Order, the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations under this Agreement. This Agreement constitutes a valid and binding obligation of the Receiver enforceable against it in accordance with its terms subject to any limitations imposed by Law.
- (c) Blutip is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (d) Blutip is registered for harmonized sales tax purposes under Part IX of the *Excise Tax Act* (Canada) with the following registration number: 89179 6674 RT0001.
- (e) The Receiver has not engaged in any act that has or could result in an Encumbrance affecting any of the Purchased Assets (other than any charge created by the Appointment Order or arising by operation of Law in the normal course of the Business).

3.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Receiver, as of the date hereof and as of the Closing Date, the matters set out below.

- (a) The Purchaser has been duly incorporated and is validly subsisting under the Laws of the jurisdiction of its incorporation, and has all requisite corporate capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business.
- (b) The execution, delivery and performance by the Purchaser of this Agreement:
 - (i) has been duly authorized by all necessary corporate action on the part of the Purchaser;
 - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of

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the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and

- (iii) will not result in the violation of any Law.
- (c) This Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with its terms subject only to any limitation under applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) Except for the Vesting Order, no Consent and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or the performance by the Purchaser of its obligations hereunder.
- (e) There is no action, suit, proceeding or claim that is pending or, to the Purchaser's knowledge, threatened in any court or by or before any Governmental Authority that would adversely affect the Purchaser's ability to perform its obligations under this Agreement on a timely basis, other than as set out in Schedule F.
- (f) The Purchaser or its designee will be a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada) on or prior to Closing or the Purchaser will be liable for any Tax consequences of not so being.
- (g) The Purchaser or its designee will not be a non-resident of Canada for purposes of the *Income Tax Act* (Canada) on or prior to Closing or the Purchaser will be liable for any Tax consequences of not so being.
- (h) As at Closing, the Purchaser or its designee will be Canadian, or if not Canadian, will qualify as a WTO investor within the meaning of the *Investment Canada Act* (Canada).

ARTICLE 4 PROCEDURES

4.1 Stalking Horse and Bidding Procedures Order; Vesting Order

- (a) The Receiver and the Purchaser acknowledge that (i) this Agreement is subject to Court approval, and (ii) Closing the Transaction is subject to this Agreement being determined by the Receiver to be the "Successful Bid" (as defined in and determined in accordance with the Bidding Procedures), and to the issuance of the Vesting Order.

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- (b) On or before March 9, 2012, the Receiver shall file and serve a motion (the "**Sale Motion**"), which Sale Motion shall seek approval of, among other things: (i) the Receiver's execution of this Agreement as a "stalking horse" asset purchase agreement; (ii) a stalking horse sale process and related bidding procedures in connection with the sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets, substantially in the form of Schedule D hereto (the "**Bidding Procedures**"); and (iii) the scheduling of an auction and sale hearing as contemplated by the Bidding Procedures (the "**Auction**" and "**Sale Hearing**", respectively).
- (c) The Receiver shall use its commercially reasonable efforts to have the Court enter on or before March 15, 2012 an order reasonably acceptable to the Purchaser and substantially in the form of Schedule E regarding the matters set out in Section 4.1(b) above (the "**Stalking Horse and Bidding Procedures Order**").
- (d) If the Receiver does not receive any Qualified Bids (other than this Agreement), the Receiver shall use its commercially reasonable efforts to promptly file and serve a motion with the Court for an Order (the "**Vesting Order**") in form and substance satisfactory to the Receiver and the Purchaser, acting reasonably, approving the sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets to the Purchaser pursuant to this Agreement and vesting title to the Purchased Assets in the Purchaser free and clear of all Encumbrances.
- (e) If the Receiver receives one or more Qualified Bids (other than this Agreement), the Receiver shall use its commercially reasonable efforts to conduct the Auction for the Purchased Assets on or before April 20, 2012. Upon completion of the Auction, the Receiver shall use its commercially reasonable efforts, to promptly file and serve a motion with the Court for the Vesting Order, approving the sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets to the Successful Bidder and vesting title to the Purchased Assets in the Successful Bidder free and clear of all Encumbrances.
- (f) If the Purchaser is the Successful Bidder (pursuant to this Agreement or otherwise), the Purchaser shall provide any information and take such actions as may be reasonably requested by the Receiver to assist the Receiver in obtaining the Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction. The Purchaser covenants to take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective the Transaction as soon as possible following the issuance of the Vesting Order, and, in any case, by the Target Closing Date.
- (g) In the event that the Purchaser is the Successful Bidder (pursuant to this Agreement or otherwise), or the Successful Bidder has not yet been determined, and leave to appeal is sought, an appeal is taken or a stay pending appeal is requested with respect to the Stalking Horse and Bidding Procedures Order or the

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Vesting Order, the Receiver shall promptly notify the Purchaser of such leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice(s) or order(s). The Receiver shall also provide the Purchaser with written notice of any motion or application filed in connection with any leave to appeal or appeal from such orders.

4.2 Pre-Closing Cooperation

- (a) Prior to the Closing, upon the terms, and subject to the conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the Transaction as soon as practicable, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing, and the taking of such actions as are necessary to obtain any requisite Consent, provided that the Receiver shall not be obligated to make any payment or deliver anything of value to any Person (other than filing with and payment of any application fees to Governmental Authorities, all of which shall be paid or reimbursed by the Purchaser) in order to obtain any Consent.
- (b) Each of the Receiver and the Purchaser shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Section 5.1 or Section 5.2 not being satisfied.

4.3 Acquisition of Assets on "As Is, Where Is" Basis

The Purchaser hereby acknowledges and agrees as follows:

- (a) the Purchased Assets are being purchased on an "as is, where is" basis at the Closing Date;
- (b) it has conducted or will conduct its own searches and investigations relating to the Purchased Assets;
- (c) it has conducted such inspections of the Purchased Assets as it deemed appropriate, satisfied itself with respect to the Purchased Assets and all matters connected with or related to the Purchased Assets, and has relied entirely upon its own investigations and inspections in entering into this Agreement to acquire the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets without regard to any information made available or provided by the Receiver or its officers, directors, employees or agents;
- (d) it will accept the Purchased Assets in their state, condition and location as at the Closing Time and except as expressly set forth in this Agreement, the Receiver makes no representations, warranties, statements or promises on its own behalf or

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on behalf of Blutip in favour of the Purchaser concerning the Purchased Assets, or the Receiver's or Blutip's right, title or interest in or to the Purchased Assets, which the Purchaser acknowledges are being acquired on an as-is where-is basis, or the uses or applications of the Purchased Assets, whether express or implied, statutory or collateral, arising by operation of Law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (Ontario) do not apply to the sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets and are hereby waived by the Purchaser; and

- (e) without limiting the generality of foregoing, it acknowledges and accepts that the description of the Purchased Assets and any portion thereof contained in the Schedules hereto or otherwise provided by the Receiver is for the purpose of identification only; and that no representation, warranty or condition has or will be given by the Receiver or any other party concerning completeness or the accuracy of such descriptions or with respect to any data room set up by the Receiver.

4.4 Title and Risk

The Purchased Assets shall remain at the risk of the Receiver, to the extent of its interest therein, until Closing and at the risk of the Purchaser from and after Closing. The Receiver covenants to the Purchaser that, during the period from and including the date hereof through and including the Closing Date or the earlier termination of this Agreement, the Receiver shall use commercially reasonable efforts to conduct the Business in substantially the same manner as conducted as of the date hereof, pay all fees with respect to the Patents, to the extent such funding is available to the Receiver, and make all other filings required by Governmental Authorities to enable the Purchaser to maintain the Patents in good standing from and after Closing.

ARTICLE 5 CONDITIONS PRECEDENT

5.1 Conditions Precedent of the Purchaser

The obligations of the Purchaser to complete the purchase of all of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Receiver made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Purchaser shall

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have received a certificate from a senior officer of the Receiver confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;

- (b) the Receiver shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Receiver shall have executed and delivered, or caused to be executed and delivered, to the Purchaser on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Purchaser or its solicitors;
- (d) there shall be no order issued by any Governmental Authority delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws;
- (e) the Receiver shall have determined in accordance with the Bidding Procedures that this Agreement is the Successful Bid (as defined in the Bidding Procedures); and
- (f) the Appointment Order, the Stalking Horse and Bidding Procedures Order and the Vesting Order shall have been issued and entered by the Court and such orders shall not have been stayed, vacated or subject to pending appeal and no order shall have been issued which restrains or prohibits the completion of the Transaction.

If any of the foregoing conditions in this Section 5.1 have not been fulfilled by the Termination Date, the Purchaser may terminate this Agreement by notice to the Receiver. However, the Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

For the avoidance of doubt, there shall be no conditions precedent to the Purchaser's obligation to consummate the Transaction, except for those conditions precedent specifically set forth in this Section 5.1.

5.2 Conditions Precedent of the Receiver

The obligations of the Receiver to complete the sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Receiver and may be waived by it in whole or in part):

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- (a) all of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Receiver shall have received a certificate from a senior officer of the Purchaser confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Purchaser shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Purchaser shall have executed and delivered or caused to be executed and delivered to the Receiver on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Receiver or its solicitors;
- (d) there shall be no order issued by any Governmental Authority delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transactions or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws;
- (e) the Receiver shall have determined in accordance with the Bidding Procedures that this Agreement is the Successful Bid (as defined in the Bidding Procedures);
- (f) the Appointment Order, the Stalking Horse and Bidding Procedures Order and the Vesting Order shall have been issued and entered by the Court and such orders shall not have been stayed, vacated or subject to pending appeal and no order shall have been issued which restrains or prohibits the completion of the Transaction;
- (g) if the Purchaser assigns any of its rights or obligations arising under this Agreement to an affiliate of the Purchaser at or before Closing, such affiliate shall have executed and delivered an assignment and assumption agreement (pursuant to which the Purchaser shall remain jointly and severally liable) satisfactory to the Receiver, acting reasonably; and
- (h) the Receiver shall have received sufficient funds to satisfy all amounts secured by the Receiver's Charge (as defined in the Appointment Order) to and including the Closing Date and such additional funds necessary to wind down and complete the receivership, in an amount to be agreed upon by the Purchaser and the Receiver, acting reasonably, from the Purchaser, either (i) by way of funds advanced by the Purchaser in its capacity as "Lender" to the Receiver under the Term Sheet and evidenced by Receiver's Certificates (which, for greater certainty shall be included in the Term Sheet Obligations); or (ii) by way of a cash payment by the

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Purchaser to the Receiver on the Closing Date (which shall be considered part of the Purchase Price). Any amounts received by the Receiver pursuant to this Section 5.2(h) that are not necessary to wind down and complete the receivership shall be returned to the Purchaser upon the Receiver's discharge.

If any of the foregoing conditions in this Section 5.2 have not been fulfilled by the Target Closing Date, the Receiver may terminate this Agreement by notice to the Purchaser. However, the Receiver may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

For the avoidance of doubt, there shall be no conditions precedent to the Receiver's obligation to consummate the Transaction, except for those conditions precedent specifically set forth in this Section 5.2.

ARTICLE 6 CLOSING AND DELIVERIES

6.1 Closing

- (a) Unless otherwise agreed by the Parties, Closing shall occur as soon as practicable after the satisfaction or waiver of all conditions set out in Sections 5.1 and 5.2 (such Closing date, the "**Closing Date**").
- (b) Closing shall take place at 10:00 a.m. (the "**Closing Time**") on the Closing Date at the offices of the Receiver's solicitors, or such other time and location as the Parties may agree upon in writing. Any tender of documents or money hereunder may be made upon the Receiver or the Purchaser or upon the solicitors acting for the Party on whom tender is desired. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

6.2 Receiver's Deliveries

At the Closing,

- (a) the sale, transfer, assignment, conveyance and delivery by the Receiver of its and Blutip's right, title and interest, if any, in and to the Purchased Assets to the Purchaser, free and clear of all Encumbrances, shall be effected by the issued and entered Vesting Order and by execution and delivery by the Receiver of the Ancillary Agreements;
- (b) the Receiver shall deliver, pursuant to the Vesting Order, free and clear title and possession of the Purchased Assets on an "as is, where is" basis in accordance

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with Section 4.3, provided that delivery shall occur in situ wherever such Purchased Assets are located on the Closing Date;

- (c) the Receiver shall deliver a true and complete copy of the Vesting Order and the Closing Certificate;
- (d) the Receiver shall deliver a bring-down certificate executed by the Receiver, in a form satisfactory to the Purchaser, acting reasonably, certifying that all of the representations and warranties of the Receiver hereunder remain true and correct in all material respects as of the Closing;
- (e) Blutip or the Receiver, as applicable, shall make the elections referred to in Section 8.3, to the extent such elections are applicable to the Transaction and available to the Purchaser;
- (f) the Receiver shall deliver an agreement executed by the Receiver, in a form satisfactory to the Purchaser, acting reasonably, assigning the Receiver's and Blutip's right, title and interest in and to the Intellectual Property to the Purchaser; and
- (g) the Receiver shall deliver a document setting out the allocation of the Purchase Price, in form and substance satisfactory to the Purchaser, acting reasonably.

6.3 Purchaser's Deliveries

At the Closing,

- (a) the Purchaser shall deliver the releases and waivers set out in Section 2.6(d) executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably;
- (b) the Purchaser shall make the cash payment referred to in Section 5.2(h)(ii), if applicable;
- (c) the Purchaser shall deliver the Ancillary Agreements to which it is party, executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably;
- (d) the Purchaser shall deliver a bring-down certificate executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably, certifying that all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing;
- (e) the Purchaser shall make the elections referred to in Section 8.3, to the extent such elections are applicable to the Transaction, or shall make a cash payment to the Receiver in an amount sufficient to satisfy any Transfer Taxes;
- (f) the Purchaser shall deliver a document setting out the allocation of the Purchase Price, in form and substance satisfactory to the Receiver, acting reasonably.

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ARTICLE 7 TERMINATION

7.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either the Receiver to the Purchaser or the Purchaser to the Receiver, immediately upon the selection by the Receiver of a Successful Bid if this Agreement is neither the Successful Bid nor the Back-Up Bid selected at such time;
- (b) subject to any approvals required from the Court, by mutual written consent of the Receiver and the Purchaser;
- (c) automatically and without any action or notice by either the Receiver to the Purchaser or the Purchaser to the Receiver, immediately upon the issuance of a final and nonappealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets as contemplated hereby;
- (d) by the Receiver if the Closing has not occurred on or before May 3, 2012 (the "**Target Closing Date**");
- (e) by either the Receiver or the Purchaser if the Closing has not occurred on or before May 15, 2012 (the "**Termination Date**");
- (f) by the Receiver, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.2 by the Target Closing Date and such violation or breach has not been waived by the Receiver or cured by the Target Closing Date, unless the Receiver is in material breach of its obligations under this Agreement; and
- (g) by the Purchaser, if there has been a material violation or breach by the Receiver of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.1 by the Termination Date and such violation or breach has not been waived by the Purchaser or cured by the Termination Date, unless the Purchaser is in material breach of its obligations under this Agreement.

7.2 Effects of Termination

If this Agreement is terminated pursuant to Section 7.1:

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- (a) 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 Section 7.2(c);
- (b) the Purchaser shall return to the Receiver all documents, work papers and other material of the Receiver or Blutip, as the case may be, relating to the Transaction, whether obtained before or after the execution hereof; and
- (c) if this Agreement is terminated pursuant to Section 7.1(a), and the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets are sold pursuant to either the Successful Bid or the Back-Up Bid, the Purchaser shall be entitled to its costs incurred in connection with the development, execution, delivery and approval by the Court of this Agreement (including, without limitation, legal expenses related thereto, and preparing and negotiating this Agreement), up to a maximum of \$75,000, from the proceeds of such sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets (the "Expense Reimbursement").

ARTICLE 8 OTHER COVENANTS OF THE PARTIES; GENERAL

8.1 Books and Records

At Closing, the Receiver shall deliver to the Purchaser, at the Purchaser's sole expense, copies of the Books and Records that relate to the Purchased Assets and that are in the possession of the Receiver or that are reasonably within the Receiver's control, including personal and employment files pertaining to those Employees who accept the Purchaser's offer of employment or who otherwise continue employment with the Purchaser, to the extent permitted by applicable Law. The Purchaser shall honour and observe, in connection with the Transaction, all applicable privacy Laws with respect to the collection, use, transfer and disclosure of personal information about Employees.

8.2 Access of the Receiver to Books and Records

The Receiver, any trustee, trustee in bankruptcy or similar official appointed with respect to Blutip, and each of their representatives shall, for a period of six (6) years from the Closing Date, have access to, and the right to copy, at their expense for *bona fide* business purposes, to the extent necessary or useful in connection with their administration, including the filing of any Tax return or the defence or settlement of any litigation or to comply with any applicable Law and during usual business hours, upon reasonable prior notice to the Purchaser, all books and records relating to the Business, the Purchased Assets and the Assumed Liabilities which are to be transferred and conveyed to the Purchaser pursuant to this Agreement. The Purchaser shall use reasonable efforts to retain and preserve all such Books and Records for such six (6) year period and shall advise the Receiver and any trustee, trustee in bankruptcy or similar official appointed with respect to Blutip (if any) prior to disposing of any such Books and Records so that they may take possession of any such Books and Records, if required.

8.3 Tax Matters

- (a) The Purchaser and the Receiver agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) For all Tax purposes, the Purchaser and, to the extent applicable, the Receiver, agree to report the Transaction in a manner consistent with the Purchase Price allocation determined in accordance with Section 2.7, and the Purchaser and the Receiver shall not voluntarily take any action inconsistent therewith in any Tax return, refund claim, litigation or otherwise, unless required by applicable Tax Laws. The Purchaser and the Receiver shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax Laws.
- (c) All amounts payable by the Purchaser to the Receiver pursuant to this Agreement do not include any federal, provincial, state or local value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, transfer, land transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, "Transfer Taxes") and all Transfer Taxes are the responsibility of and for the account of the Purchaser. The Purchaser and the Receiver agree to cooperate to determine the amount of Transfer Taxes payable in connection with the Transaction. If the Receiver is required by applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Purchaser, the Purchaser shall pay such Transfer Taxes to the Receiver on Closing, unless the Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case the Receiver shall not collect any such applicable Transfer Taxes from the Purchaser provided the Purchaser, in lieu of payment of such applicable Transfer Taxes to the Receiver, delivers to the Receiver such certificates, elections or other documentation required by applicable Law or the administration thereof to substantiate and affect the exemption claimed by the Purchaser.
- (d) The Purchaser shall indemnify and save the Receiver harmless from and against all claims and demands for payment of the Taxes referenced in this Section 8.3, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.
- (e) If applicable, at the Closing, Blutip and the Purchaser shall jointly execute an election under Section 167(1)(b) of the *Excise Tax Act* (Canada) to have subsection 167(1.1) of the *Excise Tax Act* (Canada) apply in respect of the sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased

Assets under this Agreement. The Purchaser shall file the election in the manner and within the time prescribed by subsection 167(1.1) of the *Excise Tax Act* (Canada). Notwithstanding anything to the contrary in this Agreement, the Purchaser shall indemnify and hold Blutip and the Receiver, and their respective shareholders, directors, officers and employees, harmless in respect of any harmonized sales tax, goods and services tax, penalties, interest and other amounts which may be assessed against the Receiver and/or Blutip as a result of the Transaction not being eligible for such elections or as a result of the Purchaser's failure to file the election within the prescribed time.

- (f) If applicable, Blutip and the Purchaser shall jointly execute and file an election under subsection 20(24) of the *Income Tax Act* (Canada) in the manner required by subsection 20(25) of the *Income Tax Act* (Canada) and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed manners and within the time period permitted under the *Income Tax Act* (Canada) and under any other applicable provincial or territorial statute, as to such amount paid by the Receiver on behalf of Blutip to the Purchaser for assuming future obligations. In this regard, the Purchaser and Blutip acknowledge that a portion of the Purchased Assets transferred by the Receiver pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the *Income Tax Act* (Canada) and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Receiver on behalf of Blutip as a payment for the assumption of such future obligations by the Purchaser.
- (g) If applicable, Blutip and the Purchaser shall jointly elect in the prescribed form under Section 22 of the *Income Tax Act* (Canada) and the corresponding provisions of any other applicable Tax statute as to the sale of accounts receivable of Blutip and designate in such election an amount equal to the portion of the Purchase Price allocated to such accounts receivable pursuant to the allocation determined in accordance with Section 2.7. This election or these elections, shall be made within the prescribed time for such elections.
- (h) The Purchaser and the Receiver shall also execute and deliver such other Tax elections and forms as they may mutually agree upon.

8.4 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to this Agreement, including in its execution, Duff & Phelps Canada Restructuring Inc. is acting solely in its capacity as receiver of the Property pursuant to the Appointment Order and not in its personal, corporate, or any other capacity and the Receiver and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith. Any liability of the Receiver hereunder shall be limited to payment of the Expense Reimbursement from the proceeds of sale of the Receiver's and Blutip's right, title and interest, if any, in and to the Purchased Assets pursuant to the Successful Bid or

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Back-Up Bid, as applicable, subject to and in accordance with Section 7.2(c), and in no circumstances will the Receiver be liable for any consequential damages including loss of profit.

8.5 Receiver Disclosures

The Receiver shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, to the parties in interest to the proceedings in connection with the receivership of Blutip, and to any parties entitled to "Access" (as defined in and determined in accordance with Section 3 of the Bidding Procedures). The Parties will consult with and be cooperative with each other in respect of any press release or public statement or public communication with respect to this Agreement or Transaction.

8.6 Closing Certificate

The Parties hereby acknowledge and agree that the Receiver shall be entitled to file a certificate, substantially in the form attached to the Vesting Order (the "Closing Certificate"), with the Court upon receiving written confirmation from the Purchaser that all conditions of Closing have been satisfied or waived, and the Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

8.7 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by e-mail or facsimile:

- (a) in the case of a notice to the Purchaser at:

CCM Master Qualified Fund, Ltd.
c/o Coghill Capital Management, LLC
One North Wacker Drive, Suite 4350
Chicago, IL 60606

Attention: James Schuler
Fax: (312)324-2001
Email: jschulcr@coghillcapital.com

with a copy (which shall not constitute notice) to:

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place, Suite 6100
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman
Fax: (416) 862-6666
Email: mwasserman@osler.com

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(b) in the case of a notice to the Receiver at:

Duff & Phelps Canada Restructuring Inc.
200 King Street West
Suite 1002
Toronto, Ontario M5H 3T4

Attention: David Sieradzki
Fax: (647) 497-9470
Email: david.sieradzki@duffandphelps.com

with a copy (which shall not constitute notice) to:

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

Attention: Linc Rogers
Fax: (416) 863-2653
Email: linc.rogers@blakes.com

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section 8.7.

8.8 Assignment

The Purchaser may at any time assign any of its rights or obligations arising under this Agreement to an affiliate of the Purchaser; provided, however, that in the event of any such assignment, the Purchaser shall be jointly and severally liable for the obligations it assigns and shall not be relieved of any liability or obligation hereunder. Subject to the foregoing, no Party may assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party.

8.9 Expenses

Except as set forth in Sections 5.2(h) and 7.2(c), each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the Transaction, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

8.10 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

8.11 Enurement

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

8.12 Amendment

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

8.13 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the Transaction, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

8.14 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

[Remainder of page intentionally left blank]

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

DUFF & PHELPS CANADA
RESTRUCTURING INC., solely in its
capacity as court-appointed receiver of the
assets, undertakings and properties of BLUTIP
POWER TECHNOLOGIES LTD. and not in
its personal or corporate capacity

By: 

Name: DAVID SIERADZKI

Title: MANAGING DIRECTOR

COGHILL CAPITAL MANAGEMENT,
LLC in its capacity as Investment Manager of
CCM MASTER QUALIFIED FUND, LTD.

By: _____

Name: _____

Title: _____

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

**DUFF & PHELPS CANADA
RESTRUCTURING INC.**, solely in its
capacity as court-appointed receiver of the
assets, undertakings and properties of **BLUTIP
POWER TECHNOLOGIES LTD.** and not in
its personal or corporate capacity

By: _____

Name:

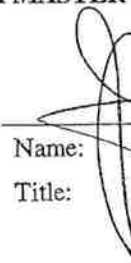
Title:

**COGHILL CAPITAL MANAGEMENT,
LLC** in its capacity as Investment Manager of
CCM MASTER QUALIFIED FUND, LTD.

By: _____

Name:

Title:

 _____
Name: James Schulz
Title: CFO & Principal

**SCHEDULE A
EXCLUDED ASSETS**

The Excluded Assets shall include:

- (a) any asset that otherwise would constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business prior to the Closing Date not in violation of this Agreement;
- (b) the corporate books and records of internal corporate proceedings, Tax records, work papers and other records that the Receiver is required by Law to retain, provided that copies of such books and records will be provided to the Purchaser at Closing;
- (c) the rights of the Receiver under this Agreement or any Ancillary Agreement and all cash and non-cash consideration payable or deliverable to the Receiver under this Agreement or any Ancillary Agreement;
- (d) all rights under or arising out of insurance policies not relating to the Business or the Purchased Assets or non-assignable as a matter of law; and
- (e) all Excluded Contracts and rights of the Receiver and Blutip related thereto.

**SCHEDULE B
ASSUMED LIABILITIES**

The Assumed Liabilities shall include:

- (a) *Obligations after Receivership* – all liabilities and obligations of the Receiver, if any, arising from the operation of the Business or the wind down and completion of the receivership, to the extent not paid or discharged at Closing and all obligations secured by Encumbrances ranking in priority to the Security to the extent not paid or discharged on Closing;
- (b) *Obligations under Contracts* - all of Blutip's and/or the Receiver's liabilities and obligations arising on or after the Closing Date under the Contracts (other than the Excluded Contracts), and all payments or obligations required to be paid, performed or discharged in connection with the assignment of such Contracts;
- (c) *Obligations after Closing* - all liabilities and obligations arising on or after the Closing Date but only to the extent that they relate to or arise out of the operation of the Business on or after the Closing Date or the Purchaser's ownership of the Purchased Assets; and
- (d) *Employee Matters* - all liabilities and obligations of the Purchaser pursuant to Section 2.8.

**SCHEDULE C
PATENTS**

Country	Application / Registration Number	Description
CA	2,269,382	Electrode Assembly
US	6,524,453	Electrode Assembly
US	7,651,602	Electrolyzer
US	12/514,962	Gas/Liquid Separator for Hydrogen Generating Apparatus
CA	2,670,138	Gas/Liquid Separator for Hydrogen Generating Apparatus
AU	2006201027	Hydrogen Generating Apparatus
CA	2,538,922	Hydrogen Generating Apparatus
CDN	2,368,508	Hydrogen Generating Apparatus and components therefor
US	7,240,641	Hydrogen Generating Apparatus and components therefor
US	6,817,320	Hydrogen Generating Apparatus and components therefor
US	6,332,434	Hydrogen Generating Apparatus and components therefor
CA	2,670,137	Hydrogen Generating Apparatus with Hydrogen Concentration Sensors
CA	2,534,454	Hydrogen Generating System for Operation with Engine Turbo Condition
US	12/514,571	Hydrogen Generating System for Operation with Engine Turbo Condition
AU	2007209732	Hydrogen Generating System for Operation with Engine Turbo Condition
PCT	PCT/CA2010/000831	Method and System for Improving Fuel Economy and Controlling Engine Emissions
US	7,722,066	Vehicle Operation Assembly

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US	12/757,215	Vehicle Operation Assembly
CA	2,673,360	Hydrogen Generating Apparatus and components thereof
CA	2,688,798	Hydrogen Generating Apparatus and Components Therefor
CA	2,287,270	Hydrogen Generating Apparatus and components thereof
CA	2,400,775	Electrolyzer
AU	2005301052	Electrochemical Cell Electrolyte Pumping System
CA	2,586,588	Electrochemical Cell Electrolyte Pumping System

**SCHEDULE D
BIDDING PROCEDURES**

See attached.

Schedule "D"

Bidding Procedures

On February 28, 2012, the Ontario Superior Court of Justice, Commercial List (the "**Court**") granted an order (the "**Appointment Order**") appointing Duff & Phelps Canada Restructuring Inc. as receiver (Duff & Phelps Canada Restructuring Inc., in such capacity, the "**Receiver**") over all of the assets, undertakings and properties acquired for, or used in relation to a business carried on by Blutip Power Technologies Ltd. (the "**Debtor**").

On March 9, 2012, the Receiver filed a motion (the "**Bidding Procedures Motion**") with the Court seeking, among other things, approval of (a) the Receiver's execution of an agreement of purchase and sale of substantially all assets of the Debtor (the "**Purchased Assets**") between the Debtor and CCM Master Qualified Fund, Ltd. (the "**Stalking Horse Bidder**") dated March 9, 2012 (the "**Stalking Horse Agreement**") so as to set a minimum floor price in respect of the sale process for the Purchased Assets; (b) certain protections granted to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement; and (c) certain bidding procedures for the solicitation of offers or proposals for the acquisition of the Purchased Assets (each a "**Bid**").

On March 15, 2012, the Court entered an order granting the relief requested in the Bidding Procedures Motion, including approval of the following bidding procedures (these "**Bidding Procedures**"). Accordingly, these Bidding Procedures shall govern the solicitation by the Receiver of Bids that are superior to that contemplated by the Stalking Horse Agreement and the proposed sale of the Purchased Assets.

All denominations are in Canadian Dollars.

1. **Assets for Sale**

The Receiver is soliciting Bids for the Purchased Assets, in whole but not in part, that are superior to that contemplated by the Stalking Horse Agreement.

2. **Bidding Deadline**

All Bids must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received by each of the Notice Parties (as defined below) no later than 10:00 a.m. (Toronto time) on April 16, 2012 (the "**Bid Deadline**"). A Bid received by a Notice Party after the Bid Deadline shall not constitute a Qualified Bid (as defined below).

Written copies of the Bids shall be delivered via e-mail or by personal delivery so that they are received by the Bid Deadline by each of the following parties (collectively, the "**Notice Parties**"):

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- (a) the Receiver at:

Duff & Phelps Canada Restructuring Inc.
200 King Street West
Suite 1002
Toronto, ON M5H 3T4

Attention: David Sieradzki
E-mail: david.sieradzki@duffandphelps.com

- (b) counsel to the Receiver at:

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

Attention: Linc Rogers
E-mail: linc.rogers@blakes.com

3. Access to Due Diligence Materials

Interested bidders that execute a Confidentiality Agreement (as defined below) are eligible to receive a confidential information memorandum describing the opportunity to acquire the Purchased Assets, a copy of the **Stalking Horse Agreement**, and due diligence access or additional non-public information ("**Access**") upon receipt by the Receiver of such executed Confidentiality Agreement. Such party's Access shall terminate when the earliest of the following events occur:

- (a) such party does not submit a Bid by the Bid Deadline;
- (b) the Receiver determines that such party does not constitute a Qualified Bidder (as defined below);
- (c) such party does not participate in the Auction (as defined below); or
- (d) at the conclusion of the Auction.

Notwithstanding that a party's Access may continue until the end of the Auction, the Receiver shall not be obligated to furnish any due diligence information after the Bid Deadline.

The Receiver will designate an employee or other representative to coordinate all reasonable requests for due diligence Access or additional non-public information from all parties eligible to receive such access and information in accordance with this Section 3. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Purchased Assets and will not make any representations as to the accuracy or completeness of such information.

4. Due Diligence From Bidders

Each Bidder (as defined below) shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by a Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Bidder is not a Qualified Bidder.

5. Bidding Procedures

The Receiver, with the assistance of its advisors, shall: (a) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions herein; (b) receive Bids from interested parties; (c) determine whether a Bidder is a Qualified Bidder; (c) if the Auction is to take place in accordance with these Bidding Procedures, conduct the Auction in accordance with these Bidding Procedures; and (d) negotiate offers made by Bidders in accordance with these Bidding Procedures. The Receiver shall have the right to adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures and facilitate the Auction, if the Auction takes place; *provided that* the adoption of any rule that materially deviates from these Bidding Procedures shall require an order of the Court. The Receiver shall provide the Stalking Horse Bidder with at least five (5) days notice of any motion to the Court to adopt a rule that materially deviates from these Bidding Procedures.

6. Bid Requirements

To participate in the process detailed by these Bidding Procedures and to otherwise be considered for any purpose hereunder, an interested party (other than the Stalking Horse Bidder) (a "**Bidder**") must satisfactorily provide the Receiver with each of the following on or before the Bid Deadline:

- (a) Identification of Bidder. Identification of the Bidder and any Principals (as defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Corporate Authority. Written evidence of the Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction; and, if the Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction, then the Bidder must furnish written evidence reasonably acceptable to the Receiver of the approval of the contemplated transaction by the equity holder(s) of such Bidder and any guarantor(s) of the Bid (the "**Principals**");
- (c) Confidentiality Agreement. An executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel (a "**Confidentiality Agreement**");

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- (d) Financing Sources. Written evidence of a firm, irrevocable commitment for financing from a creditworthy bank or financial institution that will provide such financing without alteration of condition(s) or delay(s) and that is not contingent, or, other evidence of the Bidder's ability, as determined in the Receiver's reasonable business judgment, to consummate the transaction contemplated by its Bid; and
- (e) Bid. A Bid which satisfies each of the following conditions:
- (i) Form and Content. The Bid must be in the form of an executed mark-up of the Stalking Horse Agreement reflecting such Bidder's proposed changes to the Stalking Horse Agreement, and must contain a written and binding commitment by the Bidder to close on the terms and conditions set forth therein as soon as practicable after satisfaction or waiver of all conditions and a covenant to use commercial best efforts to satisfy all conditions by the Target Closing Date (as defined below);
 - (ii) Irrevocable. The Bid must be irrevocable until the earlier of (i) the day on which the Bidder is notified that the Bid is not a Qualified Bid; (ii) the day on which a Successful Bid is selected, if the Bid is neither the Successful Bid nor the Back-Up Bid selected on such day; and (iii) May 15, 2012 (the "**Termination Date**");
 - (iii) Contingencies. The Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with the Bid may not, in the aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
 - (iv) No Fees payable to Bidder. The Bid may not request or entitle the Bidder (other than the Stalking Horse Bidder) to any break-up fee, expense reimbursement, termination or similar type of fee or payment;
 - (v) Good-Faith Deposit. The Bid must be accompanied by a cash deposit (the "**Good Faith Deposit**") equal to fifteen percent (15%) of the total cash purchase price contemplated by such Bid, and the Good Faith Deposit shall be paid to the Receiver, to be held by the Receiver in trust in accordance with these Bidding Procedures; and
 - (vi) Minimum Consideration. The aggregate consideration in a Bid must provide a cash purchase price of at least \$3,919,000. For greater certainty, this figure is an estimate, as of the Target Closing Date, of the aggregate of (a) the Credit Bid Amount (as defined in the Stalking Horse Agreement); (b) the maximum Expense Reimbursement (as defined in the Stalking Horse Agreement) of \$75,000; and (c) \$100,000.

7. Designation as Qualified Bidder

A “**Qualified Bidder**” is a Bidder that the Receiver, in consultation with its advisors, determines satisfies all of the conditions set out in Section 6 above, and the Bid submitted by such Qualified Bidder is a “**Qualified Bid**”. Upon the receipt from a Bidder of all of the deliveries required under Section 6 above, the Receiver shall notify such Bidder with respect to whether it is a Qualified Bidder as soon as practicable after the Bid Deadline.

As soon as practicable after the Bid Deadline, the Receiver shall provide all Qualified Bidders with a copy of the Opening Bid (as defined below) for the Auction.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Bidder for all purposes of these Bidding Procedures (including for purposes of the Auction) and the Stalking Horse Agreement is and is deemed to be a Qualified Bid for all purposes of these Bidding Procedures (including for purposes of the Auction).

8. Auction

Only if the Receiver has determined by April 18, 2012 that there is at least one Qualified Bid (other than the Stalking Horse Agreement) shall the Receiver conduct an auction (the “**Auction**”) to determine the highest and/or best Bid with respect to the Purchased Assets. The Auction shall commence on April 20, 2012, at 10:00 a.m. (Toronto time) at the offices of Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 4000, Commerce Court West, Toronto, Ontario, M5L 1A9.

If the Receiver determines that there is no Qualified Bid (other than the Stalking Horse Agreement), (i) the Auction will not take place; (ii) the Stalking Horse Agreement shall be declared the Successful Bid (as defined below); (iii) the Receiver shall seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing (as defined below); and (iv) the Receiver shall post notice of such facts on its website established in connection with the receivership of the Debtor, at:

http://www.duffandphelps.com/services/investment_banking/Pages/RestructuringCases.aspx

If the Auction does take place, the Auction shall be conducted according to the following procedures:

- (a) Participation At The Auction. The Receiver and its professionals shall direct and preside over the Auction. Only a Qualified Bidder is eligible to participate at the Auction. Only the authorized representatives (including counsel and other advisors) of each of the Qualified Bidders, and the Receiver shall be permitted to attend at the Auction.
- (b) Rounds. Bidding at the Auction shall be conducted in rounds. The highest Qualified Bid at the beginning of the Auction shall constitute the “**Opening Bid**” for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the “**Opening Bid**” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. If at

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the end of any round of bidding, a Qualified Bidder (other than the Qualified Bidder that submitted the Opening Bid for such round) did not submit an Overbid, then the Receiver may, in its sole discretion, bar such Qualified Bidder from participating in the next round of bidding at the Auction. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.

- (c) Bid Assessment Criteria. The determination of which Qualified Bid constitutes the Opening Bid in the first round of bidding and the determination of which Overbid constitutes the Opening Bid for each subsequent round of bidding shall take into account any factors the Receiver, with the assistance of its advisors, reasonably deems relevant to the value of the Qualified Bid/Overbid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities; (iii) the ability of the Qualified Bidder to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase-price adjustments; (vi) the net economic effect of any changes from the Stalking Horse Agreement contemplated by the Qualified Bid; (vii) the net after-tax consideration to be received by the Receiver; and (viii) such other considerations as the Receiver deems relevant in its reasonable business judgment.
- (d) Overbids. All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open, non-confidential basis, and the identity of each Qualified Bidder and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders participating in the Auction. The Receiver shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid and the Back-Up Bid (as defined below).
- (e) Terms of Overbids. An "Overbid" is any Bid made at the Auction that satisfies the following conditions:

- (i) Minimum Consideration

The amount of the cash purchase price consideration of any Overbid shall not be less than the cash purchase price consideration of the Opening Bid of the applicable round of bidding, plus \$100,000 (the "**Minimum Overbid Increment**") or such lower amount as the Receiver may determine in order to facilitate the Auction; provided, that, without duplication, application of (a) any amounts owing by the Debtor to the Stalking Horse Bidder under the Notes (as defined in the Stalking Horse Agreement), to a maximum of \$3,296,500, (b) any portion of the Appointment Costs (as defined in the Stalking Horse Agreement), and (c) any amounts advanced to the Receiver by the Stalking Horse Bidder under the Term Sheet (as defined in the

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Stalking Horse Agreement) and evidenced by the Receiver's Certificates (as defined in the Appointment Order), shall be considered as cash purchase price consideration in connection with any Overbid made by the Stalking Horse Bidder.

The Receiver shall credit the maximum amount of the Expense Reimbursement to each and every Overbid submitted by the Stalking Horse Bidder at the Auction, meaning that if an Overbid made by the Stalking Horse Bidder is the Opening Bid for a round of bidding at the Auction, the cash purchase price consideration of any Overbid made in that round of bidding must exceed the Stalking Horse Bidder's Overbid by the maximum amount of the Expense Reimbursement plus the Minimum Overbid Increment (a total amount of \$175,000).

(ii) Remaining terms are the same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in Section 6(e) above, provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits during the Auction.

To the extent not previously provided (which shall be determined by the Receiver), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver) demonstrating such Qualified Bidder's ability to close the transaction contemplated by its Overbid.

(iii) Announcing Highest Overbids

At the end of each round of bidding, the Receiver, with the assistance of its advisors, shall (i) immediately review each Overbid made in such round, (ii) identify the highest and/or best such Overbid, and (iii) announce the identity of the Qualified Bidder and the terms of such highest and/or best Overbid to all Qualified Bidders entitled to participate in the next round of bidding. Such highest and/or best Overbid shall be the Opening Bid for the next round of the Auction.

- (f) Adjournments. The Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Receiver and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed; (C) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (D) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require, in its reasonable business judgment, that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient

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internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

- (g) Closing the Auction. If, in any round of bidding, no new Overbid is made, the Auction shall be closed and the Receiver shall, with the assistance of its advisors: (i) declare the last Opening Bid as the successful Bid (the "Successful Bid" and the entity or entities submitting such Successful Bid, the "Successful Bidder"); (ii) immediately review the other Overbids made in the previous round or the Qualified Bids if there were no Overbids made at the Auction, and identify and record the next highest and/or best Overbid or Qualified Bid to the Successful Bid (the "Back-Up Bid" and the entity or entities submitting such Back-Up Bid, the "Back-Up Bidder"); and (iii) advise the Successful Bidder and the Back-Up Bidder of such determinations and all other Qualified Bidders that they are not the Successful Bidder or Back-Up Bidder.

To the extent not already provided, the Successful Bidder and the Back-Up Bidder shall each, within two (2) business days of the conclusion of the Auction, provide the Receiver with an additional cash deposit to increase its original Good Faith Deposit to equal fifteen percent (15%) of the total cash purchase price contemplated by the Successful Bid or Back-Up Bid, as applicable, to be held by the Receiver in trust as such party's "Good Faith Deposit" in accordance with these Bidding Procedures. For greater certainty, if the Stalking Horse Bidder submits an Overbid which is determined to be the Successful Bid or Back-Up Bid, the Stalking Horse Bidder shall, within two (2) business days of the conclusion of the Auction, provide the Receiver with a cash deposit equal to fifteen percent (15%) of the total cash purchase price (excluding any amounts which are credit bid pursuant to Section 13 hereof) contemplated by such Overbid, to be held by the Receiver in trust as the Stalking Horse Bidder's "Good Faith Deposit" in accordance with these Bidding Procedures.

- (h) Consent to Jurisdiction as Condition to Bid. All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder's transaction document, as applicable.
- (i) Expense Reimbursement. In the event that the Stalking Horse Bidder is neither the Successful Bidder nor the Back-Up Bidder, the Stalking Horse Agreement shall be terminated pursuant to Section 7.1(a) of the Stalking Horse Agreement, and the Expense Reimbursement (in the maximum amount of \$75,000) shall be payable to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement from the proceeds received upon closing of the Successful Bid or the Back-Up Bid, as applicable. Section

7.2(c) of the Stalking Horse Agreement and the rights and obligations created thereunder shall survive termination of the Stalking Horse Agreement.

9. Sale Hearing

The Receiver shall, within seven (7) days of the conclusion of the Auction, or, if there is no Auction as determined in accordance with Section 8, by April 20, 2012, serve notice of a hearing (the "Sale Hearing") to approve the sale of the Purchased Assets to the Successful Bidder free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Successful Bidder. The Sale Hearing shall be conducted by the Court as soon as possible thereafter, and in any case, by May 1, 2012, at 330 University Avenue, Toronto, Ontario. At the Sale Hearing, the Receiver may also seek, in its sole discretion, conditional approval of the Back-Up Bid, authorizing the Receiver to close the Back-Up Bid if the Successful Bid is not closed by May 3, 2012 (the "Target Closing Date").

10. Closing the Successful Bid

The Receiver and the Successful Bidder shall take all reasonable steps to complete the sale transaction contemplated by the Successful Bid as soon as possible after the Successful Bid is approved by the Court. The Receiver will be deemed to have accepted the Successful Bid only when the Successful Bid has been approved by the Court. If the transaction contemplated by the Successful Bid has not closed by the Target Closing Date or the Successful Bid is terminated for any reason prior to the Target Closing Date, the Receiver may elect, in its sole discretion to seek to complete the transaction contemplated by the Back-Up Bid, and upon making such election, the Receiver will seek Court approval of the Back-Up Bid (if such approval has not already been obtained) and promptly seek to close the transaction contemplated by the Back-Up Bid after such Court approval. The Back-Up Bid will be deemed to be the Successful Bid and the Receiver will be deemed to have accepted the Back-Up Bid only when the Back-Up Bid has been approved by the Court.

11. "As Is, Where Is"

The sale of the Purchased Assets pursuant to these Bidding Procedures shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor or the Receiver, other than such limited market standard representations and warranties as may be expressly set out in the Successful Bid.

12. Return of Good Faith Deposit

- (a) All Good Faith Deposits shall be held in an interest-bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with this Section 12.
- (b) Good Faith Deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidder two (2) business days after the day on which the Bidder is notified that it is not a Qualified Bidder.

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- (c) Good Faith Deposits of all Qualified Bidders other than the Successful Bidder and the Back-Up Bidder (if applicable) shall be returned to such Qualified Bidder two (2) business days after the day on which a Successful Bidder is selected.
- (d) The Good Faith Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. If the Successful Bidder fails to consummate the transaction contemplated by the Successful Bid by the Target Closing Date because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. The Good Faith Deposit of the Successful Bidder shall otherwise be returned to the Successful Bidder in accordance with the terms of the Successful Bid.
- (e) If the Back-Up Bid has not been deemed to be the Successful Bid, the Good Faith Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder as soon as practicable after the earlier of (i) the Termination Date, (ii) the closing of the transaction contemplated by the Successful Bid, and (iii) the date on which the Receiver provides written notice to the Back-Up Bidder that the Receiver will not elect to complete the transaction contemplated by the Back-Up Bid.
- (f) If the Back-Up Bid is deemed to be the Successful Bid, the Good Faith Deposit of the Back-Up Bidder shall be applied to the purchase price of such transaction at closing. If the Back-Up Bidder fails to consummate the transaction contemplated by the Back-Up Bid by the Termination Date because of a breach or failure to perform on the part of such Back-Up Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Back-Up Bidder as part of its damages resulting from the breach or failure to perform by the Back-Up Bidder. The Good Faith Deposit of the Back-Up Bidder shall otherwise be returned to the Back-Up Bidder in accordance with the terms of the Back-Up Bid.

13. Credit Bidding

For greater certainty and notwithstanding anything herein to the contrary, any lender under any Receiver's Certificate(s) and the Stalking Horse Bidder, as secured creditor pursuant to the Notes and as the creditor who applied for the Appointment Order, shall be permitted, each in their sole discretion, to credit bid up to the full amount of the debt owed to it under the Receiver's Certificate(s), and/or up to \$3,296,500 owed to it under the Notes, and/or up to the amount of the Appointment Costs, to the extent permitted under applicable law.

SCHEDULE E
STALKING HORSE AND BIDDING PROCEDURES ORDER

See attached.

Court File No. CV-12-9622-00CL

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

THE HONOURABLE)	THURSDAY DAY, THE
)	
JUSTICE)	15 TH DAY OF MARCH, 2012

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

BETWEEN:

CCM MASTER QUALIFIED FUND, LTD.

Applicant

- and -

BLUTIP POWER TECHNOLOGIES LTD.

Respondent

BIDDING PROCEDURES ORDER

THIS MOTION made by Duff & Phelps Canada Restructuring Inc., in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of blutip Power Technologies Ltd. (the “**Debtor**”) for an Order:

- a) abridging the time for service and validating the service of the Notice of Motion, the Motion Record and the First Report of the Receiver dated March 9, 2012 (the “**First Report**”) so that this Motion is properly returnable today and dispensing with further service thereof;
- b) approving the First Report and the activities of the Receiver as described therein;
- c) authorizing and directing the Receiver to execute the agreement of purchase and sale of substantially all assets of the Debtor (the “**Purchased Assets**”) between

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the Receiver and CCM Master Qualified Fund, Ltd. (the "**Stalking Horse Bidder**") dated March 9, 2012 (the "**Stalking Horse Agreement**") attached hereto as Schedule "A" so as to set a minimum floor price in respect of the sale process for the Purchased Assets;

- d) approving and authorizing the payment of the Expense Reimbursement in the manner provided for in the Stalking Horse Agreement, in conjunction with the Bidding Procedures;
- e) approving the bidding procedures attached as Schedule "D" to the Stalking Horse Agreement (the "**Bidding Procedures**") to be used in conjunction with the solicitation of offers or proposals for the acquisition of the Purchased Assets;
- f) deeming the Stalking Horse Agreement to be a Qualified Bid (as defined in the Bidding Procedures) and accepted solely for the purposes of the Stalking Horse Bidder's right to participate in the Auction (as defined in the Bidding Procedures); and
- g) ordering that the Receiver's Charge and the Receiver's Borrowings Charge, each as defined in the Order of this Court dated February 28, 2012 (the "**Appointment Order**"), have the standard priority of such charges;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion, the First Report, the Stalking Horse Agreement and the Bidding Procedures, and on hearing the submissions of counsel for the Receiver and counsel for the Stalking Horse Bidder and on being advised that the Service List was served with the Motion Record herein;

1. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Stalking Horse Agreement or the Bidding Procedures.

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SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECEIVER'S ACTIVITIES

3. **THIS COURT ORDERS** that the First Report and the activities of the Receiver as described therein are hereby approved.

STALKING HORSE AGREEMENT

4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to execute the Stalking Horse Agreement.

5. **THIS COURT ORDERS** that the provisions of the Stalking Horse Agreement providing for payment of the Expense Reimbursement are hereby authorized and approved and the Receiver is hereby authorized and directed to pay to the Stalking Horse Bidder, in accordance with Section 7.2(c) of the Stalking Horse Agreement, the Expense Reimbursement from the proceeds of sale of a Successful Bid or a Back-Up Bid in the event that the Stalking Horse Agreement is terminated in accordance with Section 7.1(a) thereof.

BIDDING PROCEDURES

6. **THIS COURT ORDERS** that the Bidding Procedures are hereby approved and, if one or more Qualified Bids (other than the Stalking Horse Agreement) are received, the Receiver shall be authorized to conduct the Auction as contemplated therein.

7. **THIS COURT ORDERS** that the Stalking Horse Agreement is hereby deemed to be a Qualified Bid and accepted solely for the purposes of the Stalking Horse Bidder's right to participate in the Auction.

8. **THIS COURT ORDERS** that nothing herein approves the sale of the Purchased Assets on the terms set out in the Stalking Horse Agreement and that the validity of any sale of the Purchased Assets will be determined on a subsequent motion made to this Court.

PRIORITY OF CHARGES

9. **THIS COURT ORDERS** that the Receiver's Charge (as defined in the Appointment Order) shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA").

10. **THIS COURT ORDERS** that the Receiver's Borrowings Charge (as defined in the Appointment Order) shall form a fixed and specific charge on the whole of the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SCHEDULE "A"**Stalking Horse Agreement**

[Intentionally omitted.]

Applicant

Respondent

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

Proceeding commenced at Toronto

BIDDING PROCEDURES ORDER

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Lawyers for the Court-appointed Receiver of
Blutip Power Technologies Ltd.

SCHEDULE F**CLAIM**

Action commenced by Statement of Claim dated November 17, 2011 of Blutip Financial Corporation against Blutip Power Technologies Ltd. and Coghill Capital Management LLC, Court File No. CV-11-00439702-0000