

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

**NOTICE OF APPLICATION**

Name of Applicant: KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed Monitor of the Petitioners (in such capacity, the “**Monitor**”)

To: The Service List, a copy of which is attached hereto as Schedule "A"

**TAKE NOTICE THAT** an application will be made by the Monitor to the Honourable Justice Stephens, at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Friday, April 26, 2024, at 9:00 a.m. for the orders sought in Part 1 below.

**PART I: ORDERS SOUGHT**

1. An order (the “**Approval and Vesting Order**”) in substantially the form attached as Schedule "B", among other things:

- (a) approving the purchase agreement (the “**Omicron Purchase Agreement**”) entered into between Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Omicron Interiors Ltd., and Omicron Construction Ltd. (collectively the “**Vendors**”), 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd., 1474484 B.C. Ltd., as purchasers (collectively, the “**Purchasers**”) and Nexii Building Solutions Inc.;
- (b) vesting in the Purchasers all of the right, title and interest in and to the Purchased Assets (as defined in the Omicron Purchase Agreement) other than such permitted encumbrances as provided for in the Omicron Purchase Agreement; and

- (c) adding Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Omicron Interiors Ltd., and Omicron Construction Ltd., *i.e.*, the Vendors, as additional petitioners (the “**Additional Petitioners**”) to these proceedings and, upon Closing of the Transaction (as those terms are defined in the Second Report of the Monitor), approving a change in the legal names of the Additional Petitioners.
2. An order (the “**Assignment Order**”) pursuant to section 11.3 of the CCAA and in substantially the form attached as Schedule "C" approving the assignment to the Purchasers, of the contracts listed at Schedules “C” to “H” of the draft Assignment Order.
3. An order (the “**Ancillary Order**”) in substantially the form attached as Schedule "D", among other things:
- (a) abridging the time for service of this Notice of Application and supporting materials;
  - (b) authorizing a distribution of the Sale Proceeds (as defined therein) to the Senior Secured Lenders or such other persons as the Senior Secured Lenders may direct;
  - (c) approving the activities of KSV, in its capacity as the Court-appointed Monitor of the Petitioners, as set out in the second report of the Monitor dated April 19, 2024 (the “**Second Report**”); and
  - (d) extending the stay of proceedings in favour of the Petitioners and Omicron Group up to and including June 30, 2024.
4. The Monitor may also seek such further relief as counsel may advise and this Honourable Court may permit.

## **PART II: FACTUAL BASIS**

### **A. Overview**

5. Capitalized terms used herein have the same meanings as in the Second Report and the Omicron Purchase Agreement unless otherwise defined.

6. All references to monetary amounts in this application are in Canadian dollars unless otherwise stated.

7. On January 11, 2024, the Honourable Justice Stephens granted an order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) and KSV was appointed as Monitor of the Petitioners, Nexii Building Solutions Inc., Nexii Construction Inc., NBS IP Inc. and Nexii Holdings Inc. (collectively, “**Nexii**”) with certain enhanced powers. The Initial Order extended certain protections of the Initial Order to Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd., and Omicron Construction Ltd. (collectively, the “**Omicron Group**”). The proceedings commenced therein are hereinafter referred to as the “**CCAA Proceedings**”.

8. On January 22, 2024, this Court granted four orders:

- (a) an amended and restated initial order (the “**ARIO**”), which among other things:
  - (i) amended and restated the relief granted in the Initial Order;
  - (ii) increased the amounts of certain charges;
  - (iii) extended the stay of proceedings granted under the Initial Order to April 30, 2024; and
  - (iv) confirmed the priority among charges granted;
- (b) an order, approving a key employee retention plan including granting a charge securing payments made thereto;
- (c) an order (the “**Sale Process Order**”), among other things approving a sale process (the “**Sale Process**”) in respect of the Petitioners’ and Omicron Group’s business and assets and approving the engagement of Origin Merchant Partners (the “**Financial Advisor**”) as financial advisor in the Sale Process;

- (d) an order sealing the Affidavit #3 of William Tucker and the Affidavit #4 of William Tucker.

## **B. Results of the Sale Process**

9. Details of the Sale Process are set out in paragraphs 4.1 to 4.2 of the Monitor's Second report and are thus not repeated in detail herein.

10. The Financial Advisor, under the supervision of the Monitor and with the assistance of the Petitioners, carried out the Sale Process in accordance with the Sale Process Approval Order. This included an extensive marketing of the Petitioners' and the Omicron Group's business and assets.

11. Despite these extensive marketing efforts, as at the Bid Submission Deadline, the Petitioners did not receive any Qualified Bids that were in a form suitable for Court approval. As a result, with the consent of the Petitioners and the Interim Lenders the Bid Submission Deadline was indefinitely extended to further develop an interest in the Petitioners' and the Omicron Group's assets and business.

12. Following a period of negotiations, the Petitioners, in consultation with the Monitor and Interim Lenders, determined that the Purchasers' bid was the Successful Bid under the Sale Process for the Property of the Vendors.

## **C. Omicron Purchase Agreement**

13. A table summarizing the commercial terms of the Omicron Purchase Agreement is included in the Second Report at paragraph 5.0, as a result, only some of the key terms are set out herein.

### **1. Purchased Assets**

14. The Omicron Purchase Agreement contemplates the acquisition by the Purchasers of the Vendors' right, title and interest in and to the business, assets, properties, contractual rights, goodwill, rights and claims of the Vendors related to the Business.

15. The consideration payable under the Omicron Purchase Agreement for the Purchased Assets includes:

- (a) a Deposit payment in the amount of \$300,000, which is being held by the Monitor in trust and is to be credited against the Cash Payment at Closing;
- (b) an amount equal to the Cash Payment less the Deposit to be paid in cash by the Purchasers to the Monitor on the Closing Date;
- (c) an amount equal to the value of the Assumed Liabilities which the Purchasers shall assume on the Closing Date satisfied by the Purchasers paying, performing, and/or discharging such Assumed Liabilities as and when they become due; and
- (d) a Conditional Payment in the event of a Post-Closing Sale pursuant to the Post-Closing Sale Agreement.

16. In addition to the aforementioned consideration, the Purchasers are to pay the Transfer Taxes pertaining to the Purchasers' acquisition of the Purchased Assets on Closing.

## **2. Assumed Liabilities**

17. The Omicron Purchase Agreement contemplates the assumption of liabilities as set out in detail in Schedule "C" thereto.

18. Such Assumed Liabilities include all accounts payable and deferred revenue in connection with the Assumed Contracts.

## **3. Conditions Precedent**

19. Among other things, the Closing of the Transaction is conditioned on the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) the Court shall have issued and entered an Approval and Vesting Order;
- (b) no Applicable Law and no final or non-appealable judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction;

- (c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
- (d) the Monitor shall have provided an executed copy of the Monitor's Certificate confirming that all conditions to Closing have either been satisfied or waived by both the Purchasers and the Vendors.

**D. Proposed Distribution**

20. As detailed further in the Second Report, the Monitor is seeking approval for the Petitioners or the Monitor to make certain distributions from the Net Proceeds of the Transaction to the Senior Secured Lenders. The distribution is being made to the Lenders in their capacity as pre-filing Senior Secured Lenders, not in their capacity as Interim Lenders under the DIP. The Purchased Assets are not subject to the DIP Charge in the ARIO.

21. The Monitor's legal counsel, Bennett Jones LLP, has provided the Monitor with an opinion that, subject to the usual and customary assumptions and qualifications contained in such opinions, the Senior Secured Lenders have valid and enforceable first ranking security against the assets of the Vendors.

**E. Activities of the Monitor**

22. As discussed in further detail in the Second Report, the Monitor with the support of its legal advisors, has engaged in various activities for the benefit of the Petitioners and their stakeholders. The Monitor is seeking the Court's approval of the activities detailed therein.

**F. Stay Extension**

23. The Monitor seeks an extension of the Stay Period (as defined in the Initial Order) up to and including June 30, 2024 (the "**Stay Extension**").

24. The Monitor submits that the proposed Stay Extension will enable it to, among other things: (i) close the Transaction; and (ii) negotiate and finalize a transaction in respect of the Remaining Nexii Assets.

### **PART III: LEGAL BASIS**

25. The Monitor relies on the following:

- (a) the CCAA;
- (b) Supreme Court Civil Rules of British Columbia;
- (c) the inherent jurisdiction of this Honourable Court; and
- (d) such further and other legal basis as counsel may advise and this Honourable Court may allow.

26. The remedial objective of the CCAA is to facilitate a restructuring of a debtor company, which may be achieved through a sale process for the company's business and assets. Section 11 of the CCAA grants this Court broad and flexible authority to make the orders necessary to achieve these objectives. The Monitor submits that all of the relief sought on this Application furthers the objectives of the CCAA and benefits the Petitioners and their stakeholders.

CCAA, section 11.  
*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 18-19 and 70.  
*North American Tungsten Corp. (Re)*, 2015 BCSC 1376 ("*North American Tungsten*") at paras. 25 and 27.

#### **A. The Approval and Vesting Order**

##### **1. The Transaction Should Be Approved**

27. Section 36(1) of the CCAA grants the Court jurisdiction to authorize the sale of a debtor company's assets outside of the ordinary course of business. In considering whether to approve such a sale, courts are to consider the following factors in accordance with subsection 36(3) of the CCAA:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;

- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition in bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

28. The considerations identified in *Royal Bank v. Soundair Corp* (“**Soundair**”) are consistent with and overlap with many of the subsection 36(3) factors. Those considerations include:

- (a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;
- (b) the interests of all the parties;
- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been unfairness in working out the process.

*Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 at para 16.

29. Both the factors in s. 36(3) of the CCAA and *Soundair* favour granting the Approval and Vesting Order, given that:

- (a) the Sale Process including with respect to the Vendors, was commercially reasonable and was conducted in accordance with the Sale Process Approval Order granted by this Court;
- (b) the market was broadly canvassed during the Sale Process, resulting in no closable Qualified Bids other than the bid submitted by the Purchasers;



- (c) the Monitor is of the view that the Cash Consideration and other consideration to be provided by the Purchasers, including the Contingent Payment, represents the greatest possible recovery available in the circumstances;
- (d) the Transaction provides a going-concern solution for the Vendors and contemplates the continuation of the Vendors' operations under the Purchasers' ownership and preserves employment for substantially all of the Vendors' employees; and
- (e) the Senior Secured Lenders, the parties with the sole economic interest left in the Vendors, who are likely to suffer a material shortfall on their secured claims, are supportive of the Transaction.

30. Section 36(4) of the CCAA includes two additional factors where the proposed sale or disposition is to a person who is related to the debtor company, as is the case in the circumstances of this application, which this Court must consider before authorizing that proposed sale or disposition. The Monitor respectfully submits that those two additional factors are met in the circumstances:

- (a) as detailed in the Second Report, the Petitioners made good faith efforts to sell or otherwise dispose of the Assets to persons who are not related to the company; and
- (b) the consideration that is to be received under the Transaction is superior to the consideration that would be received under any other offer made in accordance with the process leading to a proposed sale or disposition as there were no other binding offers made in the SISP for the assets of the Vendors.

CCAA s. 36(4).

31. As detailed in the Second Report, the Purchasers seek to acquire the assets owned by the Vendors free and clear of and from any security interest, except those specified in the Omicron Purchase Agreement. The Monitor supports vesting all of the Vendors' right, title and interest in and to the Purchased Assets in the Purchasers in this manner. This Court has jurisdiction, pursuant to section 36(6) of the CCAA, to authorize the sale of any assets free and clear of encumbrances.

CCAA s. 36(6).

32. As a result of the aforementioned factors, the Monitor submits that the approval of the Transaction is in the best interests of the Petitioners and their stakeholders and should be approved by this Court.

**2. The Additional Petitioners are Debtors to which the CCAA Applies**

33. Pursuant to the proposed Approval and Vesting Order, the Monitor seeks to include the Vendors as Additional Petitioners in these CCAA Proceedings. The Additional Petitioners are held both directly and indirectly by Nexii Building Solutions Inc. and were already extended the benefit of certain relief, including the stay of proceedings, under the ARIO. The SISF expressly made available for sale the assets and property of the Additional Petitioners.

34. The CCAA applies in respect of a “debtor company” or “affiliated debtor companies” where the total amount of claims against the debtor or its affiliates exceeds CAD \$5 million.

CCAA ss. 2, 3.

35. The CCAA defines “company” as a “company, corporation, or legal person incorporated by or under any Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, [...]”

CCAA s. 2(1).

36. The test for “having assets or doing business in Canada” is disjunctive, such that either “having assets” in Canada or “doing business in Canada” is sufficient to qualify a company as a “company” within the meaning of the CCAA. In order to meet the threshold statutory requirements of the CCAA, a petitioner only need be in technical compliance with the plain words of the CCAA.

*Cinram International Inc., Re*, 2013 ONSC 3767 at paras. 46-47.

37. The term “debtor company” is any company that is “insolvent”. The insolvency of a debtor company is determined as of the time the debtor files its application under the CCAA.

CCAA s. 2(1); *Re Stelco Inc.*, (2004), 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List]) at para. 4.

38. Each of the Additional Petitioners is a “debtor company” within the meaning of the CCAA because they meet each of the above statutory requirements. In particular:

- (a) they each have assets in Canada;
- (b) the Additional Petitioners are affiliated debtor companies that are subject to claims well in excess of \$5 million; and
- (c) the Additional Petitioners are insolvent because they are unable to pay their obligations as they become due, and their liabilities exceed their assets.

39. Including the Additional Petitioners as Petitioners is appropriate in the circumstances because the Additional Petitioners hold valuable assets that will contribute to a greater recovery for stakeholders.

40. The Purchasers are only prepared to close the Transaction on the condition that the Vendors are added as Additional Petitioners in these CCAA Proceedings.

41. The Monitor is also seeking this Court's approval in changing the legal names of the Additional Petitioners in order to facilitate the continuation of the Omicron business as a going concern and to avoid any confusion in the market regarding the go-forward business of the Vendors.

42. Parties with registered security interests in the Additional Petitioners' have been served with this Application. Accordingly, the Monitor respectfully submits that including the Vendors as Petitioners to these CCAA Proceedings and changing their legal names is in the best interest of all stakeholders.

## **B. The Assignment Order**

43. Section 11.3 of the CCAA gives this Court statutory jurisdiction and discretion to make an order assigning a debtor company's rights and obligations under an agreement, on notice to every party to the agreement and the Monitor.

44. The Court has broad discretion to exercise this authority, notwithstanding a restriction or prohibition on assignment in the relevant contracts.

*Re TBS Acquireco Inc.*, 2013 ONSC 4663 at para. 25.

45. Section 11.3 of the CCAA sets out the following criteria for a court to consider in determining whether to grant such an assignment:

- (a) whether the Monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

CCAA s. 11.3.

46. Pursuant to section 11.4 of the CCAA, the Court must be satisfied that all monetary defaults in relation to the subject agreements (other than those arising by reason only of the Company's insolvency, the commencement of proceedings under the CCAA, or the Company's failure to perform a non-monetary obligation) will be remedied on or before a day fixed by the Court.

47. Even prior to the 2009 CCAA amendments and the corresponding enactment of Section 11.3, a Court could exercise its inherent discretion under section 11 to authorize the assignment of a contract, including where the contract contained an anti-assignment clause and where consent of the counterparty to the contract was required but not obtained.

See e.g., *Re Hayes Forest Service Ltd.*, 2009 BCSC 1169 at para. 31.

48. As such, section 11.3 of the CCAA does not require a debtor company to seek a contractual counterparty's consent. It applies despite the terms of any contract and regardless of whether the counterparty's consent has been sought, or whether the counterparty's failure to consent is reasonable or unreasonable.

49. In the instant case, the Vendors reviewed all of the Assumed Contracts that are the subject of the Assignment Order and determined they include restrictions on assignment. The Vendors have notified the applicable counterparties by contacting the project or client contact and have requested their consent to the assignment of such Assumed Contracts. The Vendors will update the Monitor as to which counterparties have provided their consent in advance of the hearing of this Application.

50. The Assumed Contracts that are the subject of the Assignment Order do not fall within any exception set out in the CCAA.

51. The factors in section 11.3 have been satisfied in the instant case:

- (a) The Monitor's approval: the Monitor approves of the proposed assignments;
- (b) The ability of the Purchasers to perform the obligations: the Monitor is of the view that the Purchasers (whose principals will be the existing senior management of the Vendors) will be able to perform the obligations under the assignments if the Assignment Order is granted and are best positioned to do so;
- (c) It is appropriate to assign the rights and obligations to the Purchasers: the Monitor believes that it would be appropriate to grant the assignments, including because the assignments are central to the successful outcome of the Transaction and that without the assignments, the Purchasers will not be in a position to perform the Assumed Contracts that are the subject of the Assignment Order or acquire the Business as carried on by the Vendors. Furthermore, the Monitor does not believe that the requested assignments will create an unfair imposition upon or interference with third-party rights.

52. Without the assignments, the Vendors will no longer be in a position to perform a number of the Assumed Contracts. The proposed assignments to entities controlled and operated by known, operating industry players in the Vendors' industry will be of benefit to the counterparties. The individuals who control and operate the Purchasers are the same individuals whom the counterparties to the Assumed Contracts that are the subject of the Assignment Order have been dealing with under such contracts to date. For all the reasons provided above, the Monitor respectfully submits that the Assignment Order should be granted.

## **C. The Ancillary Order**

### **1. Distribution of the Sale Proceeds to the Lenders**

53. The Petitioners are indebted to the Senior Secured Lenders under the terms of the Credit Agreement amongst the Petitioners and the Lenders.

54. No creditor has claimed an interest over the Assets of the Petitioners in priority to Senior Secured Lenders. The Monitor, the Petitioners and the Additional Petitioners would be entitled to deduct and withhold from any distribution such amounts as may be required to be deducted and withheld pursuant to any applicable tax legislation and remit those amounts to the appropriate governmental authority.

55. The Monitor requests Court approval to make an interim distribution from the Proceeds to the Senior Secured Lenders in the amount of \$3,000,000, which is to be distributed to the Senior Secured Lenders in partial satisfaction of the indebtedness owing to them by the Petitioners.

56. Orders granting interim distributions are routinely granted by courts in insolvency proceedings.

*Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772 (ON SC) at paras. 8, 13;  
*AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at paras. 70-75.

57. In *AbitibiBowater inc.*, Justice Gascon (as he then was) considered a number of factors in deciding whether to approve an interim distribution under the CCAA, including whether the payee's security is valid and enforceable, whether the distribution would result in significant interest savings to the estate and whether the distribution will leave the estate with sufficient liquidity.

*AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at para. 75.

58. The application of these factors to the instant case demonstrates why this Court should approve the interim distribution:

- (a) The security is valid: the Monitor's counsel has reviewed the security and concluded that, subject to the standard assumptions and qualifications contained in its security opinion, the security is a valid and perfected security interest in the Assets of the Petitioners;
- (b) The interim distribution will result in significant interest savings: a distribution to the Senior Secured Lenders at this time will pay down a portion of the indebtedness owed to those creditors and limit the accrual of additional fees and interest in

respect thereof, for the benefit of creditors generally, which will result in significant interest savings; and

- (c) There will be sufficient liquidity after the interim distribution is made: as detailed in the Second Report, the Monitor is supportive of the proposed distribution to the Senior Secured Lenders as the DIP Facility will provide sufficient liquidity to extend the CCAA Proceedings until June 30, 2024.

59. This Court also has jurisdiction pursuant to section 11 of the of the CCAA to “make any order that it considers appropriate in the circumstances”. The Supreme Court of Canada in *9354-9186 Quebec Inc. v. Callidus Corp.* provides that section 11 signals Parliament’s endorsement of the “broad reading of [the] CCAA authority developed by the jurisprudence”. This discretion must be exercised in furtherance of the remedial objectives of the CCAA, including the baseline considerations of appropriateness, good faith and due diligence.

*9354-9186 Quebec Inc. v. Callidus Corp.*, 2020 SCC 10 at paras. 67, 70.

60. The Monitor submits that approving a distribution to the Senior Secured Lenders in the circumstances would be in furtherance of the remedial objectives of the CCAA as the Petitioners continue to rely on interim financing from the Senior Secured Lenders for the benefit of all its stakeholders. No party has a higher-ranking security against the Assets of the Petitioners and no party has indicated to the Monitor that it opposes an interim distribution.

## **2. Approval of the Monitor's Reports and the Monitor's Activities**

61. The Monitor's Reports outline the specific activities taken by the Monitor to date, and for which the Monitor is seeking approval by this Court.

62. There are good policy and practical reasons for the Court to approve the Monitor's activities in the circumstances. Indeed, such approval will:

- (a) allow the Monitor, the Petitioners, and other stakeholders to move forward confidently with the next steps in the CCAA Proceedings;

- (b) bring the Monitor's activities in issue before this Court, providing an opportunity for concerns of this Court, the Petitioners, and stakeholders to be addressed, and any problems to be rectified in a timely manner;
- (c) provide certainty and finality in the CCAA Proceedings and activities undertaken by the Monitor, while providing an opportunity for the Petitioners and stakeholders to raise specific objections and concerns;
- (d) enable this Court, tasked with supervising the CCAA Proceedings, to satisfy itself that the Monitor's court-mandated activities have been conducted in a prudent and diligent manner;
- (e) provide protection for the Monitor, not otherwise provided by statute; and
- (f) protect creditors from delay that would be caused by:
  - (i) re-litigation of steps taken to-date; and
  - (ii) potential indemnity claims by the Monitor.

*Target Canada Co (Re)*, 2015 ONSC 7574 at paras. 12, 22, 23.

63. In addition, the approval sought by the Monitor is not a general approval of its activities to date but is the approval of specific activities taken by the Monitor to date, all of which are detailed in the Monitor's Reports.

### **3. Extension of the Stay Period**

64. The ARIO provides for a stay of proceedings to and including April 30, 2024 in respect of the Petitioners and the Omicron Entities.

65. Pursuant to the CCAA section 11.02(2), the Court may extend this period for any period that the Court considers necessary provided that (a) the extension sought is appropriate in the circumstances; and (b) the Petitioners have acted and are acting in good faith and with due diligence. In determining whether it is appropriate to extend a stay of proceedings, courts consider whether doing so will advance the remedial purpose of the CCAA.



CCA section 11.02(2).  
*North American Tungsten*, at paras. 25 to 29.

66. Since the ARIO, Nexii has acted and continues to act and operate in good faith and with due diligence. The Monitor seeks an extension up to and including June 30, 2024 to, among other things, advance the Sale Process.

67. The Monitor submits that the proposed extension is reasonable and appropriate: its actions demonstrate good faith and due diligence in these proceedings (including moving swiftly to implement the Sale Process) and the extension is necessary to implement the Sale Process.

68. The Monitor notes that, with access to the full amount of borrowings available under the Interim Financing Term Sheet, it has sufficient liquidity to meet its obligations through the proposed extension period.

**PART IV: MATERIAL TO BE RELIED ON**

69. The Affidavit #1 of William Tucker sworn January 10, 2024;

70. The Affidavit #2 of William Tucker sworn January 17, 2024;

71. The Confidential Affidavit #3 of William Tucker, sworn January 17, 2024 (filed pursuant to a sealing order);

72. The Confidential Affidavit #4 of William Tucker, sworn January 17, 2024 (filed pursuant to a sealing order);

73. The Affidavit #1 of Ashley Kumar sworn January 9, 2024;

74. The First Report of the Monitor filed January 19, 2024;

75. The Second Report of the Monitor (to be filed);

76. Such further and other materials as counsel may advise and this Honourable Court may allow.


The Petitioner estimates that the application will take 1 hour.

X This matter is not within the jurisdiction of an associate judge. The time for this application has been set by Scheduling to be heard by Justice Stephens.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: April 19, 2024

  
For: Signature of Michael Shakra  
Lawyer for the Monitor

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this Notice of Application

with the following variations and additional terms:

.....  
.....  
.....

Date:

.....

Signature of  Judge  Associate Judge

This Notice of Application is filed by Bennett Jones LLP, whose office address and address for service is 3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4; Telephone: 416-863-1200; Facsimile: 416-863-1716 (Reference: 074735.00048)

**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- OTHER

**SCHEDULE "A"  
SERVICE LIST**

(attached)

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, as amended

AND

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC., NBS IP INC., AND NEXII HOLDINGS INC.  
PETITIONERS

Service List (April 17, 2024)	
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- B-1 -

**SCHEDULE "B"**  
**DRAFT ORDER – SALE APPROVAL ORDER**

(attached)

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE )  
 ) April 26, 2024  
JUSTICE STEPHENS )

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed Monitor (in such capacity the “**Monitor**”), coming on for a hearing at Vancouver, British Columbia, on the 26<sup>th</sup> day of April, 2024; AND ON HEARING counsel for the Monitor Michael Shakra and Andrew Froh, and those other counsel listed on **Schedule “A”** hereto, and no one else appearing although duly served; AND UPON READING, the material filed, including the Second Report of the Monitor dated April 19, 2024 (the “**Report**”); AND PURSUANT TO the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Court;

**THIS COURT ORDERS AND DECLARES THAT:**

1. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to them in the Asset Purchase Agreement dated April 19, 2024 between the Vendors and 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd., and 1474484 B.C. Ltd. (in such capacity, the “**Purchasers**”), a copy of which is attached hereto as **Schedule “B”** (the “**Sale Agreement**”) and the Report.

**ADDITIONAL PETITIONERS**

2. Effective as of the Order Effective Time (as defined below), with respect to the Amended and Restated Initial Order granted January 22, 2024 (the “**ARIO**”), Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Omicron Interiors

Ltd., and Omicron Construction Ltd. (collectively, the “**Additional Petitioners**”), shall for all purposes be deemed to be Petitioners (as Petitioners is defined in the ARIO) and, for greater certainty:

- (a) the Additional Petitioners are hereby granted all of the rights and protections afforded to the Petitioners by the ARIO;
  - (b) to the extent not already granted by the terms of the ARIO, the directors and officers of the Additional Petitioners are hereby granted all of the rights and protections afforded to the directors and officers of the Petitioners by the ARIO; and
  - (c) the Monitor, in addition to its prescribed rights and obligations under the CCAA, subject to the dispensation of certain requirements as provided for by this Order, is hereby directed and empowered to perform such duties with respect to the Additional Petitioners as the Monitor is required to perform with respect to the Petitioners pursuant to the ARIO or by this Court from time to time;
3. The Monitor's obligation to publish the notice prescribed by section 23(1)(a)(i) of the CCAA with respect to the Additional Petitioners is hereby dispensed with.

#### **APPROVAL AND VESTING**

4. The sale transaction (the “**Transaction**”) contemplated by the Sale Agreement is commercially reasonable and is hereby approved, with such minor amendments as the Petitioners may deem necessary with the consent of the Purchasers, the Monitor and the Interim Lenders. The execution of the Sale Agreement and the Post-Closing Sale Agreement (as defined in the Sale Agreement) by the Vendors is hereby authorized, ratified, and approved and the Vendors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchasers and any permitted assignees under the Sale-Agreement of the Purchased Assets.
5. This Order shall constitute the only authorization required by the Vendors to proceed with the Transaction and no shareholder or other approvals shall be required in connection therewith.
6. The Monitor is hereby authorized to take such additional steps in furtherance of its responsibilities under the Sale Agreement and this Order and shall not incur any liability in taking such steps.
7. Upon the filing with this Court of the Monitor’s Certificate substantially in the form attached hereto as **Schedule “C”** (the “**Monitor’s Certificate**”), all of the Vendors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchasers in fee simple in the manner set forth in the Sale Agreement, and except as otherwise specified herein, free and clear of and from any security interest, debenture, lien, Claim, charge, right of retention, trust, deemed trust, judgement, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, assignment (as security), royalty interest,



defect of title or adverse claim of any nature or kind, mortgage or right of a third party (including any contractual right, such as a purchase option, call or similar right of a third party in respect of securities, right of first refusal, right of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease) (collectively, the “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by any Order of this Court in the Petitioners’ CCAA proceeding commenced on January 11, 2024 (this “**CCAA Proceeding**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia, the *Personal Property Security Act* of Ontario or any other personal property registry system;
- (c) all claims in respect of, or relating to, any Taxes, apart from Transfer Taxes, owing by the Petitioners or the Additional Petitioners as at the Closing Date or any Taxes assessed or that could be assessed in respect of the Petitioners or the Additional Petitioners their business, property and assets; and
- (d) any other restrictions which may be applicable to the Purchased Assets,

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed in **Schedule “D”** hereto (the “**Permitted Encumbrances**”)), and, for greater certainty, all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

- 8. The Monitor may rely on written notice from the Vendors and the Purchasers regarding the fulfilment of the conditions to Closing under the Sale Agreement and shall have no liability with respect to delivery of the Monitor’s Certificate.
- 9. For the purposes of determining the nature and priority of the Claims, the net proceeds from the sale of the Purchased Assets (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets and, from and after the delivery of the Monitor’s Certificate, all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
- 10. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, or any other personal privacy legislation of another province where applicable to the Vendors, the Vendors and the Monitor are hereby authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the company’s records pertaining to the Vendors’ past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the

personal information provided to it in a manner, which is in all material respects identical to the prior use of such information, by the Vendors.

11. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, shall be delivered by the Vendors to the Purchasers and any permitted assignees under the Sale Agreement at the Closing Time, subject to the Permitted Encumbrances.
12. The Vendors, with the consent of the Purchasers and the Monitor, shall be at liberty to extend the Closing Date to such later date according to the Sale Agreement without the necessity of a further Order of this Court.
13. Notwithstanding:
  - (a) this CCAA Proceeding or the termination thereof;
  - (b) any applications for a bankruptcy order in respect of any or all of the Petitioners or the Additional Petitioners now or hereafter made pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of any or all of the Petitioners or the Additional Petitioners,

the vesting of the Purchased Assets in the Purchasers and/or any permitted assignees under the Sale Agreement pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioners or Additional Petitioners and shall not be void or voidable by creditors of the Petitioners or Additional Petitioners, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, or any similar legislation of a jurisdiction outside of Canada, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **ASSUMED CONTRACTS**

14. Except as expressly contemplated in the Sale Agreement and subject to the payment of any amounts required to be paid pursuant to Section 11.3 of the CCAA (or such other amount as agreed upon between the Purchasers or any permitted assignees under the Sale Agreement and the counterparty to the Assumed Contract), all Assumed Contracts will be and remain in full force and effect upon and following delivery of the Monitor’s Certificate and completion of the Transaction, and no Person who is a party to an Assumed Contract may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement, and no automatic termination or termination upon notice will have any validity or effect by reason of:

- (a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Petitioners or Additional Petitioners or any of their affiliates);
  - (b) the insolvency of the Petitioners or Additional Petitioners or any of their affiliates, or the fact that the Petitioners or any Additional Petitioners or affiliate of the Petitioners or Additional Petitioners sought or obtained relief under the CCAA;
  - (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations, or other steps taken or effected pursuant to the Sale Agreement or to effect the Transaction, or the provisions of this Order, or of any other Order of this Court in this CCAA Proceeding; or
  - (d) any transfer or assignment, or any change of control arising from the Sale Agreement or the Transaction or the provisions of this Order.
15. As of the Closing Time and subject to the payment of any amounts required to be paid pursuant to Section 11.3 of the CCAA (or such other amount as agreed upon between the Purchasers and the counterparty to the applicable Assumed Contract all Persons shall be deemed to have waived any and all defaults of the Vendors then existing or previously committed by the Vendors, or caused by the Vendors, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative covenant, provision, condition, or obligation, express or implied, in any Assumed Contract arising directly or indirectly from the insolvency of the Petitioners and the extension of certain protections under the CCAA to the Vendors, the Sale Agreement or the Transaction, including, without limitation, any of the matters or events listed in paragraph 14 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under an Assumed Contract shall be deemed to have been rescinded and of no further force or effect.
16. From and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for, or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including, without limitation, administrative hearings and orders, declarations and assessments, commenced, taken, or proceeded with or that may be commenced, taken, or proceeded with against the Purchasers relating in any way to the Excluded Assets, Excluded Liabilities, Excluded Contracts, any Encumbrances (other than Permitted Encumbrances), and any other claims, obligations, and other matters that are waived, released, expunged or discharged pursuant to this Order.

#### **CHANGE OF NAME AND AMENDMENT OF STYLE OF CAUSE**

17. Upon the filing with this Court of the Monitor's Certificate, the names of (a) Omicron Canada Inc., (b) Omicron Construction Management Ltd., (c) Omicron Consulting Ltd., (d) Omicron Interiors Ltd., and (e) Omicron Construction Ltd. shall be changed to (i)

4540514 Canada Inc., (ii) 1061660 B.C. Ltd., (iii) 0592286 B.C. Ltd., (iv) 0713447 B.C. Ltd., and (v) 0597783 B.C. Ltd.

18. Upon the filing with this Court of the Monitor's Certificate, the style of cause of these proceedings shall be and is hereby changed to:

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC., NEXII HOLDINGS INC, 4540514 CANADA  
INC., 1061660 B.C. LTD., 0592286 B.C. LTD, 0713447 B.C. LTD, AND 0597783 B.C. LTD.

### GENERAL

19. This Court requests the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, to act in aid of and to be complementary of this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Vendors, the Purchasers, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendors, the Purchasers, and the Monitor and their respective agents in carrying out the terms of this Order.
20. The Petitioners, the Vendors, the Monitor, the Purchasers and any permitted assignees under the Sale Agreement, or any other party, each have liberty to apply for such further and other directions or relief as may be necessary or desirable to give effect to this Order.
21. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.
22. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver Time on the Order Date (the "**Order Effective Time**").

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of

Party  Lawyer for KSV Restructuring Inc.

Bennett Jones LLP  
(Michael Shakra)

BY THE COURT

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REGISTRAR

**Schedule "A"**

**List of Counsel**

Michael Shakra and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett and Matilda Lici (MS Teams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
Alexis Teasdale	Counsel to the Purchasers, 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd., 1474484 B.C. Ltd.

**Schedule “B”**

**Sale Agreement**

(see attached)

## ASSET PURCHASE AGREEMENT

This Agreement is made as of the 19<sup>th</sup> day of April, 2024 (the “**Effective Date**”)

### AMONG:

**NEXII BUILDING SOLUTIONS INC.**, a corporation incorporated pursuant to the laws of British Columbia (“**Nexii**”)

– and –

**THE ENTITIES LISTED IN SCHEDULE “A”, ATTACHED HERETO** (collectively, the “**Vendors**” and each a “**Vendor**”)

– and –

**15925347 CANADA INC.**, a corporation incorporated pursuant to the laws of Canada (“**New OCI**”)

**1474480 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New OCML**”)

**1474737 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New OCon**”)

**1474741 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New OI**”)

**1464115 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New Consulting**”)

**1474484 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**1474484**” and together with New OCI, New OCML, New OCon, New OI and New Consulting, the “**Purchasers**” and each a “**Purchaser**”)

### WHEREAS:

- A. Pursuant to the Order of the Honourable Justice Stephens of the Supreme Court of British Columbia (the “**Court**”) issued January 11, 2024 (as may be further amended or amended and restated from time to time, the “**Initial Order**”), Nexii, Nexii Construction Inc., NBS IP Inc. and Nexii Holdings Inc. (collectively the “**Petitioners**”) were granted, among other things, creditor protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. was appointed as Monitor of the Petitioners, with certain enhanced powers (in such capacity, the “**Monitor**”).
- B. The Initial Order extended certain protections of the Initial Order to Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd., and Omicron Construction Ltd. (collectively, the “**Omicron Group**”).
- C. In connection with the proceedings initiated by the Initial Order (the “**CCAA Proceedings**”), on January 22, 2024, the Petitioners sought and obtained an order of the Court (the “**Sale Process Order**”), among other things, approving a sale process (the “**Sale Process**”) to be conducted by Origin Merchant Partners (“**Origin**”), under the oversight and with the assistance of the Monitor, to solicit interest in, and opportunities for, one or more or any combination of



executable transactions involving the Petitioners and the Omicron Group and/or the Petitioners' and Omicron Groups' business operations as a going concern or otherwise.

- D. In accordance with the terms of the Sale Process, the Purchasers have submitted an offer to purchase the Purchased Assets (as defined herein) from the Vendors.
- E. The Vendors wish to sell to the Purchasers, and the Purchasers wish to purchase from the Vendors, the Purchased Assets, subject to, and in accordance with, the terms and conditions set out in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the "**Parties**", and each, a "**Party**") hereby acknowledge and agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

Unless something in the subject matter or context is inconsistent therewith, the terms defined herein shall have the following meanings:

**"Affiliate"** has the meaning given to the term "affiliate" in the *Business Corporations Act* (British Columbia).

**"Agreement"** means this asset purchase agreement, including any schedules or exhibits appended to this asset purchase agreement, in each case as may be supplemented, amended or amended and restated from time to time in accordance with the terms hereof, with the consent of the Monitor, and **"Article"** and **"Section"** mean and refer to the specified article, section and subsection of this Agreement.

**"Applicable Law"** means, in respect of any Person, property, transaction or event, any: (i) domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code, directive, decree or guideline, by-law or order; (ii) judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, instruments or awards of any Governmental Authority; and (iii) policies, practices, standards, guidelines and protocols having the force of law, that applies in whole or in part to such Person, property, transaction or event.

**"Approval and Vesting Order"** means an order of the Court, in form and substance satisfactory to the Purchasers, Nexii, the DIP Lenders, the Vendors and the Monitor, each acting reasonably, among other things, approving and authorizing this Agreement and the Transaction and vesting in the Purchasers (or as they may direct) all the right, title and interest of Vendors in and to the Purchased Assets owned by the Vendors, free and clear of all Encumbrances, other than Permitted Encumbrances`.

**"Assignment and Assumption Agreement"** means an assignment and assumption agreement evidencing the assignment to the applicable Purchasers of the Vendors' interest in, to and under the Assumed Contracts and the assumption by the applicable Purchasers of all of the Assumed Liabilities, in form and substance satisfactory to the Parties, acting reasonably.

**"Assignment Order"** means an order of the Court pursuant to section 11.3 of the CCAA, in form and substance satisfactory to the Purchasers, Nexii, the Vendors and the Monitor, each acting

reasonably, assigning to the applicable Purchasers the rights and obligations of the Vendors under the Assumed Contracts to which the Vendors are a party for which a consent, approval or waiver necessary for the assignment of such Assumed Contracts has not been obtained, and which will include, if necessary, a mechanism for the resolution of any disputed Cure Costs.

“**Assumed Contracts**” means the Contracts listed in Schedule “B” (including as such Assumed Contracts may be amended, restated, supplemented or otherwise modified from time to time), as modified in accordance with Section 2.3(a).

“**Assumed Liabilities**” means: (a) Liabilities specifically and expressly designated as assumed Liabilities in Schedule “C”; and (b) all Liabilities which relate to the Business under any Assumed Contracts; in each case, solely in respect of the period from and after the Closing Time and not relating to any default existing prior to or as a consequence of Closing.

“**Authorization**” means any authorization, approval, consent, concession, exemption, license, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Authority having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person’s property or business and affairs or from any Person in connection with any easements, contractual rights or other matters.

“**Books and Records**” means all files, documents, instruments, papers, emails, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including Tax and accounting books and records, used or intended for use by, and in the possession of the Vendors or any of their respective Affiliates solely in connection with the Business or ownership or operation of the Purchased Assets, including information, documents and records relating to the Assumed Contracts, the Assumed Liabilities, current and previously completed projects, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, cost and pricing information, production reports and records, equipment logs, operating guides and manuals, credit records, records relating to present and former suppliers and contractors, plans and projections and all other records, data and information stored electronically, digitally or on computer-related media, excluding the minute books and corporate records.

“**Business**” means the businesses carried on by the Vendors, including the design and construction of all types of projects, and does not include, for the avoidance of doubt, the business of Nexii that is not carried on by the Vendors.

“**Business Day**” means a day on which banks are open for business in Vancouver, British Columbia, but does not include a Saturday, Sunday or statutory holiday in the Province of British Columbia.

“**Cash Payment**” has the meaning set out in Section 3.1.

“**Cash Purchase Price**” has the meaning set out in Section 3.3(b).

“**CCAA**” has the meaning set out in the recitals hereto.

“**CCAA Proceedings**” has the meaning set out in the recitals hereto.

“**Claims**” means any civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, audit, chose in or cause of action, suit, default, assessment or reassessment, litigation, prosecution, third party action, arbitral proceeding or

proceeding, complaint or allegation, by or before any Person, complaints, grievance, petition, application, charge, investigation, indictment, prosecution, judgement, debt, liability, damage, or loss, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, known or unknown, disputed or undisputed, contractual, legal or equitable.

“**Closing**” means the closing and consummation of the Transaction.

“**Closing Date**” means the date that is seven (7) Business Days after the date upon which the conditions set forth in ARTICLE 7 have been satisfied or waived, other than any conditions set forth in ARTICLE 7 that by their terms are to be satisfied or waived at the Closing (or such other earlier or later date as may be agreed by the Vendors and the Purchasers in writing, each acting reasonably); provided that the Closing Date shall be no later than the Outside Date.

“**Closing Time**” means 12:01 a.m. (Vancouver time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

“**Contracts**” means all pending and executory contracts, agreements, deeds, leases, understandings and arrangements (whether oral or written) to which any Vendor is a party or by which such entity is bound or in which such entity has, or will at Closing have, any rights or by which any of its property or assets are or may be affected.

“**Court**” has the meaning set out in the recitals hereto.

“**Cure Costs**” means, in respect of an Assumed Contract, all amounts, costs, fees and expenses required to be paid: (a) to remedy all of the Vendors’ monetary defaults in relation to such Assumed Contract, other than those arising by reason only of the Vendors’ bankruptcy, insolvency or failure to perform a non-monetary obligation; or (b) pursuant to the Approval and Vesting Order or the Assignment Order, as applicable, and which for greater certainty, may be an amount agreed to by the applicable Purchaser and the counterparty to such Assumed Contract.

“**Deposit**” has the meaning set out in Section 3.3(a).

“**DIP Lenders**” has the meaning set out in Section 3.3(d).

“**Effective Date**” has the meaning set out in the preamble hereto.

“**Employee**” means any individual who is employed by a Vendor and in such capacity provided services to any of the Vendors immediately prior to the Closing Date.

“**Encumbrance**” means any security interest, debenture, lien, Claim, charge, right of retention, trust, deemed trust, judgement, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, assignment (as security), royalty interest, defect of title or adverse claim of any nature or kind, mortgage or right of a third party (including any contractual right, such as a purchase option, call or similar right of a third party in respect of securities, right of first refusal, right of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

“**Excise Tax Act**” means the *Excise Tax Act*, RSC, 1985, c. E-15.

“**Excluded Assets**” means those assets of the Vendors that are not Purchased Assets, including the Excluded Contracts and including any shares a Vendor holds of another Vendor.

“**Excluded Contracts**” means those contracts and other agreements of the Vendors that are not Assumed Contracts.

“**Excluded Liabilities**” means those Liabilities of the Vendors that are not Assumed Liabilities.

“**General Conveyance**” means a general conveyance evidencing the conveyance to the applicable Purchasers of the Vendors’ interest in and to the Purchased Assets, in form and substance satisfactory to the Parties, acting reasonably.

“**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), judicial body, regulatory authority, tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation having jurisdiction over the Vendors, the Purchasers, the Purchased Assets or the Assumed Liabilities.

“**GST/HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act*, and any provincial, territorial or foreign legislation imposing a similar value added or multi-staged tax.

“**Income Tax Act**” means the *Income Tax Act*, RSC, 1985, c. 1 (5th Supp.).

“**Initial Order**” has the meaning set out in the recitals hereto.

“**Interim Period**” means the period beginning on the Effective Date and ending at the Closing Time.

“**Liability**” means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“**Monitor**” has the meaning set out in the recitals hereto.

“**Monitor’s Certificate**” means the certificate of the Monitor contemplated by the Approval and Vesting Order certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Deposit and the Cash Purchase Price.

“**Omicron Group**” has the meaning set out in the recitals hereto.

“**Organizational Documents**” means any trust document, charter, certificate or articles of incorporation or amalgamation, articles of amendment, articles of association, articles of organization, articles of continuance, bylaws, partnership agreement or similar formation or governing documents of a Person (excluding individuals).

“**Origin**” has the meaning set out in the recitals hereto.

“**Outside Date**” means 11:59 pm (Vancouver time) on May 30, 2024 or such later date and time as the Vendors, with the consent of the Monitor, and the Purchasers may agree to in writing.

“**Parties**” has the meaning set out in the recitals hereto.

“**Party**” has the meaning set out in the recitals hereto.

“**Permitted Encumbrances**” means all security interests and other interests arising exclusively under the Assumed Contracts, if any.

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

“**Petitioners**” has the meaning set out in the recitals hereto.

“**Post-Closing Sale**” has the meaning set out in Section 3.3(d).

“**Post-Closing Sale Agreement**” has the meaning set out in Section 3.3(d).

“**Purchased Assets**” means all of the Vendors’ right, title and interest in and to the business, assets, properties, contractual rights, goodwill, rights and claims of the Vendors related to the Business on the Closing Date, wherever situated and of whatever kind and nature, real or personal, tangible or intangible, whether or not reflected on the Books and Records of the Vendors, in each case, other than the Excluded Assets, and for certainty, including the Assumed Contracts and each of the assets listed at Schedule “E” hereto.

“**Purchase Price**” has the meaning set out in Section 3.1.

“**Purchaser**” has the meaning set out in the recitals hereto.

“**Sale Process**” has the meaning set out in the recitals hereto.

“**Sale Process Order**” has the meaning set out in the recitals hereto.

“**Services Agreement**” has the meaning set out in Section 5.10.

“**Taxes**” means, with respect to any Person, all national, federal, provincial, local or other taxes, including income taxes, capital gains taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, workers’ compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties, fees, assessments, imposts, levies and other charges of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, fines, or additions with respect thereto and any interest in respect of such additions or penalties and any Liability for the payment of any amounts of the type described in this paragraph as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Person.

“**Transaction**” means, collectively, all of the transactions contemplated by this Agreement, including the purchase and sale of the Purchased Assets.

“**Transfer Taxes**” means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, conveyance fees, security interest filing or recording fees and any other similar or like taxes or charges imposed by a Governmental Authority, including any related penalties and interest, in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including GST/HST, but excluding, for certainty, income tax.

“**Transferred Employees**” means those Employees who accept an offer of employment from a Purchaser (or one of its Affiliates), made pursuant to Section 5.5.

“**Vendors**” has the meaning set out in the recitals hereto.

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

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

## **1.3 General Construction**

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement as a whole and not to any particular section hereof. 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.

## **1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings and the term “third party” means any other Person other than the Vendors or the Purchasers, or any Affiliates thereof.

## **1.5 Currency**

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

## **1.6 Statutes**

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

## **1.7 Schedules & Amendments to Schedules**

The following exhibits and schedules are attached hereto and incorporated in and form part of this Agreement:

### **SCHEDULES**

Schedule “A”	-	Vendors
Schedule “B”	-	Assumed Contracts
Schedule “C”	-	Assumed Liabilities
Schedule “D”	-	Allocation Schedule

Schedule "E"	-	Purchased Assets
Schedule "F"	-	Form of Post-Closing Sale Agreement
Schedule "G"	-	Allocation of Purchase of Purchased Assets and Assumption of Assumed Liabilities Among the Purchasers

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Exhibits and Schedules and the interpretation provisions set out in this Agreement will apply to the Exhibits and Schedules. Unless the context otherwise requires, references in the Exhibits and Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

## **ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS**

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

At the Closing Time, subject to the terms and conditions of this Agreement, the Vendors shall, in accordance with Schedule "G", sell, assign, transfer and convey to the Purchasers, and the Purchasers shall, in accordance with Schedule "G", purchase and assume from the Vendors, all of the Vendors' right, title and interest in, to and under the Purchased Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

### **2.2 Transfer of Purchased Assets and Assumption of Liabilities**

Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk, legal and beneficial ownership of the Purchased Assets shall transfer from the Vendors to the Purchasers upon Closing in accordance with Schedule "G", and the Purchasers agree to, in accordance with Schedule "G", assume, discharge, perform and fulfill all of the Assumed Liabilities from and after the Closing Date.

### **2.3 Assumed Contracts**

- (a) From and after the date hereof until the date that is ten days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the Court, the Purchasers shall be entitled to make additions, deletions and modifications to the Contracts classified as "Assumed Contracts", in its sole discretion, following consultation with the Vendors and the Monitor. For greater certainty: (i) any Assumed Contract subsequently designated by a Purchaser as an Excluded Contract after the date of this Agreement shall be deemed to no longer be an Assumed Contract, and shall be an Excluded Contract; and (ii) any Contract subsequently designated by a Purchaser as an Assumed Contract after the date of this Agreement shall be deemed an Assumed Contract for the purposes of this Agreement.
- (b) From and after the date hereof until the Closing Date, each of the Parties shall use reasonable commercial efforts to obtain, as may be required by the terms of such Assumed Contracts, all consents and approvals required to assign to the applicable Purchaser the Assumed Contracts that are material to the Business, as determined by the Purchasers and the Vendors, each acting reasonably.
- (c) To the extent that any Assumed Contract is not assignable without the consent or approval of the counterparty or any other Person, and such consent or approval has not been obtained by the date that is ten days prior to the Closing Date: (i) the Vendors' interest in, to and under such Assumed Contract may be conveyed to the applicable Purchaser pursuant to an Assignment Order; (ii) Nexii and the Vendors will use commercially reasonable efforts to

obtain an Assignment Order in respect of such Assumed Contract on or prior to the Closing Date; and (iii) if an Assignment Order is obtained in respect of such Assumed Contract, the applicable Purchaser shall accept the assignment of such Assumed Contract pursuant to the terms of the Assignment Order.

- (d) To the extent that any Cure Costs are payable with respect to any Assumed Contract, the applicable Purchaser shall be responsible for and shall pay all such Cure Costs, which shall be paid directly to the applicable counterparty, which Cure Costs shall be in addition to and shall not form part of the Purchase Price. Unless the Parties otherwise agree, to the extent that any Cure Cost is payable with respect to any Assumed Contract, where such Assumed Contract is assigned pursuant to an Assignment Order, the applicable Purchaser shall pay such Cure Costs in accordance with such Assignment Order, and where such Assumed Contract is not assigned pursuant to an Assignment Order, the applicable Purchaser shall pay such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the applicable Purchaser and such counterparty.
- (e) The Vendors shall be entitled to disclaim or seek to disclaim any Excluded Contracts at any time.

It shall be the sole obligation of the Purchasers, at the Purchasers' sole cost and expense, to provide any and all financial assurances, deposits or security, including without limitation any Cure Costs to permit the transfer of the Purchased Assets, including the Assumed Contracts, to the Purchasers, as applicable.

## **2.4 Excluded Liabilities**

No Purchaser shall assume or be liable, directly or indirectly, or otherwise responsible for any Excluded Liabilities.

# **ARTICLE 3 PURCHASE PRICE**

## **3.1 Purchase Price**

The aggregate consideration payable by the Purchasers for the Purchased Assets shall be \$3,000,000 in cash at Closing (the "**Cash Payment**"), plus the assumption of the Assumed Liabilities and payment of the Conditional Payment in accordance with Section 3.3(d)(the "**Purchase Price**"). The Purchase Price shall be satisfied in accordance with Section 3.3. The Purchase Price shall not be subject to any claim for set off, reduction or adjustment or any similar claim or mechanism of any kind whatsoever.

## **3.2 Allocation of the Purchase Price**

The Purchasers and the Vendors agree that the Purchase Price shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) in accordance with Schedule "D" and Schedule "G". To the extent the precise amount of any component of such allocation cannot be finally determined as at Closing, the Parties shall determine such amount forthwith following Closing in accordance with Schedule "D" and Schedule "G". The Parties shall timely file all Tax returns (including amended returns and claims for refund) in a manner consistent with such allocation.



### 3.3 Satisfaction of Purchase Price

The Purchasers shall pay the Purchase Price in accordance with the following:

- (a) Deposit. The Parties acknowledge that the Purchasers have paid a deposit in the amount of \$300,000 (the “**Deposit**”), which Deposit is being held by the Monitor in trust, and, subject to Section 8.2, shall (inclusive of all interest earned thereon, if any) be credited against the Cash Payment at Closing;
- (b) Balance of the Cash Payment. An amount equal to the Cash Payment less the Deposit (the “**Cash Purchase Price**”) shall be paid in cash by the Purchasers to the Monitor on the Closing Date, by wire transfer of immediately available funds; and
- (c) Assumed Liabilities. An amount equal to the value of the Assumed Liabilities, which the Purchasers shall assume, in accordance with Schedule “G”, on the Closing Date, shall be satisfied by the applicable Purchasers paying, performing, and/or discharging such Assumed Liabilities as and when they become due; and
- (d) Conditional Payment. If at any time during the five year period immediately following Closing: (i) any one or more of the Purchasers (or any successor corporations) holding all or substantially all of the Purchased Assets immediately prior to such transaction or series of transactions (the “**Controlling Entities**”) sells, leases, transfers, exclusively licenses, conveys or otherwise disposes, collectively, in one transaction or a series of transactions, all or substantially all of the interests in all or substantially all of the Purchased Assets (other than in connection with an internal reorganization of the one or more of the Controlling Entities where (i) the transferee or recipient of the some or all of the interests in the Purchased Assets in such internal reorganization (the “**Transferee**”) is an affiliate of one or more of the Controlling Entities and (ii) such Transferee has delivered a joinder to this Agreement, pursuant to which the Transferee agrees in favour of the DIP Lenders to be become party to and bound by the Post-Closing Sale Agreement as a “Purchaser” and as if an original party thereto and subject to the provisions of Section 1 and 2 of the Post-Closing Sale Agreement); or (ii) there occurs a merger, amalgamation, sale, arrangement, take-over bid, reorganization, plan of arrangement, business combination, consolidation or other similar transaction or series of transactions as a result of which the beneficial owners of shares of the Controlling Entities do not own beneficial interests in a majority of the shares of the Controlling Entities outstanding immediately following such transaction or series of transactions ((i) and (ii) collectively, a “**Post-Closing Sale**”), the Purchasers shall pay to one or more of Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation (collectively, the “**DIP Lenders**”), as directed by the DIP Lenders, within ten (10) Business Days of the closing of such Post-Closing Sale, a contingent payment in cash equal to, in aggregate, 15% of the difference between (i) the consideration provided to the Controlling Entities (or shareholders thereof) in connection with the Post-Closing Sale and (ii) \$7,000,000, in accordance with an agreement to be entered into by the Purchasers and the DIP Lenders prior to Closing in the form attached as Schedule “F” (the “**Post-Closing Sale Agreement**”). In the event the Post-Closing Sale Agreement is assigned by any of Purchasers in accordance with its terms, any such assignee shall be party to the Post-Closing Sale Agreement and this Section 3.3(d) shall apply, *mutatis mutandis*, to any transaction described in (i) or (ii) above that involves such assignee.

### 3.4 Transfer Taxes; Tax Elections

The Parties agree that:

- (a) The Purchase Price does not include Transfer Taxes and the Purchasers shall be liable for and shall pay any and all Transfer Taxes pertaining to the Purchasers' acquisition of the Purchased Assets.
- (b) Where the Vendors are required under Applicable Law to collect or pay Transfer Taxes, the Purchasers will pay the amount of such Transfer Taxes to the Monitor (on behalf of the Vendors) at Closing.
- (c) Except where the Vendors are required under Applicable Law to collect or pay such Transfer Taxes, the Purchasers shall pay such Transfer Taxes directly to the appropriate Governmental Authority or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due. The Vendors will do and cause to be done such things as are reasonably requested to enable the Purchasers to comply with such obligation in a timely manner. If the Vendors are required under Applicable Law to pay any such Transfer Taxes which are not paid by a Purchaser at Closing, the Purchasers shall promptly reimburse the Vendors the full amount of such Transfer Taxes upon delivery to the Purchasers of copies of receipts showing payment of such Transfer Taxes.
- (d) The Purchasers shall indemnify the Vendors and the Monitor for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendors may pay or for which the Vendors or the Monitor may become liable as a result of any failure by the Purchasers to pay or remit such Transfer Taxes.
- (e) Notwithstanding the foregoing, if available, the Purchasers and the Vendors (or the Monitor on their behalf) shall jointly execute an election or elections under section 167 of the *Excise Tax Act* in connection with the transfer of the Purchased Assets contemplated herein, and the Purchasers, as applicable, shall file such election(s) with their applicable Tax returns for the reporting period in which the sale of the Purchased Assets takes place. Any GST/HST incurred in connection with the purchase and sale of the Purchased Assets contemplated by this Agreement, including where an election pursuant to subsection 167(1) of the *Excise Tax Act* is not or cannot be validly made in respect of the Purchased Assets, shall be borne by Purchasers, as applicable.
- (f) The Purchasers and the Vendors (or the Monitor on their behalf) agree to, at the option of the Purchasers, elect jointly in the prescribed form under Section 22 of the *Income Tax Act* as to the sale of the accounts receivable of the Vendors and other assets that are described in section 22 of the Tax Act and to designate in such election an amount equal to the portion of the Purchase Price allocated to such assets pursuant to Section 3.2 as the consideration paid by the applicable Purchaser(s) therefor.
- (g) The Vendors and the Purchasers acknowledge that the Purchasers have agreed to assume the Assumed Liabilities in accordance with Schedule "G". To the extent that the Vendors have received amounts in respect of services not rendered or goods not delivered in respect of the Assumed Liabilities, in each case prior to the Closing, the Purchased Assets having a fair market value equal to those amounts are transferred to the applicable Purchaser as payment for such Purchaser's agreement to assume a corresponding amount of the Assumed Liabilities relating to those services or goods, and the Purchasers and the Vendors (or the Monitor on their behalf), as applicable, shall jointly elect pursuant to subsection 20(24) of the *Income Tax Act* and under any similar provision of any applicable

provincial legislation. The applicable Vendors and Purchasers shall file such election, along with any documentation necessary or desirable to give effect to such election, with the Canada Revenue Agency and any other appropriate taxation authority within the prescribed time periods.

## ARTICLE 4 REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties of the Vendors

Nexii and the Vendors hereby represent and warrant as of the date hereof and as of the Closing Time as follows, and acknowledge that the Purchasers are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- (a) Incorporation and Status. The Vendors other than Omicron Canada Inc. are corporations incorporated and existing under the *Business Corporations Act* (British Columbia), and are in good standing under such statute. Omicron Canada Inc. is a corporation incorporated and existing under the *Canada Business Corporations Act*, and is in good standing under such statute. Each Vendor has the power and authority to enter into, deliver and perform their obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and, subject to obtaining of the Approval and Vesting Order in respect of the matters to be approved therein, performance by the Vendors of this Agreement has been authorized by all necessary corporate action on the part of the Vendors.
- (c) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Vendors and constitutes a legal, valid and binding obligation of the Vendors, enforceable against them in accordance with its terms, subject only to obtaining the Approval and Vesting Order and except as such enforceability may be limited by general principles of equity.
- (d) Residence of Vendors. No Vendor is a non-resident of Canada within the meaning of the Income Tax Act.
- (e) No Consents or Authorizations. Subject only to obtaining the Approval and Vesting Order, and any consents, approvals, waivers, or Assignment Order(s) required in connection with the assignment of the Assumed Contracts, no consent, approval, waiver or other Authorization is required from any Governmental Authority or any other Person, in connection with the Vendors' execution, delivery or performance of this Agreement and each of the agreements to be executed and delivered by the Vendors hereunder, or the sale of the Purchased Assets hereunder, except for any Authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that: (i) have already been obtained; or (ii) the absence of which would not, individually or in the aggregate, have a material and adverse effect on the Purchased Assets or materially delay or impair the ability of the Vendors to consummate the Transaction.
- (f) Brokers' or Finders' Fees. Neither Nexii nor any Vendor has incurred any obligation or liability, contingent or otherwise, for any broker's or finder's fees or commissions in respect of this Transaction for which a Purchaser shall have any obligation or liability to pay.
- (g) No Proceedings. There are no proceedings pending or, to the knowledge of the Vendors or Nexii, threatened against the Vendors or Nexii before any Governmental Authority, which

prohibit or seek to enjoin, delay, restrict or prohibit the Closing of the Transaction, as contemplated by this Agreement, or that would reasonably be expected to delay, restrict or prevent the Vendors or Nexii from fulfilling any of their obligations set forth in this Agreement.

- (h) GST/HST Registration. The Vendors are registrants for purposes of GST/HST, and their registration numbers are:

Entity	Registration #
Omicron Canada Inc.	836919068 RT0001 (GST)
Omicron Construction Management Ltd.	788409290 RT0001 (GST)
Omicron Consulting Ltd.	888711520 RT0001 (GST)
Omicron Interiors Ltd	857756431 RT0001 (GST_
Omicron Construction Ltd.	878855923 RT0001 (GST)

## 4.2 Representations and Warranties of the Purchasers

The Purchasers hereby represent and warrant to and in favour of Nexii and the Vendors as of the date hereof and as of the Closing Time, and acknowledge that, the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- (a) Incorporation and Status. The Purchasers are corporations incorporated and existing under the *Business Corporations Act* (British Columbia) or the *Canada Business Corporations Act*, as indicated on the first page of this Agreement, are in good standing under such statutes and have the power and authority to enter into, deliver and perform their obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and performance by the Purchasers of this Agreement has been authorized by all necessary corporate action on the part of the Purchasers.
- (c) No Conflict. The execution, delivery and performance by the Purchasers of this Agreement does not (or would not with the giving of notice, the lapse of time, or both) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the Organizational Documents of a Purchaser.
- (d) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Purchasers and constitutes a legal, valid and binding obligation of the Purchasers, enforceable against them in accordance with its terms subject only to the Approval and Vesting Order and except as such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or similar Applicable Laws affecting creditors' rights generally and by general principles of equity.
- (e) No Proceedings. There are no proceedings pending, or to the knowledge of the Purchasers, threatened, against a Purchaser before any Governmental Authority, which prohibit or seek to enjoin delay, restrict or prohibit the Closing of the Transaction, as contemplated by this

Agreement, or which would reasonably be expected to delay, restrict or prevent a Purchaser from fulfilling any of its obligations set forth in this Agreement.

- (f) No Consents or Authorizations. Subject only to obtaining the Approval and Vesting Order, and any consents, approvals, waivers, or Assignment Order(s) required in connection with the assignment of the Assumed Contracts, no consent, approval, waiver or other Authorization is required from any Governmental Authority or any other Person, in connection with the Purchasers' execution, delivery or performance of this Agreement and each of the agreements to be executed and delivered by the Purchasers hereunder, or the purchase of any of the Purchased Assets hereunder, except for any Authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that: (i) have already been obtained; or (ii) the absence of which would not, individually or in the aggregate have a material effect on or materially delay or impair the ability of the Purchasers to consummate the Transaction.
- (g) Brokers' or Finders' Fees. No Purchaser has incurred any obligation or liability, contingent or otherwise, for any broker's or finder's fees or commissions in respect of this Transaction for which Nexii or the Vendors shall have any obligation or liability to pay.
- (h) Solvency. No Purchaser has committed an act of bankruptcy, is insolvent, has proposed a compromise or arrangement to its creditors generally, has had any application for a bankruptcy or similar creditor enforcement order filed against it, has taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has had an encumbrancer take possession of any of its property, or has had any execution or distress become enforceable or levied against any of its property.
- (i) GST/HST Registration. The Purchasers are a registrants for purposes of GST/HST, and their registration numbers are:

Entity	Registration #
New OCI	745886358 RT0001
New OCML	746199553 RT0001
1474484	783814429 RT0001
New OCon	745853556 RT0001
New OI	783463821 RT0001
New Consulting	798234027 RT0001

### 4.3 As is, Where is

The Purchasers acknowledge, agree and confirm that, at the Closing Time, the Purchased Assets shall be sold and delivered to the applicable Purchasers, and the Assumed Liabilities shall be assumed by the applicable Purchasers, on an "as is, where is" basis, subject only to the representations and warranties contained herein. Other than those representations and warranties contained herein, the Purchasers acknowledge and agree that: (a) no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect

of any other matter or thing whatsoever in connection with the Transaction, including with respect to the Purchased Assets or the Assumed Liabilities; and (b) the Monitor has not provided any representations and warranties in respect of any matter or thing whatsoever in connection with the Transaction, including with respect to the Purchased Assets or the Assumed Liabilities. The disclaimer in this Section 4.3 is made notwithstanding the delivery or disclosure to the Purchasers or their directors, officers, employees, agents or representatives of any documentation or other information (including financial projections or supplemental data not included in this Agreement). Without limiting the generality of the foregoing and unless and solely to the extent expressly set forth in this Agreement or in any documents required to be delivered pursuant to this Agreement, any and all conditions, warranties or representations, expressed or implied, pursuant to Applicable Law cannot be relied on by the Purchasers and are hereby expressly waived by the Purchasers. The Purchasers further acknowledge, agree and confirm that they have conducted their own investigations, due diligence and analysis in satisfying themselves as to all matters relating to Nexii, the Vendors and their assets, liabilities and Business, including without limitation, the Purchased Assets and the Assumed Liabilities. Until Closing, the Purchased Assets shall remain at the risk of the Vendors. After Closing occurs, the Purchased Assets shall be at the sole risk of the Purchasers regardless of the location of the Purchased Assets.

## **ARTICLE 5 COVENANTS**

### **5.1 Closing Date**

The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on or before the Outside Date.

### **5.2 Motion for Approval and Vesting Order**

As soon as practicable after the Parties' execution of this Agreement, Nexii, the Vendors or the Monitor shall serve and file with the Court for a motion seeking the issuance of the Approval and Vesting Order (and, if applicable, the Assignment Order) seeking relief that will, *inter alia*, approve this Agreement and the Transaction. The Purchasers shall cooperate with Nexii, the Vendors and/or the Monitor, as applicable, in their efforts to obtain the issuance and entry of the Approval and Vesting Order.

### **5.3 Interim Period**

During the Interim Period, except (a) as otherwise expressly contemplated or permitted by this Agreement (including the Approval and Vesting Order), (b) as necessary in connection with the CCAA Proceedings, (c) as otherwise provided in the Initial Order and any other Court orders prior to the Closing Time, or (d) as consented to by the Purchasers and the Vendors, such consent not to be unreasonably withheld, conditioned or delayed, the Vendors shall use commercially reasonable efforts to continue to maintain the Purchased Assets in substantially the same manner as on the Effective Date, and shall not take any material action with respect to the Business, the Purchased Assets or the Assumed Liabilities without the consent of the Purchasers (such consent not to be unreasonably withheld, delayed or conditioned). Without limiting the generality of the foregoing, all cash and cash equivalents of the Vendors shall be maintained by the Vendors and not distributed or otherwise used, other than to fulfill ongoing obligations to employees or under the Assumed Contracts, in each case in the ordinary course. During the Interim Period, upon not less than 2 Business Days' notice and subject at all times to the workplace rules, policies, procedures, standards and supervision of the Vendors, the Vendors shall give to the Purchasers and their representatives, at the sole cost, expense and risk of the Purchasers and their representatives (as applicable), reasonable access during normal business hours to the records and personnel of the Vendors, to conduct such investigations and inspections as the Purchasers reasonably deem necessary or desirable and the Vendors shall co-operate reasonably in facilitating such investigations and inspections and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchasers.

During the Interim Period, the Vendors shall provide the Purchasers with notice of any contracts proposed to be entered into by the Vendors and, if any such Contract is entered into, the Purchasers may elect to have any such contracts become “Assumed Contracts” hereunder.

#### **5.4 Insurance Matters**

Until Closing, the Vendors shall keep in full force and effect all existing insurance policies in relation to the Purchased Assets (if any) and give any notice or present any Claim under any such insurance policies consistent with past practice of the applicable Vendor in the ordinary course of business.

#### **5.5 Employee Matters**

- (a) The Vendors will provide to the Purchasers such information with respect to the Employees as may be reasonably required for the Purchasers to comply with their obligations under this Section 5.5.
- (b) One or more (at the discretion of the Purchasers) Purchasers shall, or shall cause an Affiliate to, make written offers of employment (in a form agreed by the Vendor and in compliance with applicable law) to any Employees that the Purchasers wish to employ no later than seven Business Days before the Closing Date, which shall be (i) conditional upon Closing and effective as of the Closing Time, and (ii) on terms and conditions that are substantially similar and no less favourable in the aggregate to those terms and conditions of employment currently available to each such Employee immediately prior to the Closing Date, including plans that are for the benefit of Employees (or any spouses, dependents, survivors or beneficiaries of such Employees).
- (c) The applicable Purchasers or their Affiliates, as applicable, shall assume and be responsible for all Liabilities and obligations with respect to the Transferred Employees on and after the Closing Time, including but not limited to:
  - (i) all liabilities for salary, wages, bonuses, commissions, vacation pay, benefits and other compensation related to the employment of Transferred Employees after the Closing Time;
  - (ii) all termination costs, including termination costs relating to service of Transferred Employees prior to the Closing Time, resulting from or relating to the termination of Transferred Employees after the Closing Time;
  - (iii) all liabilities for Claims for injury, disability, death or workers’ compensation arising from or related to the employment of Transferred Employees after the Closing Time; and
  - (iv) all employment-related Claims, penalties and assessments in respect of Transferred Employees arising from or related to matters that occur after the Closing Time, including without limitation Claims, penalties and assessments in respect of occupational health and safety.

#### **5.6 Actions to Satisfy Closing Conditions**

- (a) Nexii and the Vendors agree to take all commercially reasonable actions so as to ensure that the conditions set forth in Section 7.1 and Section 7.2 are satisfied on or prior to the Closing Date; and

- (b) The Purchasers agree to take all commercially reasonable actions so as to ensure that the conditions set forth in Section 7.1 and Section 7.3 are satisfied on or prior to the Closing Date.

### **5.7 Change of Vendors' Names**

The Vendors shall, and Nexii shall take all action required to cause the Vendors to, immediately following Closing, change their names to names which do not include the words "Omicron", or any derivative thereof and shall seek approval of such name changes in the Approval and Vesting Order.

### **5.8 Office 365**

During the Interim Period (and, if necessary, following Closing), the parties shall take such actions as may be required to separate from Nexii's Microsoft Office 365 software platform the portion thereof used by the Omicron Group (the "**Omicron Office 365 Software**"), such that the Purchasers will have full use of the Omicron Office 365 Software from and after Closing, with any associated third party fees to be borne equally by the Purchasers, on one hand, and Nexii on the other.

### **5.9 Cash Received Post-Closing**

Following Closing, if the Vendors or Nexii receive any payments earned by the Vendors under an Assumed Contract, they shall promptly pay such amounts over to the applicable Purchaser.

### **5.10 Services Agreement**

During the Interim Period, the Parties shall negotiate in good faith a services agreement acceptable to the Purchasers and the DIP Lenders, each acting reasonably, for the provision of certain services by the Purchasers, their Affiliates and/or their principals to Nexii following Closing (the "**Services Agreement**").

## **ARTICLE 6 CLOSING ARRANGEMENTS**

### **6.1 Closing**

Closing shall take place electronically on the Closing Date effective as of the Closing Time (or as otherwise determined by mutual agreement of the Parties in writing), by the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format.

### **6.2 Vendors' Closing Deliveries**

At the Closing Time, the Vendors shall deliver or cause to be delivered to the Purchasers the following:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- (b) a true copy of the Approval and Vesting Order, as issued and entered by the Court;
- (c) a true copy of all Assignment Orders required by the Purchasers for Closing, if any, as issued and entered by the Court;
- (d) the Tax election(s) contemplated by Section 3.4(e), duly executed by the Vendors, as applicable;
- (e) resolutions of the directors of each Vendor authorizing the Transaction;
- (f) the General Conveyance, duly executed by the Vendors;



- (g) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (h) the Post-Closing Sale Agreement, duly executed by the DIP Lenders;
- (i) the Services Agreement, duly executed by Nexii;
- (j) evidence acceptable to the Purchasers, acting reasonably, that the Omicron Office 365 Software has been, or will, promptly following Closing be, separated from Nexii's Microsoft Office 365 software platform in accordance with Section 5.8 and will be available for use by the Purchasers from and after Closing.
- (k) a certificate of an officer of each Vendor dated as of the Closing Date confirming that all of the representations and warranties of such Vendor contained in this Agreement are true (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date, and that such Vendor has performed in all material respects the covenants to be performed by it prior to the Closing Time; and
- (l) such other agreements, documents and instruments as may be reasonably required by the Purchasers to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

### **6.3 Purchaser's Closing Deliveries**

At or before the Closing, the Purchasers shall deliver or cause to be delivered to the Vendors (or to the Monitor, as applicable), the following:

- (a) the Cash Payment;
- (b) if applicable, payment to the Monitor (or evidence of payment by the Purchasers to the relevant Governmental Authorities) of all Transfer Taxes required by Applicable Law to be collected on Closing, in accordance with Section 3.4;
- (c) the Tax election(s) contemplated by Section 3.4(e), duly executed by the Purchasers, as applicable;
- (d) resolutions of the directors of each Purchaser authorizing the Transaction;
- (e) the General Conveyance, duly executed by the Purchasers;
- (f) the Assignment and Assumption Agreement, duly executed by the Purchasers;
- (g) the Post-Closing Sale Agreement, duly executed by the Purchasers;
- (h) the Services Agreement, duly executed by the Purchasers, their Affiliates and/or their principals, as applicable;
- (i) a certificate of an officer of each Purchaser dated as of the Closing Date confirming that all of the representations and warranties of such Purchaser contained in this Agreement are true: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date, and that such Purchaser has performed in all material respects the covenants to be performed by it prior to the Closing Time; and
- (j) such other agreements, documents and instruments as may be reasonably required by the Vendors to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

## ARTICLE 7 CONDITIONS OF CLOSING

### 7.1 Conditions Precedent in Favour of the Parties

The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) Approval and Vesting Order. The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably. The Approval and Vesting Order shall, among other things add the Vendors as “Petitioners” in the CCAA Proceedings.
- (a) No Order. No Applicable Law and no final or non-appealable judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction.
- (b) No Restraint. No motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (c) Monitor’s Certificate. The Monitor shall have provided an executed copy of the Monitor’s Certificate confirming that all conditions to Closing have either been satisfied or waived by both the Purchasers and the Vendors.

The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in this Section 7.1 is not satisfied, performed or mutually waived on or prior to the Outside Date, any Party may elect on written notice to the other Parties to terminate this Agreement.

### 7.2 Conditions Precedent in Favour of the Purchasers

The obligation of the Purchasers to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Vendors’ Deliverables. The Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchasers at the Closing all the documents contemplated in Section 6.2.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 4.1 shall be true and correct: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Vendors and Nexii shall have performed, in all material respects, all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendors or Nexii on or before the Closing Date.

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

### 7.3 Conditions Precedent in Favour of the Vendors

The obligation of the Vendors to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Purchaser's Deliverables. The Purchasers shall have executed and delivered or caused to have been executed and delivered to the Vendors at the Closing all the documents and payments contemplated in Section 6.3.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 4.2 shall be true and correct: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Purchasers shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchasers on or before the Closing.

The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 7.3 may be waived by the Vendors in whole or in part, save and except for delivery of the Services Agreement in accordance with Section 6.3(h), which condition may only be waived with the written consent of the DIP Lenders, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set forth in this Section 7.3 is not satisfied or performed on or prior to the Outside Date, the Vendors may elect on written notice to the Purchasers to terminate the Agreement.

## ARTICLE 8 TERMINATION

### 8.1 Grounds for Termination

This Agreement may be terminated on or prior to the Closing Date:

- (a) by the mutual written agreement of the Vendors (with the written consent of the Monitor) and the Purchasers; or
- (b) by the Vendors (with the written consent of the Monitor) or the Purchasers upon written notice to the other Parties if: (i) the Closing has not occurred on or prior to the Outside Date; or (ii) the Approval and Vesting Order is not obtained on or before April 26, 2024 (subject to availability of the Court); provided in each case that the failure to close or obtain such order, as applicable, by such deadline is not caused by a breach of this Agreement by the Party proposing to terminate the Agreement; or
- (c) by written notice from the Purchasers to the Vendors:
  - (i) in accordance with Section 7.1 or Section 7.2; or
  - (ii) if there has been a breach by a Vendor or Nexii of any representation or warranty, or material breach of any covenant, contained in this Agreement, which breach has not been waived by the Purchasers, and: (i) such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 or Section 7.2 impossible by the Outside Date; or (ii) if such breach is curable, the Purchasers have provided prior written notice of such breach to the Vendors, and such breach has not been cured within ten (10) days following the date upon which the Vendors received such notice, unless any one or more of the Purchasers is in material breach of its obligations under this Agreement; and

- (d) by written notice from the Vendors (with the written consent of the Monitor) to the Purchasers:
  - (i) in accordance with Section 7.1 or Section 7.3; or
  - (ii) if there has been a breach by a Purchaser of any representation or warranty, or material breach of any covenant, contained in this Agreement, which breach has not been waived by the Vendors, and: (A) such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 or Section 7.3 impossible by the Outside Date; or (B) if such breach is curable, the Vendors have provided prior written notice of such breach to the Purchasers, and such breach has not been cured within ten (10) days following the date upon which the Purchasers received such notice, unless any one or more of the Vendors or Nexii are in material breach of their obligations under this Agreement.

## **8.2 Effect of Termination.**

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder; except for the provisions of this Agreement that by their nature are intended to survive termination, including this Section 8.2 (Effects of Termination) and Section 9.8 (Governing Law), each of which will survive termination; provided that if this Agreement is terminated:

- (a) in accordance with Section 8.1(d)(ii), the Monitor (on behalf of the Vendors) shall be entitled to retain the Deposit and the full amount of the Deposit shall be forfeited to the Vendors; or
- (b) for any other reason, the Deposit shall be promptly returned to the Purchasers.

In the event of termination of this Agreement under Section 8.1(d)(ii) pursuant to which the Monitor (on behalf of the Vendors) shall be entitled to retain the Deposit, the Parties agree that the amount of the Deposit constitutes a genuine pre-estimate of liquidated damages representing the Vendors' losses and Liabilities as a result of Closing not occurring and agree that the Vendors shall not be entitled to recover from the Purchasers any amounts that are in excess of the Deposit as a result of Closing not occurring. The Purchasers hereby waive any claim or defense that the amount of the Deposit is a penalty or is otherwise not a genuine pre-estimate of the Vendors' damages.

## **ARTICLE 9 GENERAL**

### **9.1 Access to Books and Records; Tax Co-Operation**

For a period of six years from the Closing Date or for such longer period as may be required for the Vendors (or any trustee in bankruptcy of the estate of any of the Vendors) to comply with any Applicable Law, the Purchasers shall:

- (a) retain all original Books and Records that are transferred to the Purchasers under this Agreement. So long as any such Books and Records are retained by the Purchasers pursuant to this Agreement, the Monitor and the Vendors (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendors) have the right to inspect and to make copies (at their own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of a Purchaser; and

- (b) use commercially reasonable efforts to assist the Vendors, including providing any reasonable information requested by the Vendors, with respect to any queries or questions that the Vendors may have in order to facilitate any Tax filings or Tax related questions or disputes that may arise following the Closing Date.

## 9.2 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered by same-day courier or by read-receipted email, addressed:

- (a) in the case of the Purchasers, as follows:

George Sawatzky  
8970 Nash Street  
Fort Langley, BC V1M 2R4

Email: [GSawatzky@omicronaec.com](mailto:GSawatzky@omicronaec.com)

with a copy to:

Lawson Lundell LLP  
925 W Georgia Street #1600  
Vancouver, BC V6C 3L2

Attention: Chat Ortved and Alexis Teasdale  
Email: [cortved@lawsonlundell.com](mailto:cortved@lawsonlundell.com) and [ateasdale@lawsonlundell.com](mailto:ateasdale@lawsonlundell.com)

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

Nexii Building Solutions Inc.

Attention: David Bryant  
Email: [dbryant@nexii.com](mailto:dbryant@nexii.com)

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

KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W3

Attention: Noah Goldstein and Ross Graham  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com) and [rgraham@ksvadvisory.com](mailto:rgraham@ksvadvisory.com)

with a copy to:

Bennett Jones LLP  
1 First Canadian Place, Suite 3400  
Toronto, ON M5X 1A4

Attention: Sean Zweig and Mike Shakra  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) and [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

Any such notice or other communication, if transmitted by email before 5:00 p.m. (Vancouver time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Vancouver time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission. In the case of a communication by email or other electronic means, if an autoreply is received indicating that the email is no longer monitored or in use, delivery must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by electronic means shall be deemed to have been given on the date stipulated above for electronic delivery.

Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

### **9.3 Public Announcements**

The Vendors and the Monitor shall be entitled to disclose this Agreement to the Court and parties in interest in the CCAA Proceedings and this Agreement may be posted on the Monitor's website maintained in connection with the CCAA Proceedings. In addition, Nexii and the Vendors may disclose the existence of the potential Transaction to their current and prospective customers and clients following execution of this Agreement. Subject to the forgoing, no press release or other announcement concerning the Transaction shall be made by the Purchasers or the Vendors without the prior consent of the other (such consent not to be unreasonably withheld, delayed or conditioned).

### **9.4 Time**

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

### **9.5 Survival**

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

### **9.6 Entire Agreement**

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

### **9.7 Paramountcy**

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

## **9.8 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court, and any appellate courts of the Province of British Columbia therefrom.

## **9.9 Assignment**

The Purchasers cannot assign any of their rights or obligations under this Agreement without the prior written consent of the Vendors, the DIP Lenders and the Monitor. Notwithstanding the forgoing, this Agreement may be assigned by the Purchasers prior to the issuance of the Approval and Vesting Order, in whole or in part, without the prior written consent of the DIP Lenders, the Vendors or the Monitor, provided that: (i) such assignee is an Affiliate, related party or wholly-owned subsidiary of a Purchaser; (ii) the Purchasers provide prior notice of such assignment to the Vendors and the Monitor; and (iii) such assignee agrees in writing to be bound by the terms of this Agreement to the extent of the assignment and a copy of such assumption agreement is delivered to the Vendors and the Monitor forthwith after having been entered into; provided, however, that any such assignment shall not relieve the Purchasers of their obligations hereunder. Neither the Vendors nor Nexii can assign any of their rights or obligations under this Agreement without the prior written consent of the Purchasers. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

## **9.10 Further Assurances**

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

## **9.11 Counterparts**

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

## **9.12 Severability**

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

## **9.13 Non-Waiver**

No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

## **9.14 Expenses**

Each of the Parties shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

## **9.15 Monitor's Certificate**

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchasers, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from the Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived (except for Section 7.1(c)), and the Monitor shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from the Parties that all conditions of Closing in favour of such Party have been satisfied or waived, and following receipt of the Cash Payment by the Monitor, the Monitor may deliver the executed Monitor's Certificate to the Purchasers' counsel, and the Closing shall be deemed to have occurred.

#### **9.16 Monitor's Capacity**

In addition to all of the protections granted to the Monitor under the CCAA, the Initial Order, the Sale Process Order, and any other order of the Court in this CCAA Proceeding, the Vendors and the Purchasers acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendors and not in its personal capacity, will have no Liability, in its personal capacity or otherwise, in connection with this Agreement or the Transaction contemplated herein whatsoever.

#### **9.17 Confidentiality.**

From and after the Closing, Nexii and the Vendors shall, and shall cause their Affiliates and their respective representatives to, hold in confidence any and all information, whether written or oral, concerning the Purchased Assets or the Business, except to the extent they can show that such information (i) is generally available and known by the public through no fault of Nexii or a Vendor or any of their Affiliates or their respective representatives, (ii) is lawfully acquired by Nexii or a Vendor or any of their Affiliates or their respective representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation, (iii) is required to be disclosed by judicial or administrative process, securities exchange or other requirements of Applicable Law; or (iv) is required to be disclosed in connection with the sale of the Petitioners' business, assets or operations (provided Nexii and Vendors ensure the recipients of such information maintain its confidentiality).

***[Signature Page Follows]***



**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first above written.

**NEXII BUILDING SOLUTIONS INC.**

DocuSigned by:  
*David Bryant*  
By: \_\_\_\_\_  
2BB4FDCFE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CANADA INC.**

DocuSigned by:  
*David Bryant*  
By: \_\_\_\_\_  
2BB4FDCFE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CONSTRUCTION  
MANAGEMENT LTD.**

DocuSigned by:  
*David Bryant*  
By: \_\_\_\_\_  
2BB4FDCFE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CONSULTING LTD.**

DocuSigned by:  
*David Bryant*  
By: \_\_\_\_\_  
2BB4FDCFE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON INTERIORS LTD.**

By: DocuSigned by:  
David Bryant  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CONSTRUCTION LTD.**

By: DocuSigned by:  
David Bryant  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**15925347 CANADA INC.**

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

I have authority to bind the Corporation.

**1474480 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474737 B.C. LTD.**

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

I have authority to bind the Corporation.

**OMICRON INTERIORS LTD.**

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

Name:

Title:

I have authority to bind the Corporation.

**OMICRON CONSTRUCTION LTD.**

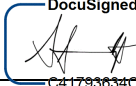
By: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation.

**15925347 CANADA INC.**

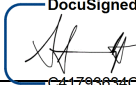
By:  \_\_\_\_\_  
C41793634C984F8...

Name: George Sawatzky

Title: Director

I have authority to bind the Corporation.

**1474480 B.C. LTD.**

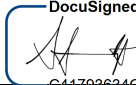
By:  \_\_\_\_\_  
C41793634C984F8...

Name: George Sawatzky

Title: Director

I have authority to bind the Corporation.

**1474737 B.C. LTD.**

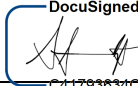
By:  \_\_\_\_\_  
C41793634C984F8...

Name: George Sawatzky

Title: Director

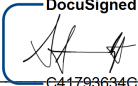
I have authority to bind the Corporation.

**1474741 B.C. LTD.**

By:  DocuSigned by:  
C41783634C984F8...  
Name: George Sawatzky  
Title: Director

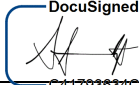
I have authority to bind the Corporation.

**1474484 B.C. LTD.**

By:  DocuSigned by:  
C41793634C984F8...  
Name: George Sawatzky  
Title: Director

I have authority to bind the Corporation.

**1464115 B.C. LTD.**

By:  DocuSigned by:  
C41793634C984F8...  
Name: George Sawatzky  
Title: Director

I have authority to bind the Corporation.

**SCHEDULE "A"**  
**VENDORS**

Omicron Canada Inc.

Omicron Construction Management Ltd.

Omicron Consulting Ltd.

Omicron Interiors Ltd.

Omicron Construction Ltd.

**SCHEDULE “B”  
ASSUMED CONTRACTS**

The following is an exhaustive list of the Assumed Contracts:

Software:

Sr. No.	Software	Num. of licenses
1	Adobe Creative Cloud	6
2	Adobe Photoshop CC	2
3	Adobe Photoshop CS2	6
4	Autodesk Architecture & Engineering Collection	80
5	Autodesk Build (Plangrid included)	10003
6	ASHRAE Thermal Comfort Tool	1
7	BIM Collaborate Pro	38
8	Bluebeam 2018	180
9	Building Connected Pro	15
10	CMBuilder	10 Projects
11	Elite Sprinkler Design	1
12	Microsoft New Commerce Experience (CSP) Office E3	172
13	Microsoft New Commerce Experience (CSP) PowerBI Pro	35
14	Microsoft New Commerce Experience (CSP) Teams with Calling Plan	119
15	Quickbooks 2018	3
16	ElumTools (Lighting Analysts)	1
17	Enscape	3
18	ETABS (Computer Structures Inc) Maintenance	1

19	ETAP Power System Simulation Software	1
20	Guardian	2
21	HAP	1
22	HVAC Solution	1
23	IES VE	2
24	ISNetworld	-
25	Lumion (SolidCAD)	2
26	Microsoft Product Software Assurance: SQL 2022 Standard	1
27	Microsoft Product Software Assurance: Windows Server 2022 Data Center	1
28	Microsoft Product Software Assurance: Remote Desktop Terminal Services	15
29	Replicon WebTimeSheet	165
30	Sketchup(Trimble)	3
31	Sophos Cloud	180 Desktop, 20 Sever
32	SpSlab, SpWall,SpColumn, spMATS (StructurePoint)	1
33	Sage 300 (Timberline)	1
34	ComplyWorks	1
35	Contractor Check	1
36	Ms Project 2010	35
37	Ms Project 2016	7
38	Ms Visio 2016	1
39	On Centre On-screen Takeoff	4
40	Print Boss subscription	-
41	S-Frame	5

42	TimberScan Support	1
43	Vice Versa	1
44	Veeam Cloud Connect Subscription	1
45	Veeam Software license	1
46	VMWare Subscription/Maintenance	1
47	Woodworks Sizer 2020	1

Vehicle Leases:

lease type	description	VIN	lessor
vehicle (truck)	FC18006 licence LJ1475	6728 6	Zeemac
vehicle (truck)	Ford Truck #60266877	0222 7	Ford Credit
vehicle (truck)	Ford Truck #60484000	0985 6	Ford Credit
vehicle (truck)	Ford Truck #61154498	2107 8	Ford Credit

Real Property and Other Leases:

lease type	description	lessor
equipment	computer servers	Jyske Lease Corp. (Softchoice)
equipment	Canon copier/printers	Meridian OneCap

1. Lease agreement dated May 12, 2021 between Omicron Construction Ltd. and Clutch Developments Ltd. in respect of property located at Unit #1, 2075 Brigantine Drive, Coquitlam, BC.
2. Lease agreement dated October 18, 2004 between Omicron Consulting Ltd. and BH Centre Head Corp. (as successor in interest to BTC Properties II Ltd. and The Great-West Life Assurance Company), in respect of property located at the 4th Floor of 595 Burrard Street, Vancouver, BC (as amended by lease expansion and amending agreement dated February 12, 2007, by partial surrender of lease and lease expansion agreement and modification of lease dated August 22, 2007, by lease extension and amending agreement dated November 19, 2013, by lease extension and amending agreement dated April 13, 2017, and by lease extension and amending agreement dated June 8, 2022).



3. Lease agreement dated July 1, 2018 between Omicron Canada Inc. and Eagle Creek Village I GP Ltd., in its capacity as general partner for and on behalf of Eagle Creek Village I Limited Partnership, in respect of property located at Suite 420, 29 Helmcken Road, Victoria.

#### Construction Contracts

1. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated March 13, 2020, as amended from time to time. [20-20-009]
2. Design and Early Works Agreement for Design and Construction Management Services between Omicron Construction Ltd and Tsawwassen Independent School Society dba Southpointe Academy dated June 23, 2023, as amended from time to time. [20-23-005]
3. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated September 18, 2020, as amended from time to time. [23-14-019]
4. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated April 16, 2021, as amended from time to time. [20-22-013, 20-21-014]
5. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Coca Cola Canada Bottling Limited dated May 8, 2023, as amended from time to time. [20-23-001]
6. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and FW Enterprises dated March 15, 2023, as amended from time to time. [20-23-006]
7. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated September 22, 2023, as amended from time to time. [20-22-014]
8. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated June 8, 2022, as amended from time to time. [20-22-008]
9. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time. [20-23-003]
10. Construction Management Contract for Services between Omicron Construction Ltd. and Allendale LP dated July 14, 2021, as amended from time to time. [20-21-018]
11. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and BC Transit dated January 26, 2022, as amended from time to time. [20-22-005]
12. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 4, 2020, as amended from time to time. [23-18-010]
13. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 14, 2020, as amended from time to time. [23-18-011]
14. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 26, 2020, as amended from time to time. [23-20-007]
15. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated Jan 24, 2023, as amended from time to time. [23-21-003]

16. Construction Management Contract for Services between Omicron Construction Ltd. and Lotus Omicron East Broadway Development Inc. dated January 31, 2022, as amended from time to time. [20-22-002]
17. Construction Management Contract for Services between Omicron Construction Ltd. and Marine and Bewicke Project Ltd dated May 5, 2023, as amended from time to time. [20-22-010]
18. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time. [20-23-002]
19. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated July 21, 2022, as amended from time to time. [20-22-004]
20. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated August 30, 2022, as amended from time to time. [23-22-005]
21. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated October 30, 2023, as amended from time to time. [23-23-005]
22. Construction Preventative Maintenance Services Contracts between Omicron Construction Ltd. And Coastal Ford Sales dated June 16, 2021, as amended from time to time. [20-21-521,522,523]
23. Construction Management Contract for Services and Construction between Omicron Construction Ltd., and Victoria Ford Alliance dated January 4, 2023, as amended from time to time. [20-20-015]
24. Services Agreement between Omicron Construction Ltd. and Tabor Storage dated June 24, 2022 as amended from time to time. [20-22-006]
25. Consultant Agreement between Omicron Construction Ltd. and Hammersmith dated October 16, 2023 as amended from time to time. [20-23-007]
26. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Davis Management Limited Partnership (DMLP) dated June 30, 2021, as amended from time to time. [20-21-022]
27. Omicron Construction Ltd. to provide on-demand services to Coastal Ford Sales Ltd. [20-23-501,502,503; 20-24-501,502,503]
28. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated August 9, 2022, as amended from time to time. [23-18-008]
29. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated July 30, 2020, as amended from time to time. [23-20-003]
30. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated March 11, 2022, as amended from time to time. [23-21-001]
31. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated February 10, 2022, as amended from time to time. [23-22-001]
- 32.
33. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and CNRL [20-12-125]
34. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated February 23, 2024, as amended from time to time. [23-24-001]

together with all work orders, change orders and other ancillary contracts, including all subcontracts, associated with the foregoing contracts listed under the heading “Construction Contracts”.

Nominee Agreements:

Nominee Agreement between Omicron Architecture Engineering Construction Ltd. and Omicron Consulting Group dated November 10, 2004, as subsequently assumed by Omicron Canada Inc.

Nominee Agreement between Omicron Architecture Engineering Ltd. and Omicron Consulting Group dated February 23, 2005, as subsequently assumed by Omicron Canada Inc.

Design contracts:<sup>1</sup>

1. Canadian Standard Form of Contract for Architect’s Services between Omicron Architecture Engineering Construction Ltd. and TELUS Communications Inc. dated March 13, 2020, as amended from time to time. [10-20-035]
2. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Ltd. and Ecowaste Industries Ltd. dated August 10, 2016, as amended from time to time. [10-16-060]
3. Agreement between Omicron Architecture Engineering Construction Ltd. and Burnaby School District (SD#41) dated May 17, 2017, as amended from time to time. [10-21-058]
4. Standard Form of Agreement between Omicron Architecture Engineering Construction Ltd. and City of Burnaby dated October 7, 2014 as amended from time to time. [10-14-104]
5. General Service Agreement between Omicron Interiors Ltd. and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the General Manager of the Liquor Distribution Branch and Administrator of the Cannabis Distribution Act, dated for reference September 8, 2020, as amended from time to time. [70-20-009,-010]
6. Canadian Standard Form of Contract for Architectural Services dated March 1, 2022 between TELUS Communications Inc. and Omicron Architecture Engineering Construction Ltd., as amended from time to time.[10-22-017]
7. Canadian Standard Form of Contract for Architectural Services dated October 1, 2023 between Coca-Cola Canada Bottling Limited and Omicron Architecture Engineering Construction Ltd., as amended from time to time.[10-19-109]
8. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Nicola VA Allandale Limited Partnership and Allandale Ventures (Lot C) Limited Partnership Services dated July 26, 2021 as amended from time to time. [10-20-099]
9. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Sherringham Holdings Ltd. Services dated October 12, 2021 as amended from time to time. [10-21-010]
10. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Montrose Industries Ltd. Services dated August 8, 2021 as amended from time to time. [10-21-087]

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<sup>1</sup> With respect to any Omicron Architecture Engineering Construction Ltd./Omicron Architecture Engineering Ltd. contracts listed below, those contracts will remain with Omicron Architecture Engineering Construction Ltd./Omicron Architecture Engineering Ltd., but the beneficial interest therein will be transferred to the applicable Purchaser in conjunction with the transfer of the Omicron Architecture Engineering Construction Ltd./Omicron Architecture Engineering Ltd. Nominee Agreements.

11. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Montrose Industries Ltd. Services dated August 8, 2021 as amended from time to time. [10-21-088]
12. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Vancouver Christian School Services dated April 4, 2022 as amended from time to time. [10-22-042]
13. Construction Management Contract for Services and Construction dated May, 2023 between Lululemon Athletica Inc. and Omicron Construction Ltd., as amended from time to time. [10-22-066]
14. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Montrose Industries Ltd. Services dated November 17, 2022 as amended from time to time. [10-22-067]
15. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Coca-Cola Canada Bottling Limited. Services dated August 28, 2023 as amended from time to time. [10-22-068]
16. Engineering Agreement between CBRE Limited and Omicron Architectural Engineering Construction Ltd. Dated June 23, 2022 as amended from time to time [10-22-082]
17. Engineering Agreement between CBRE Limited and Omicron Architectural Engineering Construction Ltd. Dated August 22, 2023 as amended from time to time [10-23-046]
18. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and BC Transit Corporation Services dated June 9, 2022 as amended from time to time. [10-22-088]
19. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Limited Services dated August 12, 2022 as amended from time to time. [10-22-102]
20. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Limited Services dated August 9, 2022 as amended from time to time. [10-22-110]
21. General Services Agreement for Architectural Services between Omicron Construction Ltd and Tsawwassen Independent School Society DBA Southpointe Academy services dated June 23, 2023 [10-22-103]
22. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Services dated January 19, 2023 as amended from time to time. [10-23-003]
23. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Services dated August 1, 2023 as amended from time to time. [10-23-038]
24. General Services Agreement for Architectural Services between Omicron Architecture Engineering Construction Ltd and Kwantlen Polytechnic University on August 23, 2023.[10-23-043]
25. Architect Agreement between Omicron Architecture Engineering Construction Ltd and City of Richmond services dated August 7, 2023 as amended from time to time [10-23-041]
26. Consulting Agreement between Omicron Architecture Engineering Construction Ltd and Canada Place Corporation serviced dated December 20, 2023 as amended from time to time [10-24-003]
27. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Alexander College Services dated September 20, 2022 as amended from time to time. [70-22-011]

28. Contract for Services between Insurance Corporation of British Columbia and Omicron Architecture Engineering Construction Ltd services dated January 10 , 2024 as amended from time to time [10-24-005]
29. Agreement between Omicron Architecture Engineering Construction Ltd and Ministry of Citizens' Services dated February 7 2023 [10-23-004]
30. Purchase order #4829 issued by City of West Kelowna on April 19, 2023.[10-23-020]
31. Purchase order #4500625298 issued by City of Vancouver on May 24, 2023 [10-23-025]
32. Purchase order #4102238354 issued by Coca-Cola Canada Bottling Limited on July 16, 2020.
33. Purchase order #CITY-0000108738 issued by City of Richmond on October 12 2023. [10-23-064]
34. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and 1159613 BC c/o Lotus Pacific Services dated December 31, 2018 as amended from time to time. [10-18-094]
35. Services Contract between Omicron Architectural Engineering Construction Ltd. And British Columbia Ferry Services Inc. dated July 5, 2023 as amended from time to time [10-23-035]
36. Construction Management Contract for Services and Construction dated April 16, 2021 between TELUS Communications Inc. and Omicron Construction Ltd., as amended from time to time. [10-21-076]
37. Agreement between Omicron Architecture Engineering Construction Ltd. and Sherringham Holdings Ltd. in respect of Design Services at 681 Allandale Road.\* services dated October 13 2022 [70-22-012]
38. Agreement between Omicron Architecture Engineering Construction Ltd and FW Enterprises Ltd. Dated May 18, 2023 [70-23-002]
39. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Services dated July 20, 2023 as amended from time to time. [70-23-005]
40. Agreement between Omicron Architecture Engineering Construction Ltd. And Cambie Street Properties Inc. dated October 23, 2017 amended from time to time.[10-17-083]
41. General Consulting Services Agreement between The Waterfront Limited Partnership and Omicron Architecture Engineering Construction Ltd. dated March 24, 2021 as amended from time to time [10-21-028, 10-23-016]
42. Consulting Agreement between Canada Place Corporation and Omicron Architecture Engineering Construction Ltd. Dated May 27, 2021, as amended from time to time [10-21-060]
43. General Services Agreement between Omicron Canada Inc. and Kwantlen Polytechnic University dated February 28 2022 as amended from time to time [10-21-128]
44. Agreement between Montrose Properties and Omicron Architecture Engineering Construction Ltd dated February 17, 2022, as amended from time to time [10-22-024]
45. Planning Management Agreement between Telus Communications Inc. and Omicron Architecture Engineering Construction Ltd dated March 1, 2022, as amended from time to time [10-22-039]
46. Terms of Engagement between Ecowaste Industries Inc. and Omicron Architecture Engineering Construction Ltd dated June 4, 2019, as amended from time to time [10-17-015]
47. Purchase Order #KPO000005610 issued by CBRE Limited dated xx [10-22-044]
48. Purchase Order #KPO000022160 issued by CBRE Limited dated February 20, 2024 [10-22-084]
49. Purchase Order #KPO000021925 issued by CBRE Limited dated January 31<sup>st</sup> 2024 [10-22-086]
50. Purchase Order #KPO000021924 issued by CBRE Limited dated January 31<sup>st</sup> 2024 [10-22-087]
51. Terms of Engagement between Canucks Sports and Entertainment and Omicron Architecture Engineering Construction Ltd. dated August 3 2022, as amended from time to time [10-22-108]

52. Agreement between Top Down Investments and Omicron Architecture Engineering Construction Ltd. dated June 1<sup>st</sup> 2023, as amended from time to time. [10-22-117]
53. Purchase Order #OP 54866 000 issued by Port of Vancouver dated November 13, 2022 [10-22-119]
54. Subcontract Agreement between Omicron Construction Ltd. and Hammersmith Corporation Inc. dated December 14 2022 as amended from time to time [10-22-126]
55. Master Services Agreement between Lululemon Athletica Canada Inc. and Omicron Architecture Engineering Construction Ltd. dated October 23, 2023, as amended from time to time [10-23-006]
56. General Services Agreement between Kwantlen Polytechnic University and Omicron Canada Inc. dated March 14, 2023 as amended from time to time [10-23-010]
57. Purchase Order #KPO000014091 issued by CBRE Limited dated April 4<sup>th</sup> 2023 [10-23-012]
58. Change Order #33 issued by Wesbild Holdings to Omicron Canada Inc. and CDC Construction Ltd dated June 12, 2023 [10-23-016]
59. Purchase Order #7474 issued by Canada Place Corporation to Omicron Canada Inc. dated May 2 2023 [10-23-017]
60. Signed proposal between Dimensional Energy and Omicron Architecture Engineering Construction Ltd. dated June 2 2023 as amended time to time [10-23-027]
61. Purchase Order #KPO000015524 issued by CBRE Limited dated July 24 2023. [10-23-030]
62. Signed Proposal between Lululemon Athletica Inc. and Omicron Architecture Engineering Construction Ltd. dated Sept 5<sup>th</sup> 2023 [10-23-050]
63. Signed Proposal between Lululemon Athletica Inc. and Omicron Architecture Engineering Construction Ltd. dated August 31 2023 [10-23-049]
64. Purchase Order #KPO000022156 issued by CBRE Limited dated February 20 2024. [10-23-051]
65. Terms of Engagement between City of Burnaby and Omicron Architecture Engineering Construction Ltd dated August 21 2023, as amended from time to time. [10-23-061]
66. Letter of Commitment between Concert Properties and Omicron Architecture Engineering Construction Ltd dated May 6 2020 [10-18-001]
67. Letter of Commitment between Concert Properties and Omicron Architecture Engineering Construction Ltd dated October 1 2020 [10-20-067]
68. Purchase Order #252976 issued by NTE Energy Canada Ltd. dated November 1 2023 [10-23-066]
69. Terms of Engagement between Aspengrove School and Omicron Architecture Engineering Construction Ltd dated January 22 2023 [10-24-009]
70. Project Manager Agreement between Bureau Veritas Commodities Canada Ltd and Omicron Architecture Engineering Construction Ltd dated January 18 2024 [10-24-010].
71. Purchase Order #PO782627 issued by Metro Vancouver to Omicron Canada Inc. dated February 15 2024. [10-24-011]
72. Signed Proposal between Gustavson Wylie Architects Inc and Omicron Architecture Engineering Construction Ltd. dated February 21, 2024 [10-24-012]
73. Terms of Engagement between Claren Academy Society and Omicron Architecture Engineering Construction Ltd dated February 22 2024 [10-24-013]
74. Master Services Contract between WorkSafeBC and Avison Young Commercial Real Estate Services LP and Omicron Interiors Ltd. dated February 1<sup>st</sup> 2023 as amended from time to time [70-23-003]
75. Email Agreement between Blackwood Partners Management Corporation and Omicron Architecture Engineering Construction Ltd dated March 14, 2022. [10-22-030]
76. Work order #263603139 issued by Home Depot Canada Inc. Dated December 10, 2023 [10-23-067]

77. Work order #261562527 issued by Home Depot Canada Inc. Dated November 16 2023 [10-23-015]
78. Signed Proposal between Tung Lin Kok Yuen Canada Society and Omicron Architecture Engineering Construction Ltd dated November 16 2023, as amended from time to time. [10-24-007]
79. Email Agreement between Read Jones Christofferson Consulting Engineers Ltd and Omicron Architecture Engineering Construction Ltd dated April 19, 2022. [10-22-062]
80. Agreement between Tabor Storage Solutions and Omicron Architecture Engineering Construction Ltd dated December 18, 2023, as amended from time to time [10-24-001]
81. Email Agreement between Telus Communications Inc. and Omicron Architecture Engineering Construction Ltd dated September 16, 2022, as amended from time to time [10-22-093]
82. Signed Proposal between Home Depot of Canada Inc. and Omicron Architecture Engineering Construction Ltd dated January 19, 2024, as amended from time to time. [10-24-006]
83. Purchase Order #KPO000016189 issued by CBRE Limited dated September 11, 2023 [10-23-032]
84. Engineering Agreement between CBRE Ltd and Omicron Architecture Engineering Construction Ltd dated March 11 2024. [10-24-016]
85. PO issued by McRae Integration Ltd. to Omicron Canada Inc. for electrical service dated March 07 2024. [10-24-017]
86. Email Agreement between Morguard and Omicron Architecture Engineering Construction Ltd dated March 19th, 2024, as amended from time to time [10-24-018]
87. Email Agreement between Danny Guillaume and Omicron Architecture Engineering Construction Ltd dated April 2, 2024, as amended from time to time [10-24-019]

together with all work orders, change orders and other ancillary contracts, including all subcontracts, associated with the foregoing contracts listed under the heading “Design Contracts”.

Other:

Settlement and Mutual Release Agreement between Omicron Construction Ltd. and Canadian Natural Resources Limited May 11, 2015, including the entitlement to receipt of the “Indemnity Holdback” thereunder upon its payment (the “**CNRL Agreement**”).

Insurance/Benefits:

The insurance policies and benefit plans of the Vendors.

**SCHEDULE "C"**  
**ASSUMED LIABILITIES**

Accounts payable and deferred revenue in connection with the Assumed Contracts.

Any obligation to pay the Trust Cash in connection with the Legal Proceedings (each as defined in Schedule E).



**SCHEDULE “D”  
PURCHASE PRICE ALLOCATION**

The Vendors and the Purchasers agree that the Purchase Price shall be allocated for tax purposes amongst the Purchased Assets in a manner consistent with the following methodology, to be applied in respect of each Vendor and Purchaser in accordance with Schedule “G”:

<b>Category</b>	<b>Methodology</b>
Cash and cash equivalents	Book value
Accounts receivable	Book value
Prepaid expenses and other current assets	Book value
Short term investments	Fair market value
Tangible/depreciable assets	Net book value
Construction contracts	Remainder of purchase price, up to maximum of \$1,000,000 (in aggregate for all Purchasers).
Intangibles and goodwill	Remainder of purchase price (after the allocation to the Construction contracts above), if any

**SCHEDULE “E”  
PURCHASED ASSETS**

The following is a non-exhaustive list of Purchased Assets:

- All rights, title (in respect of owned property) and interests in furniture, fixtures, furnishings, office equipment, computer hardware and accessories, communications and networking equipment, servers and other items of tangible personal property owned or leased by any of the Vendors located on or about the premises subject to the real property leases included in the Assumed Contracts or otherwise used in, held for use in or relating to the operation of the Business.
- All rights, title and interests in the following vehicles owned by a Vendor:

Chevy 2007 Suburban 2500	77111
Haulmark 2008 Com TLR (Trailer)	30275
Ford 2008 F150 XLT	63736
Ford 2008 F350 Super Duty	96373
Ford 2016 F150	68455
Ford 2017 F150	95299
Ford 2017 F150	95130
Ford 2017 F150	35942

- All rights and interests in the following vehicles leased by a Vendor:

FC18006 license LJ1475	67286
Ford Truck #60266877	02227
Ford Truck #60484000	09856
Ford Truck #61154498	21078

- The Books and Records.
- All creative, promotional, marketing or advertising materials (whether in hard copy or computer or other electronic format) of any Vendor used in, held for use in or relating to the operation of the Business.
- The names of the Vendors and all intellectual property rights of any Vendor used in, held for use in or relating to the operation of the Business, including all documentation, designs and other intellectual property rights associated with current and prior projects.
- All permits held by any Vendor and required for the operation of the Business.
- All insurance policies for the benefit of any Vendor.
- All benefit plans of any Vendor.
- All rights, claims, counterclaims, credits, causes of action or rights of set-off of any of the Vendors against third parties.

- All telephone numbers, facsimile numbers, directory listings, email addresses and other communications identifiers owned by any of the Vendors that are used in, held for use in or relating to the operation of the Business.
- All cash and cash equivalents of the Vendors as at the Closing Time.
- All current assets of the Vendors, including prepaid expenses and receivables.
- All interests of the Vendors in the cash held by Borden Ladner Gervais LLP in respect of certain ongoing litigation in relation to a prior project for Canadian Natural Resources Limited (the “**Legal Proceedings**”), including any interest accrued thereon (the “**Trust Cash**”).
- Any inventory of the Vendors
- The bank accounts (including the cash contained therein) and credit cards of the Vendors, including the following:

<b>Bank</b>	<b>Bank Account</b>	<b>Legal entity</b>	<b>Currency</b>
HSBC	270-750 703-001	Omicron Canada Inc.	CAD
HSBC	270-750 703-270	Omicron Canada Inc.	USD
HSBC	270-750-738-001	Omicron Construction Ltd.	CAD
HSBC	270-750-746-001	Omicron Construction Management Ltd.	CAD
HSBC	270-750-762-001	Omicron Interiors Ltd.	CAD

<b>Bank</b>	<b>CC number</b>	<b>Legal entity</b>	<b>Currency</b>	<b>User name</b>
RBC	4516076004716907	Omicron Canada Inc.	CAD	Hank Sam
RBC	4516070015485875	Omicron Canada Inc.	CAD	Caroline Tovey

**SCHEDULE "F"**  
**FORM OF POST-CLOSING SALE AGREEMENT**

*Attached.*

## CONTINGENT SALE AGREEMENT

This Contingent Sale Agreement (the “**Agreement**”) is made as of this 19th day of April, between:

**THE ENTITIES LISTED IN SCHEDULE “A” ATTACHED HERETO**  
(collectively, the “**Purchasers**” and each a “**Purchaser**”)

- and -

**THE ENTITIES LISTED IN SCHEDULE “B” ATTACHED HERETO** (collectively,  
the “**DIP Lenders**” and each a “**DIP Lender**”)

### WHEREAS:

- A. Pursuant to the Order of the Honourable Justice Stephens of the Supreme Court of British Columbia (the “**Court**”) issued January 11, 2024 (as may be further amended or amended and restated from time to time, the “**Initial Order**”), Nexii Building Solutions Inc., Nexii Construction Inc., NBS IP Inc. and Nexii Holdings Inc. (collectively the “**Petitioners**”) were granted, among other things, creditor protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. was appointed as Monitor of the Petitioners, with certain enhanced powers (in such capacity, the “**Monitor**”).
- B. The Initial Order extended certain protections of the Initial Order to Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd., and Omicron Construction Ltd. (collectively, the “**Omicron Group**”).
- C. In connection with the proceedings initiated by the Initial Order, on January 22, 2024, the Petitioners sought and obtained an order of the Court, among other things, approving a sale process (the “**Sale Process**”) to be conducted by Origin Merchant Partners, under the oversight and with the assistance of the Monitor, to solicit interest in, and opportunities for, one or more or any combination of executable transactions involving the Petitioners and the Omicron Group and/or the Petitioners’ and Omicron Groups’ business operations as a going concern or otherwise.
- D. As a result of the Sale Process, Nexii Building Solutions Inc., the Omicron Group, apart from Grant & Sinclair Architects Ltd., and Purchasers entered into a binding Asset Purchase Agreement dated April 19, 2024 (the “**Purchase Agreement**”) for the Purchased Assets (as defined therein).
- E. Pursuant to section 3.3(d) of the Purchase Agreement, the DIP Lenders and Purchasers are to enter into a Post-Closing Sale Agreement (as defined therein) to apply to any Post-Closing Sale (as defined therein).
- F. Terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the “**Parties**”, and each, a “**Party**”) hereby acknowledge and agree as follows:

## **1. Conditional Payment**

If at any time during the five-year period immediately following Closing:

- (a) any one or more of the Purchasers (or any successor corporations) holding all or substantially all of the Purchased Assets immediately prior to such transaction or series of transactions (the “**Controlling Entities**”) sells, leases, transfers, exclusively licenses, conveys or otherwise disposes, collectively, in one transaction or a series of transactions, all or substantially all of the interests in all or substantially all of the Purchased Assets (other than in connection with an internal reorganization of the one or more of the Controlling Entities where (i) the transferee or recipient of the some or all of the interests in the Purchased Assets in such internal reorganization (the “**Transferee**”) is an affiliate of one or more of the Controlling Entities and (ii) such Transferee has delivered a joinder to this Agreement, pursuant to which the Transferee agrees in favour of the DIP Lenders to become party to and bound by this Agreement as a “**Purchaser**” and as if an original party hereto and subject to the provisions of Section 1 and 2 of this Agreement); or
- (b) there occurs a merger, amalgamation, sale, arrangement, take-over bid, reorganization, plan of arrangement, business combination, consolidation or other similar transaction or series of transactions as a result of which the beneficial owners of shares of the Controlling Entities do not own beneficial interests in a majority of the shares of the Controlling Entities outstanding immediately following such transaction or series of transactions

((a) and (b) collectively, a “**Post-Closing Sale**”);

the Purchaser or Purchasers who are party to such a Post-Closing Sale (collectively, the “**Post-Closing Sale Party**”) shall pay to the DIP Lenders, within ten (10) Business Days of the closing of such Post-Closing Sale, a cash payment equal to 15% of the difference between (a) the consideration provided to the Post-Closing Sale Party (or shareholders thereof) in connection with the Post-Closing Sale and (b) \$7,000,000. For certainty, the DIP Lenders are entitled to a single payment as between them (not a payment each) and this Agreement shall terminate following the completion of a Post-Closing Sale (provided any obligation of the Purchasers to make a payment in respect of such Post-Closing Sale to the DIP Lenders hereunder shall survive such termination).

## **2. Covenants of the Purchasers**

The Purchasers will provide the DIP Lenders with not less than five (5) Business Days’ prior written notice of any proposed Post-Closing Sale and will provide the DIP Lenders at such time with excerpts of the portions of the then current drafts of the principal transaction documents for such Post-Closing Sale that establish the consideration to be provided to the Post-Closing Sale Party (or shareholders thereof) in connection with the proposed Post-Closing Sale. Promptly following closing of a Post-Closing Sale and in any event within two (2) Business Days’ following such closing, the Post-Closing Sale Party will provide the DIP Lenders with written confirmation of the closing of such Post-Closing Sale and confirmation of the total closing proceeds paid or payable to the Post-Closing Sale Party (or shareholders thereof), together with true and correct copies of the excerpts of the portions of the duly executed principal transaction documents for such Post-Closing Sale that establish the consideration to be provided to the Post-Closing

Sale Party (or shareholders thereof).

Within 90 days following each of the first five anniversaries of the date on which the Closing occurs, the Purchasers will deliver to the DIP Lenders a certificate duly executed by an officer of 15925347 Canada Inc. and any other Purchaser entity that is not then a subsidiary of 15925347 Canada Inc., certifying that other than as disclosed to the DIP Lenders in accordance with this Section 2 no Post-Closing Sale has occurred and attaching an estimate, prepared internally by the Purchasers in good faith, of the aggregate value of Purchased Assets as at the applicable anniversary, the confidentiality of which shall be maintained by the DIP Lenders.

### **3. Currency**

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

### **4. Binding Agreement**

The Parties acknowledge and confirm that all of the terms and conditions of this Agreement are binding on the Parties and their respective successors and assigns, following the Closing of the Transaction. Should the Transaction fail to close, the terms and conditions of this Agreement will be of no force and effect.

### **5. Entire Agreement**

This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes in its entirety all prior agreements whether written or oral. Except as otherwise provided herein, nothing contained herein shall or is intended to affect, modify or otherwise alter the terms and conditions of the Purchase Agreement and the respective Parties' obligations thereunder.

### **6. Notices**

Any notices, waivers or other communications from one Party to another pursuant hereto (hereinafter collectively referred to as "**Notices**") shall be in writing. Notices will be considered to have been sufficiently given when delivered by registered mail, by hand, by email or by other designated form of electronic communication to the applicable Party as set out below:

(a) in the case of the Purchasers, as follows:

15925347 Canada Inc.  
c/o 8970 Nash Street  
Fort Langley, BC V1M 2R4  
Attention: George Sawatzky

Email: [GSawatzky@omicronaec.com](mailto:GSawatzky@omicronaec.com)

with a copy to:

Lawson Lundell LLP  
925 W Georgia Street #1600  
Vancouver, BC V6C 3L2

Attention: Chat Ortved and Alexis Teasdale  
Email: [cortved@lawsonlundell.com](mailto:cortved@lawsonlundell.com) and [ateasdale@lawsonlundell.com](mailto:ateasdale@lawsonlundell.com)

(b) in the case of the DIP Lenders, as follows:

Aird & Berlis LLP  
Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Canada, M5J 2T9

Attention: Kyle Plunkett  
Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

**7. No Amendment**

This Agreement may only be amended by the written agreement of the duly authorized representatives of the Parties.

**8. Assignment**

No Party may assign this Agreement without the prior written consent of the other Parties (provided the Purchasers may assign this Agreement in conjunction with an assignment of the Purchase Agreement permitted thereunder).

**9. Enurement**

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

**10. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court, and any appellate courts of the Province of British Columbia therefrom.

**11. Non-Waiver**

No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

**12. Counterparts**

This Agreement may be executed and delivered by Portable Document Format (PDF) or other electronic means and in any number of identical counterparts each of which may be deemed an original, and all of which taken together shall constitute one and the same agreement.

*[Remainder of Page Intentionally Left Blank]*



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

**15925347 CANADA INC.**

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

I have authority to bind the Corporation.

**1474480 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474737 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474741 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474484 B.C. LTD.**

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

I have authority to bind the Corporation.

**1464115 B.C. LTD.**

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

Name:

Title:

I have authority to bind the Corporation.

**POWERSCOURT INVESTMENTS XXV, LP**

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

Name:

Title:

I have authority to bind the Corporation.

**TRINITY CAPITAL INC.**

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

Name:

Title:

I have authority to bind the Corporation.

**HORIZON TECHNOLOGY FINANCE  
CORPORATION**

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

Name:

Title:

I have authority to bind the Corporation.

## **Schedule “A”**

### **Purchasers**

15925347 Canada Inc.  
1474480 B.C. Ltd.  
1474737 B.C. Ltd.  
1474741 B.C. Ltd.  
1474484 B.C. Ltd.  
1474484 B.C. Ltd.

**Schedule “B”**

**DIP Lenders**

Powerscourt Investments XXV, LP  
Trinity Capital Inc.  
Horizon Technology Finance Corporation

56826533.2

**SCHEDULE “G”**  
**ALLOCATION OF PURCHASE OF PURCHASED ASSETS AND ASSUMPTION OF ASSUMED**  
**LIABILITIES AMONG THE PURCHASERS**

Subject to and in accordance with the Agreement:

1. New OCI shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Canada Inc.;
2. New OCML shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Construction Management Ltd.;
3. New OI shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Interiors Ltd.;
4. New Consulting shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Consulting Ltd.; and
5. New OCon shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Construction Ltd.,

with the following exceptions/qualifications:

1. 1474484 shall purchase and assume the CNRL Agreement and Trust Cash, along with any obligation to pay the Trust Cash in connection with the Legal Proceedings.
2. New OCML, as opposed to New OCon, shall assume the following Contracts:
  - a. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated September 22, 2023, as amended from time to time. [20-22-014]
  - b. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated June 8, 2022, as amended from time to time. [20-22-008]
  - c. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated July 21, 2022, as amended from time to time. [20-22-004]
  - d. Construction Management Contract for Services between Omicron Construction Ltd. and Allendale LP dated July 14, 2021, as amended from time to time. [20-21-018]

Schedule “C”

**Form of Monitor’s Certificate**

No S240195  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES’ CREDITORS  
ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

**MONITOR’S CERTIFICATE**

1. Capitalized terms used but not otherwise defined in this Monitor’s Certificate shall have the meaning given to them in the Order of the Supreme Court of British Columbia (the “**Court**”) pronounced on April 26, 2024 (the “**Approval and Vesting Order**”) and the Sale Agreement.
2. Pursuant to an Order of the Court pronounced January 11, 2024, KSV Restructuring Inc. (the “**Initial Order**”) was appointed as the monitor (in such capacity, the “**Monitor**”) of the Petitioners.
3. Pursuant to the Initial Order, certain of the protections extended to the Petitioners therein, were extended to Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Inc., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd. and Omicron Construction Ltd. (the “**Omicron Entities**”).
4. Pursuant to the Approval and Vesting Order, the Vendors were made “Additional Petitioners” in the CCAA proceedings.
5. Pursuant to the Approval and Vesting Order, the Court ordered that all of the right, title and interest of the Vendors in and to the Purchased Assets shall vest in the Purchasers or any permitted assignees under the Sale Agreement effective upon, among other things, the delivery by the Monitor of this Monitor’s Certificate to the Purchasers confirming that the transactions contemplated by the Sale Agreement have been implemented.

**THE MONITOR HEREBY CERTIFIES as follows:**

1. The Vendors and the Purchasers have each delivered written notice to the Monitor that all applicable conditions under the Sale Agreement have been satisfied and/or waived, as applicable.
2. The transactions contemplated by the Sale Agreement have been implemented.

**Dated at the City of Vancouver, in the Province of British Columbia, this [●] day of [●], 2024.**

KSV Restructuring Inc., in its capacity as  
Court-appointed Monitor of the  
Petitioners and not in its personal  
capacity.

: \_\_\_\_\_

Name:

Title:



**Schedule "D"**

**Permitted Encumbrances**

1. All security interests and other interests arising exclusively under the Assumed Contracts, if any.

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IN THE SUPREME COURT OF BRITISH  
COLUMBIA

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IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF NEXII BUILDING  
SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and  
NEXII HOLDINGS INC.

PETITIONERS

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**APPROVAL AND VESTING ORDER**

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**SCHEDULE "C"**  
**DRAFT ORDER – ASSIGNMENT ORDER**

(attached)

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, RSC 1985, c C-36, as amended**

**and**

**IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC. OLD  
OMICRON CANADA INC., 4540514 CANADA INC., 1061660 B.C. LTD., 0592286 B.C.  
LTD, 0713447 B.C. LTD, AND 0597783 B.C. LTD.**

**PETITIONERS**

**ASSIGNMENT ORDER**

BEFORE THE HONOURABLE )  
 ) April 26, 2024  
JUSTICE STEPHENS )

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed Monitor (in such capacity, the “**Monitor**”) coming on for a hearing at Vancouver, British Columbia, on the 26<sup>th</sup> day of April, 2024; AND ON HEARING counsel for the Monitor Michael Shakra and Andrew Froh, and those other counsel listed on **Schedule “A”** hereto, and no one else appearing although duly served; AND UPON READING, the material filed, including the Second Report of the Monitor dated April 19, 2024 (the “**Report**”); AND PURSUANT TO the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Court;

**THIS COURT ORDERS AND DECLARES THAT:**

1. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to them in the Asset Purchase Agreement dated April 19, 2024 between the Vendors and Purchasers (as defined below) a copy of which is attached hereto as **Schedule “B”** (the “**Sale Agreement**”).
2. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

**APPROVAL OF ASSIGNMENT OF ASSIGNED CONTRACTS**

3. Upon delivery of the Monitor's Certificate and subject to Section 2.3 of the Sale Agreement:
- (a) all of the rights and obligations of the Vendors under and to the contracts set forth at **Schedule "C" to "H"** hereto (collectively the "**Assigned Contracts**" and each, an "**Assigned Contract**") shall be assigned, transferred, and conveyed to and assumed by 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd., 1474484 B.C. Ltd. (collectively, the "**Purchasers**"), respectively, as identified in the applicable Schedules hereto pursuant to Section 11.3 of the CCAA and such assignment is valid and binding upon all counterparties to the Assigned Contracts, notwithstanding any restriction, condition or prohibition contained in any such Assigned Contracts, relating to the assignment thereof, including but not limited to, any transfer restrictions or provision(s) relating to a change of control or requiring the consent of, or notice for any period in advance of the assignment to, any party to such Assigned Contracts; and
  - (b) the Assigned Contracts shall remain in full force and effect in accordance with the terms thereof. Notwithstanding the foregoing, and subject to paragraph 5 below, the counterparties to the Assigned Contracts are prohibited from exercising any rights or remedies (including, without limitation, any right of set-off) or pursue any demand, claim, action or suit under the Assigned Contracts, and shall be forever barred, enjoined and estopped from taking such action by reason of:
    - (i) any circumstance that existed or event that occurred on or prior to the Closing Date that would have entitled such counterparty to the Assigned Contract to enforce those rights or remedies or caused an automatic termination to occur;
    - (ii) any default arising from the insolvency of the Vendors or any of their affiliates;
    - (iii) any default arising as a result of the commencement of this CCAA proceeding;
    - (iv) any restriction, condition or prohibition contained therein, including any transfer restrictions relating to the assignment thereof or any change of control;
    - (v) the implementation of the Sale Agreement and the proposed Transaction or any parts thereof (including the assignment of the Assigned Contracts pursuant to this Order and any default arising as a result of such assignment); or
    - (vi) one or more of the Vendors having breached a non-monetary obligation under any of the Assigned Contracts.

and the counterparties under the Assigned Contracts are hereby deemed to waive any defaults relating thereto. For greater certainty and without limiting the generality of the foregoing, no counterparty under an Assigned Contract shall rely on a notice of default sent prior to the filing of the Monitor's Certificate to terminate an Assigned Contract as against the applicable Purchaser or its permitted assignee in accordance with the Sale Agreement or against the applicable Vendor.

4. The assignment of the Assigned Contracts shall be subject to the provisions of the approval and vesting order of the Honourable Justice Stephens dated April 26, 2024 (the “**Approval and Vesting Order**”) directing that the Vendors’ rights, title and interests in and to the Assigned Contracts shall vest absolutely in the Purchasers free and clear of all Claims and Encumbrances other than the Permitted Encumbrances in accordance with the provisions of the Approval and Vesting Order.
5. All monetary defaults in relation to the Assigned Contracts as set out in **Schedules “C” to “H”** hereto, if any, other than those arising solely by reason of (i) the Vendors’ insolvency, (ii) the commencement of these CCAA proceedings, or (iii) any failure of any of the Vendors to perform a non-monetary obligation under any of the Assigned Contracts, shall be paid by the Purchasers, as applicable, in an amount agreed to by the Purchasers, as applicable, and the counterparty to such Assigned Contracts or as otherwise determined by further order of this Court within 30 calendar days of the delivery of the Monitor’s Certificate.
6. Upon the delivery of the Monitor’s Certificate and except as expressly set out to the contrary in any agreement among the Vendors, the Purchasers and the applicable counterparty under an Assigned Contract, each Purchaser, as applicable, shall be entitled to all of the rights and benefits and subject to all of the obligations pursuant to the terms of the applicable Assigned Contracts.
7. Notwithstanding:
  - (a) the pendency of these CCAA proceedings or the termination thereof, and any declaration of insolvency made herein;
  - (b) any applications for a bankruptcy order in respect of any or all of the Vendors now or hereafter made pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of any or all of the Vendors,

the assignment of the Assigned Contracts to the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendors or any of them and shall not be void or voidable by creditors of the Vendors, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, or any similar legislation of a jurisdiction

outside of Canada, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. If an Assigned Contract is excluded from the Assumed Contracts prior to the Closing Date in accordance with the Sale Agreement (or as otherwise agreed between the Vendors and Purchasers), then such Contract shall cease to be an Assigned Contract for the purposes of this Order.

#### GENERAL

9. This Court hereby requests the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies, including any Court or administrative tribunal, to act in aid of and to be complementary of this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Vendors, the Purchasers and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners, the Purchasers, the Vendors and the Monitor and their respective agents in carrying out the terms of this Order.
10. The Petitioners, the Vendors, the Monitor, the Purchasers or any other party, each have liberty to apply for such further and other directions or relief as may be necessary or desirable to give effect to this Order.
11. Endorsement of this Order by counsel appearing on this application, other than counsel for the Vendors, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of

Party  Lawyer for KSV Restructuring Inc.

Bennett Jones LLP  
(Michael Shakra)

BY THE COURT

\_\_\_\_\_  
REGISTRAR

**Schedule "A"**

**List of Counsel**

Michael Shakra and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett and Matilda Lici (MS Teams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
Alexis Teasdale	Counsel to the Purchasers, 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd. and 1474484 B.C. Ltd.



**Schedule "B"**

**Sale Agreement (See Attached)**

## ASSET PURCHASE AGREEMENT

This Agreement is made as of the 19<sup>th</sup> day of April, 2024 (the “**Effective Date**”)

### AMONG:

**NEXII BUILDING SOLUTIONS INC.**, a corporation incorporated pursuant to the laws of British Columbia (“**Nexii**”)

– and –

**THE ENTITIES LISTED IN SCHEDULE “A”, ATTACHED HERETO** (collectively, the “**Vendors**” and each a “**Vendor**”)

– and –

**15925347 CANADA INC.**, a corporation incorporated pursuant to the laws of Canada (“**New OCI**”)

**1474480 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New OCML**”)

**1474737 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New OCon**”)

**1474741 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New OI**”)

**1464115 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**New Consulting**”)

**1474484 B.C. LTD.**, a corporation incorporated pursuant to the laws of British Columbia (“**1474484**” and together with New OCI, New OCML, New OCon, New OI and New Consulting, the “**Purchasers**” and each a “**Purchaser**”)

### WHEREAS:

- A. Pursuant to the Order of the Honourable Justice Stephens of the Supreme Court of British Columbia (the “**Court**”) issued January 11, 2024 (as may be further amended or amended and restated from time to time, the “**Initial Order**”), Nexii, Nexii Construction Inc., NBS IP Inc. and Nexii Holdings Inc. (collectively the “**Petitioners**”) were granted, among other things, creditor protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. was appointed as Monitor of the Petitioners, with certain enhanced powers (in such capacity, the “**Monitor**”).
- B. The Initial Order extended certain protections of the Initial Order to Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd., and Omicron Construction Ltd. (collectively, the “**Omicron Group**”).
- C. In connection with the proceedings initiated by the Initial Order (the “**CCAA Proceedings**”), on January 22, 2024, the Petitioners sought and obtained an order of the Court (the “**Sale Process Order**”), among other things, approving a sale process (the “**Sale Process**”) to be conducted by Origin Merchant Partners (“**Origin**”), under the oversight and with the assistance of the Monitor, to solicit interest in, and opportunities for, one or more or any combination of

executable transactions involving the Petitioners and the Omicron Group and/or the Petitioners' and Omicron Groups' business operations as a going concern or otherwise.

- D. In accordance with the terms of the Sale Process, the Purchasers have submitted an offer to purchase the Purchased Assets (as defined herein) from the Vendors.
- E. The Vendors wish to sell to the Purchasers, and the Purchasers wish to purchase from the Vendors, the Purchased Assets, subject to, and in accordance with, the terms and conditions set out in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the "**Parties**", and each, a "**Party**") hereby acknowledge and agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

Unless something in the subject matter or context is inconsistent therewith, the terms defined herein shall have the following meanings:

"**Affiliate**" has the meaning given to the term "affiliate" in the *Business Corporations Act* (British Columbia).

"**Agreement**" means this asset purchase agreement, including any schedules or exhibits appended to this asset purchase agreement, in each case as may be supplemented, amended or amended and restated from time to time in accordance with the terms hereof, with the consent of the Monitor, and "**Article**" and "**Section**" mean and refer to the specified article, section and subsection of this Agreement.

"**Applicable Law**" means, in respect of any Person, property, transaction or event, any: (i) domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code, directive, decree or guideline, by-law or order; (ii) judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, instruments or awards of any Governmental Authority; and (iii) policies, practices, standards, guidelines and protocols having the force of law, that applies in whole or in part to such Person, property, transaction or event.

"**Approval and Vesting Order**" means an order of the Court, in form and substance satisfactory to the Purchasers, Nexii, the DIP Lenders, the Vendors and the Monitor, each acting reasonably, among other things, approving and authorizing this Agreement and the Transaction and vesting in the Purchasers (or as they may direct) all the right, title and interest of Vendors in and to the Purchased Assets owned by the Vendors, free and clear of all Encumbrances, other than Permitted Encumbrances`.

"**Assignment and Assumption Agreement**" means an assignment and assumption agreement evidencing the assignment to the applicable Purchasers of the Vendors' interest in, to and under the Assumed Contracts and the assumption by the applicable Purchasers of all of the Assumed Liabilities, in form and substance satisfactory to the Parties, acting reasonably.

"**Assignment Order**" means an order of the Court pursuant to section 11.3 of the CCAA, in form and substance satisfactory to the Purchasers, Nexii, the Vendors and the Monitor, each acting

reasonably, assigning to the applicable Purchasers the rights and obligations of the Vendors under the Assumed Contracts to which the Vendors are a party for which a consent, approval or waiver necessary for the assignment of such Assumed Contracts has not been obtained, and which will include, if necessary, a mechanism for the resolution of any disputed Cure Costs.

“**Assumed Contracts**” means the Contracts listed in Schedule “B” (including as such Assumed Contracts may be amended, restated, supplemented or otherwise modified from time to time), as modified in accordance with Section 2.3(a).

“**Assumed Liabilities**” means: (a) Liabilities specifically and expressly designated as assumed Liabilities in Schedule “C”; and (b) all Liabilities which relate to the Business under any Assumed Contracts; in each case, solely in respect of the period from and after the Closing Time and not relating to any default existing prior to or as a consequence of Closing.

“**Authorization**” means any authorization, approval, consent, concession, exemption, license, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Authority having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person’s property or business and affairs or from any Person in connection with any easements, contractual rights or other matters.

“**Books and Records**” means all files, documents, instruments, papers, emails, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including Tax and accounting books and records, used or intended for use by, and in the possession of the Vendors or any of their respective Affiliates solely in connection with the Business or ownership or operation of the Purchased Assets, including information, documents and records relating to the Assumed Contracts, the Assumed Liabilities, current and previously completed projects, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, cost and pricing information, production reports and records, equipment logs, operating guides and manuals, credit records, records relating to present and former suppliers and contractors, plans and projections and all other records, data and information stored electronically, digitally or on computer-related media, excluding the minute books and corporate records.

“**Business**” means the businesses carried on by the Vendors, including the design and construction of all types of projects, and does not include, for the avoidance of doubt, the business of Nexii that is not carried on by the Vendors.

“**Business Day**” means a day on which banks are open for business in Vancouver, British Columbia, but does not include a Saturday, Sunday or statutory holiday in the Province of British Columbia.

“**Cash Payment**” has the meaning set out in Section 3.1.

“**Cash Purchase Price**” has the meaning set out in Section 3.3(b).

“**CCAA**” has the meaning set out in the recitals hereto.

“**CCAA Proceedings**” has the meaning set out in the recitals hereto.

“**Claims**” means any civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, audit, chose in or cause of action, suit, default, assessment or reassessment, litigation, prosecution, third party action, arbitral proceeding or

proceeding, complaint or allegation, by or before any Person, complaints, grievance, petition, application, charge, investigation, indictment, prosecution, judgement, debt, liability, damage, or loss, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, known or unknown, disputed or undisputed, contractual, legal or equitable.

“**Closing**” means the closing and consummation of the Transaction.

“**Closing Date**” means the date that is seven (7) Business Days after the date upon which the conditions set forth in ARTICLE 7 have been satisfied or waived, other than any conditions set forth in ARTICLE 7 that by their terms are to be satisfied or waived at the Closing (or such other earlier or later date as may be agreed by the Vendors and the Purchasers in writing, each acting reasonably); provided that the Closing Date shall be no later than the Outside Date.

“**Closing Time**” means 12:01 a.m. (Vancouver time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

“**Contracts**” means all pending and executory contracts, agreements, deeds, leases, understandings and arrangements (whether oral or written) to which any Vendor is a party or by which such entity is bound or in which such entity has, or will at Closing have, any rights or by which any of its property or assets are or may be affected.

“**Court**” has the meaning set out in the recitals hereto.

“**Cure Costs**” means, in respect of an Assumed Contract, all amounts, costs, fees and expenses required to be paid: (a) to remedy all of the Vendors’ monetary defaults in relation to such Assumed Contract, other than those arising by reason only of the Vendors’ bankruptcy, insolvency or failure to perform a non-monetary obligation; or (b) pursuant to the Approval and Vesting Order or the Assignment Order, as applicable, and which for greater certainty, may be an amount agreed to by the applicable Purchaser and the counterparty to such Assumed Contract.

“**Deposit**” has the meaning set out in Section 3.3(a).

“**DIP Lenders**” has the meaning set out in Section 3.3(d).

“**Effective Date**” has the meaning set out in the preamble hereto.

“**Employee**” means any individual who is employed by a Vendor and in such capacity provided services to any of the Vendors immediately prior to the Closing Date.

“**Encumbrance**” means any security interest, debenture, lien, Claim, charge, right of retention, trust, deemed trust, judgement, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, assignment (as security), royalty interest, defect of title or adverse claim of any nature or kind, mortgage or right of a third party (including any contractual right, such as a purchase option, call or similar right of a third party in respect of securities, right of first refusal, right of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

“**Excise Tax Act**” means the *Excise Tax Act*, RSC, 1985, c. E-15.

“**Excluded Assets**” means those assets of the Vendors that are not Purchased Assets, including the Excluded Contracts and including any shares a Vendor holds of another Vendor.

“**Excluded Contracts**” means those contracts and other agreements of the Vendors that are not Assumed Contracts.

“**Excluded Liabilities**” means those Liabilities of the Vendors that are not Assumed Liabilities.

“**General Conveyance**” means a general conveyance evidencing the conveyance to the applicable Purchasers of the Vendors’ interest in and to the Purchased Assets, in form and substance satisfactory to the Parties, acting reasonably.

“**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), judicial body, regulatory authority, tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation having jurisdiction over the Vendors, the Purchasers, the Purchased Assets or the Assumed Liabilities.

“**GST/HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act*, and any provincial, territorial or foreign legislation imposing a similar value added or multi-staged tax.

“**Income Tax Act**” means the *Income Tax Act*, RSC, 1985, c. 1 (5th Supp.).

“**Initial Order**” has the meaning set out in the recitals hereto.

“**Interim Period**” means the period beginning on the Effective Date and ending at the Closing Time.

“**Liability**” means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“**Monitor**” has the meaning set out in the recitals hereto.

“**Monitor’s Certificate**” means the certificate of the Monitor contemplated by the Approval and Vesting Order certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Deposit and the Cash Purchase Price.

“**Omicron Group**” has the meaning set out in the recitals hereto.

“**Organizational Documents**” means any trust document, charter, certificate or articles of incorporation or amalgamation, articles of amendment, articles of association, articles of organization, articles of continuance, bylaws, partnership agreement or similar formation or governing documents of a Person (excluding individuals).

“**Origin**” has the meaning set out in the recitals hereto.

“**Outside Date**” means 11:59 pm (Vancouver time) on May 30, 2024 or such later date and time as the Vendors, with the consent of the Monitor, and the Purchasers may agree to in writing.

“**Parties**” has the meaning set out in the recitals hereto.

“**Party**” has the meaning set out in the recitals hereto.

“**Permitted Encumbrances**” means all security interests and other interests arising exclusively under the Assumed Contracts, if any.

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

“**Petitioners**” has the meaning set out in the recitals hereto.

“**Post-Closing Sale**” has the meaning set out in Section 3.3(d).

“**Post-Closing Sale Agreement**” has the meaning set out in Section 3.3(d).

“**Purchased Assets**” means all of the Vendors’ right, title and interest in and to the business, assets, properties, contractual rights, goodwill, rights and claims of the Vendors related to the Business on the Closing Date, wherever situated and of whatever kind and nature, real or personal, tangible or intangible, whether or not reflected on the Books and Records of the Vendors, in each case, other than the Excluded Assets, and for certainty, including the Assumed Contracts and each of the assets listed at Schedule “E” hereto.

“**Purchase Price**” has the meaning set out in Section 3.1.

“**Purchaser**” has the meaning set out in the recitals hereto.

“**Sale Process**” has the meaning set out in the recitals hereto.

“**Sale Process Order**” has the meaning set out in the recitals hereto.

“**Services Agreement**” has the meaning set out in Section 5.10.

“**Taxes**” means, with respect to any Person, all national, federal, provincial, local or other taxes, including income taxes, capital gains taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, workers’ compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties, fees, assessments, imposts, levies and other charges of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, fines, or additions with respect thereto and any interest in respect of such additions or penalties and any Liability for the payment of any amounts of the type described in this paragraph as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Person.

“**Transaction**” means, collectively, all of the transactions contemplated by this Agreement, including the purchase and sale of the Purchased Assets.

“**Transfer Taxes**” means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, conveyance fees, security interest filing or recording fees and any other similar or like taxes or charges imposed by a Governmental Authority, including any related penalties and interest, in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including GST/HST, but excluding, for certainty, income tax.

“**Transferred Employees**” means those Employees who accept an offer of employment from a Purchaser (or one of its Affiliates), made pursuant to Section 5.5.

“**Vendors**” has the meaning set out in the recitals hereto.

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

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

## **1.3 General Construction**

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement as a whole and not to any particular section hereof. 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.

## **1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings and the term “third party” means any other Person other than the Vendors or the Purchasers, or any Affiliates thereof.

## **1.5 Currency**

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

## **1.6 Statutes**

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

## **1.7 Schedules & Amendments to Schedules**

The following exhibits and schedules are attached hereto and incorporated in and form part of this Agreement:

### **SCHEDULES**

Schedule “A”	-	Vendors
Schedule “B”	-	Assumed Contracts
Schedule “C”	-	Assumed Liabilities
Schedule “D”	-	Allocation Schedule



Schedule "E"	-	Purchased Assets
Schedule "F"	-	Form of Post-Closing Sale Agreement
Schedule "G"	-	Allocation of Purchase of Purchased Assets and Assumption of Assumed Liabilities Among the Purchasers

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Exhibits and Schedules and the interpretation provisions set out in this Agreement will apply to the Exhibits and Schedules. Unless the context otherwise requires, references in the Exhibits and Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

## **ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS**

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

At the Closing Time, subject to the terms and conditions of this Agreement, the Vendors shall, in accordance with Schedule "G", sell, assign, transfer and convey to the Purchasers, and the Purchasers shall, in accordance with Schedule "G", purchase and assume from the Vendors, all of the Vendors' right, title and interest in, to and under the Purchased Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

### **2.2 Transfer of Purchased Assets and Assumption of Liabilities**

Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk, legal and beneficial ownership of the Purchased Assets shall transfer from the Vendors to the Purchasers upon Closing in accordance with Schedule "G", and the Purchasers agree to, in accordance with Schedule "G", assume, discharge, perform and fulfill all of the Assumed Liabilities from and after the Closing Date.

### **2.3 Assumed Contracts**

- (a) From and after the date hereof until the date that is ten days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the Court, the Purchasers shall be entitled to make additions, deletions and modifications to the Contracts classified as "Assumed Contracts", in its sole discretion, following consultation with the Vendors and the Monitor. For greater certainty: (i) any Assumed Contract subsequently designated by a Purchaser as an Excluded Contract after the date of this Agreement shall be deemed to no longer be an Assumed Contract, and shall be an Excluded Contract; and (ii) any Contract subsequently designated by a Purchaser as an Assumed Contract after the date of this Agreement shall be deemed an Assumed Contract for the purposes of this Agreement.
- (b) From and after the date hereof until the Closing Date, each of the Parties shall use reasonable commercial efforts to obtain, as may be required by the terms of such Assumed Contracts, all consents and approvals required to assign to the applicable Purchaser the Assumed Contracts that are material to the Business, as determined by the Purchasers and the Vendors, each acting reasonably.
- (c) To the extent that any Assumed Contract is not assignable without the consent or approval of the counterparty or any other Person, and such consent or approval has not been obtained by the date that is ten days prior to the Closing Date: (i) the Vendors' interest in, to and under such Assumed Contract may be conveyed to the applicable Purchaser pursuant to an Assignment Order; (ii) Nexii and the Vendors will use commercially reasonable efforts to

obtain an Assignment Order in respect of such Assumed Contract on or prior to the Closing Date; and (iii) if an Assignment Order is obtained in respect of such Assumed Contract, the applicable Purchaser shall accept the assignment of such Assumed Contract pursuant to the terms of the Assignment Order.

- (d) To the extent that any Cure Costs are payable with respect to any Assumed Contract, the applicable Purchaser shall be responsible for and shall pay all such Cure Costs, which shall be paid directly to the applicable counterparty, which Cure Costs shall be in addition to and shall not form part of the Purchase Price. Unless the Parties otherwise agree, to the extent that any Cure Cost is payable with respect to any Assumed Contract, where such Assumed Contract is assigned pursuant to an Assignment Order, the applicable Purchaser shall pay such Cure Costs in accordance with such Assignment Order, and where such Assumed Contract is not assigned pursuant to an Assignment Order, the applicable Purchaser shall pay such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the applicable Purchaser and such counterparty.
- (e) The Vendors shall be entitled to disclaim or seek to disclaim any Excluded Contracts at any time.

It shall be the sole obligation of the Purchasers, at the Purchasers' sole cost and expense, to provide any and all financial assurances, deposits or security, including without limitation any Cure Costs to permit the transfer of the Purchased Assets, including the Assumed Contracts, to the Purchasers, as applicable.

## **2.4 Excluded Liabilities**

No Purchaser shall assume or be liable, directly or indirectly, or otherwise responsible for any Excluded Liabilities.

# **ARTICLE 3 PURCHASE PRICE**

## **3.1 Purchase Price**

The aggregate consideration payable by the Purchasers for the Purchased Assets shall be \$3,000,000 in cash at Closing (the "**Cash Payment**"), plus the assumption of the Assumed Liabilities and payment of the Conditional Payment in accordance with Section 3.3(d)(the "**Purchase Price**"). The Purchase Price shall be satisfied in accordance with Section 3.3. The Purchase Price shall not be subject to any claim for set off, reduction or adjustment or any similar claim or mechanism of any kind whatsoever.

## **3.2 Allocation of the Purchase Price**

The Purchasers and the Vendors agree that the Purchase Price shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) in accordance with Schedule "D" and Schedule "G". To the extent the precise amount of any component of such allocation cannot be finally determined as at Closing, the Parties shall determine such amount forthwith following Closing in accordance with Schedule "D" and Schedule "G". The Parties shall timely file all Tax returns (including amended returns and claims for refund) in a manner consistent with such allocation.

### 3.3 Satisfaction of Purchase Price

The Purchasers shall pay the Purchase Price in accordance with the following:

- (a) Deposit. The Parties acknowledge that the Purchasers have paid a deposit in the amount of \$300,000 (the “**Deposit**”), which Deposit is being held by the Monitor in trust, and, subject to Section 8.2, shall (inclusive of all interest earned thereon, if any) be credited against the Cash Payment at Closing;
- (b) Balance of the Cash Payment. An amount equal to the Cash Payment less the Deposit (the “**Cash Purchase Price**”) shall be paid in cash by the Purchasers to the Monitor on the Closing Date, by wire transfer of immediately available funds; and
- (c) Assumed Liabilities. An amount equal to the value of the Assumed Liabilities, which the Purchasers shall assume, in accordance with Schedule “G”, on the Closing Date, shall be satisfied by the applicable Purchasers paying, performing, and/or discharging such Assumed Liabilities as and when they become due; and
- (d) Conditional Payment. If at any time during the five year period immediately following Closing: (i) any one or more of the Purchasers (or any successor corporations) holding all or substantially all of the Purchased Assets immediately prior to such transaction or series of transactions (the “**Controlling Entities**”) sells, leases, transfers, exclusively licenses, conveys or otherwise disposes, collectively, in one transaction or a series of transactions, all or substantially all of the interests in all or substantially all of the Purchased Assets (other than in connection with an internal reorganization of the one or more of the Controlling Entities where (i) the transferee or recipient of the some or all of the interests in the Purchased Assets in such internal reorganization (the “**Transferee**”) is an affiliate of one or more of the Controlling Entities and (ii) such Transferee has delivered a joinder to this Agreement, pursuant to which the Transferee agrees in favour of the DIP Lenders to be become party to and bound by the Post-Closing Sale Agreement as a “Purchaser” and as if an original party thereto and subject to the provisions of Section 1 and 2 of the Post-Closing Sale Agreement); or (ii) there occurs a merger, amalgamation, sale, arrangement, take-over bid, reorganization, plan of arrangement, business combination, consolidation or other similar transaction or series of transactions as a result of which the beneficial owners of shares of the Controlling Entities do not own beneficial interests in a majority of the shares of the Controlling Entities outstanding immediately following such transaction or series of transactions ((i) and (ii) collectively, a “**Post-Closing Sale**”), the Purchasers shall pay to one or more of Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation (collectively, the “**DIP Lenders**”), as directed by the DIP Lenders, within ten (10) Business Days of the closing of such Post-Closing Sale, a contingent payment in cash equal to, in aggregate, 15% of the difference between (i) the consideration provided to the Controlling Entities (or shareholders thereof) in connection with the Post-Closing Sale and (ii) \$7,000,000, in accordance with an agreement to be entered into by the Purchasers and the DIP Lenders prior to Closing in the form attached as Schedule “F” (the “**Post-Closing Sale Agreement**”). In the event the Post-Closing Sale Agreement is assigned by any of Purchasers in accordance with its terms, any such assignee shall be party to the Post-Closing Sale Agreement and this Section 3.3(d) shall apply, *mutatis mutandis*, to any transaction described in (i) or (ii) above that involves such assignee.

### 3.4 Transfer Taxes; Tax Elections

The Parties agree that:

- (a) The Purchase Price does not include Transfer Taxes and the Purchasers shall be liable for and shall pay any and all Transfer Taxes pertaining to the Purchasers' acquisition of the Purchased Assets.
- (b) Where the Vendors are required under Applicable Law to collect or pay Transfer Taxes, the Purchasers will pay the amount of such Transfer Taxes to the Monitor (on behalf of the Vendors) at Closing.
- (c) Except where the Vendors are required under Applicable Law to collect or pay such Transfer Taxes, the Purchasers shall pay such Transfer Taxes directly to the appropriate Governmental Authority or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due. The Vendors will do and cause to be done such things as are reasonably requested to enable the Purchasers to comply with such obligation in a timely manner. If the Vendors are required under Applicable Law to pay any such Transfer Taxes which are not paid by a Purchaser at Closing, the Purchasers shall promptly reimburse the Vendors the full amount of such Transfer Taxes upon delivery to the Purchasers of copies of receipts showing payment of such Transfer Taxes.
- (d) The Purchasers shall indemnify the Vendors and the Monitor for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendors may pay or for which the Vendors or the Monitor may become liable as a result of any failure by the Purchasers to pay or remit such Transfer Taxes.
- (e) Notwithstanding the foregoing, if available, the Purchasers and the Vendors (or the Monitor on their behalf) shall jointly execute an election or elections under section 167 of the *Excise Tax Act* in connection with the transfer of the Purchased Assets contemplated herein, and the Purchasers, as applicable, shall file such election(s) with their applicable Tax returns for the reporting period in which the sale of the Purchased Assets takes place. Any GST/HST incurred in connection with the purchase and sale of the Purchased Assets contemplated by this Agreement, including where an election pursuant to subsection 167(1) of the *Excise Tax Act* is not or cannot be validly made in respect of the Purchased Assets, shall be borne by Purchasers, as applicable.
- (f) The Purchasers and the Vendors (or the Monitor on their behalf) agree to, at the option of the Purchasers, elect jointly in the prescribed form under Section 22 of the *Income Tax Act* as to the sale of the accounts receivable of the Vendors and other assets that are described in section 22 of the Tax Act and to designate in such election an amount equal to the portion of the Purchase Price allocated to such assets pursuant to Section 3.2 as the consideration paid by the applicable Purchaser(s) therefor.
- (g) The Vendors and the Purchasers acknowledge that the Purchasers have agreed to assume the Assumed Liabilities in accordance with Schedule "G". To the extent that the Vendors have received amounts in respect of services not rendered or goods not delivered in respect of the Assumed Liabilities, in each case prior to the Closing, the Purchased Assets having a fair market value equal to those amounts are transferred to the applicable Purchaser as payment for such Purchaser's agreement to assume a corresponding amount of the Assumed Liabilities relating to those services or goods, and the Purchasers and the Vendors (or the Monitor on their behalf), as applicable, shall jointly elect pursuant to subsection 20(24) of the *Income Tax Act* and under any similar provision of any applicable

provincial legislation. The applicable Vendors and Purchasers shall file such election, along with any documentation necessary or desirable to give effect to such election, with the Canada Revenue Agency and any other appropriate taxation authority within the prescribed time periods.

## ARTICLE 4 REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties of the Vendors

Nexii and the Vendors hereby represent and warrant as of the date hereof and as of the Closing Time as follows, and acknowledge that the Purchasers are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- (a) Incorporation and Status. The Vendors other than Omicron Canada Inc. are corporations incorporated and existing under the *Business Corporations Act* (British Columbia), and are in good standing under such statute. Omicron Canada Inc. is a corporation incorporated and existing under the *Canada Business Corporations Act*, and is in good standing under such statute. Each Vendor has the power and authority to enter into, deliver and perform their obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and, subject to obtaining of the Approval and Vesting Order in respect of the matters to be approved therein, performance by the Vendors of this Agreement has been authorized by all necessary corporate action on the part of the Vendors.
- (c) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Vendors and constitutes a legal, valid and binding obligation of the Vendors, enforceable against them in accordance with its terms, subject only to obtaining the Approval and Vesting Order and except as such enforceability may be limited by general principles of equity.
- (d) Residence of Vendors. No Vendor is a non-resident of Canada within the meaning of the Income Tax Act.
- (e) No Consents or Authorizations. Subject only to obtaining the Approval and Vesting Order, and any consents, approvals, waivers, or Assignment Order(s) required in connection with the assignment of the Assumed Contracts, no consent, approval, waiver or other Authorization is required from any Governmental Authority or any other Person, in connection with the Vendors' execution, delivery or performance of this Agreement and each of the agreements to be executed and delivered by the Vendors hereunder, or the sale of the Purchased Assets hereunder, except for any Authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that: (i) have already been obtained; or (ii) the absence of which would not, individually or in the aggregate, have a material and adverse effect on the Purchased Assets or materially delay or impair the ability of the Vendors to consummate the Transaction.
- (f) Brokers' or Finders' Fees. Neither Nexii nor any Vendor has incurred any obligation or liability, contingent or otherwise, for any broker's or finder's fees or commissions in respect of this Transaction for which a Purchaser shall have any obligation or liability to pay.
- (g) No Proceedings. There are no proceedings pending or, to the knowledge of the Vendors or Nexii, threatened against the Vendors or Nexii before any Governmental Authority, which

prohibit or seek to enjoin, delay, restrict or prohibit the Closing of the Transaction, as contemplated by this Agreement, or that would reasonably be expected to delay, restrict or prevent the Vendors or Nexii from fulfilling any of their obligations set forth in this Agreement.

- (h) GST/HST Registration. The Vendors are registrants for purposes of GST/HST, and their registration numbers are:

Entity	Registration #
Omicron Canada Inc.	836919068 RT0001 (GST)
Omicron Construction Management Ltd.	788409290 RT0001 (GST)
Omicron Consulting Ltd.	888711520 RT0001 (GST)
Omicron Interiors Ltd	857756431 RT0001 (GST_
Omicron Construction Ltd.	878855923 RT0001 (GST)

## 4.2 Representations and Warranties of the Purchasers

The Purchasers hereby represent and warrant to and in favour of Nexii and the Vendors as of the date hereof and as of the Closing Time, and acknowledge that, the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- (a) Incorporation and Status. The Purchasers are corporations incorporated and existing under the *Business Corporations Act* (British Columbia) or the *Canada Business Corporations Act*, as indicated on the first page of this Agreement, are in good standing under such statutes and have the power and authority to enter into, deliver and perform their obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and performance by the Purchasers of this Agreement has been authorized by all necessary corporate action on the part of the Purchasers.
- (c) No Conflict. The execution, delivery and performance by the Purchasers of this Agreement does not (or would not with the giving of notice, the lapse of time, or both) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the Organizational Documents of a Purchaser.
- (d) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Purchasers and constitutes a legal, valid and binding obligation of the Purchasers, enforceable against them in accordance with its terms subject only to the Approval and Vesting Order and except as such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or similar Applicable Laws affecting creditors' rights generally and by general principles of equity.
- (e) No Proceedings. There are no proceedings pending, or to the knowledge of the Purchasers, threatened, against a Purchaser before any Governmental Authority, which prohibit or seek to enjoin delay, restrict or prohibit the Closing of the Transaction, as contemplated by this

Agreement, or which would reasonably be expected to delay, restrict or prevent a Purchaser from fulfilling any of its obligations set forth in this Agreement.

- (f) No Consents or Authorizations. Subject only to obtaining the Approval and Vesting Order, and any consents, approvals, waivers, or Assignment Order(s) required in connection with the assignment of the Assumed Contracts, no consent, approval, waiver or other Authorization is required from any Governmental Authority or any other Person, in connection with the Purchasers' execution, delivery or performance of this Agreement and each of the agreements to be executed and delivered by the Purchasers hereunder, or the purchase of any of the Purchased Assets hereunder, except for any Authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that: (i) have already been obtained; or (ii) the absence of which would not, individually or in the aggregate have a material effect on or materially delay or impair the ability of the Purchasers to consummate the Transaction.
- (g) Brokers' or Finders' Fees. No Purchaser has incurred any obligation or liability, contingent or otherwise, for any broker's or finder's fees or commissions in respect of this Transaction for which Nexii or the Vendors shall have any obligation or liability to pay.
- (h) Solvency. No Purchaser has committed an act of bankruptcy, is insolvent, has proposed a compromise or arrangement to its creditors generally, has had any application for a bankruptcy or similar creditor enforcement order filed against it, has taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has had an encumbrancer take possession of any of its property, or has had any execution or distress become enforceable or levied against any of its property.
- (i) GST/HST Registration. The Purchasers are a registrants for purposes of GST/HST, and their registration numbers are:

Entity	Registration #
New OCI	745886358 RT0001
New OCML	746199553 RT0001
1474484	783814429 RT0001
New OCon	745853556 RT0001
New OI	783463821 RT0001
New Consulting	798234027 RT0001

### 4.3 As is, Where is

The Purchasers acknowledge, agree and confirm that, at the Closing Time, the Purchased Assets shall be sold and delivered to the applicable Purchasers, and the Assumed Liabilities shall be assumed by the applicable Purchasers, on an "as is, where is" basis, subject only to the representations and warranties contained herein. Other than those representations and warranties contained herein, the Purchasers acknowledge and agree that: (a) no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect

of any other matter or thing whatsoever in connection with the Transaction, including with respect to the Purchased Assets or the Assumed Liabilities; and (b) the Monitor has not provided any representations and warranties in respect of any matter or thing whatsoever in connection with the Transaction, including with respect to the Purchased Assets or the Assumed Liabilities. The disclaimer in this Section 4.3 is made notwithstanding the delivery or disclosure to the Purchasers or their directors, officers, employees, agents or representatives of any documentation or other information (including financial projections or supplemental data not included in this Agreement). Without limiting the generality of the foregoing and unless and solely to the extent expressly set forth in this Agreement or in any documents required to be delivered pursuant to this Agreement, any and all conditions, warranties or representations, expressed or implied, pursuant to Applicable Law cannot be relied on by the Purchasers and are hereby expressly waived by the Purchasers. The Purchasers further acknowledge, agree and confirm that they have conducted their own investigations, due diligence and analysis in satisfying themselves as to all matters relating to Nexii, the Vendors and their assets, liabilities and Business, including without limitation, the Purchased Assets and the Assumed Liabilities. Until Closing, the Purchased Assets shall remain at the risk of the Vendors. After Closing occurs, the Purchased Assets shall be at the sole risk of the Purchasers regardless of the location of the Purchased Assets.

## **ARTICLE 5 COVENANTS**

### **5.1 Closing Date**

The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on or before the Outside Date.

### **5.2 Motion for Approval and Vesting Order**

As soon as practicable after the Parties' execution of this Agreement, Nexii, the Vendors or the Monitor shall serve and file with the Court for a motion seeking the issuance of the Approval and Vesting Order (and, if applicable, the Assignment Order) seeking relief that will, *inter alia*, approve this Agreement and the Transaction. The Purchasers shall cooperate with Nexii, the Vendors and/or the Monitor, as applicable, in their efforts to obtain the issuance and entry of the Approval and Vesting Order.

### **5.3 Interim Period**

During the Interim Period, except (a) as otherwise expressly contemplated or permitted by this Agreement (including the Approval and Vesting Order), (b) as necessary in connection with the CCAA Proceedings, (c) as otherwise provided in the Initial Order and any other Court orders prior to the Closing Time, or (d) as consented to by the Purchasers and the Vendors, such consent not to be unreasonably withheld, conditioned or delayed, the Vendors shall use commercially reasonable efforts to continue to maintain the Purchased Assets in substantially the same manner as on the Effective Date, and shall not take any material action with respect to the Business, the Purchased Assets or the Assumed Liabilities without the consent of the Purchasers (such consent not to be unreasonably withheld, delayed or conditioned). Without limiting the generality of the foregoing, all cash and cash equivalents of the Vendors shall be maintained by the Vendors and not distributed or otherwise used, other than to fulfill ongoing obligations to employees or under the Assumed Contracts, in each case in the ordinary course. During the Interim Period, upon not less than 2 Business Days' notice and subject at all times to the workplace rules, policies, procedures, standards and supervision of the Vendors, the Vendors shall give to the Purchasers and their representatives, at the sole cost, expense and risk of the Purchasers and their representatives (as applicable), reasonable access during normal business hours to the records and personnel of the Vendors, to conduct such investigations and inspections as the Purchasers reasonably deem necessary or desirable and the Vendors shall co-operate reasonably in facilitating such investigations and inspections and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchasers.



During the Interim Period, the Vendors shall provide the Purchasers with notice of any contracts proposed to be entered into by the Vendors and, if any such Contract is entered into, the Purchasers may elect to have any such contracts become "Assumed Contracts" hereunder.

#### **5.4 Insurance Matters**

Until Closing, the Vendors shall keep in full force and effect all existing insurance policies in relation to the Purchased Assets (if any) and give any notice or present any Claim under any such insurance policies consistent with past practice of the applicable Vendor in the ordinary course of business.

#### **5.5 Employee Matters**

- (a) The Vendors will provide to the Purchasers such information with respect to the Employees as may be reasonably required for the Purchasers to comply with their obligations under this Section 5.5.
- (b) One or more (at the discretion of the Purchasers) Purchasers shall, or shall cause an Affiliate to, make written offers of employment (in a form agreed by the Vendor and in compliance with applicable law) to any Employees that the Purchasers wish to employ no later than seven Business Days before the Closing Date, which shall be (i) conditional upon Closing and effective as of the Closing Time, and (ii) on terms and conditions that are substantially similar and no less favourable in the aggregate to those terms and conditions of employment currently available to each such Employee immediately prior to the Closing Date, including plans that are for the benefit of Employees (or any spouses, dependents, survivors or beneficiaries of such Employees).
- (c) The applicable Purchasers or their Affiliates, as applicable, shall assume and be responsible for all Liabilities and obligations with respect to the Transferred Employees on and after the Closing Time, including but not limited to:
  - (i) all liabilities for salary, wages, bonuses, commissions, vacation pay, benefits and other compensation related to the employment of Transferred Employees after the Closing Time;
  - (ii) all termination costs, including termination costs relating to service of Transferred Employees prior to the Closing Time, resulting from or relating to the termination of Transferred Employees after the Closing Time;
  - (iii) all liabilities for Claims for injury, disability, death or workers' compensation arising from or related to the employment of Transferred Employees after the Closing Time; and
  - (iv) all employment-related Claims, penalties and assessments in respect of Transferred Employees arising from or related to matters that occur after the Closing Time, including without limitation Claims, penalties and assessments in respect of occupational health and safety.

#### **5.6 Actions to Satisfy Closing Conditions**

- (a) Nexii and the Vendors agree to take all commercially reasonable actions so as to ensure that the conditions set forth in Section 7.1 and Section 7.2 are satisfied on or prior to the Closing Date; and

- (b) The Purchasers agree to take all commercially reasonable actions so as to ensure that the conditions set forth in Section 7.1 and Section 7.3 are satisfied on or prior to the Closing Date.

### **5.7 Change of Vendors' Names**

The Vendors shall, and Nexii shall take all action required to cause the Vendors to, immediately following Closing, change their names to names which do not include the words "Omicron", or any derivative thereof and shall seek approval of such name changes in the Approval and Vesting Order.

### **5.8 Office 365**

During the Interim Period (and, if necessary, following Closing), the parties shall take such actions as may be required to separate from Nexii's Microsoft Office 365 software platform the portion thereof used by the Omicron Group (the "**Omicron Office 365 Software**"), such that the Purchasers will have full use of the Omicron Office 365 Software from and after Closing, with any associated third party fees to be borne equally by the Purchasers, on one hand, and Nexii on the other.

### **5.9 Cash Received Post-Closing**

Following Closing, if the Vendors or Nexii receive any payments earned by the Vendors under an Assumed Contract, they shall promptly pay such amounts over to the applicable Purchaser.

### **5.10 Services Agreement**

During the Interim Period, the Parties shall negotiate in good faith a services agreement acceptable to the Purchasers and the DIP Lenders, each acting reasonably, for the provision of certain services by the Purchasers, their Affiliates and/or their principals to Nexii following Closing (the "**Services Agreement**").

## **ARTICLE 6 CLOSING ARRANGEMENTS**

### **6.1 Closing**

Closing shall take place electronically on the Closing Date effective as of the Closing Time (or as otherwise determined by mutual agreement of the Parties in writing), by the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format.

### **6.2 Vendors' Closing Deliveries**

At the Closing Time, the Vendors shall deliver or cause to be delivered to the Purchasers the following:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- (b) a true copy of the Approval and Vesting Order, as issued and entered by the Court;
- (c) a true copy of all Assignment Orders required by the Purchasers for Closing, if any, as issued and entered by the Court;
- (d) the Tax election(s) contemplated by Section 3.4(e), duly executed by the Vendors, as applicable;
- (e) resolutions of the directors of each Vendor authorizing the Transaction;
- (f) the General Conveyance, duly executed by the Vendors;

- (g) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (h) the Post-Closing Sale Agreement, duly executed by the DIP Lenders;
- (i) the Services Agreement, duly executed by Nexii;
- (j) evidence acceptable to the Purchasers, acting reasonably, that the Omicron Office 365 Software has been, or will, promptly following Closing be, separated from Nexii's Microsoft Office 365 software platform in accordance with Section 5.8 and will be available for use by the Purchasers from and after Closing.
- (k) a certificate of an officer of each Vendor dated as of the Closing Date confirming that all of the representations and warranties of such Vendor contained in this Agreement are true (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date, and that such Vendor has performed in all material respects the covenants to be performed by it prior to the Closing Time; and
- (l) such other agreements, documents and instruments as may be reasonably required by the Purchasers to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

### **6.3 Purchaser's Closing Deliveries**

At or before the Closing, the Purchasers shall deliver or cause to be delivered to the Vendors (or to the Monitor, as applicable), the following:

- (a) the Cash Payment;
- (b) if applicable, payment to the Monitor (or evidence of payment by the Purchasers to the relevant Governmental Authorities) of all Transfer Taxes required by Applicable Law to be collected on Closing, in accordance with Section 3.4;
- (c) the Tax election(s) contemplated by Section 3.4(e), duly executed by the Purchasers, as applicable;
- (d) resolutions of the directors of each Purchaser authorizing the Transaction;
- (e) the General Conveyance, duly executed by the Purchasers;
- (f) the Assignment and Assumption Agreement, duly executed by the Purchasers;
- (g) the Post-Closing Sale Agreement, duly executed by the Purchasers;
- (h) the Services Agreement, duly executed by the Purchasers, their Affiliates and/or their principals, as applicable;
- (i) a certificate of an officer of each Purchaser dated as of the Closing Date confirming that all of the representations and warranties of such Purchaser contained in this Agreement are true: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date, and that such Purchaser has performed in all material respects the covenants to be performed by it prior to the Closing Time; and
- (j) such other agreements, documents and instruments as may be reasonably required by the Vendors to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

## ARTICLE 7 CONDITIONS OF CLOSING

### 7.1 Conditions Precedent in Favour of the Parties

The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) Approval and Vesting Order. The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably. The Approval and Vesting Order shall, among other things add the Vendors as “Petitioners” in the CCAA Proceedings.
- (a) No Order. No Applicable Law and no final or non-appealable judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction.
- (b) No Restraint. No motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (c) Monitor’s Certificate. The Monitor shall have provided an executed copy of the Monitor’s Certificate confirming that all conditions to Closing have either been satisfied or waived by both the Purchasers and the Vendors.

The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in this Section 7.1 is not satisfied, performed or mutually waived on or prior to the Outside Date, any Party may elect on written notice to the other Parties to terminate this Agreement.

### 7.2 Conditions Precedent in Favour of the Purchasers

The obligation of the Purchasers to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Vendors’ Deliverables. The Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchasers at the Closing all the documents contemplated in Section 6.2.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 4.1 shall be true and correct: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Vendors and Nexii shall have performed, in all material respects, all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendors or Nexii on or before the Closing Date.

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

### 7.3 Conditions Precedent in Favour of the Vendors

The obligation of the Vendors to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Purchaser's Deliverables. The Purchasers shall have executed and delivered or caused to have been executed and delivered to the Vendors at the Closing all the documents and payments contemplated in Section 6.3.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 4.2 shall be true and correct: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Purchasers shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchasers on or before the Closing.

The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 7.3 may be waived by the Vendors in whole or in part, save and except for delivery of the Services Agreement in accordance with Section 6.3(h), which condition may only be waived with the written consent of the DIP Lenders, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set forth in this Section 7.3 is not satisfied or performed on or prior to the Outside Date, the Vendors may elect on written notice to the Purchasers to terminate the Agreement.

## ARTICLE 8 TERMINATION

### 8.1 Grounds for Termination

This Agreement may be terminated on or prior to the Closing Date:

- (a) by the mutual written agreement of the Vendors (with the written consent of the Monitor) and the Purchasers; or
- (b) by the Vendors (with the written consent of the Monitor) or the Purchasers upon written notice to the other Parties if: (i) the Closing has not occurred on or prior to the Outside Date; or (ii) the Approval and Vesting Order is not obtained on or before April 26, 2024 (subject to availability of the Court); provided in each case that the failure to close or obtain such order, as applicable, by such deadline is not caused by a breach of this Agreement by the Party proposing to terminate the Agreement; or
- (c) by written notice from the Purchasers to the Vendors:
  - (i) in accordance with Section 7.1 or Section 7.2; or
  - (ii) if there has been a breach by a Vendor or Nexii of any representation or warranty, or material breach of any covenant, contained in this Agreement, which breach has not been waived by the Purchasers, and: (i) such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 or Section 7.2 impossible by the Outside Date; or (ii) if such breach is curable, the Purchasers have provided prior written notice of such breach to the Vendors, and such breach has not been cured within ten (10) days following the date upon which the Vendors received such notice, unless any one or more of the Purchasers is in material breach of its obligations under this Agreement; and

- (d) by written notice from the Vendors (with the written consent of the Monitor) to the Purchasers:
  - (i) in accordance with Section 7.1 or Section 7.3; or
  - (ii) if there has been a breach by a Purchaser of any representation or warranty, or material breach of any covenant, contained in this Agreement, which breach has not been waived by the Vendors, and: (A) such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 or Section 7.3 impossible by the Outside Date; or (B) if such breach is curable, the Vendors have provided prior written notice of such breach to the Purchasers, and such breach has not been cured within ten (10) days following the date upon which the Purchasers received such notice, unless any one or more of the Vendors or Nexii are in material breach of their obligations under this Agreement.

## **8.2 Effect of Termination.**

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder; except for the provisions of this Agreement that by their nature are intended to survive termination, including this Section 8.2 (Effects of Termination) and Section 9.8 (Governing Law), each of which will survive termination; provided that if this Agreement is terminated:

- (a) in accordance with Section 8.1(d)(ii), the Monitor (on behalf of the Vendors) shall be entitled to retain the Deposit and the full amount of the Deposit shall be forfeited to the Vendors; or
- (b) for any other reason, the Deposit shall be promptly returned to the Purchasers.

In the event of termination of this Agreement under Section 8.1(d)(ii) pursuant to which the Monitor (on behalf of the Vendors) shall be entitled to retain the Deposit, the Parties agree that the amount of the Deposit constitutes a genuine pre-estimate of liquidated damages representing the Vendors' losses and Liabilities as a result of Closing not occurring and agree that the Vendors shall not be entitled to recover from the Purchasers any amounts that are in excess of the Deposit as a result of Closing not occurring. The Purchasers hereby waive any claim or defense that the amount of the Deposit is a penalty or is otherwise not a genuine pre-estimate of the Vendors' damages.

## **ARTICLE 9 GENERAL**

### **9.1 Access to Books and Records; Tax Co-Operation**

For a period of six years from the Closing Date or for such longer period as may be required for the Vendors (or any trustee in bankruptcy of the estate of any of the Vendors) to comply with any Applicable Law, the Purchasers shall:

- (a) retain all original Books and Records that are transferred to the Purchasers under this Agreement. So long as any such Books and Records are retained by the Purchasers pursuant to this Agreement, the Monitor and the Vendors (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendors) have the right to inspect and to make copies (at their own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of a Purchaser; and

- (b) use commercially reasonable efforts to assist the Vendors, including providing any reasonable information requested by the Vendors, with respect to any queries or questions that the Vendors may have in order to facilitate any Tax filings or Tax related questions or disputes that may arise following the Closing Date.

## 9.2 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered by same-day courier or by read-receipted email, addressed:

- (a) in the case of the Purchasers, as follows:

George Sawatzky  
8970 Nash Street  
Fort Langley, BC V1M 2R4

Email: [GSawatzky@omicronaec.com](mailto:GSawatzky@omicronaec.com)

with a copy to:

Lawson Lundell LLP  
925 W Georgia Street #1600  
Vancouver, BC V6C 3L2

Attention: Chat Ortved and Alexis Teasdale  
Email: [cortved@lawsonlundell.com](mailto:cortved@lawsonlundell.com) and [ateasdale@lawsonlundell.com](mailto:ateasdale@lawsonlundell.com)

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

Nexii Building Solutions Inc.

Attention: David Bryant  
Email: [dbryant@nexii.com](mailto:dbryant@nexii.com)

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

KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W3

Attention: Noah Goldstein and Ross Graham  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com) and [rgraham@ksvadvisory.com](mailto:rgraham@ksvadvisory.com)

with a copy to:

Bennett Jones LLP  
1 First Canadian Place, Suite 3400  
Toronto, ON M5X 1A4

Attention: Sean Zweig and Mike Shakra  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) and [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

Any such notice or other communication, if transmitted by email before 5:00 p.m. (Vancouver time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Vancouver time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission. In the case of a communication by email or other electronic means, if an autoreply is received indicating that the email is no longer monitored or in use, delivery must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by electronic means shall be deemed to have been given on the date stipulated above for electronic delivery.

Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

### **9.3 Public Announcements**

The Vendors and the Monitor shall be entitled to disclose this Agreement to the Court and parties in interest in the CCAA Proceedings and this Agreement may be posted on the Monitor's website maintained in connection with the CCAA Proceedings. In addition, Nexii and the Vendors may disclose the existence of the potential Transaction to their current and prospective customers and clients following execution of this Agreement. Subject to the foregoing, no press release or other announcement concerning the Transaction shall be made by the Purchasers or the Vendors without the prior consent of the other (such consent not to be unreasonably withheld, delayed or conditioned).

### **9.4 Time**

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

### **9.5 Survival**

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

### **9.6 Entire Agreement**

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

### **9.7 Paramountcy**

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



## **9.8 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court, and any appellate courts of the Province of British Columbia therefrom.

## **9.9 Assignment**

The Purchasers cannot assign any of their rights or obligations under this Agreement without the prior written consent of the Vendors, the DIP Lenders and the Monitor. Notwithstanding the forgoing, this Agreement may be assigned by the Purchasers prior to the issuance of the Approval and Vesting Order, in whole or in part, without the prior written consent of the DIP Lenders, the Vendors or the Monitor, provided that: (i) such assignee is an Affiliate, related party or wholly-owned subsidiary of a Purchaser; (ii) the Purchasers provide prior notice of such assignment to the Vendors and the Monitor; and (iii) such assignee agrees in writing to be bound by the terms of this Agreement to the extent of the assignment and a copy of such assumption agreement is delivered to the Vendors and the Monitor forthwith after having been entered into; provided, however, that any such assignment shall not relieve the Purchasers of their obligations hereunder. Neither the Vendors nor Nexii can assign any of their rights or obligations under this Agreement without the prior written consent of the Purchasers. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

## **9.10 Further Assurances**

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

## **9.11 Counterparts**

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

## **9.12 Severability**

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

## **9.13 Non-Waiver**

No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

## **9.14 Expenses**

Each of the Parties shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

## **9.15 Monitor's Certificate**

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchasers, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from the Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived (except for Section 7.1(c)), and the Monitor shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from the Parties that all conditions of Closing in favour of such Party have been satisfied or waived, and following receipt of the Cash Payment by the Monitor, the Monitor may deliver the executed Monitor's Certificate to the Purchasers' counsel, and the Closing shall be deemed to have occurred.

#### **9.16 Monitor's Capacity**

In addition to all of the protections granted to the Monitor under the CCAA, the Initial Order, the Sale Process Order, and any other order of the Court in this CCAA Proceeding, the Vendors and the Purchasers acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendors and not in its personal capacity, will have no Liability, in its personal capacity or otherwise, in connection with this Agreement or the Transaction contemplated herein whatsoever.

#### **9.17 Confidentiality.**

From and after the Closing, Nexii and the Vendors shall, and shall cause their Affiliates and their respective representatives to, hold in confidence any and all information, whether written or oral, concerning the Purchased Assets or the Business, except to the extent they can show that such information (i) is generally available and known by the public through no fault of Nexii or a Vendor or any of their Affiliates or their respective representatives, (ii) is lawfully acquired by Nexii or a Vendor or any of their Affiliates or their respective representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation, (iii) is required to be disclosed by judicial or administrative process, securities exchange or other requirements of Applicable Law; or (iv) is required to be disclosed in connection with the sale of the Petitioners' business, assets or operations (provided Nexii and Vendors ensure the recipients of such information maintain its confidentiality).

***[Signature Page Follows]***

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first above written.

**NEXII BUILDING SOLUTIONS INC.**

DocuSigned by:  
*David Bryant*  
By: 2BB4FDCE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CANADA INC.**

DocuSigned by:  
*David Bryant*  
By: 2BB4FDCE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CONSTRUCTION  
MANAGEMENT LTD.**

DocuSigned by:  
*David Bryant*  
By: 2BB4FDCE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CONSULTING LTD.**

DocuSigned by:  
*David Bryant*  
By: 2BB4FDCE854F4B8  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON INTERIORS LTD.**

By: DocuSigned by:  
David Bryant  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**OMICRON CONSTRUCTION LTD.**

By: DocuSigned by:  
David Bryant  
Name: David Bryant  
Title: Senior Executive Advisor

I have authority to bind the Corporation.

**15925347 CANADA INC.**

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

I have authority to bind the Corporation.

**1474480 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474737 B.C. LTD.**

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

I have authority to bind the Corporation.

**OMICRON INTERIORS LTD.**

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

Name:

Title:

I have authority to bind the Corporation.

**OMICRON CONSTRUCTION LTD.**

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

Name:

Title:

I have authority to bind the Corporation.

**15925347 CANADA INC.**

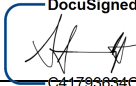
By:  \_\_\_\_\_  
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Name: George Sawatzky

Title: Director

I have authority to bind the Corporation.

**1474480 B.C. LTD.**

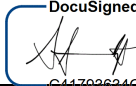
By:  \_\_\_\_\_  
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Name: George Sawatzky

Title: Director

I have authority to bind the Corporation.

**1474737 B.C. LTD.**

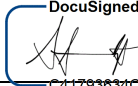
By:  \_\_\_\_\_  
C41793634C984F8...

Name: George Sawatzky

Title: Director

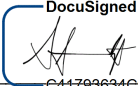
I have authority to bind the Corporation.

**1474741 B.C. LTD.**

By:  DocuSigned by:  
C41783634C984F8...  
Name: George Sawatzky  
Title: Director

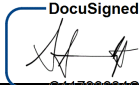
I have authority to bind the Corporation.

**1474484 B.C. LTD.**

By:  DocuSigned by:  
C41793634C984F8...  
Name: George Sawatzky  
Title: Director

I have authority to bind the Corporation.

**1464115 B.C. LTD.**

By:  DocuSigned by:  
C41793634C984F8...  
Name: George Sawatzky  
Title: Director

I have authority to bind the Corporation.

**SCHEDULE "A"**  
**VENDORS**

Omicron Canada Inc.

Omicron Construction Management Ltd.

Omicron Consulting Ltd.

Omicron Interiors Ltd.

Omicron Construction Ltd.

**SCHEDULE “B”  
ASSUMED CONTRACTS**

The following is an exhaustive list of the Assumed Contracts:

Software:

Sr. No.	Software	Num. of licenses
1	Adobe Creative Cloud	6
2	Adobe Photoshop CC	2
3	Adobe Photoshop CS2	6
4	Autodesk Architecture & Engineering Collection	80
5	Autodesk Build (Plangrid included)	10003
6	ASHRAE Thermal Comfort Tool	1
7	BIM Collaborate Pro	38
8	Bluebeam 2018	180
9	Building Connected Pro	15
10	CMBuilder	10 Projects
11	Elite Sprinkler Design	1
12	Microsoft New Commerce Experience (CSP) Office E3	172
13	Microsoft New Commerce Experience (CSP) PowerBI Pro	35
14	Microsoft New Commerce Experience (CSP) Teams with Calling Plan	119
15	Quickbooks 2018	3
16	ElumTools (Lighting Analysts)	1
17	Enscape	3
18	ETABS (Computer Structures Inc) Maintenance	1



19	ETAP Power System Simulation Software	1
20	Guardian	2
21	HAP	1
22	HVAC Solution	1
23	IES VE	2
24	ISNetworld	-
25	Lumion (SolidCAD)	2
26	Microsoft Product Software Assurance: SQL 2022 Standard	1
27	Microsoft Product Software Assurance: Windows Server 2022 Data Center	1
28	Microsoft Product Software Assurance: Remote Desktop Terminal Services	15
29	Replicon WebTimeSheet	165
30	Sketchup(Trimble)	3
31	Sophos Cloud	180 Desktop, 20 Sever
32	SpSlab, SpWall,SpColumn, spMATS (StructurePoint)	1
33	Sage 300 (Timberline)	1
34	ComplyWorks	1
35	Contractor Check	1
36	Ms Project 2010	35
37	Ms Project 2016	7
38	Ms Visio 2016	1
39	On Centre On-screen Takeoff	4
40	Print Boss subscription	-
41	S-Frame	5

42	TimberScan Support	1
43	Vice Versa	1
44	Veeam Cloud Connect Subscription	1
45	Veeam Software license	1
46	VMWare Subscription/Maintenance	1
47	Woodworks Sizer 2020	1

Vehicle Leases:

lease type	description	VIN	lessor
vehicle (truck)	FC18006 licence LJ1475	6728 6	Zeemac
vehicle (truck)	Ford Truck #60266877	0222 7	Ford Credit
vehicle (truck)	Ford Truck #60484000	0985 6	Ford Credit
vehicle (truck)	Ford Truck #61154498	2107 8	Ford Credit

Real Property and Other Leases:

lease type	description	lessor
equipment	computer servers	Jyske Lease Corp. (Softchoice)
equipment	Canon copier/printers	Meridian OneCap

1. Lease agreement dated May 12, 2021 between Omicron Construction Ltd. and Clutch Developments Ltd. in respect of property located at Unit #1, 2075 Brigantine Drive, Coquitlam, BC.
2. Lease agreement dated October 18, 2004 between Omicron Consulting Ltd. and BH Centre Head Corp. (as successor in interest to BTC Properties II Ltd. and The Great-West Life Assurance Company), in respect of property located at the 4th Floor of 595 Burrard Street, Vancouver, BC (as amended by lease expansion and amending agreement dated February 12, 2007, by partial surrender of lease and lease expansion agreement and modification of lease dated August 22, 2007, by lease extension and amending agreement dated November 19, 2013, by lease extension and amending agreement dated April 13, 2017, and by lease extension and amending agreement dated June 8, 2022).

3. Lease agreement dated July 1, 2018 between Omicron Canada Inc. and Eagle Creek Village I GP Ltd., in its capacity as general partner for and on behalf of Eagle Creek Village I Limited Partnership, in respect of property located at Suite 420, 29 Helmcken Road, Victoria.

#### Construction Contracts

1. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated March 13, 2020, as amended from time to time. [20-20-009]
2. Design and Early Works Agreement for Design and Construction Management Services between Omicron Construction Ltd and Tsawwassen Independent School Society dba Southpointe Academy dated June 23, 2023, as amended from time to time. [20-23-005]
3. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated September 18, 2020, as amended from time to time. [23-14-019]
4. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated April 16, 2021, as amended from time to time. [20-22-013, 20-21-014]
5. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Coca Cola Canada Bottling Limited dated May 8, 2023, as amended from time to time. [20-23-001]
6. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and FW Enterprises dated March 15, 2023, as amended from time to time. [20-23-006]
7. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated September 22, 2023, as amended from time to time. [20-22-014]
8. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated June 8, 2022, as amended from time to time. [20-22-008]
9. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time. [20-23-003]
10. Construction Management Contract for Services between Omicron Construction Ltd. and Allendale LP dated July 14, 2021, as amended from time to time. [20-21-018]
11. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and BC Transit dated January 26, 2022, as amended from time to time. [20-22-005]
12. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 4, 2020, as amended from time to time. [23-18-010]
13. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 14, 2020, as amended from time to time. [23-18-011]
14. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 26, 2020, as amended from time to time. [23-20-007]
15. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated Jan 24, 2023, as amended from time to time. [23-21-003]

16. Construction Management Contract for Services between Omicron Construction Ltd. and Lotus Omicron East Broadway Development Inc. dated January 31, 2022, as amended from time to time. [20-22-002]
17. Construction Management Contract for Services between Omicron Construction Ltd. and Marine and Bewicke Project Ltd dated May 5, 2023, as amended from time to time. [20-22-010]
18. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time. [20-23-002]
19. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated July 21, 2022, as amended from time to time. [20-22-004]
20. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated August 30, 2022, as amended from time to time. [23-22-005]
21. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated October 30, 2023, as amended from time to time. [23-23-005]
22. Construction Preventative Maintenance Services Contracts between Omicron Construction Ltd. And Coastal Ford Sales dated June 16, 2021, as amended from time to time. [20-21-521,522,523]
23. Construction Management Contract for Services and Construction between Omicron Construction Ltd., and Victoria Ford Alliance dated January 4, 2023, as amended from time to time. [20-20-015]
24. Services Agreement between Omicron Construction Ltd. and Tabor Storage dated June 24, 2022 as amended from time to time. [20-22-006]
25. Consultant Agreement between Omicron Construction Ltd. and Hammersmith dated October 16, 2023 as amended from time to time. [20-23-007]
26. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Davis Management Limited Partnership (DMLP) dated June 30, 2021, as amended from time to time. [20-21-022]
27. Omicron Construction Ltd. to provide on-demand services to Coastal Ford Sales Ltd. [20-23-501,502,503; 20-24-501,502,503]
28. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated August 9, 2022, as amended from time to time. [23-18-008]
29. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated July 30, 2020, as amended from time to time. [23-20-003]
30. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated March 11, 2022, as amended from time to time. [23-21-001]
31. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated February 10, 2022, as amended from time to time. [23-22-001]
- 32.
33. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and CNRL [20-12-125]
34. Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated February 23, 2024, as amended from time to time. [23-24-001]

together with all work orders, change orders and other ancillary contracts, including all subcontracts, associated with the foregoing contracts listed under the heading “Construction Contracts”.

Nominee Agreements:

Nominee Agreement between Omicron Architecture Engineering Construction Ltd. and Omicron Consulting Group dated November 10, 2004, as subsequently assumed by Omicron Canada Inc.

Nominee Agreement between Omicron Architecture Engineering Ltd. and Omicron Consulting Group dated February 23, 2005, as subsequently assumed by Omicron Canada Inc.

Design contracts:<sup>1</sup>

1. Canadian Standard Form of Contract for Architect’s Services between Omicron Architecture Engineering Construction Ltd. and TELUS Communications Inc. dated March 13, 2020, as amended from time to time. [10-20-035]
2. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Ltd. and Ecowaste Industries Ltd. dated August 10, 2016, as amended from time to time. [10-16-060]
3. Agreement between Omicron Architecture Engineering Construction Ltd. and Burnaby School District (SD#41) dated May 17, 2017, as amended from time to time. [10-21-058]
4. Standard Form of Agreement between Omicron Architecture Engineering Construction Ltd. and City of Burnaby dated October 7, 2014 as amended from time to time. [10-14-104]
5. General Service Agreement between Omicron Interiors Ltd. and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the General Manager of the Liquor Distribution Branch and Administrator of the Cannabis Distribution Act, dated for reference September 8, 2020, as amended from time to time. [70-20-009,-010]
6. Canadian Standard Form of Contract for Architectural Services dated March 1, 2022 between TELUS Communications Inc. and Omicron Architecture Engineering Construction Ltd., as amended from time to time.[10-22-017]
7. Canadian Standard Form of Contract for Architectural Services dated October 1, 2023 between Coca-Cola Canada Bottling Limited and Omicron Architecture Engineering Construction Ltd., as amended from time to time.[10-19-109]
8. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Nicola VA Allandale Limited Partnership and Allandale Ventures (Lot C) Limited Partnership Services dated July 26, 2021 as amended from time to time. [10-20-099]
9. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Sherringham Holdings Ltd. Services dated October 12, 2021 as amended from time to time. [10-21-010]
10. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Montrose Industries Ltd. Services dated August 8, 2021 as amended from time to time. [10-21-087]

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<sup>1</sup> With respect to any Omicron Architecture Engineering Construction Ltd./Omicron Architecture Engineering Ltd. contracts listed below, those contracts will remain with Omicron Architecture Engineering Construction Ltd./Omicron Architecture Engineering Ltd., but the beneficial interest therein will be transferred to the applicable Purchaser in conjunction with the transfer of the Omicron Architecture Engineering Construction Ltd./Omicron Architecture Engineering Ltd. Nominee Agreements.

11. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Montrose Industries Ltd. Services dated August 8, 2021 as amended from time to time. [10-21-088]
12. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Vancouver Christian School Services dated April 4, 2022 as amended from time to time. [10-22-042]
13. Construction Management Contract for Services and Construction dated May, 2023 between Lululemon Athletica Inc. and Omicron Construction Ltd., as amended from time to time. [10-22-066]
14. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Montrose Industries Ltd. Services dated November 17, 2022 as amended from time to time. [10-22-067]
15. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Coca-Cola Canada Bottling Limited. Services dated August 28, 2023 as amended from time to time. [10-22-068]
16. Engineering Agreement between CBRE Limited and Omicron Architectural Engineering Construction Ltd. Dated June 23, 2022 as amended from time to time [10-22-082]
17. Engineering Agreement between CBRE Limited and Omicron Architectural Engineering Construction Ltd. Dated August 22, 2023 as amended from time to time [10-23-046]
18. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and BC Transit Corporation Services dated June 9, 2022 as amended from time to time. [10-22-088]
19. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Limited Services dated August 12, 2022 as amended from time to time. [10-22-102]
20. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Limited Services dated August 9, 2022 as amended from time to time. [10-22-110]
21. General Services Agreement for Architectural Services between Omicron Construction Ltd and Tsawwassen Independent School Society DBA Southpointe Academy services dated June 23, 2023 [10-22-103]
22. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Services dated January 19, 2023 as amended from time to time. [10-23-003]
23. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Services dated August 1, 2023 as amended from time to time. [10-23-038]
24. General Services Agreement for Architectural Services between Omicron Architecture Engineering Construction Ltd and Kwantlen Polytechnic University on August 23, 2023.[10-23-043]
25. Architect Agreement between Omicron Architecture Engineering Construction Ltd and City of Richmond services dated August 7, 2023 as amended from time to time [10-23-041]
26. Consulting Agreement between Omicron Architecture Engineering Construction Ltd and Canada Place Corporation serviced dated December 20, 2023 as amended from time to time [10-24-003]
27. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and Alexander College Services dated September 20, 2022 as amended from time to time. [70-22-011]

28. Contract for Services between Insurance Corporation of British Columbia and Omicron Architecture Engineering Construction Ltd services dated January 10 , 2024 as amended from time to time [10-24-005]
29. Agreement between Omicron Architecture Engineering Construction Ltd and Ministry of Citizens' Services dated February 7 2023 [10-23-004]
30. Purchase order #4829 issued by City of West Kelowna on April 19, 2023.[10-23-020]
31. Purchase order #4500625298 issued by City of Vancouver on May 24, 2023 [10-23-025]
32. Purchase order #4102238354 issued by Coca-Cola Canada Bottling Limited on July 16, 2020.
33. Purchase order #CITY-0000108738 issued by City of Richmond on October 12 2023. [10-23-064]
34. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and 1159613 BC c/o Lotus Pacific Services dated December 31, 2018 as amended from time to time. [10-18-094]
35. Services Contract between Omicron Architectural Engineering Construction Ltd. And British Columbia Ferry Services Inc. dated July 5, 2023 as amended from time to time [10-23-035]
36. Construction Management Contract for Services and Construction dated April 16, 2021 between TELUS Communications Inc. and Omicron Construction Ltd., as amended from time to time. [10-21-076]
37. Agreement between Omicron Architecture Engineering Construction Ltd. and Sherringham Holdings Ltd. in respect of Design Services at 681 Allandale Road.\* services dated October 13 2022 [70-22-012]
38. Agreement between Omicron Architecture Engineering Construction Ltd and FW Enterprises Ltd. Dated May 18, 2023 [70-23-002]
39. Canadian Standard Form of Contract for Architectural Services between Omicron Architecture Engineering Construction Inc. and CBRE Services dated July 20, 2023 as amended from time to time. [70-23-005]
40. Agreement between Omicron Architecture Engineering Construction Ltd. And Cambie Street Properties Inc. dated October 23, 2017 amended from time to time.[10-17-083]
41. General Consulting Services Agreement between The Waterfront Limited Partnership and Omicron Architecture Engineering Construction Ltd. dated March 24, 2021 as amended from time to time [10-21-028, 10-23-016]
42. Consulting Agreement between Canada Place Corporation and Omicron Architecture Engineering Construction Ltd. Dated May 27, 2021, as amended from time to time [10-21-060]
43. General Services Agreement between Omicron Canada Inc. and Kwantlen Polytechnic University dated February 28 2022 as amended from time to time [10-21-128]
44. Agreement between Montrose Properties and Omicron Architecture Engineering Construction Ltd dated February 17, 2022, as amended from time to time [10-22-024]
45. Planning Management Agreement between Telus Communications Inc. and Omicron Architecture Engineering Construction Ltd dated March 1, 2022, as amended from time to time [10-22-039]
46. Terms of Engagement between Ecowaste Industries Inc. and Omicron Architecture Engineering Construction Ltd dated June 4, 2019, as amended from time to time [10-17-015]
47. Purchase Order #KPO000005610 issued by CBRE Limited dated xx [10-22-044]
48. Purchase Order #KPO000022160 issued by CBRE Limited dated February 20, 2024 [10-22-084]
49. Purchase Order #KPO000021925 issued by CBRE Limited dated January 31<sup>st</sup> 2024 [10-22-086]
50. Purchase Order #KPO000021924 issued by CBRE Limited dated January 31<sup>st</sup> 2024 [10-22-087]
51. Terms of Engagement between Canucks Sports and Entertainment and Omicron Architecture Engineering Construction Ltd. dated August 3 2022, as amended from time to time [10-22-108]

52. Agreement between Top Down Investments and Omicron Architecture Engineering Construction Ltd. dated June 1<sup>st</sup> 2023, as amended from time to time. [10-22-117]
53. Purchase Order #OP 54866 000 issued by Port of Vancouver dated November 13, 2022 [10-22-119]
54. Subcontract Agreement between Omicron Construction Ltd. and Hammersmith Corporation Inc. dated December 14 2022 as amended from time to time [10-22-126]
55. Master Services Agreement between Lululemon Athletica Canada Inc. and Omicron Architecture Engineering Construction Ltd. dated October 23, 2023, as amended from time to time [10-23-006]
56. General Services Agreement between Kwantlen Polytechnic University and Omicron Canada Inc. dated March 14, 2023 as amended from time to time [10-23-010]
57. Purchase Order #KPO000014091 issued by CBRE Limited dated April 4<sup>th</sup> 2023 [10-23-012]
58. Change Order #33 issued by Wesbild Holdings to Omicron Canada Inc. and CDC Construction Ltd dated June 12, 2023 [10-23-016]
59. Purchase Order #7474 issued by Canada Place Corporation to Omicron Canada Inc. dated May 2 2023 [10-23-017]
60. Signed proposal between Dimensional Energy and Omicron Architecture Engineering Construction Ltd. dated June 2 2023 as amended time to time [10-23-027]
61. Purchase Order #KPO000015524 issued by CBRE Limited dated July 24 2023. [10-23-030]
62. Signed Proposal between Lululemon Athletica Inc. and Omicron Architecture Engineering Construction Ltd. dated Sept 5<sup>th</sup> 2023 [10-23-050]
63. Signed Proposal between Lululemon Athletica Inc. and Omicron Architecture Engineering Construction Ltd. dated August 31 2023 [10-23-049]
64. Purchase Order #KPO000022156 issued by CBRE Limited dated February 20 2024. [10-23-051]
65. Terms of Engagement between City of Burnaby and Omicron Architecture Engineering Construction Ltd dated August 21 2023, as amended from time to time. [10-23-061]
66. Letter of Commitment between Concert Properties and Omicron Architecture Engineering Construction Ltd dated May 6 2020 [10-18-001]
67. Letter of Commitment between Concert Properties and Omicron Architecture Engineering Construction Ltd dated October 1 2020 [10-20-067]
68. Purchase Order #252976 issued by NTE Energy Canada Ltd. dated November 1 2023 [10-23-066]
69. Terms of Engagement between Aspengrove School and Omicron Architecture Engineering Construction Ltd dated January 22 2023 [10-24-009]
70. Project Manager Agreement between Bureau Veritas Commodities Canada Ltd and Omicron Architecture Engineering Construction Ltd dated January 18 2024 [10-24-010].
71. Purchase Order #PO782627 issued by Metro Vancouver to Omicron Canada Inc. dated February 15 2024. [10-24-011]
72. Signed Proposal between Gustavson Wylie Architects Inc and Omicron Architecture Engineering Construction Ltd. dated February 21, 2024 [10-24-012]
73. Terms of Engagement between Claren Academy Society and Omicron Architecture Engineering Construction Ltd dated February 22 2024 [10-24-013]
74. Master Services Contract between WorkSafeBC and Avison Young Commercial Real Estate Services LP and Omicron Interiors Ltd. dated February 1<sup>st</sup> 2023 as amended from time to time [10-23-003]
75. Email Agreement between Blackwood Partners Management Corporation and Omicron Architecture Engineering Construction Ltd dated March 14, 2022. [10-22-030]
76. Work order #263603139 issued by Home Depot Canada Inc. Dated December 10, 2023 [10-23-067]



77. Work order #261562527 issued by Home Depot Canada Inc. Dated November 16 2023 [10-23-015]
78. Signed Proposal between Tung Lin Kok Yuen Canada Society and Omicron Architecture Engineering Construction Ltd dated November 16 2023, as amended from time to time. [10-24-007]
79. Email Agreement between Read Jones Christofferson Consulting Engineers Ltd and Omicron Architecture Engineering Construction Ltd dated April 19, 2022. [10-22-062]
80. Agreement between Tabor Storage Solutions and Omicron Architecture Engineering Construction Ltd dated December 18, 2023, as amended from time to time [10-24-001]
81. Email Agreement between Telus Communications Inc. and Omicron Architecture Engineering Construction Ltd dated September 16, 2022, as amended from time to time [10-22-093]
82. Signed Proposal between Home Depot of Canada Inc. and Omicron Architecture Engineering Construction Ltd dated January 19, 2024, as amended from time to time. [10-24-006]
83. Purchase Order #KPO000016189 issued by CBRE Limited dated September 11, 2023 [10-23-032]
84. Engineering Agreement between CBRE Ltd and Omicron Architecture Engineering Construction Ltd dated March 11 2024. [10-24-016]
85. PO issued by McRae Integration Ltd. to Omicron Canada Inc. for electrical service dated March 07 2024. [10-24-017]
86. Email Agreement between Morguard and Omicron Architecture Engineering Construction Ltd dated March 19th, 2024, as amended from time to time [10-24-018]
87. Email Agreement between Danny Guillaume and Omicron Architecture Engineering Construction Ltd dated April 2, 2024, as amended from time to time [10-24-019]

together with all work orders, change orders and other ancillary contracts, including all subcontracts, associated with the foregoing contracts listed under the heading “Design Contracts”.

Other:

Settlement and Mutual Release Agreement between Omicron Construction Ltd. and Canadian Natural Resources Limited May 11, 2015, including the entitlement to receipt of the “Indemnity Holdback” thereunder upon its payment (the “**CNRL Agreement**”).

Insurance/Benefits:

The insurance policies and benefit plans of the Vendors.

**SCHEDULE "C"**  
**ASSUMED LIABILITIES**

Accounts payable and deferred revenue in connection with the Assumed Contracts.

Any obligation to pay the Trust Cash in connection with the Legal Proceedings (each as defined in Schedule E).

**SCHEDULE “D”  
PURCHASE PRICE ALLOCATION**

The Vendors and the Purchasers agree that the Purchase Price shall be allocated for tax purposes amongst the Purchased Assets in a manner consistent with the following methodology, to be applied in respect of each Vendor and Purchaser in accordance with Schedule “G”:

<b>Category</b>	<b>Methodology</b>
Cash and cash equivalents	Book value
Accounts receivable	Book value
Prepaid expenses and other current assets	Book value
Short term investments	Fair market value
Tangible/depreciable assets	Net book value
Construction contracts	Remainder of purchase price, up to maximum of \$1,000,000 (in aggregate for all Purchasers).
Intangibles and goodwill	Remainder of purchase price (after the allocation to the Construction contracts above), if any

**SCHEDULE “E”  
PURCHASED ASSETS**

The following is a non-exhaustive list of Purchased Assets:

- All rights, title (in respect of owned property) and interests in furniture, fixtures, furnishings, office equipment, computer hardware and accessories, communications and networking equipment, servers and other items of tangible personal property owned or leased by any of the Vendors located on or about the premises subject to the real property leases included in the Assumed Contracts or otherwise used in, held for use in or relating to the operation of the Business.
- All rights, title and interests in the following vehicles owned by a Vendor:

Chevy 2007 Suburban 2500	77111
Haulmark 2008 Com TLR (Trailer)	30275
Ford 2008 F150 XLT	63736
Ford 2008 F350 Super Duty	96373
Ford 2016 F150	68455
Ford 2017 F150	95299
Ford 2017 F150	95130
Ford 2017 F150	35942

- All rights and interests in the following vehicles leased by a Vendor:

FC18006 license LJ1475	67286
Ford Truck #60266877	02227
Ford Truck #60484000	09856
Ford Truck #61154498	21078

- The Books and Records.
- All creative, promotional, marketing or advertising materials (whether in hard copy or computer or other electronic format) of any Vendor used in, held for use in or relating to the operation of the Business.
- The names of the Vendors and all intellectual property rights of any Vendor used in, held for use in or relating to the operation of the Business, including all documentation, designs and other intellectual property rights associated with current and prior projects.
- All permits held by any Vendor and required for the operation of the Business.
- All insurance policies for the benefit of any Vendor.
- All benefit plans of any Vendor.
- All rights, claims, counterclaims, credits, causes of action or rights of set-off of any of the Vendors against third parties.

- All telephone numbers, facsimile numbers, directory listings, email addresses and other communications identifiers owned by any of the Vendors that are used in, held for use in or relating to the operation of the Business.
- All cash and cash equivalents of the Vendors as at the Closing Time.
- All current assets of the Vendors, including prepaid expenses and receivables.
- All interests of the Vendors in the cash held by Borden Ladner Gervais LLP in respect of certain ongoing litigation in relation to a prior project for Canadian Natural Resources Limited (the “**Legal Proceedings**”), including any interest accrued thereon (the “**Trust Cash**”).
- Any inventory of the Vendors
- The bank accounts (including the cash contained therein) and credit cards of the Vendors, including the following:

<b>Bank</b>	<b>Bank Account</b>	<b>Legal entity</b>	<b>Currency</b>
HSBC	270-750 703-001	Omicron Canada Inc.	CAD
HSBC	270-750 703-270	Omicron Canada Inc.	USD
HSBC	270-750-738-001	Omicron Construction Ltd.	CAD
HSBC	270-750-746-001	Omicron Construction Management Ltd.	CAD
HSBC	270-750-762-001	Omicron Interiors Ltd.	CAD

<b>Bank</b>	<b>CC number</b>	<b>Legal entity</b>	<b>Currency</b>	<b>User name</b>
RBC	4516076004716907	Omicron Canada Inc.	CAD	Hank Sam
RBC	4516070015485875	Omicron Canada Inc.	CAD	Caroline Tovey

**SCHEDULE "F"**  
**FORM OF POST-CLOSING SALE AGREEMENT**

*Attached.*

## CONTINGENT SALE AGREEMENT

This Contingent Sale Agreement (the “**Agreement**”) is made as of this 19th day of April, between:

**THE ENTITIES LISTED IN SCHEDULE “A” ATTACHED HERETO**  
(collectively, the “**Purchasers**” and each a “**Purchaser**”)

- and –

**THE ENTITIES LISTED IN SCHEDULE “B” ATTACHED HERETO** (collectively,  
the “**DIP Lenders**” and each a “**DIP Lender**”)

### WHEREAS:

- A. Pursuant to the Order of the Honourable Justice Stephens of the Supreme Court of British Columbia (the “**Court**”) issued January 11, 2024 (as may be further amended or amended and restated from time to time, the “**Initial Order**”), Nexii Building Solutions Inc., Nexii Construction Inc., NBS IP Inc. and Nexii Holdings Inc. (collectively the “**Petitioners**”) were granted, among other things, creditor protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. was appointed as Monitor of the Petitioners, with certain enhanced powers (in such capacity, the “**Monitor**”).
- B. The Initial Order extended certain protections of the Initial Order to Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd., and Omicron Construction Ltd. (collectively, the “**Omicron Group**”).
- C. In connection with the proceedings initiated by the Initial Order, on January 22, 2024, the Petitioners sought and obtained an order of the Court, among other things, approving a sale process (the “**Sale Process**”) to be conducted by Origin Merchant Partners, under the oversight and with the assistance of the Monitor, to solicit interest in, and opportunities for, one or more or any combination of executable transactions involving the Petitioners and the Omicron Group and/or the Petitioners’ and Omicron Groups’ business operations as a going concern or otherwise.
- D. As a result of the Sale Process, Nexii Building Solutions Inc., the Omicron Group, apart from Grant & Sinclair Architects Ltd., and Purchasers entered into a binding Asset Purchase Agreement dated April 19, 2024 (the “**Purchase Agreement**”) for the Purchased Assets (as defined therein).
- E. Pursuant to section 3.3(d) of the Purchase Agreement, the DIP Lenders and Purchasers are to enter into a Post-Closing Sale Agreement (as defined therein) to apply to any Post-Closing Sale (as defined therein).
- F. Terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the “**Parties**”, and each, a “**Party**”) hereby acknowledge and agree as follows:

## **1. Conditional Payment**

If at any time during the five-year period immediately following Closing:

- (a) any one or more of the Purchasers (or any successor corporations) holding all or substantially all of the Purchased Assets immediately prior to such transaction or series of transactions (the “**Controlling Entities**”) sells, leases, transfers, exclusively licenses, conveys or otherwise disposes, collectively, in one transaction or a series of transactions, all or substantially all of the interests in all or substantially all of the Purchased Assets (other than in connection with an internal reorganization of the one or more of the Controlling Entities where (i) the transferee or recipient of the some or all of the interests in the Purchased Assets in such internal reorganization (the “**Transferee**”) is an affiliate of one or more of the Controlling Entities and (ii) such Transferee has delivered a joinder to this Agreement, pursuant to which the Transferee agrees in favour of the DIP Lenders to become party to and bound by this Agreement as a “**Purchaser**” and as if an original party hereto and subject to the provisions of Section 1 and 2 of this Agreement); or
- (b) there occurs a merger, amalgamation, sale, arrangement, take-over bid, reorganization, plan of arrangement, business combination, consolidation or other similar transaction or series of transactions as a result of which the beneficial owners of shares of the Controlling Entities do not own beneficial interests in a majority of the shares of the Controlling Entities outstanding immediately following such transaction or series of transactions

((a) and (b) collectively, a “**Post-Closing Sale**”);

the Purchaser or Purchasers who are party to such a Post-Closing Sale (collectively, the “**Post-Closing Sale Party**”) shall pay to the DIP Lenders, within ten (10) Business Days of the closing of such Post-Closing Sale, a cash payment equal to 15% of the difference between (a) the consideration provided to the Post-Closing Sale Party (or shareholders thereof) in connection with the Post-Closing Sale and (b) \$7,000,000. For certainty, the DIP Lenders are entitled to a single payment as between them (not a payment each) and this Agreement shall terminate following the completion of a Post-Closing Sale (provided any obligation of the Purchasers to make a payment in respect of such Post-Closing Sale to the DIP Lenders hereunder shall survive such termination).

## **2. Covenants of the Purchasers**

The Purchasers will provide the DIP Lenders with not less than five (5) Business Days’ prior written notice of any proposed Post-Closing Sale and will provide the DIP Lenders at such time with excerpts of the portions of the then current drafts of the principal transaction documents for such Post-Closing Sale that establish the consideration to be provided to the Post-Closing Sale Party (or shareholders thereof) in connection with the proposed Post-Closing Sale. Promptly following closing of a Post-Closing Sale and in any event within two (2) Business Days’ following such closing, the Post-Closing Sale Party will provide the DIP Lenders with written confirmation of the closing of such Post-Closing Sale and confirmation of the total closing proceeds paid or payable to the Post-Closing Sale Party (or shareholders thereof), together with true and correct copies of the excerpts of the portions of the duly executed principal transaction documents for such Post-Closing Sale that establish the consideration to be provided to the Post-Closing



Sale Party (or shareholders thereof).

Within 90 days following each of the first five anniversaries of the date on which the Closing occurs, the Purchasers will deliver to the DIP Lenders a certificate duly executed by an officer of 15925347 Canada Inc. and any other Purchaser entity that is not then a subsidiary of 15925347 Canada Inc., certifying that other than as disclosed to the DIP Lenders in accordance with this Section 2 no Post-Closing Sale has occurred and attaching an estimate, prepared internally by the Purchasers in good faith, of the aggregate value of Purchased Assets as at the applicable anniversary, the confidentiality of which shall be maintained by the DIP Lenders.

### **3. Currency**

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

### **4. Binding Agreement**

The Parties acknowledge and confirm that all of the terms and conditions of this Agreement are binding on the Parties and their respective successors and assigns, following the Closing of the Transaction. Should the Transaction fail to close, the terms and conditions of this Agreement will be of no force and effect.

### **5. Entire Agreement**

This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes in its entirety all prior agreements whether written or oral. Except as otherwise provided herein, nothing contained herein shall or is intended to affect, modify or otherwise alter the terms and conditions of the Purchase Agreement and the respective Parties' obligations thereunder.

### **6. Notices**

Any notices, waivers or other communications from one Party to another pursuant hereto (hereinafter collectively referred to as "**Notices**") shall be in writing. Notices will be considered to have been sufficiently given when delivered by registered mail, by hand, by email or by other designated form of electronic communication to the applicable Party as set out below:

(a) in the case of the Purchasers, as follows:

15925347 Canada Inc.  
c/o 8970 Nash Street  
Fort Langley, BC V1M 2R4  
Attention: George Sawatzky

Email: [GSawatzky@omicronaec.com](mailto:GSawatzky@omicronaec.com)

with a copy to:

Lawson Lundell LLP  
925 W Georgia Street #1600  
Vancouver, BC V6C 3L2

Attention: Chat Ortved and Alexis Teasdale  
Email: [cortved@lawsonlundell.com](mailto:cortved@lawsonlundell.com) and [ateasdale@lawsonlundell.com](mailto:ateasdale@lawsonlundell.com)

(b) in the case of the DIP Lenders, as follows:

Aird & Berlis LLP  
Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Canada, M5J 2T9

Attention: Kyle Plunkett  
Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

**7. No Amendment**

This Agreement may only be amended by the written agreement of the duly authorized representatives of the Parties.

**8. Assignment**

No Party may assign this Agreement without the prior written consent of the other Parties (provided the Purchasers may assign this Agreement in conjunction with an assignment of the Purchase Agreement permitted thereunder).

**9. Enurement**

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

**10. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court, and any appellate courts of the Province of British Columbia therefrom.

**11. Non-Waiver**

No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

**12. Counterparts**

This Agreement may be executed and delivered by Portable Document Format (PDF) or other electronic means and in any number of identical counterparts each of which may be deemed an original, and all of which taken together shall constitute one and the same agreement.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

**15925347 CANADA INC.**

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

I have authority to bind the Corporation.

**1474480 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474737 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474741 B.C. LTD.**

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

I have authority to bind the Corporation.

**1474484 B.C. LTD.**

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

I have authority to bind the Corporation.

**1464115 B.C. LTD.**

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

Name:

Title:

I have authority to bind the Corporation.

**POWERSCOURT INVESTMENTS XXV, LP**

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

Name:

Title:

I have authority to bind the Corporation.

**TRINITY CAPITAL INC.**

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

Name:

Title:

I have authority to bind the Corporation.

**HORIZON TECHNOLOGY FINANCE  
CORPORATION**

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

Name:

Title:

I have authority to bind the Corporation.

## **Schedule “A”**

### **Purchasers**

15925347 Canada Inc.  
1474480 B.C. Ltd.  
1474737 B.C. Ltd.  
1474741 B.C. Ltd.  
1474484 B.C. Ltd.  
1474484 B.C. Ltd.

**Schedule “B”**

**DIP Lenders**

Powerscourt Investments XXV, LP  
Trinity Capital Inc.  
Horizon Technology Finance Corporation

56826533.2

**SCHEDULE “G”**  
**ALLOCATION OF PURCHASE OF PURCHASED ASSETS AND ASSUMPTION OF ASSUMED**  
**LIABILITIES AMONG THE PURCHASERS**

Subject to and in accordance with the Agreement:

1. New OCI shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Canada Inc.;
2. New OCML shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Construction Management Ltd.;
3. New OI shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Interiors Ltd.;
4. New Consulting shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Consulting Ltd.; and
5. New OCon shall purchase the Purchased Assets, and assume the Assumed Liabilities, of Omicron Construction Ltd.,

with the following exceptions/qualifications:

1. 1474484 shall purchase and assume the CNRL Agreement and Trust Cash, along with any obligation to pay the Trust Cash in connection with the Legal Proceedings.
2. New OCML, as opposed to New OCon, shall assume the following Contracts:
  - a. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated September 22, 2023, as amended from time to time. [20-22-014]
  - b. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated June 8, 2022, as amended from time to time. [20-22-008]
  - c. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Montrose Industries Ltd. dated July 21, 2022, as amended from time to time. [20-22-004]
  - d. Construction Management Contract for Services between Omicron Construction Ltd. and Allendale LP dated July 14, 2021, as amended from time to time. [20-21-018]



**Schedule "C"**

**Consent Required Contracts Assigned to 15925347 Canada Inc.**

<b>Vendor</b>	<b>Consent Required Contract</b>	<b>Cure Costs</b>
Jim Pattison Developments Ltd.	Lease agreement dated July 1, 2018 between Omicron Canada Inc. and Eagle Creek Village I GP Ltd., in its capacity as general partner for and on behalf of Eagle Creek Village I Limited Partnership, in respect of property located at Suite 420, 29 Helmcken Road, Victoria.	None
Jyske Lease Corporation	Lease agreement between Omicron Canada Inc. and Jyske Lease Corporation dated September 5, 2023, for lease contract #79365 computer hardware.  Lease agreement between Omicron Canada Inc. and Jyske Lease Corporation dated January 11, 2024, for lease contract #84799 software.	None

**Schedule "D"**

**Consent Required Contracts Assigned to 1474480 B.C. Ltd.**

<b>Vendor</b>	<b>Consent Required Contract</b>	<b>Cure Costs</b>
BC Hydro & Power Authority	<p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated September 18, 2020, as amended from time to time.</p> <p>PO#45000-12617</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 4, 2020, as amended from time to time.</p> <p>PO#413000-16651</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 14, 2020, as amended from time to time.</p> <p>PO#45000-01869</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 26, 2020, as amended from time to time.</p> <p>PO#45000-08810</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated Jan 24, 2023, as amended from time to time.</p> <p>PO#45000-71041</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated August 30, 2022, as amended from time to time.</p>	None

Vendor	Consent Required Contract	Cure Costs
	<p>PO#45000-66756</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated October 30, 2023, as amended from time to time.</p> <p>PO#45000-89294</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated March 11, 2022, as amended from time to time.</p> <p>PO#4500-51566</p>	
Zeemac Vehicle Lease Ltd.	<p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated March 11, 2022, as amended from time to time.</p> <p>PO#4500-51566</p>	None
Montrose Industries Ltd.	<p>Construction Management Contract for Services between Omicron Construction Ltd. and Montrose Industries Ltd. dated September 22, 2023, as amended from time to time.</p> <p>Construction Management Contract for Services between Omicron Construction Ltd. and Montrose Industries Ltd. dated June 8, 2022, as amended from time to time.</p> <p>Construction Management Contract for Services between Omicron Construction Ltd. and Montrose Industries Ltd. dated July 21, 2022, as amended from time to time.</p>	None
Nicola V.A. Allandale L.P. and A.V. Lot C	<p>Construction Management Contract for Services between Omicron Construction Ltd. and Nicola V.A. Allandale L.P. and A.V. Lot C dated July 14, 2021, as amended from time to time</p>	None

**Schedule "E"**

**Consent Required Contracts Assigned to 1474737 B.C. Ltd.**

<b>Vendor</b>	<b>Consent Required Contract</b>	<b>Cure Costs</b>
B.C. Transit	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and BC Transit dated January 26, 2022, as amended from time to time.	None
Carson Automotive Group	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Carson Automotive Group dated January 4, 2023, as amended from time to time	None
Coastal Ford Sales Limited	Construction Preventative Maintenance Services Contracts between Omicron Construction Ltd. And Coastal Ford Sales dated June 16, 2021, as amended from time to time.  Omicron Construction Ltd. to provide on-demand services to Coastal Ford Sales Ltd.	None
Coca-Cola Canada Bottling Limited	Construction management Contract for Services and Construction between Omicron Construction Ltd. and Coca-Cola Canada Bottling Limited dated May 8, 2023, as amended from time to time	None
FW Enterprises Ltd.	Consultant Management Contract for Services and Construction between Omicron Construction Ltd. and FW Enterprises Ltd. dated March 15, 2023, as amended from time to time	None
Hammersmith Corporation	Consultant Agreement between Omicron Construction Ltd. and Hammersmith Corporation dated October 16, 2023, as amended from time to time	None
Lotus Omicron East Broadway Development Inc.	Construction Management Contract for Services between Omicron Construction Ltd. and Lotus Omicron East Broadway Development Inc. dated January 31, 2022, as amended from time to time	None
Lululemon Athletica	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time.	None

Vendor	Consent Required Contract	Cure Costs
	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time.	
Marine & Bewicke Project Ltd.	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Marine and Bewicke Project Ltd. dated May 5, 2023	None
Tsawwassen Independent School Society dba Southpointe Academy	Design and Early Works Agreement for Design and Construction Management Services between Omicron Construction Ltd. and Tsawwassen Independent School Society dba Southpointe Academy dated June 23, 2023, as amended from time to time	None
Tabor Storage Solutions	Services Agreement between Omicron Construction Ltd. and Tabor Storage Solutions dated June 24, 2022, as amended from time to time	None
TELUS Communications Inc.	<p>Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated March 13, 2020, as amended from time to time.</p> <p>Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated April 16, 2021, as amended from time to time.</p>	None
Clutch Developments Ltd.	Lease agreement dated May 12, 2021 between Omicron Construction Ltd. and Clutch Developments Ltd. in respect of property located at Unit #1, 2075 Brigantine Drive, Coquitlam, BC.	None
Ford Credit Canada Company	<p>Lease agreement between Omicron Construction Ltd. and Ford Credit Canada dated May 18, 2021 for Ford VIN 1FTEW1EB0MKE02227</p> <p>Lease agreement between Omicron Construction Ltd. and Ford Credit Canada dated August 24, 2023 for Ford VIN 1FTEW1EB0MKE09856.</p>	None

<b>Vendor</b>	<b>Consent Required Contract</b>	<b>Cure Costs</b>
	Lease agreement between Omicron Construction Ltd. and Ford Credit Canada dated April 25, 2022 for Ford VIN 1FTEW1E51JFA21078.	

**Schedule “F”**

**Consent Required Contracts Assigned to 1474741 B.C. Ltd.**

<b>Vendor</b>	<b>Consent Required Contract</b>	<b>Cure Costs</b>
City of West Kelowna	Agreement between Omicron Interiors Ltd. and City of West Kelowna dated April 19, 2023 as amended from time to time	None
BC Liquor Distribution Branch	General Service Agreement between Omicron Interiors Ltd. and His Majesty The King in Right of the Province of British Columbia as Represented by The General Manager of the Liquor Distribution Branch (the “Counterparty”) dated September 8, 2020 as amended from time to time	None

**Schedule "G"**

**Consent Required Contracts Assigned to 1464115 B.C. Ltd.**

<b>Vendor</b>	<b>Consent Required Contract</b>	<b>Cure Costs</b>
BH Centre Head Corp.	Lease agreement dated October 18, 2004 between Omicron Consulting Ltd. and BH Centre Head Corp. (as successor in interest to BTC Properties II Ltd. and The Great-West Life Assurance Company), in respect of property located at the 4th Floor of 595 Burrard Street, Vancouver, BC (as amended by lease expansion and amending agreement dated February 12, 2007, by partial surrender of lease and lease expansion agreement and modification of lease dated August 22, 2007, by lease extension and amending agreement dated November 19, 2013, by lease extension and amending agreement dated April 13, 2017, and by lease extension and amending agreement dated June 8, 2022).	None



**Schedule "H"**

**Consent Required Contracts Assigned to 1474484 B.C. Ltd.**

<b>Vendor</b>	<b>Consent Required Contract</b>	<b>Cure Costs</b>
None	None	None

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IN THE SUPREME COURT OF BRITISH  
COLUMBIA

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IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.  
C-36, AS AMENDED

AND

IN THE MATTER OF NEXII BUILDING  
SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and  
NEXII HOLDINGS INC. 4540514 CANADA INC.,  
1061660 B.C. LTD., 0592286 B.C. LTD, 0713447 B.C.  
LTD, AND 0597783 B.C. LTD.

PETITIONERS

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**ASSIGNMENT ORDER**

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**SCHEDULE "D"**  
**DRAFT ORDER – ANCILLARY ORDER**

(attached)

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

ANCILLARY ORDER

	)	
BEFORE THE HONOURABLE	)	APRIL 26, 2024
JUSTICE STEPHENS	)	
	)	
	)	
	)	
	)	

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed Monitor (in such capacity the “**Monitor**”), coming on for hearing at Vancouver, British Columbia, on the 26<sup>th</sup> day of April, 2024; AND ON HEARING from counsel of the Monitor, Michael Shakra and Andrew Froh and those other counsel listed on **Schedule “A”** hereto, and no one else appearing although duly served; AND UPON READING, the material filed, including the Second Report of the Monitor dated April 19, 2024 (the “**Report**”); AND PURSUANT TO the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Court;

**THIS COURT ORDERS AND DECLARES THAT:**

- Capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the (i) Initial Order of Justice Stephens made on January 11,

2024 as amended by the Order of Justice Stephens dated January 22, 2024 (the “**Amended and Restated Initial Order**”) or (ii) the Report as the case may be.

2. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

### **STAY EXTENSION**

3. The Stay Period granted in paragraph 16 of the Amended and Restated Initial Order is hereby extended up to and including June 30, 2024.

### **DISTRIBUTION**

4. Upon Closing of the Transaction, the Monitor or the Petitioners are authorized to distribute the e consideration received by the Vendors from the Transaction (“**Sale Proceeds**”) to the Senior Secured Lenders or such other person(s) as the Senior Secured Lenders may direct (the “**Distribution**”).
5. The Monitor and/or any of the Petitioners or the Additional Petitioners (as that term is defined in the Approval and Vesting Order to be granted on the date of this Order) are hereby authorized to take all necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.
6. Notwithstanding:
  - (a) the pendency of these CCAA proceedings;
  - (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) or other applicable legislation in respect of the Petitioners or the Additional Petitioners and any bankruptcy or receivership order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Petitioners or the Additional Petitioners;
  - (d) and any provisions of any federal or provincial legislation,

the Distribution shall be made free and clear of all Encumbrances (including the Charges) and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Petitioners or the Additional Petitioners and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. The Monitor and/or any of the Petitioners or the Additional Petitioners shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to such Distribution under any applicable tax legislation and to remit such amounts to the appropriate governmental authority or other person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the Distribution in respect of which such withholding or deduction was made.
8. Any payments, distributions and disbursements made under this Order shall not constitute a “distribution” by any person and the Monitor shall not constitute a “legal representative” or “representative” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 23 of the *Canada Pension Plan Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), and section 97.39 of the *Customs Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Monitor, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under this Order, and is not exercising any discretion in making such distributions, disbursements or payments under this Order and no person is “distributing”, nor shall be considered to “distribute” nor have “distributed”, such funds for the purpose of the Tax Statutes. Further, the Monitor shall not incur any liability under the Tax Statutes in respect of its making any payments, distributions or disbursements ordered or permitted under this Order, and are hereby forever released and discharged from any claims against it, him or her under or pursuant to the Tax Statutes or otherwise at law, arising in respect of any such payments, distributions or disbursements made under this Order and any claims of this nature are hereby forever barred.

## GENERAL

9. The activities of the Monitor, as set out in the Report are hereby approved.
10. Endorsement of this Order by counsel appearing, other than counsel for the Monitor, is hereby dispensed with.
11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court overseeing the Petitioners’ proceedings under Chapter 15 of the Bankruptcy Code in Case No. 24-10026-JKS, or in any other foreign jurisdiction, to give effect to this Order and to assist the Petitioners or the Additional Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Additional Petitioners and the Monitor, as an officer of this Court, as may be necessary

or desirable to give effect to this Order or to assist the Petitioners, the Additional Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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[Signature of  
 Party  Lawyer for KSV  
Restructuring Inc.

Bennett Jones LLP  
(Michael Shakra)

BY THE COURT

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REGISTRAR

**Schedule "A"**

**List of Counsel**

<b>NAME</b>	<b>PARTY</b>
Michael Shakra and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett and Matilda Lici (MS Teams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
Alexis Teasdale	Counsel to the Purchasers, 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd., 1474484 B.C. Ltd.



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IN THE SUPREME COURT OF BRITISH  
COLUMBIA

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IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF NEXII BUILDING  
SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and  
NEXII HOLDINGS INC.

PETITIONERS

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**ANCILLARY ORDER**

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