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**Report of  
Duff & Phelps Canada Restructuring Inc.  
as Proposed Receiver of  
Xchange Technology Group LLC,  
IT Xchange Inc., IT Xchange Corp.,  
BlueRange Technology Corp.,  
BlueRange Technology Inc.,  
IT Xchange Financial Services LLC and  
Partstock Computer LLC**

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**October 25, 2013**

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COURT FILE NO: CV-11-9498-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

CALLIDUS CAPITAL CORPORATION

APPLICANT

- AND -

XCHANGE TECHNOLOGY GROUP LLC, IT XCHANGE INC.,  
IT XCHANGE CORP., BLUERANGE TECHNOLOGY CORP.,  
BLUERANGE TECHNOLOGY INC., IT XCHANGE FINANCIAL SERVICES LLC AND  
PARTSTOCK COMPUTER LLC

RESPONDENTS

REPORT OF  
DUFF & PHELPS CANADA RESTRUCTURING INC.  
AS PROPOSED RECEIVER

OCTOBER 25, 2013

## 1.0 Introduction

1. Duff & Phelps Canada Restructuring Inc. ("D&P") was retained by Xchange Technology Group LLC on August 22, 2013 to provide restructuring and related advisory services in connection with, *inter alia*, Xchange Technology Group LLC, IT Xchange Inc., IT Xchange Corp., BlueRange Technology Corp., BlueRange Technology Inc., IT Xchange Financial Services LLC and Partstock Computer LLC (collectively, the "XTG Debtors"), as well as the business and operations of the entities listed in paragraph 2 below.
2. The XTG Debtors exclude the following foreign affiliates: IT Xchange Limited (UK); IT Xchange Japan LLC (Japan); Hire Information Technology Ltd. (UK); Xchange Technology Rentals Ltd. (UK); IT Xchange Macao Commercial Offshore Ltd. (Macao); IT Xchange Pty Ltd. (Australia); and Xchange Technology GmbH (Germany) (collectively, the "Foreign Affiliates" and with the XTG Debtors, the "XTG Group").



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3. Callidus Capital Corporation (“Callidus”), the senior secured creditor of the XTG Debtors, has brought an application to the Ontario Superior Court of Justice (the “Ontario Court”) for:
    - a. an order (the “Receivership Order”) appointing D&P as receiver (“Receiver”) over all of the property, assets and undertaking of the XTG Debtors pursuant to Subsection 243(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (“BIA”), and Section 101 of the Courts of Justice Act R.S.O. 1990, c. C.43, as amended;
    - b. an order approving an agreement of purchase and sale dated October 25, 2013 (the “Sale Agreement”) as the stalking horse (“Stalking Horse Offer”) for the sale of substantially all of the XTG Debtors’ business and assets by the Receiver, if appointed, to 2393134 Ontario Inc., an entity incorporated by Callidus (the “Purchaser”); and
    - c. an order approving the Sale Process (as defined in Section 7.2 below), and declaring the Purchaser to be the “successful bidder” in the Sale Process absent a better offer being generated from the Sale Process.
  4. The primary purpose of the contemplated receivership proceedings is to expeditiously carry out the Sale Process in order to complete a sale of substantially all of the XTG Debtors’ business and assets.
  5. The Receivership Order contemplates that the Receiver would act as foreign representative (“Foreign Representative”) for the purpose of seeking an order from the US Bankruptcy Court in Delaware (the “US Court”) recognizing the receivership proceedings as a foreign “non-main” proceeding and enforcing the Orders of the Ontario Court made in these proceedings.

## **1.1 Purposes of this Report**

1. The purposes of this report (“Report”) are to:
  - a) Provide background information about XTG Group, including an overview of its historic operating results and current financial position;
  - b) Detail XTG Group’s connections to Canada;
  - c) Summarize XTG Group’s refinancing processes performed by Canaccord Genuity Corporation (“CG”) pursuant to an engagement letter dated May 23, 2013 (the “CG Process”) and by KPMG Corporate Finance Inc. (“KPMG”) pursuant to an engagement letter dated February 7, 2013 (the “KPMG Process”);
  - d) Summarize the proposed Sale Process and the terms of the Stalking Horse Offer;

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- e) Summarize the opinions prepared by Chaitons LLP (“Chaitons”) and Moore & Van Allen PLLC (“MVA”) on the security granted by XTG Group to Callidus in Canada (the “Canadian Security”) and in the US (the “US Security”), respectively;
  - f) Provide an analysis of the estimated realizable value of XTG Group’s business and assets in a liquidation;
  - g) Summarize the reasons that D&P believes that the Sale Process maximizes the value of the XTG Debtors’ business and assets and is in the best interests of its stakeholders;
  - h) Support the continued use of the XTG Debtors’ cash management system; and
  - i) Recommend that this Honourable Court issue Orders:
    - Placing the XTG Debtors in receivership;
    - Approving the Sale Process and authorizing and directing the Receiver to conduct the Sale Process on the basis detailed herein;
    - Approving the Stalking Horse Offer and declaring the Purchaser to be the “successful bidder” under the Sale Process absent a better offer being generated from the Sale Process; and
    - Sealing the Confidential Appendices to this Report, subject to further order of this Court.

## **1.2 Restrictions**

1. In preparing this Report, D&P has relied upon unaudited financial information prepared by XTG Group’s management, XTG Group’s books and records and discussions with its management. D&P has not performed an audit or other verification of such information. An examination of the XTG Group’s financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information relied upon in this Report is based on management’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

## **1.3 Currency**

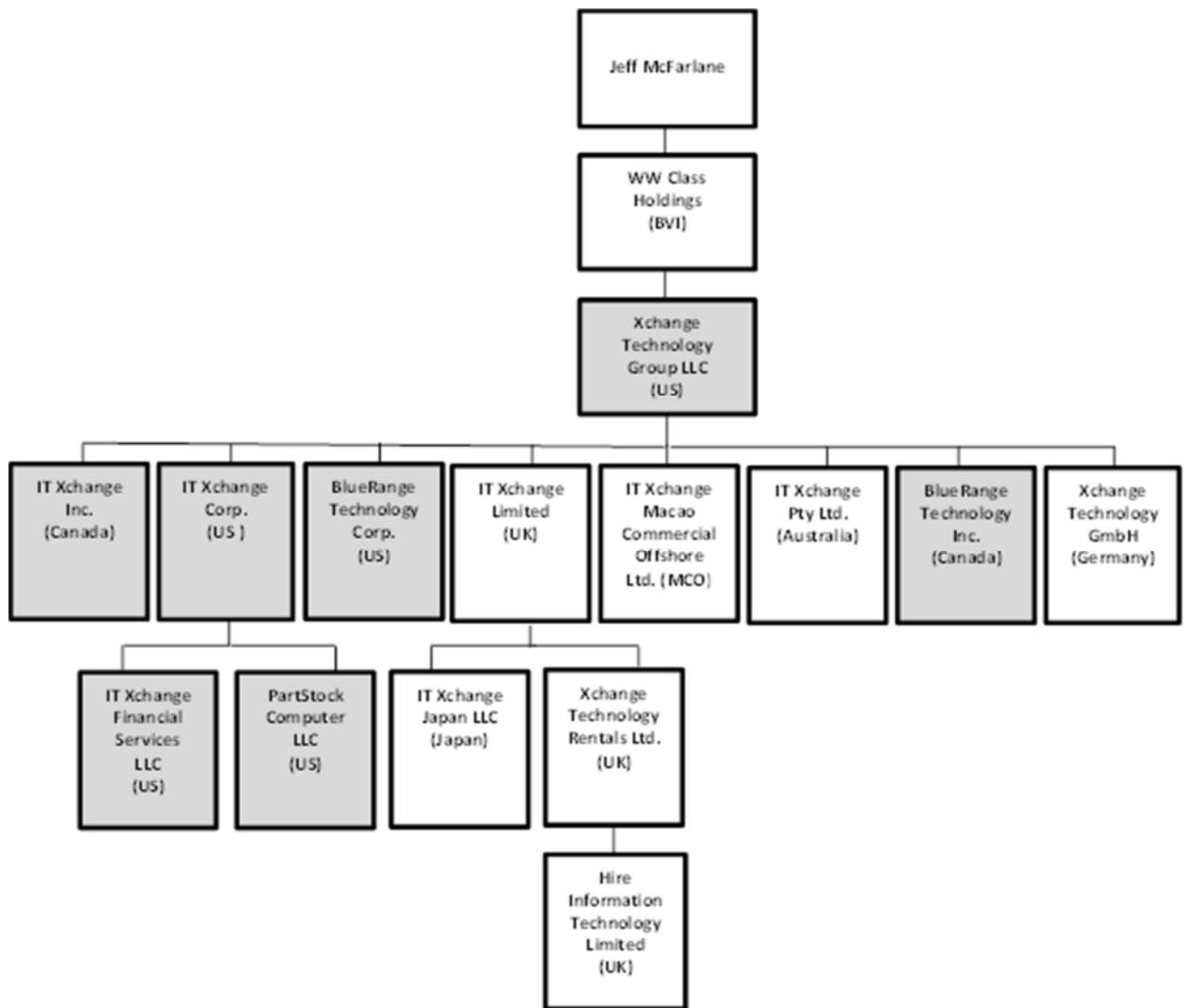
1. All currency references in this Report are to US dollars unless otherwise specified.

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## 2.0 Background Information

### 2.1 Corporate Overview

1. XTG Group was founded in 1996 in Ontario by its ultimate shareholder, Jeff McFarlane (“McFarlane”). XTG Group’s corporate organizational chart is provided in the following chart (the XTG Debtors are shaded):



2. XTG Group is a supplier of information technology (“IT”) products with operations in Canada, the United States, the United Kingdom, Germany, Australia, Macao and Japan. XTG Group also provides IT rental assets and programs, including servers, storage devices, laptops and desktop computers.

3. The table below details the lines of business performed by each of the XTG Debtors' business units. Business units cross corporate entities, as reflected in the table.

Business Unit	Legal Entities	Line of Business
ITX	IT Xchange Inc., IT Xchange Corp. and Foreign Affiliates	Distributor of Intel-based server systems and serves a wide variety of end-users in the secondary market
Partstock	IT Xchange Corp.	Distributor of IT products to the education segment, including kindergarten to grade 12 schools
Vernon	IT Xchange Financial Services LLC	Short term rental of IT products
BlueRange	BlueRange Technology Inc. and BlueRange Technology Corp.	Providing IT equipment for embedded solutions providers in the primary market

4. The place of incorporation and location(s) of each of the XTG Debtors is provided in the table below.

Entity	Place of Incorporation	Location of Operations
Xchange Technology Group, LLC	Delaware, USA	-
IT Xchange Inc.	Ontario, Canada	Canada
IT Xchange Corp. <sup>1</sup>	North Carolina, USA	USA
BlueRange Technology Corp.	Delaware, USA	USA
BlueRange Technology Inc.	Ontario, Canada	Canada
IT Xchange Financial Services LLC	Delaware, USA	Canada and USA
Partstock Computer LLC	Delaware, USA	-

5. XTG Group's Canadian and US head offices are located in Oakville, Ontario and Raleigh, North Carolina, respectively. These facilities are leased, as are the eight other North American facilities from which the XTG Debtors operate. These other facilities are located in Richmond Hill, Ontario, Minneapolis, Georgia, Washington, Maine, Illinois, Connecticut and California.
6. The XTG Debtors include five US entities, each of which has assets in Canada, as more fully detailed in Section 2.2 below.
7. XTG Group employs approximately 260 individuals globally, including 57 in Canada. XTG Group's workforce is not unionized; it does not maintain any employee pension plans.
8. Further background information about XTG Group is provided in the affidavit of Craig Boyer, a Vice-President of Callidus (the "Affidavit"), included in the receivership application materials filed by Callidus.

<sup>1</sup> Includes the business unit referred to as "Partstock". Partstock Computer LLC is inactive and does not carry on the Partstock business.

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## 2.2 Connections to Canada

1. XTG Group's connections to Canada, include:

- It was founded in Canada by McFarlane – he presently resides in North Carolina. McFarlane maintains an office at the Oakville, Ontario location, which is used by Alan Rupp (“Rupp”), XTG Group’s Chief Financial Officer, when he is in Oakville;
- The Canadian XTG Debtors carry on business in Canada and each of the US entities of the XTG Debtors has assets in Canada, as detailed in the table below:

US Entity	Assets in Canada
Xchange Technology Group, LLC	Bank accounts
IT Xchange Corp.	Accounts receivable, inventory and fixed assets
BlueRange Technology Corp.	Inventory and fixed assets
IT Xchange Financial Services LLC	Bank accounts, accounts receivable and inventory
Partstock Computer LLC	Cash

- The Chief Operating Officer of XTG Group works at the Oakville premises;
- The accounting and finance functions for XTG Group’s operations are performed in Canada. The finance group is comprised of 20 employees, each of whom works from the Oakville premises, including the Controller. This group prepares internal financial statements and other financial/accounting reports for each entity in XTG Group, including the Canadian entities, the US entities and the Foreign Affiliates;
- The majority of XTG Group’s administrative functions, including general accounting and financial reporting, are performed in Canada;
- The majority of XTG Group’s books and records are located and maintained at the Oakville premises;
- The human resource function is centralized and managed from Oakville;
- Payroll is processed from Oakville for XTG Group’s US and Canadian operating entities;

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- Callidus, being XTG Group's senior secured creditor, is based in Toronto, Ontario. The Credit Agreement includes a clause entitled "Consent to Jurisdiction" which states:

*"The Borrowers and Lender hereby irrevocably submit, as elected by Lender, to the non-exclusive jurisdiction of any United States Federal Court or North Carolina state court sitting in Wake County, North Carolina, or any Federal Court of Canada or provincial court of Ontario sitting in Toronto, Ontario in any action or proceeding arising out of or relating to this Agreement or any of the Credit Documents and the Borrowers and Lender hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in any such United States Federal Court, North Carolina state court, Federal Court of Canada or provincial court of Ontario."*

- XTG Group maintains several bank accounts in Canada. The cash in the deposit accounts is generally swept to either a USD or CAD consolidation account maintained by Callidus at Bank of Montreal;
- The operations of certain of XTG Group's US entities are integrated with certain of the Canadian operations. For example, a portion of the sales of IT Xchange Corp., a US debtor, are shipped from the Oakville premises. IT Xchange Corp. and IT Xchange Inc., a Canadian debtor, share inventory and fulfill orders based on availability of inventory. In addition, when rental assets of IT Xchange Financial Services LLC, a US debtor, come off of rental, they are sold (on an intercompany basis) to either IT Xchange Inc. (a Canadian debtor) or IT Xchange Corp. (a US debtor) for resale by those entities; and
- IT Xchange Ltd. and BlueRange Technology Inc., being the Canadian operating entities in the XTG Group, represent approximately \$15 million (15%) of the XTG Group's annual volume. Trade obligations of the Canadian entities presently total approximately \$1.8 million, or approximately 30% of the total trade debt of XTG Group, and the Canadian operations employ 57 individuals.

## **2.3 Management Authority/Capacity**

1. On August 3, 2013, XTG Group and Callidus entered into a Forbearance Agreement ("Forbearance Agreement"). The agreement was extended on August 16, 2013 and the forbearance period expired on September 4, 2013; it has not since been extended.
2. As part of the Forbearance Agreement, McFarlane and Callidus entered into a Withdrawal Agreement dated June 6, 2013 requiring McFarlane to relinquish his management and executive authority (the "Withdrawal Agreement"). A copy of the Withdrawal Agreement is attached as Appendix "A".

3. Pursuant to the Withdrawal Agreement, the executive and management authority over XTG Group was delegated to Rupp.
4. Although the Withdrawal Agreement is dated June 6, 2013, it didn't become effective until August 3, 2013, the date on which the Forbearance Agreement was settled. Rupp has performed an executive leadership role since that time.

## 2.4 Historical Operating Results

1. The table below reflects the historical consolidated financial results of XTG Group since 2010.

	(\$000s)			
	Year Ended December 31,			(Unaudited) Seven Months Ended July 31, 2013
	(audited) 2010	(audited) 2011	(unaudited) 2012	
Sales	92,661	130,964	114,091	60,616
Gross profit (\$)	29,783	53,609	45,519	27,618
EBITDA	6,477	14,702	1,958	4,594
EBIT	2,761	549	(13,000)	(2,578)
Net income/(loss)	1,464	(1,586)	(17,560)	(8,406)

Negative  
EBIT of  
\$15.58  
million

2. The table reflects the following:
  - Net losses since fiscal 2011 total \$27.5 million;
  - Accumulated losses before interest and taxes for the last 19 months total approximately \$15.58 million;
  - The nature of XTG Group's business, particularly its rental asset business, requires significant capital investment in inventory. Accordingly, earnings before interest and taxes ("EBIT") is a key financial metric as depreciation has a significant relationship to the capital expenditure requirements in the rental asset business. EBIT has declined significantly since 2010. Management attributes this to, *inter alia*:
    - The poorly executed integration of two acquisitions in 2011, being Hamilton Services Group Limited and Livingston Electronic Services GmbH in the UK and Germany, respectively;
    - Decentralized management and decision making which inhibited the execution of a global sales and procurement strategy for the business;
    - Excessive overhead costs related to the decentralized sales and procurement structure of the business units;

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- Liquidity constraints which impaired XTG Group's ability to capitalize on opportunistic inventory purchases, which is essential to the success of the business, particularly in the ITX and Vernon business units;
  - Costs (in excess of \$3 million) related to an unsuccessful implementation of an Enterprise Resource Planning system in 2011 – this continues to impair the accuracy and timeliness of financial reporting; and
  - Inability to invest in new technologies and products due to capital constraints which has impaired growth.
3. XTG Group is presently not generating sufficient cash flow to service its obligations to Callidus, nor does it have sufficient funding to continue to operate in the normal course. Losses are continuing. Callidus has continued to provide advances to the XTG Debtors over the last several months, notwithstanding the distressed state of its business.

## **2.5 Financial Position**

1. XTG Group's internal financial statements as at June 30, 2013 reflect that it:
- is highly leveraged – the book value of its current liabilities (approximately \$46 million) significantly exceeds the book value of its assets (approximately \$30 million, including approximately \$10 million of intangible and other assets, such as goodwill and deferred financing costs);
  - has negative working capital of approximately \$30 million;
  - has approximately \$5 million of accounts payable that are past-due;
  - has negative retained earnings of approximately \$8 million; and
  - is insolvent on a consolidated balance sheet basis.

## **3.0 Creditors**

### **3.1 Callidus**

1. Callidus is the XTG Group's senior secured creditor and operating lender pursuant to an amended and restated credit agreement dated October 11, 2012 (the "Credit Agreement"). The Credit Agreement expired on October 10, 2013.



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2. As at October 24, 2013, the XTG Group was indebted to Callidus in the amount of \$36.97 million, including an “over-advance” of approximately \$4.5 million<sup>2</sup> on the revolving line of credit facility.
  3. McFarlane and one of the Foreign Affiliates, Hire Information Technology Limited, a UK entity, are guarantors of XTG Group’s obligations to Callidus.
  4. On July 26, 2013, Callidus issued demand for payment of all amounts owing to it.
  5. On August 3, 2013, XTG Group and Callidus entered into the Forbearance Agreement.

### **3.1.1 Cash Management System**

1. XTG Group’s cash management system consists of over thirty domestic and international bank accounts with Wells Fargo, Royal Bank of Canada (“RBC”) and HSBC Bank Canada (“HSBC”). Collection accounts may be blocked and include a daily cash sweep mechanism, depending on the financial institution. Not all of the cash sweeps are automated – for those accounts, customer receipts are swept manually, as frequently as daily. Most customers pay XTG Group by wire, ACH or credit card. Ultimately, customer receipts of the XTG Debtors are swept to either a US or Canadian dollar consolidation account maintained by Callidus at Bank of Montreal. Working capital is advanced to the XTG Debtors via wire transfer to either a US or Canadian dollar disbursement account at Wells Fargo, to fund global operations. It would be difficult, costly and time consuming for a new cash management system to be implemented during these proceedings. Amending the cash management system would require Callidus to increase significantly its exposure to the XTG Group as customers would need to amend their payment practices, which would delay accounts receivable collections and cause Callidus to increase its exposure while new payment mechanisms are worked out with customers.
2. Given the significant complexities of the cash management system, and the cash flow impact resulting from customers changing their payment practices, it is contemplated that XTG Group would continue to utilize the existing cash management system, including the application of all cash receipts against Callidus’ revolving loan facility.
3. Based on the foregoing and the results of the security opinions described below, the proposed Receiver believes it is appropriate for XTG Group’s existing cash management system to be continued during these proceedings.

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<sup>2</sup> The overadvance is based on a borrowing base certificate filed on October 21, 2013 and totals approximately \$20 million if the amount outstanding under the unmarginated “Facility B” is included.

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### 3.1.2 Security Opinion - Callidus

1. In anticipation of these proceedings, D&P retained Chaitons and A&O to act as the Receiver's Canadian and US legal counsel, respectively. A&O retained MVA, a North Carolina law firm, to provide an opinion on the US Security as it is subject to the laws of North Carolina. Chaitons provided an opinion on the Canadian Security.
2. Subject to the standard assumptions and qualifications contained in the opinions ("Opinions")<sup>3</sup>.
  - a. Chaitons opined that the Canadian Security, as registered under the Ontario *Personal Property Security Act* ("PPSA"), creates a valid and perfected security interest in the business and assets of XTG Group situated in Ontario; and
  - b. MVA opined that the US Security, together with the *Uniform Commercial Code* ("UCC") financing statements and the deposit account control agreement, creates a valid and perfected security interest in the general intangibles, accounts receivable, inventory, equipment and goods held by the members of the XTG Debtors organized within the US and the deposit accounts listed in the deposit account control agreement.
3. The Opinions were required in advance of these proceedings because: (a) the purchase price under the Sale Agreement is to be paid by way of credit bid by Callidus; and (b) the Receivership Order provides that XTG Group's cash management system, as described above and further described in the Affidavit, would continue to be utilized during these proceedings.

### 3.2 Triangle Capital Corporation

1. Triangle Capital Corporation ("Triangle") is a secured creditor of XTG Group pursuant to a Senior Subordinated Note dated June 7, 2012, as amended (the "Triangle Note"). The Triangle Note is in the principal amount of up to \$8.5 million, which contemplated an initial advance of \$6 million.
2. On June 7, 2012, Triangle advanced \$6 million to XTG Group under the Triangle Note. There have been no additional advances made by Triangle. XTG Group's indebtedness to Triangle is presently approximately \$6.4 million, including interest.
3. Triangle was provided with notice of Callidus' demand on July 26, 2013 and has been served with Callidus' receivership application materials.

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<sup>3</sup> Copies of the Opinions will be made available to the Court should the Court wish to review the Opinions.

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4. Triangle is aware of the retention of D&P. During September, 2013, Triangle representatives contacted D&P in order to set up a meeting to discuss XTG Group. Triangle representatives were to meet with D&P representatives in Toronto on September 27, 2013. The meeting did not take place.

### **3.3 Royal Bank of Canada**

1. RBC has security over certain of XTG Group's business and assets which appears, if valid, to rank subordinate to the Callidus security.
2. On August 7, 2013, RBC commenced an action against XTG Group in which it claims that it is owed approximately \$630,000. The litigation is ongoing and XTG Group filed a statement of defence in September, 2013.
3. On September 13, 2013, RBC issued notices under the PPSA for payment from XTG Group bank accounts held at HSBC. The issuance of these notices caused HSBC to freeze all funds in those bank accounts (approximately \$415,000).
4. Correspondence has been exchanged among HSBC, Callidus and XTG Group and/or their respective legal counsel. D&P understands that HSBC will not allow the monies to be released to XTG Group, Callidus or RBC absent agreement among the parties or Court order.

### **3.4 GE Commercial Distribution Finance Corporation ("GE")**

1. GE has security over certain of the XTG Debtors' business and assets pursuant to an Amended and Restated Inventory Financing Agreement dated August 15, 2012 between GE and Partstock Computer LLC (the "GE Agreement"). Xchange Technology Group LLC, the parent company in the XTG Group, is a guarantor of the obligations owing under the GE Agreement.
2. The XTG Group owes approximately \$200,000 to GE. D&P understands that this obligation ranks in priority to Callidus.

### **3.5 Other Secured Creditors**

1. Based on PPSA registrations, certain other creditors have registered security against the XTG Debtors. Those creditors include Business Development Bank of Canada ("BDC"), Ingram Micro Inc., McFarlane and Tech Data Canada Corp. Each of these creditors (other than Tech Data Canada Corp.) has entered into a subordination agreement with Callidus pursuant to which they have agreed to subordinate their security in favour of Callidus.
2. Based on UCC registrations, certain other creditors have registered security under the UCC against the XTG Debtors. Those creditors include Lenovo Financial Services and Winthrop Resources Corporation. Both of these registrations were made subsequent to the registrations filed in favour of Callidus.

### 3.6 Claims that Rank or May Rank in Priority to Callidus

- Based on XTG Group's books and records as at October 23, 2013, potential priority payables (both in US and Canada) total approximately \$790,000 and are comprised of the following (collectively, the "Priority Payables").

Description	Amount (\$000s)
Vacation pay	90
Wages and source deductions (stub period)	434
HST obligation	266
Total	790

### 3.7 Unsecured Creditors

- According to XTG Group's accounts payable records as at October 23, 2013, unsecured creditor obligations totaled approximately \$6.23 million, the majority of which are owing to trade suppliers. As illustrated in the following table, trade obligations are significantly aged - approximately 57% of these obligations are aged greater than 90 days.

Entity	(\$000s)				Total
	Current	Over 30 days	Over 60 days	Over 90 days	
IT Xchange Corp.	675	191	290	1,701	2,857
IT Xchange Financial Services LLC	370	64	35	255	724
BlueRange Technology Corp.	17	0	0	46	63
Subtotal – US filing entities	1,062	255	325	2,002	3,644
IT Xchange Inc.	182	93	20	914	1,209
BlueRange Technology Inc.	439	(6)	26	152	611
Subtotal – Canadian filing entities	621	87	46	1,066	1,820
Subtotal – Foreign Affiliates	268	3	31	463	765
Total	1,951	345	402	3,531	6,229
Total (%)	31.3%	5.5%	6.5%	56.7%	100%

- As at October 23, 2013, amounts owing by XTG Group to its five largest unsecured creditors were as follows:

Creditor	Service Provided	Entities Serviced	Amount (\$000s)
Fedex	Freight	IT Xchange Financial Services LLC., IT Xchange Corp.	655
Ingram Micro Canada	Inventory supplier	BlueRange Technology Inc., IT Xchange Inc., IT Xchange Financial Services LLC.	330
IT Convergence	Inventory supplier	IT Xchange Corp.	255
MFP	Inventory supplier	IT Xchange Inc., IT Xchange Corp., IT Xchange Limited	238
Tech Data Canada	Inventory supplier	BlueRange Technology Inc., IT Xchange Inc., IT Xchange Financial Services LLC.	212
Subtotal			1,690
All others	Various		4,539
Total (XTG Debtors and Foreign Affiliates)			6,229

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3. The vendor lists of the XTG Debtors include more than 430 suppliers. The XTG Debtors are presently on cash-on-delivery terms with the majority of their vendors.
  4. The creditors below have commenced litigation to collect amounts due to them from XTG Group. Several other creditors have threatened to initiate proceedings.

Creditor	XTG Debtor	Amount Owing (\$)
RBC	IT Xchange Inc.	629,205
Gov Connection	IT Xchange Corp.	137,183
Bank of America Leasing	IT Xchange Inc.	125,000
Computer Technology Link	IT Xchange Corp.	65,299
Avaya Canada Corp.	IT Xchange Inc.	50,052
EET Danmark	IT Xchange Corp.	28,718

5. Of the creditors listed above, Gov Connection, Avaya Canada Corp. and Computer Technology Link have obtained judgements.
6. BDC has a mortgage on the Oakville property, which is owned by McFarlane. BDC recently transferred the account to its special loans group. BDC is owed approximately \$4 million by McFarlane. This obligation is guaranteed by IT Xchange Inc., one of the Canadian entities in the XTG Group.

## 4.0 Pre-Filing Refinancing Processes

### 4.1 CG Process

1. CG was engaged by XTG Group to conduct a refinancing solicitation process for XTG Group in May, 2013. McFarlane was CG's principal contact during the CG Process. A redacted copy of CG's engagement letter is included as an exhibit to the Affidavit.
2. Based on information provided to Rupp by CG, the CG Process included the following:
  - CG identified 56 parties, including financial parties, strategic parties and private equity firms that it believed may have an interest in participating in a refinancing of the XTG Group;
  - Interested parties were required to sign a confidentiality agreement in order to obtain a confidential information memorandum ("CIM") prepared by CG;

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- Information concerning the XTG Group was provided in a virtual data room. The data room contained financial and other information, including employee data, occupancy leases, Callidus and Triangle loan agreements and supplier and customer information; and
  - CG arranged for interested parties to meet with management and tour XTG Group's premises, upon request.

#### **4.1.1 CG Process Results**

1. Twenty-three parties executed the CA and received a CIM. The balance of the parties did not express an interest in the opportunity.
2. CG advised Rupp that it received five verbal expressions of interest and three term sheets. Only one of these three parties performed diligence. That party passed on the opportunity shortly after it commenced diligence.
3. On August 15, 2013, McFarlane submitted to Callidus a letter of intent from one party who participated in the CG process (the "Letter of Intent"); however, the Letter of Intent was submitted directly to McFarlane and not through CG.
4. The Letter of Intent was an offer to purchase for \$15 million (plus \$2 million in preferred equity in the acquiring "newco") all of XTG Group's business and assets (i.e. not a refinancing), before adjustments for past due payables (over \$4.5 million at that time). The Letter of Intent was subject to diligence, financing and required a 60-day exclusivity period. Callidus advised McFarlane that it was not prepared to consider the Letter of Intent.
5. Financing for the Letter of Intent transaction was to be provided by a US private equity firm (the "PE Firm"). As an alternative to the Letter of Intent, the PE Firm made an offer to purchase the Callidus debt for \$17 million. This offer was also not acceptable to Callidus. D&P has been advised that there were discussions between Callidus and the PE Firm about a sale of the Callidus debt; however, Callidus advised that the amount discussed was not (and is not) acceptable to it. A copy of the Letter of Intent is attached as Confidential Appendix "1".
6. Attached as Confidential Appendix "2" is a summary provided by CG to Rupp on October 15, 2013 which sets out the parties that were contacted by CG and the values of their expressions of interest.

#### **4.2 KPMG Process**

1. KPMG was engaged in February, 2013 by the XTG Group to conduct a refinancing solicitation process. The process terminated in June, 2013. McFarlane was KPMG's principal contact. A redacted copy of KPMG's engagement letter is included as an exhibit to the Affidavit.
2. KPMG advised Rupp that the KPMG Process included a broad canvassing of the asset based lending marketplace.

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#### 4.3 KPMG Process Results

1. Based on information provided by KPMG to Rupp, one term sheet was submitted under the KPMG Process. This party passed on the opportunity after it performed diligence.
2. Attached as Confidential Appendix “3” is a memo dated October 18, 2013 from KPMG which summarizes the KPMG Process.

#### 5.0 Urgency

1. D&P has been involved with the business in an advisory capacity since mid-June, 2013, although its engagement letter was not executed until August 22, 2013 due to issues related to the Withdrawal Agreement. As a result of its activities, D&P has first-hand knowledge of the issues materially impacting the business, including:
  - The business is fragile. Absent the proposed stay of proceedings and certainty that will result from the transaction contemplated by the Stalking Horse Offer (or a superior transaction resulting from the Sale Process), it is unlikely XTG Group will be able to continue to operate on a going-concern basis;
  - XTG Group is incurring significant losses that are eroding XTG Group’s financial position to the detriment of its stakeholders;
  - Certain elements of XTG Group’s contemplated restructuring can only be implemented in the context of an insolvency proceeding, including terminating real property leases and implementing other cost-cutting measures;
  - XTG Group is substantially overdrawn on its working capital facility with Callidus. Absent the continued support of Callidus, XTG Group is without funding to continue to operate;
  - XTG Group is on cash-on-delivery terms with the majority of its suppliers, including its key inventory suppliers. Supplier pressure is significant and continues to intensify. A growing list of creditors and suppliers have commenced, or are threatening to commence, litigation and/or to take “self-help” remedies in order to collect amounts owing to them by XTG Group. One such example is the action taken by RBC which resulted in the freezing of funds in XTG Group’s bank accounts at HSBC, as further described in the Affidavit; and
  - Industry rumours are impairing XTG Group’s business.



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## 6.0 Restructuring Process Considerations

1. Upon evaluation of various cross border restructuring options and structures, D&P and XTG Group's advisors determined that the most expedient and least costly process is to place the XTG Debtors in receivership and to have the proceedings, and the transactions resulting therefrom, recognized by the US Court.
2. D&P and the other advisors were of the view that any prolonged process, with the incumbent cost and uncertainty, may jeopardize substantially the ability to restructure the business.
3. D&P, as proposed Receiver, was also cognizant that, given the expedited timelines in this process, stakeholders receive sufficient notice in both Canada and the US. The contemplated process achieves that objective.

## 7.0 Restructuring Plan, Stalking Horse Offer and Sale Process

1. Subject to the making of the Receivership Order, implementation of the restructuring plan will be immediately commenced. The restructuring plan is summarized as follows:
  - Certain operations will be relocated to less costly premises;
  - Portions of the business will be consolidated into the XTG Group's facility in North Carolina;
  - Underperforming portions of the business which do not form part of the go forward business plan will be wound down on an orderly basis;
  - An external sales force would be retained to augment the existing sales network in certain business units;
  - A sale of XTR Germany would be completed – this is presently being negotiated;
  - A sale of UK real estate would be completed – this is presently being negotiated;
  - Callidus would be the ultimate 100% shareholder of the restructured entity; and
  - Callidus would provide new (or amended) credit facilities to the Purchaser to facilitate its restructuring and future growth.



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## 7.1 The Sale Agreement

1. A summary of the key terms and conditions of the Sale Agreement is as follows:
  - Vendor: the Receiver
  - Purchaser: an entity or entities to be incorporated prior to closing that is to be ultimately 100% owned by Callidus
  - Purchased assets: Substantially all of XTG Group's business and assets and the shares of the Foreign Affiliates
  - Purchase price: Will be paid by credit bid and calculated as follows: Callidus debt on closing (less \$3 million) plus the Priority Payables. As at the date of this Report, the purchase price would be approximately \$35 million
  - Priority obligations: Assumed by the Purchaser or paid at closing, including GE debt (to the extent it ranks in priority to Callidus and remains unpaid after closing), priming government obligations, priority employee claims and sales tax obligations
  - Assumed Obligations: Purchaser to assume all obligations related to transferred employees, obligations under assumed contracts, priming claims (unless paid in full on or prior to closing) and post-filing obligations incurred from operating the business during the receivership proceedings<sup>4</sup>
  - Employees: The Purchaser intends to offer employment to the majority of the existing employees
  - Representations and warranties: Consistent with insolvency transactions, i.e. to be completed on an "as is, where is" basis without material representations and warranties
  - Closing: Business date two days following US Court approval of the transaction
  - Conditions: The only material condition precedent is the approval of the transaction by the Ontario Court and the US Court
  - Transition Services Agreement: A Transition Services Agreement is to be utilized to assist to transition the existing operations to the Purchaser

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<sup>4</sup> It is contemplated that the Receiver's fees and expenses would be secured by the Receiver's Charge and funded in cash prior to the completion of these proceedings. Accordingly, those costs would not be an Assumed Obligation under the Sale Agreement.

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2. A copy of the Sale Agreement is attached as Appendix “B”. The schedules to the Sale Agreement contain commercially sensitive information and, accordingly, are attached as Confidential Appendix “4”.

## 7.2 Sale Process

1. A summary of the proposed Sale Process is as follows:
- The Sale Agreement is to be a Stalking Horse Offer in the Sale Process;
  - The Receiver shall distribute a brief interest solicitation letter detailing this opportunity to prospective purchasers identified by the Receiver, including those that were approached by CG and KPMG. Attached to the interest solicitation letter will be a form of confidentiality agreement (“CA”);
  - Upon execution of a CA, bidders will be provided with the opportunity to commence diligence, including reviewing information in an online data room;
  - The Receiver will facilitate due diligence efforts by, *inter alia*, arranging site visits and meetings between management and interested parties, provided that such meetings are supervised by the Receiver, and the Receiver is of the view that such prospective purchasers are bona fide, in the Receiver’s sole discretion;
  - Prospective purchasers will be provided with a hard and soft copy of the Stalking Horse Offer. Prospective purchasers will be required to submit offers in the form of the Stalking Horse Offer;
  - A “Superior Bid” under the Sale Process is one that is submitted for the Purchased Assets which is at least equivalent to the Stalking Horse Offer, which includes the following minimum criteria:
    - the offer must be an irrevocable offer;
    - the offer must be accompanied by a cash deposit which is at least equal to 15% of the aggregate purchase price payable under the offer;
    - the offer must be for a purchase price at least equal to the Purchase Price, payable in cash on Closing, and otherwise on terms no less favourable and no more burdensome or conditional than the Stalking Horse Offer;
    - the offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror’s obligation to complete the transaction that are not otherwise contained in the Stalking Horse Offer;

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- the offer must be made by an offeror which can demonstrate the financial ability to complete the transaction; and
  - the offer must contemplate a closing date of no later than December 31, 2013.
- Offers will be required to be submitted to the Receiver by 10:00 am (Toronto time) on November 19, 2013 (the “Bid Deadline”), being three weeks from the return date of the motion for approval of the Sale Process; and
  - The Sale Process does not contemplate any “break-fee” or “expense reimbursement” as the offer is in the form of a credit bid.
2. Approval of bidding procedures for an auction is not being sought at this time. Should the results of the Sale Process necessitate that auction procedures be prepared, the Receiver would bring a motion to do so.
  3. The Receiver will have the right to extend or amend the Sale Process as it considers appropriate; however, the Receiver would seek the Court’s approval to terminate or materially amend the Sale Process (including any procedures related to the conduct of an auction).
  4. The Receiver shall not be required to accept the highest offer, or any offer.
  5. Any transaction will be subject to approval by the Ontario Court and the US Court.
  6. Subject to the approval of the Ontario Court, the following table sets out the Sale Process timeline:

Milestone	Timeline
Receivership Application	October 29, 2013
US Motion for Provisional Relief, including recognition of Receivership Order, Sale Process and Stalking Horse Offer	October 29/30, 2013
Offer deadline under Sale Process	November 19, 2013
Canadian Sale Approval Motion	November 22, 2013
US Motion for Recognition Order, including recognition of Canadian Sale Approval and Vesting Order	November 26, 2013
Anticipated closing date of the Stalking Horse Offer <sup>5</sup>	November 29, 2013

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<sup>5</sup> Should the Sale Process result in a transaction other than the transaction contemplated by the Stalking Horse Offer, the closing date is estimated to be on or prior to December 31, 2013.

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## 8.0 Recommendation

1. D&P, as proposed Receiver, recommends that this Court issue an Order approving the Sale Process, including the approval of the Stalking Horse Offer, for the following reasons:
  - In the Receiver's view, the Sale Process is appropriate and of sufficient duration, particularly in light of the processes previously conducted by CG and KPMG. KPMG and CG widely canvassed the market for a prolonged period of time, including contacting financial parties, strategic parties and private equity firms across North America. Many of the parties that will be contacted by the Receiver during the Sale Process are familiar with this opportunity;
  - McFarlane provided a Letter of Intent from a prospective purchaser to Callidus which was for approximately 50% of the Callidus debt, implying that there is no value to the equity in the business;
  - The duration of the proposed Sale Process and the existence of a "stalking horse" offer will assist to create certainty for all stakeholders, particularly XTG Group's employees. It is critical that the Sale Process be completed expeditiously so that stakeholders (employees, customers and vendors) understand that the XTG Group will continue to operate as a going concern;
  - Absent the completion of the transaction contemplated by the Stalking Horse Offer or a superior transaction that may result from the Sale Process, XTG Group will be without funding and, accordingly, could be forced to discontinue operations; and
  - The use of a "stalking horse" offer is common in cross-border insolvency proceedings. In addition, no break fee or expense reimbursement is contemplated, which is appropriate in a credit bid circumstance.

## 9.0 Liquidation Analysis

1. D&P prepared an analysis of the estimated realizable value of XTG Group's business and assets in a liquidation. A copy of this analysis is provided in Confidential Appendix "5".
2. The liquidation analysis reflects that Callidus would incur a significant shortfall on its outstanding loans to XTG Group should its business cease operating and the assets liquidated. Detailed assumptions to the liquidation analysis are provided in the confidential appendix.

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## 10.0 Confidential Appendices

1. Given that the Confidential Appendices to this Report contain sensitive commercial information, including the identity and values of any expressions of interest and/or the liquidation value of XTG Group's assets, D&P is of the view that it is appropriate for these appendices to be filed with the Court on a confidential basis pending further Court Order.

## 11.0 Funding of these Proceedings

1. Provided the proposed Orders are granted, Callidus is prepared to continue to fund the business in accordance with the existing cash management system.

## 12.0 Conclusion and Recommendation

1. Based on the foregoing, D&P, as proposed Receiver, respectfully recommends that this Honourable Court make Orders granting the relief detailed in Section 1.1 of this Report.

\* \* \*

All of which is respectfully submitted,

*Duff & Phelps Canada Restructuring Inc.*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS PROPOSED RECEIVER OF  
XCHANGE TECHNOLOGY GROUP LLC, IT EXCHANGE INC.,  
IT XCHANGE CORP., BLUERANGE TECHNOLOGY CORP.,  
BLUERANGE TECHNOLOGY INC., IT XCHANGE FINANCIAL SERVICES LLC AND  
PARTSTOCK COMPUTER LLC  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

June 6, 2013

To:

*Lender:*

Callidus Capital Corporation  
Suite 4320, Royal Trust Tower  
77 King Street West  
Toronto, Ontario M5K 1K2

*Borrowers:*

Xchange Technology Group LLC  
ITXchange Financial Services LLC  
IT Xchange Corp.  
BlueRange Technology Corp.  
PartStock Computer LLC  
I.T. Xchange Inc.  
BlueRange Technology Inc.  
I.T. Xchange Limited  
Xchange Technology Rentals Limited  
Hamilton Rentals Limited  
c/o Xchange Technology Group  
9241 Globe Center Drive, Unit 100  
Morrisville, North Carolina 27560

Re: Financing arrangements between the Lender and the Borrowers named above under the Amended and Restated Loan Agreement dated October 11, 2012, as amended (the "Loan Agreement").

Dear Sirs:

I have guarantied payment and performance of the Obligations (as defined in the Loan Agreement) pursuant to an Amended and Restated Guaranty dated October 11, 2012, subject to the limitations set forth therein. I acknowledge that events of default have occurred under the Loan Agreement.

The purpose of this letter is to confirm that I have suspended and relinquished the exercise of any of my powers and authorities as an officer, director, manager, managing member, or employee of any of the Borrowers, and to confirm that those powers and authorities may be carried out by Alan Rupp in his capacity as the chief financial officer of the Borrowers.

In my individual capacity and as the indirect sole owner of the Borrowers and as the sole director or manager of each of the Borrowers, I specifically agree as follows:

1. Mr. Rupp has been and is hereby appointed as an authorized officer and agent of each of the Borrowers and is authorized and directed, without limitation and acting on behalf and in the name of each of the Borrowers, to do each of the following (each of which powers and authorities I have suspended and relinquished):

- (a) execute and deliver any loan or collateral document to or with the Lender in connection with the Obligations or the Loan Agreement, including but not limited to any forbearance agreement with the Lender, to request advances thereunder, and take any action necessary or appropriate to the performance of the Borrowers' obligations under the Loan Agreement or any of the Loan Documents (as defined in the Loan Agreement), including but not limited to the delivery of acknowledgements and waivers after default, to cause the Borrowers to perform their obligations to the Lender in connection with the exercise of its remedies after default, and to the

appointment of a receiver over the assets or operations of any of the Borrowers upon the request of the Lender;

(b) execute and deliver any loan or collateral document to or with any lender (other than Lender) to or creditor of any of the Borrowers in connection with any other loan, credit or financing arrangements;

(c) procure any alternative financing for purposes of replacing or supplementing the Obligations and make any payment and execute and deliver any documents necessary or appropriate to evidence or effect that financing;

(d) establish operational and capital budgets for all of the Borrowers;

(e) establish cost restructuring and divestiture plans for all of the Borrowers;

(f) engage brokers, bankers, consultants and other advisors for purposes of soliciting offers to purchase any one or more Borrowers or their assets;

(g) procure, approve, execute, deliver, and perform any agreement for the sale of any or all of the assets of any of the Borrowers (including any Borrower's equity ownership in any of its subsidiaries that is not a Borrower) or the sale of the equity interests of any or all of the Borrowers;

(h) hire and fire employees and officers for all of the Borrowers and to set their compensation; except that he will not be authorized to change my salary or benefits or to terminate my status as an employee;

(i) open bank accounts, sign checks and other orders for payment, direct the payment of the funds of any of the Borrowers, and procure insurance and obtain trade credit for all of the Borrowers;

(j) collect, demand, receive, sue for or compromise amounts due any of the Borrowers and compromise and settle claims made against any of the Borrowers arising out of any transaction made in the ordinary course of business; and

(k) authorize the filing of a petition in bankruptcy, an assignment for the benefit of creditors, or any other proceeding for the liquidation and winding up of the business of any of the Borrowers.

2. I agree that without the prior written consent of the Lender, I will not and will not be authorized to do any of the following;

(a) hold myself out to third parties as continuing to have any of the powers and authorities that I have suspended or relinquished under this agreement;

(b) take any action to usurp, rescind or terminate any of Mr. Rupp's powers and authorities, except for good cause due to his gross negligence, willful misconduct, or willful mismanagement, provided that in such case I will first give written notice to the Lender to afford time for the selection of a replacement officer to carry out the powers and authorities assigned to Mr. Rupp pursuant hereto; or



(c) establish or commence any business operation that is, or is intended to be, competitive with any of the Borrowers; provided that I continue to receive my salary and benefits from the Borrowers as set forth on attached Schedule 2(c), and provided further, however, that this will not restrict me (alone or with others) from bidding to purchase (or purchasing) any of the assets of the Borrowers or any of the equity ownership of the Borrowers, and, if purchased, from conducting the purchased business.

3. I further acknowledge and agree that:

(a) The Lender is relying on this agreement in forbearing from enforcement due to the events of default and in making any future advances to the Borrowers;

(b) This agreement will be treated as one of the Loan Documents (as defined in the Loan Agreement) and my failure to comply with this agreement will be an Event of Default under the Loan Agreement; and

(c) After having an opportunity for consultation with counsel, I agree that the arrangements under this agreement are in the best interests of the Borrowers at this time.

4. Notwithstanding the suspension and relinquishment of my corporate powers hereunder, I shall be entitled to promptly receive any and all information from the Borrowers related to their business and financial affairs which I may request, shall be entitled, with Mr. Rupp's permission, to consult with employees of the Borrowers related to any matter concerning the Borrowers' business or financial affairs, may have access to Borrowers' electronically stored information, and may maintain an office at the Borrower's business premises.

5. I will take all corporate and limited liability company actions to effectuate this agreement and to confirm the appointment and authorization of Mr. Rupp as provided herein, and will provide copies of any and all such documents to the Lender concurrently with execution thereof. A copy of this letter may be provided to Triangle Capital Corporation or any other creditor or third party dealing with any of the Borrowers.

6. Notwithstanding any other provision of this agreement, I am not waiving any rights that I may have to the compensation and employee benefits as described on attached Schedule 2(c), provided that this agreement supersedes any contrary provision under any employment agreement that I have with any of the Borrowers and I will waive and forebear from exercising any right that I may have under any such agreement to claim any severance or other termination payment or other compensation.

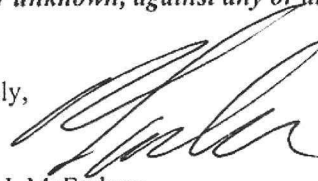
7. Notwithstanding any other provision of this agreement, I reserve the right to reinstate fully the authorities and powers that I have suspended and relinquished under this letter upon the payment of the Obligations in full or with the prior written consent of the Lender.

8. I irrevocably submit to the non-exclusive jurisdiction of any United States Federal Court or North Carolina state court sitting in Wake County, North Carolina, any United States Federal Court or Delaware state court sitting in New Castle County, Delaware, or any Federal Court of Canada or provincial court of Ontario sitting in Toronto, Ontario in any action or proceeding arising out of or relating to this agreement, and I irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in any such court.

9. *I hereby waive, discharge and forever release Lender, Lender's employees, officers, directors, affiliates, attorneys, stockholders and successors and assigns (the "Lender Parties"), from and of any*

*and all claims, causes of action, defenses, counterclaims or offsets and/or allegations that I may have or may have made or which are based on facts or circumstances arising at any time up through and including the date of this agreement, whether known or unknown, against any or all of the Lender Parties.*

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey J. McFarlane', written over the word 'Sincerely,'.

Jeffrey J. McFarlane

Schedule 2(c)

1. Compensation: Salary of \$315,000.00 per year payable bi-weekly by ITX Corp [specify payroll Borrower] (M)

2. Benefits:

(a) Medical, dental, and vision insurance

(b) 401K plan

(M) (c) Car Allowance

(M) (d) Monthly Membership at Old Chatham Golf Course

## **Appendix “B”**

## ASSET PURCHASE AGREEMENT

This Agreement made this 25<sup>th</sup> day of October, 2013.

### A M O N G:

**DUFF & PHELPS CANADA RESTRUCTURING INC.**, in its capacity as Court appointed Receiver of all of the assets, undertakings and properties of the NA Debtors (as defined below) and not in its personal capacity

(the "**Vendor**")

- and -

**2393134 ONTARIO INC.**, a corporation governed by the laws of the Province of Ontario

(the "**Purchaser**")

**WHEREAS** Callidus Capital Corporation ("**Callidus**") is a secured creditor of Xchange Technology Group LLC, a Delaware limited liability company ("**Parent**"), ITXchange Financial Services LLC, a Delaware limited liability company ("**Xchange Financial**"), IT Xchange Corp., a North Carolina corporation ("**Xchange NC**"), BlueRange Technology Corp., a Delaware corporation ("**BTC**"), BlueRange Technology Inc., an Ontario corporation ("**BTI**"), Partstock Computer LLC, a Delaware limited liability company ("**Partstock**"), I.T. Xchange Inc., an Ontario corporation ("**Xchange Ontario**"), I.T. Xchange Limited, a corporation organized under the laws of Scotland ("**Xchange Scotland**"), Xchange Technology Rentals Ltd., a corporation organized under the laws of England and Wales ("**Technology Rentals Limited**"), and Hire Information Technology Limited, a registered company organized under the laws of England and Wales ("**HIT**") and together with Parent, Xchange Financial, Xchange NC, BTC, BTI, Partstock, Xchange Ontario, Xchange Scotland, Technology Rentals Limited (collectively "**Debtors**" and individually "**Debtor**");

**AND WHEREAS** Callidus intends to make an application for an Order or Orders of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), among other things, appointing the Vendor as the Receiver of all of the property, assets and undertaking of Parent, Xchange Financial, Xchange NC, BTC, BTI, Partstock, Xchange Ontario (the "**NA Debtors**" and individually an "**NA Debtor**") and authorizing the Vendor to enter into this Agreement and to conduct a sales process with respect to the business and assets of the NA Debtors; and

**AND WHEREAS** in connection therewith, the Vendor has agreed to sell, and the Purchaser has agreed to purchase, all of the Purchased Assets (as defined herein) in accordance with the terms of this Agreement;

**NOW THEREFORE**, in consideration of the premises and mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the parties, the parties hereto agree as follows:

## ARTICLE I INTERPRETATION

### 1.01 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

**"Accrued Vacation Pay"** means the amount that would be payable for all accrued and unpaid vacation pay pursuant to employment arrangements as at the Closing Date for all Transferred Employees;

**"Affiliate"** shall mean, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such Person. For purposes of this definition, **"Control"** (including, with correlative meanings, the terms **"Controlled by"** and **"under common Control with"**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, as trustee or executor, by written or oral contracts, commitments, understandings or other agreements or credit arrangement or otherwise;

**"Agreement"** means this asset purchase agreement, including all schedules and all amendments or restatements, as permitted and references to **"Article"** **"Section"** or **"Schedule"** mean the specified Article, Section of, or Schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

**"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

**"Approval Order"** has the meaning given in Section 6.01;

**"Assumed Callidus Debt"** has the meaning given in Section 2.04;

**"Assumed Contract"** means a Contract listed in Schedule "A" being assumed by the Purchaser on the Closing Date, and **"Assumed Contracts"** means every Assumed Contract;

**"Assumed Obligations"** has the meaning given in Section 2.07;

**"Assumed Priority Payables"** has the meaning given in Section 2.04;

**"Bankruptcy Code"** has the meaning given in Section 4.01;

**"Books and Records"** means all books and records relating to the Purchased Assets in the possession of any of the NA Debtors, including financial, operations and sales books, records, books of account, sales and purchase records, including all data, information and databases stored on computer-related or other electronic media;

**"Business"** means the business conducted by the Debtors prior to the Closing Date;

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

**“Callidus”** has the meaning given in the recitals above;

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

**“Closing”** means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;

**“Closing Date”** means the Business Day two days following the date on which the U.S. Order is granted, or such earlier or later date as may be agreed to in writing by the Parties;

**“Contract”** means any contracts, licences, leases, agreements, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which an NA Debtor is a party, and **“Contracts”** means every Contract;

**“Court”** has the meaning given in the recitals above;

**“Encumbrances”** means liens, charges, security interests (whether contractual, statutory, or otherwise), hypothecs, statutory liens, charges, pledges, leases, title retention agreements, mortgages, trusts, executions, levies, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever, whether written or oral, or imposed by law, equity or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the Uniform Commercial Code or any other personal property registry system;

**“Employee Liabilities”** means any liability imposed upon an NA Debtor pursuant to any Applicable Law pursuant to which such NA Debtor is deemed to be a successor employer, related employer or otherwise responsible for or liable for payment of any amounts owing to any of the current or former Employees (including, but not limited to, the Transferred Employees up to and including the Closing Date), whether pursuant to the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Pay Equity Act*, R.S.O. 1990, c. P.7, or the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sch. A. or similar legislation. Without limiting the foregoing, Employee Liabilities shall include:

- (a) all salaries, wages, bonuses, commissions and other compensation (including accrued but unpaid vacation pay and any retroactive pay) and all liabilities under employee benefit plans relating to employment of the current or former Employees;
- (b) all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by an NA Debtor of current or former Employees; and
- (c) all liabilities for claims for injury, disability, death or workers’ compensation arising from or relating to employment in the Business;

**“Employee”** means an individual currently or formerly employed by an NA Debtor in its business, including individuals that may be considered, treated or deemed, at law, to be currently or formerly employed by an NA Debtor, and **“Employees”** means every Employee;

**“Excluded Assets”** has meaning given in Section 2.02;

**“Excluded Liabilities”** has the meaning given in Section 2.08;

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

**“HST”** means all harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

**“Intellectual Property”** shall mean all intellectual property of whatever nature and kind anywhere in the world including works of authorship, inventions (whether patentable or not), invention disclosures, industrial models, industrial designs, utility models and certificates of invention, designs (including without limitation graphics, labels and artistic designs), all local or foreign patents and patent applications (including all provisional patent applications, continuations, continuations-in-part, divisionals, reexamination certificates, reissues and the like), trademarks, trade names, service marks, all goodwill associated with such trademarks and service marks, copyrights, and any applications for such trademarks, trade names, service marks and copyrights, and all product designs, product packaging, business and product names and logos trade styles and all other forms of business identifiers, together in all cases with related intangible value, domain names, business telephone numbers, pricing and cost information, business and marketing plans and proposals and all other trade secrets or other confidential information and data in any form or format, know-how, and computer software programs or applications, source code, object code and tangible or intangible proprietary information or material;

**“Interim Period”** means the period from and including the date of this Agreement to and including the Closing Date;

**“Leased Premises”** means all of the leased premises from which an NA Debtor conducted its business located at the municipal addresses as described in Schedule “B”;

**“NA Debtor”** and **“NA Debtors”** has the meaning given in the recitals above;

**“Non-Assigned Rights”** has the meaning given in Section 2.09;

**“Parties”** means the Vendor and the Purchaser collectively, and **“Party”** means either one of them;

**“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

**“Priority Payables Amount”** has the meaning given in Section 2.03



**“Prospective Employees”** has the meaning given in Section 7.01;

**“Purchase Price”** has the meaning given in Section 2.03;

**“Purchased Assets”** means all of the right, title, interest and benefit of each of the NA Debtors in and to its property, assets and undertaking of whatsoever nature and kind, legal and equitable, tangible and intangible, including, without limitation, the (i) assets described in Schedule “C”; (ii) Assumed Contracts; (iii) Leased Premises; (iv) Intellectual Property and (v) shares of I.T. Xchange Limited (UK), I.T. Xchange Macao Commercial Offshore Ltd. (Macao), I.T. Xchange Pty Ltd. (Australia), Xchange Technology GmbH (Germany). For greater certainty, the Purchased Assets shall not include the Excluded Assets;

**“Receivership Order”** means an Order of the Court, among other things, appointing the Vendor as the Receiver of all of the property, assets and undertaking of the NA Debtors;

**“Rights”** has the meaning given in Section 2.09;

**“Sales Process Order”** has the meaning given in Section 8.01;

**“Stalking Horse Offer”** has the meaning given in Section 8.01;

**“Superior Bid”** shall mean an offer to purchase all or any of the Purchased Assets which is better than the Stalking Horse Offer as determined pursuant to the Sales Process Order, provided that no offer shall qualify as a Superior Bid unless it meets, among other things, the following minimum criteria:

- (a) the offer must be an irrevocable offer;
- (b) the offer must be accompanied by a cash deposit which is at least equal to 15% of the aggregate purchase price payable under the offer;
- (c) the offer must be for a purchase price at least equal to the Purchase Price, payable in cash on Closing, and otherwise on terms no less favourable and no more burdensome or conditional than the Stalking Horse Offer;
- (d) the offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror’s obligation to complete the transaction that are not otherwise contained in the Stalking Horse Offer;
- (e) the offer must be made by an offeror which can demonstrate the financial ability to complete the transaction;
- (f) the offer must contemplate a closing date of no later than December 31, 2013.

**“Taxes”** means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any

instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

**"Time of Closing"** means 2:00 p.m. (Toronto Time) on the Closing Date or such earlier or later time as may be agreed to by the Vendor and Purchaser;

**"Transferred Employee Liabilities"** means any liability imposed upon the Purchaser pursuant to any Applicable Law pursuant to which the Purchaser is deemed to be a successor employer, related employer or otherwise responsible for or liable for payment of any amounts owing to any of the Transferred Employees, whether pursuant to the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Pay Equity Act*, R.S.O. 1990, c. P.7, or the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sch. A. or similar legislation. Without limiting the foregoing, Transferred Employee Liabilities shall include Accrued Vacation Pay.

**"Transferred Employees"** has the meaning given in Section 7.01;

**"Transfer Taxes"** has the meaning given in Section 2.06;

**"U.S. Order"** has the meaning given in Section 6.01;

**"U.S. Court"** means the U.S. Bankruptcy Court;

**"Vesting Order"** has the meaning given in Section 6.01.

## **1.02 Headings and Sections**

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.

## **1.03 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

## **1.04 Currency**

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

## **1.05 Statute References**

Unless otherwise specified, any reference in this Agreement to any statute or any section thereof shall be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

## **1.06 Time Periods**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and

including the day on which the period ends and by extending the period to the next Business Day if the last day of the period is not a Business Day.

#### **1.07 Consent**

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

#### **1.08 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

#### **1.09 Entire Agreement**

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

#### **1.10 Section and Schedule References**

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections and Schedules of this Agreement, as applicable. Until the Closing Date, the Schedules may be amended as mutually agreed by the Vendor and Purchaser. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

<b>Schedule</b>	<b>Description</b>
Schedule "A"	<b>Assumed Contracts</b>
Schedule "B"	<b>Leased Premises</b>
Schedule "C"	<b>Purchased Assets</b>

## **ARTICLE II PURCHASE AND SALE**

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

On the Closing Date, subject to the issuance of the Approval Order, Vesting Order, the U.S. Order and the other terms and conditions of this Agreement:

- (a) the Vendor shall sell, transfer, assign and convey unto the Purchaser, to the extent assignable or transferable, and the Purchaser shall purchase, acquire and accept, all of the Purchased Assets, free and clear of all Claims, liabilities and Encumbrances (other than mutually agreed permitted exceptions and permitted liens); and
- (b) the Purchaser shall pay the Purchase Price as provided in Section 2.04.

### **2.02 Excluded Assets**

The Purchased Assets do not include any of the following property, assets, rights and interests of any NA Debtor (collectively, the “**Excluded Assets**”):

- (a) the minute books and stock ledgers of the NA Debtors;
- (b) Non-Assigned Rights;
- (c) the rights of any Debtor under this Agreement or under any agreements, certificates, instruments or documents made in connection with this Agreement; and
- (d) any other assets that the Purchaser elects to exclude, without adjustment to the Purchase Price.

### **2.03 Purchase Price**

The purchase price payable to the Vendor for the Purchased Assets (such amount being hereinafter referred to as the “**Purchase Price**”) will be the aggregate of: (a) the amount of the obligations of the Debtors to Callidus as at the Closing Date less CDN\$3,000,000 and (b) the aggregate amount of all of the NA Debtors’ obligations to creditors who have a lien, charge, security interest, deemed trust or other encumbrance in or against the property or assets of an NA Debtor which rank in priority to the security held by Callidus on such property and assets, including, without limitation, all amounts owing for wages, vacation pay, employee source deductions and the professional fees and expenses of the Vendor, its counsel and the counsel for Callidus (collectively, the “**Priority Payables Amount**”).

### **2.04 Satisfaction of Purchase Price**

The Purchase Price shall be satisfied as follows:

- (a) on or prior to the Time of Closing, the Purchaser shall pay to the Vendor, by certified cheque, bank draft, or wire transfer payable to or to the order of the Vendor, an amount equal to the Priority Payables Amount less the amount of any

Assumed Obligations which, and to the extent they do, comprise a portion of the Priority Payables Amount (the “**Assumed Priority Payables**”); and

- (b) as to the Assumed Priority Payables, on or prior to the Time of Closing, the Purchaser shall assume the Assumed Priority Payables;
- (c) as to the balance of the Purchase Price, on or prior to the Time of Closing, the Purchaser shall assume the Debtors’ obligations to Callidus less CDN\$3,000,000 (“**Assumed Callidus Debt**”).

## **2.05 Allocation of Purchase Price**

The Purchase Price will be allocated among the Purchased Assets as agreed between the Vendor and the Purchaser prior to Closing, acting reasonably. Any Tax returns and filings made by the NA Debtors or the Purchaser will be made on a basis which is consistent with the amount and allocation of the Purchase Price set out in such allocation.

## **2.06 Sales and Transfer Taxes; HST Election**

(1) Subject to Sections 2.06(2) and (3) hereof, the Purchaser will be liable for and will pay, or cause to be paid, any applicable federal, state and provincial Taxes and charges (including sales taxes, goods and services taxes, excise taxes, all transfer, land transfer, value added, ad-valorem, use, consumption, harmonized sales, retail sales, social services, or other similar taxes or duties and any applicable interest, penalties and fines) (other than income taxes of the Vendor) payable under any Applicable Law on or with respect to the sale and purchase of the Purchased Assets under this Agreement as and when due (collectively, “**Transfer Taxes**”). On or prior to the Time of Closing, the Purchaser will either pay the Transfer Taxes to the Vendor or deliver to the Vendor evidence confirming the Purchaser’s payment of or exemption from payment of the Transfer Taxes in form and substance acceptable to the Vendor, acting reasonably. The Purchaser will prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense. To the extent that any Transfer Taxes are required to be paid by or are imposed upon the Vendor, the Purchaser will reimburse to the Vendor such taxes within 5 Business Days of payment of such taxes by the Vendor. The Purchaser will indemnify and hold the Vendor harmless in respect of any Transfer Taxes, Claims, liabilities, costs and fees for on in connection with payment of the Transfer Taxes, fines, penalties, interest and other amounts that may be assessed against the Vendor under any Applicable Law in connection with or relating to the sale of the Purchased Assets and any Claims, liabilities, costs and fees in connection with, relating to or arising from any failure to pay such taxes, fines, penalties and other amounts when due.

(2) At the Time of Closing, the Vendor and the Purchaser shall, to the extent applicable, jointly execute elections under Section 167 of the *Excise Tax Act* (Canada) to have the sale of the Purchased Assets take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the reporting period in which the sale of the Purchased Assets takes place.

(3) The Purchaser and the Vendor shall execute jointly an election in prescribed form under Section 22 of the *Income Tax Act* (Canada) in respect of the account receivables purchased pursuant hereto and shall each file such election with their respective tax returns for their respective taxation years that include the Time of Closing.

(4) The Vendor, at no cost to it, shall cooperate with the Purchaser to take all reasonably available steps to minimize any applicable Transfer Taxes that may be payable in the U.S. including making such tax elections as may be agreeable to the Vendor.

(5) Unless required by Applicable Law, no amended Tax return with respect to a tax period beginning on or before the Closing Date shall be filed by or on behalf of any of the Debtors which are not an NA Debtor without the prior written consent of the Vendor.

#### **2.07 Assumed Obligations**

At and from the date of Closing, the Purchaser shall assume and be liable for the Assumed Obligations. The Assumed Obligations shall consist of the following:

- (a) all Transferred Employee Liabilities payable to or related to any Transferred Employees;
- (b) the liabilities and obligations of any NA Debtor under any of the Assumed Contracts; and
- (c) all liabilities arising or accruing from the use of the Purchased Assets and/or the operation of the Business from and after the Closing Date to the extent relating to periods from and after the Closing Date and not related to any default existing at, prior to or as a consequence of Closing; and
- (d) any liability or obligation which is agreed in writing to be assumed by the Purchaser

(the foregoing being the “Assumed Obligations”).

#### **2.08 Excluded Liabilities**

Except for the Assumed Obligations, the Purchaser is not assuming, and shall not be deemed to have assumed, any liabilities, obligations, Contracts (written or unwritten) or commitments of any NA Debtor (collectively, the “Excluded Liabilities”), whether pursuant to this Agreement or as a result of the transactions described in this Agreement. For the avoidance of doubt, the Purchaser shall not assume or be liable for any liabilities, obligations, Contracts (written or unwritten) or commitments of any NA Debtor that are the subject of litigation or arbitration as of the Closing Date, or that arose prior to the Closing Date and are asserted thereafter, including any such liabilities or obligations that otherwise would be Assumed Liabilities.

#### **2.09 Non-Transferrable and Non-Assignable Purchased Assets**

(1) To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from the Purchased Assets (collectively, the “Rights”) is not capable of being transferred without the approval, consent or waiver of the other party or parties to it or any third party, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless an approval, consent or waiver of a third party is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement (including its right not to proceed with the Closing), this Agreement

shall not constitute a transfer of such Rights ("**Non-Assigned Rights**") unless and until such approval, consent or waiver has been obtained.

(2) Once the consent, approval or waiver to the assignment of a Non-Assigned Right is obtained on terms satisfactory to the Purchaser, acting reasonably, such Non-Assigned Right shall be deemed to be assigned to the Purchaser and the Purchaser is deemed, as of and from such date, to assume the obligations under such Non-Assigned Rights.

(3) From and after the Closing and until the Non-Assigned Rights are transferred to the Purchaser or expire or are terminated by the other contracting party the Purchaser shall:

- (a) pay the corresponding obligations for periods from and after the Closing Date associated with such Non-Assigned Rights and indemnify and hold the Vendor harmless in respect of any and all, Claims, liabilities, debts, sums of money, accounts, indebtedness, liens of whatever nature that may be made pursuant to or in connection with such Non-Assigned Rights as a result of the completion of the transactions contemplated by this Agreement;
- (b) to the extent within its control, comply with the terms and provisions of such Non-Assigned Rights;
- (c) to the extent the Vendor paid or pays, or causes to be paid, any obligation as referred to in clause (a) above, reimburse the Vendor forthwith; and
- (d) without limiting the Vendor's obligations hereunder, cooperate in the transfer of the Non-Assigned Rights (for greater certainty, other than Excluded Assets) and the obtaining of such necessary approvals, consents or waivers and taking such actions and providing such information, assurances and indemnities as may be reasonably requested.

(4) After the Closing and until the earlier of the date 120 days following the Closing (or such other date as may be agreed to by the Purchaser and the Vendor) and the date the Non-Assigned Rights are transferred to the Purchaser or expire or are terminated by the other contracting party or by the Vendor under the direction of the Purchaser and at the Purchaser's sole risk and expense, the Vendor shall, to the extent within its control and within the scope of its authority in its capacity as Receiver and subject to the direction, if applicable, of the Court and such other court of competent jurisdiction as may be applicable:

- (a) hold, or cause such NA Debtor as applicable to hold, such Non-Assigned Rights in trust for the Purchaser;
- (b) to the extent within its control and possible given the completion of the transactions contemplated by this Agreement, comply, or cause such NA Debtor as applicable to comply, with the terms and provisions of such Non-Assigned Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate, or cause such NA Debtor as applicable to cooperate, with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Non-Assigned Rights to the Purchaser; and



- (d) enforce, or cause such NA Debtor as applicable to enforce, at the request of the Purchaser and at the sole risk and expense and for the account of the Purchaser, any rights of such NA Debtor arising from such Non-Assigned Rights against any third party, including the right to elect, exercise, extend or to terminate any such rights in accordance with the terms of such Non-Assigned Rights upon the written direction of the Purchaser.

(5) In order that the full value of the Non-Assigned Rights may be realized for the benefit of the Purchaser, the Vendor shall, subject to the direction, if applicable, of the Court, the US Court and such other court of competent jurisdiction as may be applicable, at the request, risk and expense and under the direction of the Purchaser, cooperate with the Purchaser and use its commercially reasonable efforts to implement a mutually agreeable arrangement with the Purchaser to take all such action and to do or cause to be done all such things as are reasonably necessary or proper in order that the obligations of the NA Debtors under such Non-Assigned Rights may be performed in such manner that the value of such Non-Assigned Rights is preserved and enures to the benefit of the Purchaser and that any amounts due and payable and to become due and payable to the Purchaser in and under the Non-Assigned Rights are received by the Purchaser.

### **ARTICLE III CLOSING ARRANGEMENTS**

#### **3.01 Closing**

Closing shall take place at the Time of Closing on the Closing Date at the offices of the Vendor, or such other time and location as the Parties may agree upon in writing.

#### **3.02 Tender**

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian or U.S. chartered bank, by negotiable cheque payable in funds denominated in the currency of the liability which such money is tendered to directly or indirectly satisfy (or such other currency as the Vendor and Purchaser may agree) and certified by a Canadian or U.S. chartered bank or trust company or, by wire transfer of immediately available funds to the account specified by that Party.

#### **3.03 Vendor's Closing Deliveries**

At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) if applicable, the election(s) referred to in Section 2.06;
- (b) a copy of the Approval Order, Vesting Order and the U.S. Order and the vesting certificate relating thereto;
- (c) a general conveyance and assumption of liabilities agreement, in a form agreed to by the Vendor and the Purchaser prior to Closing (acting reasonably);
- (d) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true



as of the Closing Date, with the same effect as though made on and as of the Closing Date;

- (e) a transition services agreement pursuant to which the Vendor will assist with the transition of the Business to the Purchaser, in a form agreed to by the Purchaser and Vendor prior to Closing (acting reasonably);
- (f) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Section 4.01 of this Agreement have been fulfilled, performed or waived as of the Closing Date;
- (g) a copy of a Receiver's certificate in connection with the purchase and sale transaction contemplated herein; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to complete the transactions provided for in this Agreement.

#### **3.04 Purchaser's Closing Deliveries**

At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor (or as the Vendor may otherwise direct) the following documents and payments:

- (a) the payments in respect of the amounts referred to in Section 2.04;
- (b) if applicable, the election referred to in Section 2.06;
- (c) a general conveyance and assumption of liabilities agreement (pursuant to which, *inter alia*, the Purchaser shall assume the Assumed Liabilities), in a form agreed to by the Vendor and the Purchaser prior to Closing (acting reasonably);
- (d) an assumption agreement regarding the Purchaser assuming Assumed Callidus Debt and related security, in a form agreed to by the Purchaser and Callidus prior to Closing (acting reasonably);
- (e) a transition services agreement pursuant to which the Vendor will assist with the transition of the Business to the Purchaser, in a form agreed to by the Purchaser and Vendor prior to Closing (acting reasonably);
- (f) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (g) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Section 4.02 of this Agreement have been fulfilled, performed or waived as of the Closing Date; and

- (h) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to complete the transactions provided for in this Agreement.

#### **ARTICLE IV CONDITIONS PRECEDENT**

##### **4.01 Conditions Precedent of the Purchaser**

The Purchaser shall not be obliged to complete the purchase and sale of the Purchased Assets pursuant to this Agreement unless, at or before the Closing Date (or such other date as may be indicated below), each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time; and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Date:

- (a) *Representations and Warranties.* The representations and warranties of the Vendor in Section 5.01 shall be true and correct at the Closing Date;
- (b) *Vendor's Compliance.* The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the deliveries contemplated in Section 3.03 or elsewhere in this Agreement;
- (c) *No Litigation.* There shall be no litigation or proceedings pending or threatened or order issued by a Governmental Authority against any of the Parties, or involving the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper; and
- (d) *Approval Order and Vesting Order.* The Approval Order shall have been obtained on or by October 30, 2013 and the Vesting Order shall have been obtained by November 25, 2013 or, in each case, such later date as may be agreed to in writing by the Parties and the U.S. Order recognizing the Approval Order and the Vesting Order shall have been obtained on or by November 30, 2013 or such later date as may be agreed to in writing by the Parties.
- (e) *Vendor Authorized Foreign Representative and Recognition of the Canadian Proceeding as a Foreign Main Proceeding by U.S. Court.* Through entry of a final and non-appealable order by the U.S. Court, the Vendor shall have been declared to be the authorized foreign representative of the NA Debtors, the petitions filed by the Vendor on behalf of the NA Debtors in the U.S. Courts under chapter 15 of title 11 of the United States Code (the "**Bankruptcy Code**") shall have been granted and the proceeding commenced in the Court shall have been recognized as a "foreign proceeding".

#### **4.02 Conditions Precedent of the Vendor**

The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Date (or such other date as may be indicated below), each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing, by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within the Purchaser's reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Date:

- (a) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 5.02 shall be true and correct at the Closing;
- (b) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Date and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing Date all the deliveries contemplated in Section 3.04 or elsewhere in this Agreement;
- (c) *No Litigation.* There shall be no litigation or proceedings pending or threatened or order issued by a Governmental Authority against any of the Parties, or involving the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper; and
- (d) *Approval Order and Vesting Order.* The Approval Order shall have been obtained on or by October 30, 2013 and the Vesting Order shall have been obtained by November 25, 2013 or, in each case, such later date as may be agreed to in writing by the Parties and the U.S. Order recognizing the Approval Order and the Vesting Order shall have been obtained on or by November 30, 2013 or such later date as may be agreed to in writing by the Parties.
- (e) *Vendor Authorized Foreign Representative and Recognition of the Canadian Proceeding as a Foreign Main Proceeding by U.S. Court.* Through entry of a final and non-appealable order by the U.S. Court, the Vendor shall have been declared to be the authorized foreign representative of the NA Debtors, the petitions filed by the Vendor on behalf of the NA Debtors in the U.S. Courts under chapter 15 of title 11 of the Bankruptcy Code shall have been granted and the proceeding commenced in the Court shall have been recognized as a "foreign proceeding".

#### **4.03 Non-Satisfaction of Conditions**

If any condition precedent set out in this Article IV is not satisfied or performed prior to the time specified therefor, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or

- (b) terminate this Agreement by written notice to the other Party, in which event the Parties shall be released from their respective obligations under this Agreement.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

### **5.01 Representations and Warranties of the Vendor**

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.01, subject to the granting of the Approval Order, Vesting Order and the U.S. Order, the Vendor hereby represents and warrants to the Purchaser as follows:

- (a) *Appointment.* The Vendor has been duly appointed as the Receiver of all of the property, assets and undertaking of the NA Debtors pursuant to the Receivership Order and the Vendor has authority to exercise the powers contained therein;
- (b) *Due Authorization.* The Vendor has all necessary power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (c) *HST.* Each NA Debtor required to be registered under Part IX of the *Excise Tax Act* (Canada) is duly registered thereunder;
- (d) *No Litigation.* To the knowledge of the Vendor, there is no litigation, action, suits or proceedings pending or threatened against any NA Debtor, or involving the Purchased Assets for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby;
- (e) *Residence of the Canadian Seller.* Xchange Ontario is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act* (Canada); and
- (f) *Finders' Fees.* There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Vendor who might be entitled to any fee or commission from the Purchaser or any of its Affiliates upon consummation of the transactions contemplated by this Agreement.

### **5.02 Representations and Warranties of the Purchaser**

As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.02, the Purchaser hereby represents and warrants to the Vendor as follows:

- (a) *Incorporation of the Purchaser.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized and validly subsisting under such laws;

- (b) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the transactions contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;
- (d) *Approvals and Consents.* Except as otherwise provided herein, no consent or approval of, or filing with or notice to any governmental agency, regulatory body, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder;
- (e) *No Litigation.* To the knowledge of the Purchaser, there is no litigation, action, suits or proceedings pending or threatened against the Purchaser for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby;
- (f) *Sufficient Funds.* The Purchaser has sufficient funds or committed financing available to effect the transactions contemplated by this Agreement on the terms set forth herein, and to pay all of its related fees and expenses;
- (g) *Finders' Fees.* There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Purchaser or its Affiliates who might be entitled to any fee or commission from the Vendor or any of their Affiliates upon consummation of the transactions contemplated by this Agreement; and
- (h) *HST.* The Purchaser is or will be a registrant under Part IX of the *Excise Tax Act* (Canada) on the Closing Date.

### **5.03 Survival of Representations and Warranties**

- (a) The representations and warranties of the Vendor contained in Section 5.01 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing.
- (b) The representations and warranties of the Purchaser contained in Section 5.02 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing.

#### **5.04 Acquisition of Assets on “As Is, Where Is” Basis**

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as they shall exist on the Closing Date, subject to the terms of the Approval Order, Vesting Order and the U.S. Order. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions. The Purchaser further acknowledges that all written and oral information (including, without limitation, analyses, financial information and projections, compilations and studies) obtained by the Purchaser from the Vendor or any Debtor with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall be under no obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser’s responsibility to take possession of the Purchased Assets.

### **ARTICLE VI INTERIM PERIOD**

#### **6.01 Approval Order and Vesting Order**

As soon as practicable after the finalization of this Agreement and the execution and delivery of this Agreement by the Purchaser, and in any event by no later than October 30, 2013, the Vendor shall file an application with the Court for an order (the “**Approval Order**”), substantially in the form and substance as approved by the Vendor and the Purchaser, approving this Agreement and approving the sale of the Purchased Assets to the Purchaser and the assumption of the Assumed Obligations by the Purchaser. If, following the completion of the sales process contemplated by the Sales Process Order, a Superior Bid has not been obtained for the Purchased Assets, the Vendor shall file an application with the Court for an order (the “**Vesting Order**”), substantially in the form and substance as approved by the Vendor and the Purchaser, vesting in the Purchaser, upon the delivery to the Purchaser of a Receiver’s certificate, all right, title and interest of the NA Debtors in and to the Purchased Assets, free and clear of all Claims, liabilities and Encumbrances pursuant to the terms and conditions of this Agreement. The application for the Approval Order and the Vesting Order shall be served upon the necessary parties by the Vendor.

As soon as practicable following the granting of the Approval Order and the Vesting Order, the Vendor shall file and serve an application with the U.S. Court for entry of an order (the “**U.S. Order**”), substantially in the form and substance as approved by the Vendor and the Purchaser, that, among other things, (i) recognizes and enforces the Approval Order and the Vesting Order; (ii) authorizes and approves the sale of all of the Purchased Assets free and clear of all Encumbrances;



and (iii) waives any applicable stays of the U.S. Order. The application for the U.S. Order shall be served upon the necessary parties by the Vendor.

#### **6.02 Access**

During the Interim Period, the Purchaser shall have reasonable access to the Purchased Assets and the NA Debtors' premises which contain any of the Purchased Assets or records relating thereto during normal business hours and at such other times as agreed to by the Vendor to, among other things, conduct such commercially reasonable inspections of the Purchased Assets as it deems appropriate and plan for the transition of the Business to be operated by the Purchaser. The Purchaser shall not be provided with access to any of the foregoing to the extent that such access would violate or conflict with (i) any Applicable Laws to which the Vendor, any Debtor or any of the Purchased Assets are subject; or (ii) any agreement, instrument or understanding by which any Debtor is bound. The Purchaser shall indemnify and hold harmless the Vendor from and against all claims, demands, losses, damages, actions and costs incurred or arising from or in any way related to the inspection of the Purchased Assets by the Purchaser or attendance by the Purchaser at the Leased Premises, save and except for any claims, demands, losses, damages, actions and costs incurred or resulting from the negligence or wilful misconduct of the Vendor.

#### **6.03 Risk of Loss**

The Purchased Assets shall remain at the risk of the Vendor, to the extent of its interest, until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser.

#### **6.04 Purchaser's Right to Close or Terminate**

If, prior to Closing, the Purchased Assets are substantially damaged, destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the transaction by providing written notice to the Vendor of same within five (5) Business Days after notification to the Purchaser by the Vendor of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within five (5) Business Days of the Closing Date), in which event this Agreement shall be terminated automatically without any compensation to the Purchaser and the Parties shall be released from their respective obligations under this Agreement. If the Purchaser does not exercise such option, it shall complete the transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction, if any, without any abatement to the Purchase Price. Where any damage or destruction is not substantial, the Purchaser shall complete the transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an abatement agreed between the Vendor and the Purchaser, each acting reasonably.

#### **6.05 Transfer and Delivery of Purchased Assets**

The Purchaser acknowledges that it shall be the Purchaser's sole responsibility to obtain, at its own expense, any consents, approvals (other than the Approval Order, Vesting Order and the U.S. Order) or any further documentation or assurances which may be required to carry out the terms of this Agreement, including in respect of any Purchased Assets subject to lease or any Purchased Assets which are not assignable without the consent or other action of a third party or parties. Notwithstanding the foregoing, the Vendor shall execute and deliver to the Purchaser all such bills of sale, assignments, instruments of transfer, deeds, assurances, consents and other documents as

shall be reasonably necessary to effectively transfer to the Purchaser, or as the Purchaser may direct, all the NA Debtors' right, title and interest in, to and under, or in respect of, the Purchased Assets, provided that any such documents shall contain no representations or warranties of the Vendor except for those provided herein; and the Vendor shall execute and deliver such documents to effect registrations, recordings and filings with Governmental Authorities as may be reasonably required in connection with the transfer of ownership to the Purchaser of the Purchased Assets.

#### **6.06 Conduct of the NA Debtors Prior to the Closing**

Unless the Purchaser otherwise consents in writing (which consent shall not be unreasonably withheld or delayed), during the period commencing with the execution and delivery of this Agreement and terminating upon the earlier to occur of the end of the Interim Period or the termination of this Agreement pursuant to and in accordance with Section Error! Reference source not found., the NA Debtors shall conduct their respective operations and business in the ordinary course of business, consistent with past practices and in compliance with all Applicable Laws, and preserve intact its current business organization, keep its physical assets in good working condition, keep available the services of its current officers and employees and preserve its relationships with customers, clients, suppliers and other Persons that relate to its business so that its goodwill and its business shall not be impaired in any material respect.

### **ARTICLE VII EMPLOYEES**

#### **7.01 Employees**

(1) Following the execution and delivery of this Agreement by the Parties, the Purchaser may provide the Vendor with a list of Employees to whom it may offer employment (the "**Prospective Employees**") and, in respect of any particular Prospective Employee, such offer of employment shall be effective as of the Closing Date and on terms and conditions substantially similar to the particular Prospective Employee's current terms and conditions of employment. For greater certainty, the Purchaser shall not be obligated to offer employment to any Employee. The Purchaser shall provide the Vendor with a list of the names, if any, of the Prospective Employees at least five (5) days before the Closing Date. Prospective Employees who accept employment with the Purchaser are collectively referred to herein as the "**Transferred Employees**").

(2) The NA Debtors shall be responsible for all Employee Liabilities, including but not limited to all wages, salaries and related employee withholding taxes (but excluding vacation pay) prior to the Closing Date.

(3) The Transferred Employees shall remain employees of their respective current NA Debtor employer until commencement of their employment by the Purchaser on the Closing Date. It is understood that the Purchaser shall have no obligation or liability to any Employee (including the Transferred Employees) or to any Governmental Authority for any premiums for employment insurance, employer health tax, worker's compensation, benefit plans, Canada Pension Plan, accrued wages (but excluding vacation pay), accrued overtime pay, salaries, commissions, incentive compensation, expenses, sick leave benefits and other employee benefits or Taxes which are payable to, received by or accrued in favour of any Employee prior to the Closing Date even if not then due. The Vendor shall be responsible for all wages, notice of termination, severance pay and other obligations including entitlement to benefit coverage and overtime pay to all Employees who are not Transferred Employees.



## **ARTICLE VIII SALES PROCESS**

### **8.01 Sales Process.**

The Parties acknowledge and agree that an order will be obtained from the Court (the “**Sales Process Order**”) which, *inter alia*, will approve and recognize this Agreement and in particular the Purchase Price, as a “stalking horse offer” (the “**Stalking Horse Offer**”) and shall also provide for a marketing process of the Purchased Assets by the Vendor. The Purchaser acknowledges and agrees that the aforementioned marketing process is in contemplation of determining whether a Superior Bid can be obtained for the Purchased Assets.

## **ARTICLE IX TERMINATION**

### **9.01 Termination by the Parties**

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Vendor and the Purchaser;
- (b) pursuant to Section 4.03(b) by either Party, in the event any of the conditions precedent which benefit such Party are not satisfied;
- (c) pursuant to Section 6.04 by the Purchaser;
- (d) by the Purchaser or Vendor, if the Approval Order shall have not been obtained on or by October 30, 2013 and the Vesting Order shall have not been obtained by November 25, 2013 or, in each case, such later date as may be agreed to in writing by the Parties or the U.S. Order recognizing the Approval Order and the Vesting Order shall have not been obtained on or by November 30, 2013 or such later date as may be agreed to in writing by the Parties;

in which event the Parties shall be released from their respective obligations under this Agreement and neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy or relief other than as provided herein.

## **ARTICLE X POST-CLOSING MATTERS**

### **10.01 Books and Records**

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of two (2) years from the Closing Date or for any longer period as may be required by any Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Vendor and the NA Debtors and, in the event an NA Debtor is adjudged bankrupt, any trustee of the estate of either of such NA Debtor and its representatives, reasonable access during normal business hours, and a licence free of charge, to use the books, records and documentation included in the Purchased Assets up to the Closing Date, including, without limitation, any employment records of the Transferred Employees relating to the period up to the Closing Date and any Employees engaged by an NA Debtor at or in respect of the

Purchased Assets up to and including the Closing Date, and computer systems, tapes, disks, records and software acquired as part of the Purchased Assets. If the Purchaser intends to destroy the Books and Records it will provide notice of such intention to the Vendor. The Vendor may request and Purchaser shall facilitate the transfer of Books and Records to the Vendor if the Vendor confirms its intention to acquire such Books and Records in lieu of destruction; provided that the Purchaser shall be permitted to destroy such Books and Records if the Vendor does not respond within twenty (20) Business Days of such notice of intention.

#### **10.02 Transferred Employees**

Following the Closing Date, the Purchaser shall make available to the Vendor and/or NA Debtors, on a reasonable basis and during normal business hours, the Transferred Employees as may be reasonably requested by the Vendor from time to time as is needed to administer their respective duties in the proceedings under the insolvency proceedings relating to the Debtors provided that the provision of the Transferred Employees as aforesaid does not cause unreasonable disruption to the business operations of the Purchaser.

### **ARTICLE XI OTHER COVENANTS OF THE PARTIES; GENERAL**

#### **11.01 Expenses**

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement. Any commissions or fees payable to any agents or brokers used by the Purchaser shall be for the Purchaser's account and shall be payable by the Purchaser.

#### **11.02 Notices**

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

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

2393134 Ontario Inc.  
c/o Callidus Capital Corporation  
Royal Trust Tower  
77 King Street West, Suite 4320  
Toronto, ON M5K 1K2

Attention: David Reese  
Email: dreese@calliduscapital.ca  
Fax No.: (416)941-9876

with a copy to Canadian counsel:

Dickinson Wright  
199 Bay Street, Suite 2200

Toronto, ON M5L 1G4

Attention: John Leslie  
Email: jleslie@dickinsonwright.com  
Fax No.: (416)865-1398

And with a copy to U.S. counsel:

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801

Attention: Michael Nestor  
Email: mnestor@ycst.com  
Fax No.: (302)576-3321

(b) if to the Vendor:

Duff & Phelps Canada Restructuring Inc.  
Bay Adelaide Centre  
333 Bay St., 14<sup>th</sup> Floor  
Toronto, ON M5H 2R2

Attention: Bobby Kofman & David Sieradski  
Email: bobby.kofman@duffandphelps.com  
& david.sieradzki@duffandphelps.com  
Fax No.: (647) 497-9490

with a copy to Canadian Counsel:

Chaitons LLP  
5000 Yonge Street  
10th Floor  
Toronto, ON M2N 7E9

Attention: Harvey Chaiton  
Email: harvey@chaitons.com  
Fax No.: (416) 218-1849

And with a copy to U.S. counsel:

Allen & Overy, LLP  
1221 Avenue of the Americas  
New York, NY 10020

Attention: Ken Coleman  
Email: Ken.Coleman@AllenOvery.com  
Fax No.: 212 610 6399

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

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

#### **11.03 Successors and Assigns**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, the Purchaser may at any time assign all or any portion of its rights or obligations arising under this Agreement to one or more affiliates of the Purchaser or such other persons or entities as the Purchaser may designate, but notwithstanding such assignment, the Purchaser shall not be released from any obligations hereunder. Notwithstanding anything to the contrary contained herein, if the Purchaser assigns all or any part of its respective rights or obligations under this Agreement, notwithstanding such assignment, all representations, warranties, covenants and obligations hereunder of the Purchaser and such assignees shall be joint and several representations, warranties, covenants and obligations of the Purchaser and such assignees.

#### **11.04 No Third Party Beneficiaries**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

#### **11.05 Time of the Essence**

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

#### **11.06 Amendment**

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

#### **11.07 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as

may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

#### **11.08 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

#### **11.09 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

#### **11.10 Effective Time and Execution and Delivery**

This Agreement shall not be of any force or effect unless and until the Vendor is appointed as Receiver of all of the assets, undertakings and properties of the NA Debtors and not in its personal capacity. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or electronically delivered.

IN WITNESS OF WHICH the Parties have executed this Agreement.

**DUFF & PHELPS CANADA RESTRUCTURING  
INC.**, in its capacity as Court appointed Receiver of all  
of the assets, undertakings and properties of the NA  
Debtors and not in its personal capacity

Per: \_\_\_\_\_

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

Title: \_\_\_\_\_

**2393134 ONTARIO INC.**

Per: \_\_\_\_\_

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

Title: \_\_\_\_\_

*D. Reese*  
*David Reese*  
*President*