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**Fifth Report of  
Duff & Phelps Canada Restructuring Inc.  
as 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**

April 1, 2015

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**COURT FILE NO: CV-13-10310-00CL**

**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**

**FIFTH REPORT OF  
DUFF & PHELPS CANADA RESTRUCTURING INC.  
AS 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**

**APRIL 1, 2015**

## **1.0 Introduction**

1. This report ("Report") is filed by Duff & Phelps Canada Restructuring Inc. ("D&P") in its capacity as receiver ("Receiver") of the property, assets and undertaking 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 (collectively, the "XTG Debtors").
2. The XTG Debtors have numerous foreign affiliates that are not subject to these proceedings, namely 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); and IT Xchange Pty Ltd. (Australia) (collectively, with the XTG Debtors, the "XTG Group"). A corporate organizational chart of the XTG Group is provided in Section 2 below.

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3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on October 29, 2013 (the “Receivership Order”), D&P was appointed Receiver. A copy of the Receivership Order is attached as Appendix “A”.
  4. On October 30, 2013, the Receiver, as Foreign Representative, commenced proceedings in the United States Bankruptcy Court for the District of Delaware (“US Court”) seeking recognition of the Canadian receivership proceeding under Chapter 15 of the *US Bankruptcy Code* as a foreign non-main proceeding. On October 30, 2013 and November 25, 2013, the US Court entered orders granting provisional relief in aid of the Canadian proceeding and the Recognition Order, respectively.
  5. The primary purpose of these proceedings has been to complete a sale of substantially all of the XTG Debtors’ business and assets through a Court supervised sale process (“Sale Process”).
  6. On November 22, 2013, the Court issued an order approving a sale (“Transaction”) by the Receiver of the XTG Debtors’ business and assets to 2393134 Ontario Inc. (the “Purchaser”), an entity incorporated by Callidus Capital Corporation (“Callidus”), the principal secured creditor of the XTG Debtors. The Transaction was completed on January 2, 2015.

## **1.1 Purposes of this Report**

1. The purposes of this report (“Report”) are to:
  - a) Provide background information about the XTG Debtors;
  - b) Set out the Receiver’s understanding that the \$3 million “carve-out” amount from the purchase price in an Asset Purchase Agreement dated October 25, 2013 between the Receiver and the Purchaser (the “APA”) was intended to be expressed in US dollars; and
  - c) Support the requested order rectifying the APA to state that the remaining obligation owing from the XTG Debtors to Callidus be denominated in US dollars.

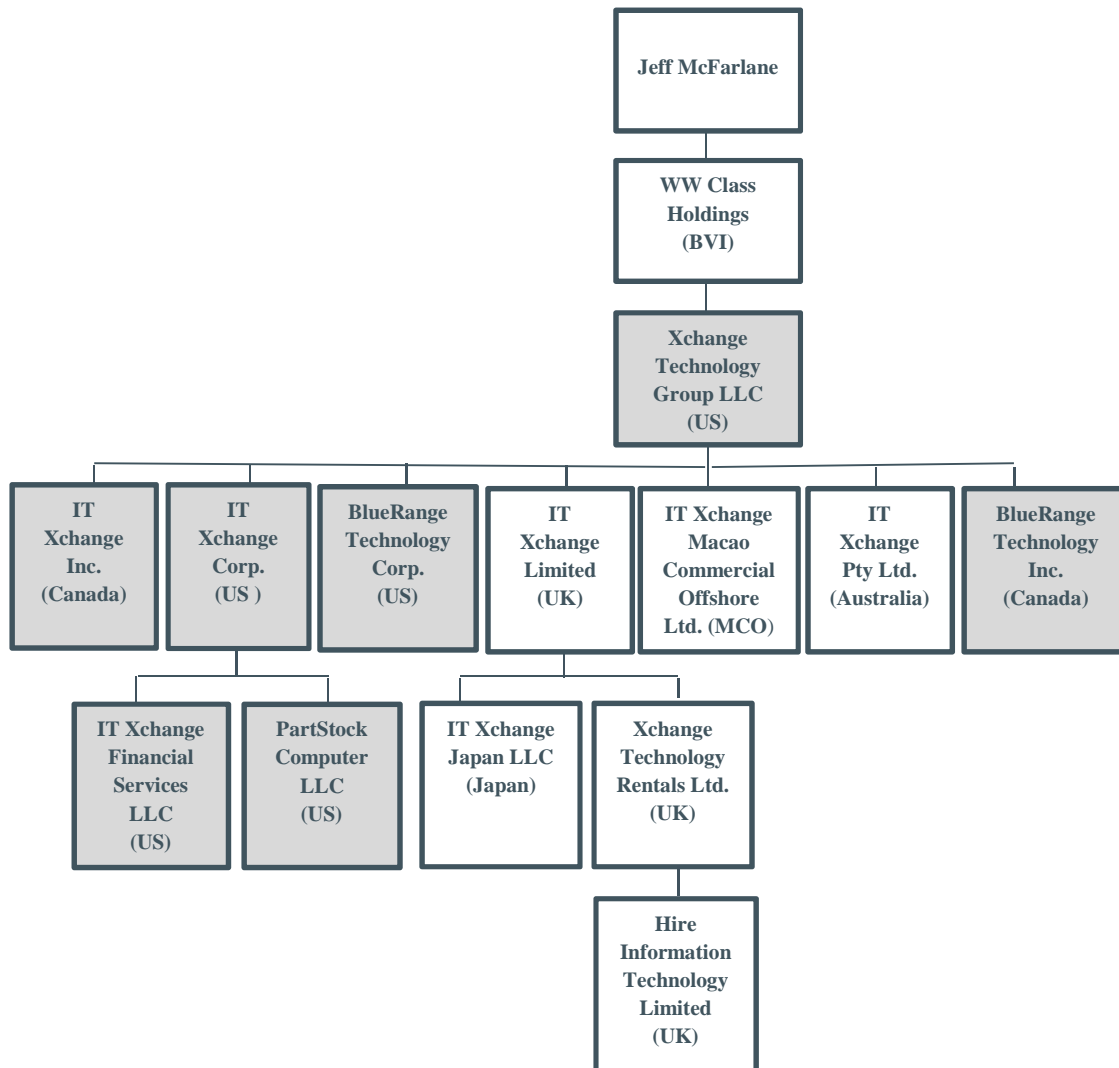
## **1.2 Currency**

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

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## 2.0 Background Information

1. XTG Group was founded in 1996 in Ontario by Jeff McFarlane. XTG Group's corporate organizational chart is set out below (the XTG Debtors are shaded).



2. The organizational chart excludes a German subsidiary, Xchange Technology GmbH (Germany), the shares of which were sold in these proceedings pursuant to a Court Order made on May 1, 2014.
3. XTG Group was a supplier of information technology ("IT") products with operations in Canada, the United States, the United Kingdom, Australia, Macao and Japan. XTG Group also provided IT rental assets and programs, including servers, storage devices, laptops and desktop computers.

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4. Additional background information on the XTG Debtors, the Sale Process and the Transaction were detailed in the Receiver's First Report to Court dated November 19, 2013 (the "First Report"), a copy of which is attached as Appendix "B", without appendices.

### **3.0 Sale Process and Transaction**

1. The Receivership Order approved the Sale Process, including an offer submitted by the Purchaser as a "stalking horse" for substantially all of the XTG Debtors' business and assets pursuant to the APA.
2. The Receiver carried out the Sale Process in accordance with the Receivership Order. No offers were submitted in the Sale Process and the Court accepted the Receiver's conclusion that the Transaction provided the best outcome for stakeholders, as more fully detailed in the First Report.
3. On November 22, 2013, the Court approved the Transaction pursuant to an Order made on that date (the "Sale Approval and Vesting Order"). A copy of the Sale Approval and Vesting Order is attached as Appendix "C". The US Court issued an Order approving the Transaction on November 25, 2013.

#### **3.1 The APA<sup>1</sup>**

1. The APA was negotiated by the Purchaser, Callidus and the Receiver in advance of the receivership as a stalking horse bid. The APA was drafted by the Receiver's counsel and approved by all parties to the Transaction. A copy of the APA is attached as Appendix "D".
2. At the time of the Receivership Order, Callidus was owed in excess of US\$38 million by the XTG Debtors. It was agreed that the purchase price for the Purchased Assets would be the amount of the XTG Debtors' obligations to Callidus as at the completion of the Transaction, less a "carve-out" of US\$3 million, plus the Priority Payables Amount (the "Purchase Price"). The Purchase Price was to be satisfied by way of a credit bid.
3. At the closing on January 2, 2015, upon payment of the Purchase Price and satisfaction of all conditions set out in the APA, the Receiver delivered to the Purchaser the Receiver's Certificate which, pursuant to Paragraph 3 of the Sale Approval and Vesting Order, caused "all of the right, title and interest of the XTG Debtors in and to the Purchased Assets [to] vest absolutely in the Purchaser, its nominees or assignees". A copy of the Receiver's Certificate is attached as Appendix "E".

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<sup>1</sup> Capitalized terms in the section of the Report not otherwise defined shall have the meanings provided to them in the APA.

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4. During the negotiation and preparation of the APA, the Receiver and its counsel were advised by representatives of Callidus and its legal counsel that the “carve-out” of US\$3 million from the Purchase Price was intended to correspond to the principal amount guaranteed by Mr. McFarlane to Callidus in respect of the various loan facilities made by Callidus to the XTG Debtors pursuant to an Amended and Restated Limited Guarantee dated October 11, 2012, as amended on June 6, 2013 (the “Guarantee”). Section 1 of the Guarantee provides:

*“The undersigned hereby jointly and severally (if more than one) hereby guarantees payment to the Lender, upon demand therefore being upon the undersigned, of all Obligations (as defined in the Loan Agreement) now or at any time and from time to time hereafter due or owing to the Lender from or by the Borrowers or by any successor corporation of the Borrowers, limited to the amount of Three Million and 001/00 Dollars (US\$3,000,000.00) in total; plus interest thereon ...”*

5. Callidus and its counsel have advised the Receiver that the Purchase Price was intended to be the amount of the Callidus debt less US\$3 million owing to it in order to preserve its right to pursue Mr. McFarlane under the Guarantee.
6. The particulars of the Purchase Price, including the amount of the “carve-out”, are set out in section 2.03 of the APA. Through inadvertence and a drafting error, the currency referenced at section 2.03 of the APA (and section 2.04 – Satisfaction of Purchase Price) was stated in Canadian dollars as opposed to US dollars. The error was carried through in every subsequent reference to the Purchase Price in the APA and such error was not identified until after completion of the Transaction.
7. The Receiver’s First Report recommending the Transaction correctly referenced the carve-out amount as US\$3 million.

### **3.2 Basis for Receiver’s Support of the Relief being Sought re: APA**

1. The Receiver supports an order rectifying the APA such that the “carve-out” from the Purchase Price be in US dollars for the following reasons:
- The Receiver believes that the intention of the parties was for the “carve-out” to correspond with the amount of the Guarantee (i.e. US\$3 million). In this regard, the Receiver’s reports to Court, including the First Report, correctly referenced the currency of the Purchase Price and the “carve-out” in US dollars;
  - It was due to an oversight that the “carve-out” in the APA was denominated in Canadian dollars. It should be noted that, as at the date of the APA, the US and Canadian dollars were near par (CAD\$1:US\$0.96), whereas the value of the Canadian dollar relative to the US dollar has since significantly declined (as at the date of this Report, the rate is CAD\$1:US\$0.79);

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- Callidus has advised that the error has not at any time altered the intention of the parties or factored into its internal assumptions and calculations regarding the APA, the Guarantee and/or related matters; and
  - The clarification does not have any impact on the results of the Sale Process given that, *inter alia*, the Purchaser's stalking horse bid was the only offer submitted in the Sale Process and the value of the Transaction was well in excess of the liquidation value of the XTG Debtors' business and assets.
2. The Receiver has advised Callidus' legal counsel that Mr. McFarlane will be served with a copy of these motion materials as he is the only party with an interest in the relief being sought.

#### 4.0 Conclusion

1. Based on the foregoing, the Receiver supports the relief being sought.

\* \* \*

All of which is respectfully submitted,



**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS 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”

I HEREBY CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS IDENTIFIED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE.

LA PRÉSENT ATTESTE QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVÊTUE DU Sceau de la Cour Supérieure de Justice à Toronto, est une copie conforme du document conservé dans ce bureau.

DATED AT TORONTO THIS 29<sup>th</sup> DAY OF OCT 2013  
FAIT A TORONTO LE 29 OCT 2013

Court File No. CV-13-10310-00CL

ONTARIO

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE MR.**

**JUSTICE MORAWETZ**

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**TUESDAY, THE 29<sup>th</sup> DAY**

**OF OCTOBER, 2013**

**BETWEEN:**

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

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

Respondents

**ORDER**

THIS APPLICATION, made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Duff & Phelps Canada Restructuring Inc. as receiver (the "Receiver") without security, of all of the assets, undertakings and properties of Xchange Technology Group LLC, It Xchange Financial Services LLC, It Xchange Corp., Bluerange Technology Corp., Bluerange Technology Inc., Partstock Computer LLC and It Xchange Inc. (the "Debtors") acquired for, or used in relation to businesses carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Craig Boyer sworn October 25, 2013 and the Report of Duff & Phelps Canada Restructuring Inc. dated October 25, 2013 (the "Report") and on hearing

the submissions of counsel for Callidus Capital Corporation ("Callidus"), counsel for Duff & Phelps Canada Restructuring Inc., the proposed receiver, and counsel for the Debtors, and on reading the consent of Duff & Phelps Canada Restructuring Inc. to act as the Receiver,

### SERVICE

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

### APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Duff & Phelps Canada Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (the "Property").

### RECEIVER'S POWERS

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

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

to carry on all or any part of the businesses, or cease to perform any contracts of the Debtors;

- d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- e) to purchase or lease such equipment, inventories, supplies, premises or other assets to continue the businesses of the Debtors or any part or parts thereof;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- g) to settle, extend or compromise any indebtedness owing to the Debtors;
- h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with Court approval and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

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THIS IS TO CERTIFY THAT THIS  
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DATE: 10/25/13 BY: [Signature]

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

- l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- n) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- o) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

#### THE STALKING HORSE OFFER

4. THIS COURT ORDERS that the Receiver shall be authorized and directed to accept the Asset Purchase Agreement dated October 25, 2013 (the "**Stalking Horse Offer**") signed by 2393134 Ontario Inc. (the "**Purchaser**") pursuant to which the Purchaser has agreed to purchase all of the right, title and interest of the Debtors in and to the assets specified in the Stalking Horse Offer (the "**Purchased Assets**"). If the Receiver does not receive and accept at or before the Bid

Deadline (as defined below) a Superior Bid (as defined below) in accordance with the Sale Process, the Receiver is entitled to take all actions or steps necessary to complete the transaction thereunder in accordance with its terms, without further approval of this Court, however the Receiver shall apply for the appropriate Vesting Orders. If the Receiver does receive a Superior Bid at or before the Bid Deadline in accordance with the Sale Process, the Receiver shall apply to the Court for approval of the Superior Bid. A "Superior Bid" shall be an offer to purchase the Purchased Assets which the Receiver, acting in its sole discretion, considers at least equivalent to the Stalking Horse Offer, provided that no offer shall qualify as a Superior Bid unless it meets 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; and
- f) the offer must contemplate a closing date of no later than December 31, 2013.

#### **SALES PROCESS**

5. The Receiver shall undertake the marketing and sale of the Property, including soliciting offers, and negotiating the terms and conditions of sale, in accordance with the Sales Process and timetable outlined in paragraph 7.2 of the Duff & Phelps Report (the "Sale Process")

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

6. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons

acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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



providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of right of Callidus pursuant to paragraph 23 of this Order or in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

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



**CONTINUATION OF SERVICES**

13. ~~THIS COURT ORDERS~~ <sup>ed 13</sup> that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from the sale of all or any of the Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

15. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against their remuneration and disbursements when and as approved by this Court.

**FUNDING OF THE RECEIVERSHIP**

22. THIS COURT ORDERS that the Debtors or the Receiver on behalf of the Debtors and not in its personal capacity is hereby authorized and empowered to continue to obtain and borrow, repay and re-borrow, additional monies under an Amended and Restated Loan Agreement dated October 11, 2012 among the Debtors and Callidus (as later amended from time to time, the "Loan Agreement"), subject to and in accordance with blocked account agreements between the Debtors, Callidus, Bank of Montreal and any other financial institution used by the Debtors in their cash management system (the "Blocked Account Agreements"), in order to finance the Debtors' operating expenses and the reasonable fees and disbursements of the Receiver and its legal counsel, all on the terms and subject to the conditions set forth in the Loan Agreement and the Blocked Account Agreements or such other terms and conditions as Callidus shall agree.

23. THIS COURT ORDERS that the Debtors or the Receiver on behalf of the Debtors and not in its personal capacity is hereby authorized and directed to pay all of its indebtedness, interest, fees, liabilities and obligations to Callidus under and pursuant to the Loan Agreement and in accordance with the Blocked Account Agreements when the same become due notwithstanding any other provision of this Order, provided that Callidus shall reimburse the Receiver any monies received by Callidus which it may not have been entitled to pursuant to any liens, charges, security interests or other claims having priority over Callidus' security.

24. THIS COURT ORDERS that, in addition to advances in accordance with availability under the Loan Agreement, the Receiver on behalf of the Debtors be at liberty and it is hereby empowered to borrow monies from Callidus in excess of availability under the Loan Agreement (hereafter "Overadvances") on the terms and at the rate of interest set out in the Loan Agreement for such period or periods of time as the Receiver may arrange with Callidus, for the purpose of payment of the Debtors operating expenses and the reasonable fees and disbursements of the Receiver and its legal counsel.

GENERAL

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

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

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

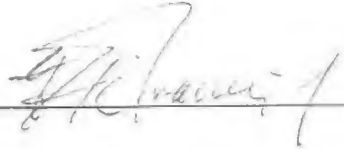
28. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized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

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

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

31. <sup>29</sup> THIS COURT ORDERS that confidential appendices 1, 2, 3 and 5 to the Report be and ~~are hereby sealed~~ pending further Order of this Court.

LE JUDGE LEFSC CHIEF  
OCT 29 2013

  
\_\_\_\_\_

CALLIDUS CAPITAL CORPORATION  
Applicant

-and-  
Respondents

XCHANGE TECHNOLOGY GROUP LLC  
Respondents

Court File No. CV-13-10310-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**

**DICKINSON WRIGHT LLP**  
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Lawyers for the applicant

## **Appendix “B”**



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**First Report of  
Duff & Phelps Canada Restructuring Inc.  
as 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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November 19, 2013

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COURT FILE NO: CV-13-10310-00CL

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

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

NOVEMBER 19, 2013

## **1.0 Introduction**

1. This report ("Report") is filed by Duff & Phelps Canada Restructuring Inc. ("D&P") in its capacity as receiver ("Receiver") of the property, assets and undertaking 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 (collectively, the "XTG Debtors").
2. The XTG Debtors have numerous foreign affiliates that are not subject to these proceedings. They are: 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 together with the XTG Debtors, referred to as the "XTG Group"). A corporate organizational chart is provided in Section 2 below.
3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on October 29, 2013 (the "Receivership Order"), D&P was appointed Receiver. A copy of the Receivership Order and the Endorsement of the Honourable Justice Morawetz is attached as Appendix "A".

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4. On October 30, 2013, the Receiver, as Foreign Representative, commenced proceedings in the United States Bankruptcy Court for the District of Delaware ("US Court") seeking recognition of the Canadian receivership proceeding as a foreign non-main proceeding under Chapter 15 of the *US Bankruptcy Code*. On October 30, 2013, the US Court entered an order granting provisional relief in aid of the Canadian proceeding, a copy of which is attached as Appendix "B".
  5. The purpose of these proceedings is to complete a sale transaction for substantially all of the XTG Debtors' business and assets through a Court supervised sale process ("Sale Process").

## **1.1 Purposes of this Report**

1. The purposes of this report are to:
  - a) Provide background information about the XTG Group;
  - b) Summarize the results of the Sale Process carried out by the Receiver in accordance with the Receivership Order;
  - c) Summarize a transaction (the "Transaction") between the Receiver and 2393134 Ontario Inc. (the "Purchaser"), an entity incorporated by Callidus Capital Corporation ("Callidus"), the senior secured creditor of the XTG Debtors and the "stalking horse" bidder in the Sale Process, which contemplates the sale to the Purchaser or its nominee(s) of substantially all of the XTG Debtors' business and assets (the "Purchased Assets") pursuant to an Asset Purchase Agreement dated October 25, 2013 between the Receiver and the Purchaser (the "Stalking Horse Agreement");
  - d) Summarize an issue involving Devang Shah ("Shah"), a former Account Executive in the "Partstock" division of the XTG Debtors, in connection with a Non-Disclosure and Non-Solicitation Agreement dated May 1, 2009 between the XTG Debtors and Shah (the "NDSA");
  - e) Provide an overview of the Receiver's activities since the commencement of these proceedings; and
  - f) Recommend that this Honourable Court issue an Order vesting title in and to the Purchased Assets in the Purchaser or its nominee(s) free and clear of all liens, claims and encumbrances (the "Vesting Order").

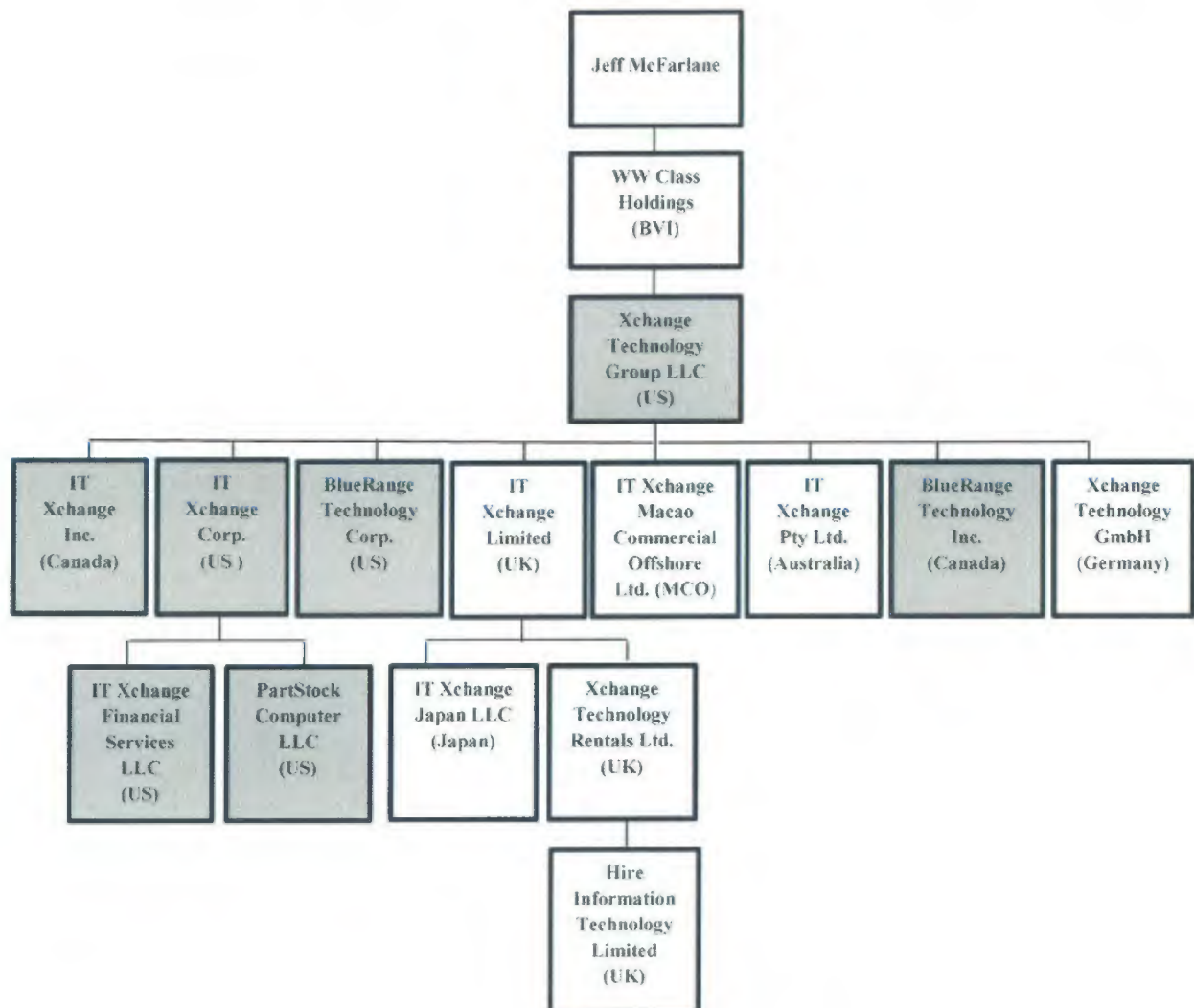
## **1.2 Currency**

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



## 2.0 Background Information

1. XTG Group was founded in 1996 in Ontario by Jeff McFarlane ("McFarlane"). XTG Group's corporate organizational chart is as follows (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.

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3. XTG Group's Canadian and US head offices are located in Oakville, Ontario and Morrisville, North Carolina, respectively. These facilities are leased, as are the other eight North American facilities from which the XTG Debtors currently operate. These other facilities are located in Richmond Hill, Ontario, Minneapolis, Georgia, Washington, Maine, Illinois, Connecticut and California.
  4. At the commencement of the receivership proceedings, XTG Group employed approximately 260 individuals globally. There are presently approximately 242 employees, including 53 in Canada and 97 in the US.
  5. XTG Group's workforce is not unionized; it does not maintain any employee pension plans.
  6. Further background information about XTG Group is provided in the Report of the Proposed Receiver dated October 25, 2013 ("Report of the Proposed Receiver"), a copy of which is attached as Appendix "C", without appendices.

### **3.0 Sale Process**

#### **3.1 Sale Process Overview**

1. The Report of the Proposed Receiver provides details of the XTG Group's pre-filing activities to attempt to refinance its business. This included two extensive refinancing processes: one conducted by Canaccord Genuity Corporation ("Canaccord Genuity") and one by KPMG Corporate Finance Inc. ("KPMG"). The targets contacted during the refinancing processes included certain parties that would have had a strategic interest in XTG Group.
2. Paragraph 4 of the Receivership Order authorized and directed the Receiver to accept the Stalking Horse Agreement subject to a Superior Bid (as defined in the Receivership Order) resulting from the Sale Process submitted on or before the bid deadline of November 19, 2013 (the "Bid Deadline").
3. The Sale Process was expedited for four principal reasons: a) the breadth and duration of the pre-filing marketing efforts to identify a party to refinance the XTG Debtors; b) the inability to generate an offer from the refinancing efforts; c) the distressed state of the business; and d) the need to quickly stabilize the business to prevent erosion in stakeholder confidence.
4. Immediately following the granting of the Receivership Order, the Receiver commenced the Sale Process in accordance with the Receivership Order, as follows:
  - The Receiver distributed an interest solicitation letter detailing the acquisition opportunity ("Teaser"). The Teaser included the Receiver's recommendation that bidders submit their offers substantially in the form of the Stalking Horse Agreement;

- 
- The Teaser was circulated to a list of 88 prospective purchasers developed by the Receiver (the "Buyers List"). The Buyers List was comprised of 30 strategic parties and 58 financial parties, including parties that were previously identified and approached by Canaccord Genuity and/or KPMG. (Further details on the Canaccord Genuity and KPMG processes, including the results thereof, are detailed in the Report of the Proposed Receiver.);
  - Attached to the Teaser was a form of confidentiality agreement ("CA") that interested parties were required to sign in order to obtain a copy of the XTG Debtors' confidential information memorandum ("CIM") and to access an online data room established by the Receiver;
  - The data room established by the Receiver contained historical and projected financial information and other information, including employee data, occupancy leases, supplier and customer information and certain contracts and agreements. Copies of the Stalking Horse Agreement and the CIM were also included in the data room; and
  - The Receiver facilitated due diligence requests from interested parties.

### **3.2 Sale Process Results**

1. The results of the Sale Process are summarized as follows:
  - Three parties executed the CA and were provided access to the data room; and
  - No offers were submitted on or prior to the Bid Deadline.
2. On November 19, 2013, the Receiver advised Callidus that it was the "successful bidder" and that the Receiver would promptly file motion materials to apply for the Vesting Order contemplated by Paragraph 4 of the Receivership Order.

### **4.0 The Transaction**

1. The Transaction was detailed in the Report of the Proposed Receiver and is summarized as follows:
  - Purchased Assets: Substantially all of XTG Debtors' business and assets, including the shares of the Foreign Affiliates. The most significant excluded assets are the real property leases for the leased premises in Minneapolis, Minnesota and Oakville, Ontario. The XTG Debtors intend to exit these facilities.



- 
- Purchase Price: To be paid by credit bid and calculated as follows: Callidus debt on closing less \$3 million, plus priority payables. As at the date of this Report, the purchase price would be approximately \$35 million.
  - 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.
  - Employees: Purchaser intends to offer employment to substantially all of the existing employees, other than the vast majority of the employees of the Partstock business unit, which is in the process of transitioning from Minneapolis to North Carolina, and the BlueRange business unit, which is in the process of being wound down.
  - 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: Subject to obtaining the Vesting Order from this Court on November 22, 2013 and the US Court on November 25, 2013, the Receiver expects the Transaction to close in December, 2013.
  - Conditions: Only material condition precedent to closing is approval and issuance of a Vesting Order by this Honourable Court and the US Court. A copy of the Stalking Horse Agreement is attached as Appendix "D".
  - Transition Services Agreement ("TSA"): To provide for a seamless transition of the XTG Debtors' business to the Purchaser, the Stalking Horse Agreement contemplates that the Purchaser and the Receiver will enter into a TSA. The TSA will contemplate that, *inter alia*, during the transition period:
    - i. The XTG Debtors will continue to employ those employees who are not hired by the Purchaser at closing until such employees are terminated by the Receiver on behalf of the XTG Debtors in accordance with the Receivership Order;
    - ii. The Receiver will continue to occupy, for use by the Purchaser, the XTG Debtors' leased premises in Minneapolis and Oakville until such time as those leased premises are no longer required, following which those leases will be disclaimed by the Receiver; and



- 
- iii. During the transition period, the Purchaser will reimburse the Receiver for all costs incurred by the XTG Debtors in connection with the TSA, including employee costs and rent. The Purchaser is also to indemnify the Receiver for all expenses and liabilities of the Receiver resulting from the Purchaser's actions and/or omissions during the transition period.

#### 4.1 Recommendation

1. The basis for the Receiver's support of the Transaction was set out in the Report of the Proposed Receiver. The Receiver recommends that the Court issue the Vesting Order for similar reasons, including:
  - In the Receiver's view, the Sale Process was commercially reasonable in the circumstances. It was carried out in accordance with the Court-approved Sale Process;
  - Further marketing efforts are unlikely to result in a superior transaction and any delay could jeopardize the ongoing operations of the XTG Debtors;
  - Absent the closing of the Transaction, there would not be funding available to continue the XTG Debtors' operations. A transaction must be completed promptly in order for the business to continue to operate on a going-concern basis. The Transaction also eliminates the uncertainty regarding the status of the business, operations and viability of the XTG Debtors;
  - The Transaction contemplates the continuation of the XTG Debtors' operations and preserves employment for approximately 230 employees of the XTG Group; and
  - The Transaction provides for the greatest recovery available in the circumstances – no other offers were submitted under the Sale Process and the value of the Transaction significantly exceeds the liquidation value of the XTG Debtors' assets. Accordingly, the Receiver believes the Transaction is in the best interests of all relevant stakeholders.
2. The proposed form of Vesting Order contemplates that a Receiver's Certificate will be delivered to the Purchaser on the closing of the Transaction and subsequently filed with the Court, which will, *inter alia*, confirm the names of the entities in which the Purchased Assets have vested. The Receiver believes this provision is required as the organizational structure has not yet been finalized.
3. Based on the foregoing, the Receiver respectfully recommends that this Court grant the proposed Vesting Order.

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## 5.0 Non-Disclosure and Non-Solicitation Agreement

1. The XTG Debtors' restructuring plan contemplates transitioning the Partstock business from its location in Minneapolis to its location in North Carolina. This transition resulted in the XTG Debtors terminating the employment of five members of Partstock's senior management on October 28, 2013.
2. On May 1, 2009, Shah entered into the NDSA, pursuant to which he is prohibited from, *inter alia*, direct and indirect customer solicitation for a period of 12 months following his last day of employment with the XTG Debtors. Until his termination on October 28, 2013, Shah was an Account Executive with frequent contact with customers of the Partstock business unit.
3. The Receiver understands that Shah violated the NDSA prior to his termination by actively soliciting Partstock customers and sending them to a competitor by the name of FireFly Computers LLC, which is non-arm's length to him. In addition, since October 28, 2013, XTG Debtors' Management has advised the Receiver that Shah has continued to violate the NDSA and certain terms of the Receivership Order by continuing to solicit customers of the XTG Debtors.
4. Shah claims, among other things, that the NDSA is unenforceable and that an amendment to the NDSA was entered into on August 3, 2013 (the "Amendment"), pursuant to which the term of the NDSA was reduced from 12 months to two months.
5. The Receiver notes that the Amendment was executed by McFarlane, on behalf of the XTG Debtors, at a time when he did not have authority to bind the XTG Debtors, which the Receiver is advised by management of the XTG Debtors was known or ought to have been known to Shah at that time. McFarlane and Callidus entered into a Withdrawal Agreement dated June 6, 2013 requiring McFarlane to relinquish his management and executive authority (the "Withdrawal Agreement"). Pursuant to the Withdrawal Agreement, the executive and management authority over XTG Group was delegated at that time to Alan Rupp, XTG Group's Chief Financial Officer.
6. In respect of this dispute, the Receiver's counsel and Shah exchanged correspondence dated November 4, 2013, November 7, 2013, November 11, 2013 and November 14, 2013. Copies of this correspondence are attached as Appendix "E".
7. As noted in the correspondence, the Receiver has advised Shah that if he continues to violate the NDSA and/or the Receivership Order, the Receiver intends to seek injunctive or other relief against him.



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## 6.0 Overview of the Receiver's Activities

1. An overview of the Receiver's activities since the date of its appointment is as follows:
  - Carrying out the Receiver's duties and responsibilities in accordance with the Receivership Order;
  - Attending daily at the XTG Debtors' premises in Morrisville, North Carolina and Oakville, Ontario;
  - Attending at the XTG Debtors' premises in Minneapolis, Minnesota on October 29 and 30, 2013 in order to assist the XTG Debtors to implement its transition plan;
  - Corresponding extensively with legal counsel concerning issues with respect to the directorships of the Foreign Affiliates and executing shareholders resolutions in respect thereof;
  - Corresponding with HSBC Bank Canada ("HSBC") in order to remove a "block" on certain bank accounts of the XTG Debtors that was implemented by HSBC prior to the commencement of the receivership proceedings;
  - Assisting the XTG Debtors to prepare a communication strategy that was implemented at the commencement of these proceedings;
  - Reviewing on a daily basis all transactions from the XTG Debtors' bank accounts;
  - Reviewing the XTG Debtors' funding requests submitted to Callidus;
  - Reviewing the XTG Debtors' post-filing purchase orders;
  - Reviewing post-filing disbursements;
  - Assisting the XTG Debtors to compile certain information required for the filing, including creditor listings and schedules to the Stalking Horse Agreement;
  - Attending and participating, either in person or by conference call, at each employee meeting convened on October 29, 2013 and October 30, 2013 for the purpose of explaining the implications of the receivership proceedings to the XTG Group's worldwide employee base;
  - Carrying out the Receiver's statutory obligations, including drafting and filing the Receiver's notice and statement in accordance with subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;

- 
- Carrying out the Sale Process;
  - Drafting Sale Process materials, including the Teaser, CA and Buyers List;
  - Corresponding with prospective purchasers over the course of the Sale Process, including following up with the parties on the Buyers List in order to confirm their interest, if any;
  - Providing prospective purchasers with access to the data room and facilitating diligence, as required;
  - Assisting the XTG Debtors to prepare financial projections under various scenarios for the period ending December 31, 2014;
  - Corresponding with certain suppliers of the XTG Debtors regarding the supply of goods and services during the receivership proceedings and arranging for continuity of supply with certain suppliers who discontinued service at the outset, including Tech Data Canada Corp. and Federal Express;
  - Corresponding with certain of the XTG Debtors' customers, as required;
  - Dealing with legal counsel in connection with the NDSA breaches detailed in this Report;
  - Corresponding extensively with the Receiver's Canadian and US legal counsel and legal counsel to Callidus;
  - Drafting this Report; and
  - Other matters pertaining to the administration of this mandate.

## 7.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*Duff & Phelps Canada Restructuring Inc.*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS 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 AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “C”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

FRIDAY, THE 22<sup>ND</sup>

JUSTICE MORAWETZ

)

DAY OF NOVEMBER, 2013

)

**BETWEEN:**

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

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

Respondents



**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Duff & Phelps Canada Restructuring Inc. ("**Duff & Phelps**" or the "**Receiver**") in its capacity as Court-appointed receiver over all of the property, assets and undertakings of the Respondents (collectively, the "**XTG Debtors**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement dated October 25, 2013 (the "**Sale Agreement**") between the Receiver and 2393134 Ontario Inc., (the "**Purchaser**") and vesting in the Purchaser or its nominees the right, title and interest of the



XTG Debtors in and to the Purchased Assets as described in the Sale Agreement, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report of the Receiver dated November 19, 2013, and on hearing the submissions of counsel for the Receiver, Callidus Capital Corporation, the Purchaser, and Jeffrey McFarlane, no one else appearing for any other person on the service list, although properly served as appears from the Affidavit of Mary Gartland sworn November 20, 2013, filed.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein, be and is hereby abridged such that the motion is properly returnable today and this Court hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the ~~Transaction is hereby approved~~ <sup>was received in the Sales Process</sup> and that the Sale Agreement is commercially reasonable. ~~The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser or its nominees~~ <sup>or assigns</sup>

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the right, title and interest of the XTG Debtors in and to the Purchased Assets shall vest absolutely in the Purchaser, its nominees or assignees named in the Receiver's Certificate, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Morawetz dated October 29, 2013 (ii) and all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the

"Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the XTG Debtors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the XTG Debtors.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the XTG Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the XTG Debtors;

the vesting of the Purchased Assets in the Purchaser, its nominees or assignees pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the XTG Debtors and shall not be void or voidable by creditors of the XTG Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

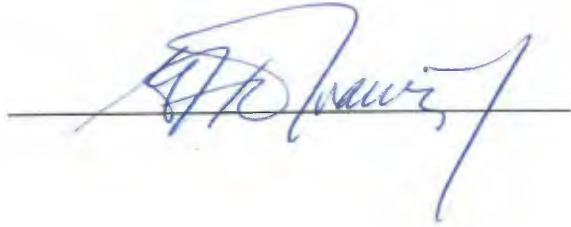


7. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

ENVOI EN REGISTRE  
ON 2013 NOV 22  
LE VANDRE 22 NOV 2013

NOV 22 2013



**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-13-10310-00CL

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

**B E T W E E N:**

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

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

Respondents

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated October 29, 2013, Duff & Phelps Canada Restructuring Inc. was appointed as the receiver (the "Receiver") of all of the property, assets and undertakings of the Respondents (collectively, the "XTG Debtors").

B. Pursuant to an Order of the Court dated November 22, 2013, the Court approved the Asset Purchase Agreement dated October 25, 2013 (the "Sale Agreement") between the Receiver and 2393134 Ontario Inc. (the "Purchaser"), and provided for the vesting in the Purchaser, its nominees or assignees of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the

delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; (iii) the names of the entities in which the Purchased Assets are to be conveyed and vested; and (iv) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser, its nominees or assignees has/have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, its nominees or assignees;
3. The Purchased Assets are to be conveyed to and vested in, the following nominees or assignees of the Purchaser:

**[TO BE COMPLETED]**

4. The Transaction has been completed to the satisfaction of the Receiver.
5. This Certificate was delivered by the Receiver at [TIME] on \_\_\_\_ [DATE].

**DUFF & PHELPS CANADA  
RESTRUCTURING INC., in its capacity as  
Court-appointed Receiver over all of the  
property, assets and undertakings of the  
Respondents, and not in its personal capacity**

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

Name:

Title:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at TORONTO

**APPROVAL AND VESTING ORDER**

**CHAITONS LLP**

Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton**

LSUC Registration No. 21592F  
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**Lawyers for Duff & Phelps Canada**

**Restructuring Inc., in its capacity as court-**  
**appointed Receiver of the Respondents**

## **Appendix “D”**

## ASSET PURCHASE AGREEMENT

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

### AMONG:

**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: \_\_\_\_\_

*Dr. Reese*  
*David Reese*  
*President.*

**Amended Schedule "A"**  
**Assumed Contracts**

1. Contract entered into between IT Xchange Corp and Mainline Information Systems, entered into on February 2, 2012 and continuing indefinitely, in connection with resale of IT Xchange equipment.
2. Contract entered into between Lenovo (Singapore) Pte. Ltd. and IT Xchange Financial Services, LLC, entered into on April 29, 2008 and continuing indefinitely, in connection with leasing equipment.
3. Contract entered into between Lenovo US and IT Xchange Corp. entered into on November 7, 2011 and continuing indefinitely, as a procurement relationship.
4. Contract entered into between CDW Logistics, Inc. and IT. Xchange Corp., entered into on February 9, 2005 and continuing indefinitely, as a supplier agreement.
5. Contract entered into between IT Xchange Financials Services, LLC and Apple Inc. as an authorized reseller.
6. Contract entered into between IT Xchange Corp. and NEC-Mitshubishi Inc. for the NEC Demo Program.
7. Contract entered into between IT Xchange Financial Services LLC and Winthrop Resources Corporation on December 17, 2012 and all subsequent agreements and/or amendments with Winthrop Resources Corporation.
8. All agreements, contracts and authorizations between Xchange Technology Group, LLC, its subsidiaries and any original manufacturers and remarketing companies.
9. The following licenses and permits entered into with IT Xchange Financial Services, LLC.
  - a. 32 Microsoft Windows XP
  - b. 32 Microsoft Office XP
  - c. 32 Microsoft Office CAL
  - d. Segate Crystal Reports (1)
  - e. Photoshop (1)
  - f. Microsoft FrontPage (1)
  - g. Microsoft Xchange 2000 (1)



- h. Opus Coownership Arrangement
- i. Microsoft Windows 2000 Server (13)
- j. Microsoft SQL Server (2)
- k. GFI Mail Essentials
- l. Arcserve 2000
- m. Etrust Antivirus (45)
- n. Helpstar 7.0
- o. Microsoft Visio 2000
- p. ASP Upload
- q. Shiva Access Manager
- r. Third Party Licenses

- 10. All partnership agreements entered into between Xchange Technology Group, LLC, its subsidiaries and all current partners, including but not limited to, qualified rental partnerships and Business Partners.
- 11. All Program Agreements entered into between Xchange Technology Group, LLC, its subsidiaries and all current Program Partners.
- 12. All Supplier contracts entered into between Xchange Technology Group, LLC, its subsidiaries and Supplier.

\*Subject to Amendment\*

**Schedule "B"**

**Leased Premises**

1. 9241 Globe Center Drive, Unit 100, Morrisville, NC 27560
2. Abenaki Prof. Pk, Bldg C, 1662 Post Road, Wells, Maine 04090
3. 155 Montgomery St, Suite 505, San Francisco, CA 94104
4. 11 East Adams, Suite 1005, Chicago, Illinois 60603
5. 77 Selleck Street, Stamford, CT 06902
6. 1008 Windward Ridge Parkway, Forsyth County, Alpharetta, Georgia 30005
7. 2831 152nd Avenue NE, Building 10, Suite AB, Redmond, WA 98052

\*\*\*Subject to amendment\*\*\*

## **Schedule "C"**

### **Purchased Assets**

All assets of Xchange Technology Group, LLC (XTG) and all of its subsidiaries, used in connection with the current business, including but not limited to the following:

1. All mutual Confidentiality, Non-disclosure and Non-Solicitation Agreements.
2. All Cash of XTG including: cash on hand, cash at any XTG facility and all monetary sums in all XTG global bank accounts.
3. All XTG accounts receivables as detailed in the account receivable subsidiary ledgers (attached).
4. All XTG Prepaid Expenses.
5. All XTG Inventory as detailed in the inventory subsidiary ledgers (attached).
6. All XTG Debentures receivable to XTG from any sales of all affiliates.
7. All Equity Shares of all Foreign Subsidiaries of XTG.
8. All XTG Fixed Assets as detailed in the fixed asset subsidiary ledger (attached).
9. All XTG Rental Equipment and Rental Equipment Agreements as detailed in the rental equipment subsidiary ledger (attached).
10. All XTG Intangible Assets including, but not limited to all trademarks, copyrights, domain names, and intellectual property.
11. Any other asset of XTG deemed as an XTG asset prior to the official Close Date.

\*\*\*Subject to amendment\*\*\*

## **Appendix “E”**

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

**B E T W E E N:**

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

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

Respondents

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated October 29, 2013, Duff & Phelps Canada Restructuring Inc. was appointed as the receiver (the "Receiver") of all of the property, assets and undertakings of the Respondents (collectively, the "**XTG Debtors**").

B. Pursuant to an Order of the Court dated November 22, 2013, the Court approved the Asset Purchase Agreement dated October 25, 2013 (the "**Sale Agreement**") between the Receiver and 2393134 Ontario Inc. (the "**Purchaser**"), and provided for the vesting in the Purchaser, its nominees or assignees of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; (iii)

the names of the entities in which the Purchased Assets are to be conveyed and vested; and (iv) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser, its nominees or assignees has/have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, its nominees or assignees;

3. The Purchased Assets are to be conveyed to and vested in, the following nominees or assignees of the Purchaser:

IT Xchange Financial Services (2013) Inc.  
Partstock Computer (2013) Inc.  
IT Xchange (2013) Corp.  
BlueRange Technology (2013) Corp.  
XTG Holdings (Ontario) Inc.

4. The Transaction has been completed to the satisfaction of the Receiver.

5. This Certificate was delivered by the Receiver at 11:25 am. [TIME] on January 2, 2015 [DATE].

**DUFF & PHELPS CANADA  
RESTRUCTURING INC., in its capacity as  
Court-appointed Receiver over all of the  
property, assets and undertakings of the  
Respondents, and not in its personal capacity**

Per:

Name: Robert Kofman

Title: Managing Director

NB  
9:23



**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**EXCHANGE TECHNOLOGY GROUP LLC et al.**

Respondents

Court File No. CV-13-10310-00CL

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

Proceedings commenced at TORONTO

**RECEIVER'S CERTIFICATE**

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario  
M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: 416-218-1129  
Fax: 416-218-1849  
E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**Lawyers for the Duff & Phelps Canada  
Restructuring Inc. as Court-appointed  
Receiver of the Respondents**