

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

XCHANGE TECHNOLOGY GROUP LLC, *et al.*,

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 13-12809 (KG)

(Jointly Administered)

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that on November 2, 2013, Duff & Phelps Canada Restructuring Inc., the court-appointed receiver (the “**Receiver**”) and authorized foreign representative of Xchange Technology Group LLC, BlueRange Technology Corp., BlueRange Technology Inc., IT Xchange Corp., IT Xchange Financial Services LLC, I.T. Xchange Inc., and Partstock Computer LLC (collectively, the “**XTG Debtors**”) in a proceeding under Canada's *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**Canadian Proceeding**”) pending before the Ontario Superior Court of Justice, Commercial List (the “**Ontario Court**”), filed the *Receiver's Motion, Pursuant to Sections 105(a), 363, 1501 and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004 and 9014, for Entry of an Order (I) Recognizing and Enforcing the Approval Order and Vesting Order, (II) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of any and all Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “**Sale Motion**”). A copy of the Sale Motion is attached.

PLEASE TAKE FURTHER NOTICE that a hearing on the Sale Motion (the “**Hearing**”) has been scheduled for **November 25, 2013 at 2:30 p.m. (ET)** before the Honorable Kevin Gross at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that objections or responses, if any, to the Sale Motion must be made pursuant to title 11 of the United States Code and the Local and Federal Rules of Bankruptcy Procedure, including, without limitation Rule 1011 of the Federal Rules of Bankruptcy Procedure, in writing and setting forth the basis therefore. Such objection must be filed with the Office of the Clerk of the Court, 824 Market Street, Third Floor, Wilmington, Delaware 19801, on or before **November 18, 2013 at 4:00 p.m. (ET)** (the “**Objection Deadline**”). Objections should also be served, so as to be received on or before the Objection Deadline, on: (i) Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attention: Ken Coleman and Jonathan Cho, (ii) Buchanan Ingersoll & Rooney, 1105 N. Market Street Suite 1900, Wilmington, DE 19801, Attention: Mary Caloway, and (iii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attention: Michael Nestor and Matthew Lunn.

PLEASE TAKE FURTHER NOTICE that if no response or objection is timely filed and served as provided above, the Bankruptcy Court may grant the relief requested in the Sale Motion without further notice or hearing.

PLEASE TAKE FURTHER NOTICE that the Hearing may be adjourned from time to time without further notice other than an announcement in open court at the Hearing of the adjourned date or dates or any further adjourned hearing.

Copies of the Sale Motion, and other filings in these cases are presently available (1) on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov> (a PACER login and a password are required to retrieve a document), (2) from the Receiver through its website at <http://www.duffandphelps.com/intl/en-ca/Pages/RestructuringCases.aspx?caseId=895>, and/or (3) upon written request to the Receiver's counsel addressed to:

Allen & Overy LLP
1221 Avenue of the Americas
New York, New York 10020
Telephone (212) 610-6300
Facsimile (212) 610-6399
Attention: Jonathan Cho
jonathan.cho@allenoverly.com

Dated: Wilmington, Delaware
November 2, 2013

BUCHANAN INGERSOLL & ROONEY

By: /s/ Mary F. Caloway
Mary F. Caloway (No. 3059)
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Restructuring Inc., as Receiver and Foreign
Representative of the XTG Debtors*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

XCHANGE TECHNOLOGY GROUP LLC, *et al.*¹,

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 13-12809 (KG)

(Jointly Administered)

Hearing Date: November 25, 2013 at 2:30 p.m.

Objection Deadline: November 18, 2013 at 4:00 p.m.

**RECEIVER'S MOTION, PURSUANT TO SECTIONS 105(A), 363, 1501,
AND 1521 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004,
AND 9014, FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE
APPROVAL ORDER AND VESTING ORDER, (II) AUTHORIZING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY
AND ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,
(III) AUTHORIZING ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Duff & Phelps Canada Restructuring Inc., in its capacity as the court-appointed receiver and authorized foreign representative (the "Receiver") for the above-captioned debtors (collectively, the "Debtors") in the proceeding (the "Canadian Proceeding") commenced under Canada's *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, and pending before the Ontario Superior Court of Justice, Commercial List (the "Canadian Court"), subject to the entry of that certain *Vesting Order* by the Canadian Court (the "Vesting Order"), hereby moves this Court for the entry of an order, substantially in the form attached hereto as Exhibit A (the "U.S. Sale Order"), pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, and 1521 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1

¹ The last four digits of the United States Tax Identification Number, or similar foreign identification number, as applicable, follow in parentheses: Xchange Technology Group LLC (9024); BlueRange Technology Corp. (0843); BlueRange Technology Inc. (84663 1695); IT Xchange Corp. (8738); IT Xchange Financial Services LLC (3557); IT Xchange Inc. (89168 2031); and Partstock Computer LLC (9157).

of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (a) recognizing and enforcing paragraphs 4-5 of the Receivership Order (as defined below) (such paragraphs in the Receivership Order, the “Approval Order”) and the Vesting Order, pursuant to which the Canadian Court will have authorized the sale and transfer (the “Sale”) by the Receiver of the Debtors’ right, title, and interest in and to substantially all of the Debtors’ assets (collectively, the “Purchased Assets”) to 2393134 Ontario Inc., or such other purchaser that has submitted a Superior Offer (as defined in that certain *Asset Purchase Agreement* (the “Purchase Agreement”), by and between the Receiver and 2393134 Ontario Inc., an entity wholly owned by Callidus Capital Corporation, (the “Purchaser”), dated October 25, 2013, a copy of which is attached hereto as Exhibit B), free and clear of all claims, liabilities and encumbrances, except as set forth in the Purchase Agreement; (b) authorizing, pursuant to section 363 of the Bankruptcy Code, the Sale of the Debtors’ right, title, and interest in and to the Purchased Assets to the Purchaser, free and clear of all Interests (as defined in the U.S. Sale Order), except as otherwise provided in the Purchase Agreement; (c) authorizing and approving, to the extent provided for in the Vesting Order, the assignment of the Assumed Contracts (as defined in the Purchase Agreement); and (d) granting certain related relief. In support of this Motion, the Receiver has filed the *Report of Duff & Phelps Canada Restructuring Inc.*, dated October 25, 2013 (the “Receiver’s Report”), which is attached as Exhibit B to the *Declaration of Ken Coleman in Support of the Verified Petitions for Recognition of Foreign Proceeding and Related Relief and Motion for Provisional Relief in Aid of Canadian Proceeding*, dated October 29, 2013 [Docket No. 10] (the “Coleman Declaration”) and anticipates filing additional reports in connection with the Sale Process (as defined in the

Purchase Agreement) and Sale. In further support of this Motion, the Receiver respectfully states as follows:

JURISDICTION AND VENUE

This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (P). Venue is proper in this Court and in this District pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105(a), 363(b), (f), (m) and (n), 1501, and 1521 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 6004, and 9014 and Local Rule 6004-1.

GENERAL BACKGROUND

1. The Debtors' business was first established in Ontario in 1996. As a result of organic growth and a number of acquisitions, the Debtors developed into a global and leading supplier of information technology ("IT") products, as well as a provider of IT rental asset services and programs that include servers, storage devices, laptops, and desktop computers. The Debtors' global footprint extends to 20 locations in eight countries.

2. On October 25, 2013, Callidus Capital Corporation made an application under the *Bankruptcy and Insolvency Act* (Canada) commencing the Canadian Proceeding. On October 29, 2013, the Canadian Court entered an Order (the "Receivership Order"), which, among other things, (i) appointed Duff & Phelps Canada Restructuring Inc. as the Receiver and authorized the Receiver to manage and operate the property of the Debtors; (ii) authorized the Receiver to market the Debtors' assets in accordance with the Sale Process (as defined in the Receivership Order); and (iii) granted a stay of the proceedings against the Debtors.

3. On October 29, 2013 (the "Petition Date"), the Receiver commenced these chapter 15 cases (the "Chapter 15 Cases") by filing, among other things, petitions on behalf of

the Debtors pursuant to sections 1504 and 1515 (collectively, the “Chapter 15 Petitions”) seeking recognition by this Court of the Canadian Proceeding as a foreign nonmain proceeding under chapter 15 of the Bankruptcy Code.

4. On October 30, 2013, this Court entered an order (i) staying execution against the Debtors’ assets in the United States pursuant to section 1519(a)(1) of the Bankruptcy Code and (ii) applying sections 362 and 365(e) of the Bankruptcy Code in these Chapter 15 Cases on a provisional basis pursuant to sections 105(a), 1519(a)(3), and 1521(a)(7) of the Bankruptcy Code (the “Provisional Order”) [Docket No. 19]. A hearing to consider recognition of the Chapter 15 Petitions is currently scheduled for November 25, 2013.

5. Additional information about the Debtors’ business and operations, the events leading up to the Petition Date, and the facts and circumstances surrounding the Canadian Proceeding and the Chapter 15 Cases is set forth in the Receiver’s Report and the *Affidavit of Craig Boyer* in support of the commencement of the Canadian Proceeding, sworn to on October, 25 2013, which is attached as Exhibit A to the Coleman Declaration (the “Boyer Affidavit”).

SPECIFIC BACKGROUND

A. Debtors’ Obligations Under the Loan Agreement

6. On October 11, 2012, Callidus Capital Corporation (“Callidus”) advanced credit facilities to the Debtors aggregating \$22 million when Callidus acquired from PNC Bank, National Association (“PNC”) certain loans that PNC had made to the Debtors. These credit facilities were documented by an Amended and Restated Loan Agreement dated October 11, 2012 between Callidus and the Debtors (as later amended from time to time, the “Loan Agreement”).

7. The credit facilities included (i) a demand “Revolving Loan” in the amount of \$20 million which is margined against “eligible” accounts receivable and inventory and (ii) a demand “Single Advance Loan” in the amount of \$2 million is unmargined. The stated purposes for both the Revolving Loan and the Single Advance Loan were (1) to refinance a portion of the debt assigned from PNC to Callidus (the “Assigned Debt”), and (2) to provide working capital for daily business operations and other business purposes of the Debtors. At the request of the Debtors, Amendment No. 1 to the Loan Agreement was made on November 2, 2012 to include two new demand facilities aggregating \$3 million to fund inventory purchases.

8. Callidus and the Debtors entered into a Forbearance Agreement dated August 3, 2013, referenced in more detail hereinafter, which further amended the loan facilities and the obligations of the borrowers and guarantors to Callidus under the Loan Agreement. As at October 24, 2013, the amount owing to Callidus was approximately \$36.97 million.

9. The Debtors’ obligations to Callidus are secured by security interests, liens and charges upon all of the property, assets and undertakings of the Debtors (the “Security”). The Security has been properly perfected by, among other things, registrations of financing statements pursuant to the *Personal Property Security Act* of Ontario, and the Uniform Commercial Code, as adopted in North Carolina. The Security generally represents a first priority and first ranking security interest in the assets, property and undertaking of the Debtors.

B. The Prepetition Solicitation Process

10. As set forth more fully in the Receiver’s Report and the Boyer Affidavit, prior to the commencement of the Canadian Proceeding and the Chapter 15 Cases, the Debtors employed a solicitation process to refinance their secured debt and to identify potential investors. In particular, the Debtors engaged Canaccord Genuity Corp. (“Canaccord”) to provide various advisory services, including the conduct of a refinancing solicitation process to identify potential

investors for the Debtors in May, 2013. Canaccord identified 56 parties, including financial parties, strategic parties and private equity firms that it believed may have an interest in participating in a refinancing of the Debtors, or refinancing the Debtors without participation by other parties. The solicitation process lasted approximately two months, but only resulted in the receipt by the Debtors of five verbal expressions of interest and three term sheets. Only one of those three parties that submitted a term sheet performed due diligence and that party passed on the opportunity shortly after it commenced diligence.

11. In addition to the process run by Cannaccord, KPMG was engaged in February, 2013 by the Debtors to conduct a refinancing solicitation process. The process included a broad canvassing of the asset based lending market place and resulted in the submission of one term sheet, but that party passed on the opportunity after it performed diligence.

12. The Canadian Proceeding contemplates a sale of the Debtors' business, carried out by the Receiver, as the best option for maximizing and preserving the enterprise value of the Debtors for the benefit of the Debtors' creditors, including their employees, customers, and suppliers. To that end, through the Receivership Order, the Canadian Court authorized and directed the Receiver to accept the Purchase Agreement as the Stalking Horse Offer and engage in the Sale Process.

13. The Sale Process approved by the Canadian Court through the Receivership Order is a three week process and contemplates that the Receiver will, among other things, contact the parties that were contacted by Canaccord and KPMG, among others. The deadline to submit offers to the Receiver is 10:00 am (Toronto time) on November 19, 2013 (the "Bid Deadline"). If the Receiver does not receive and accept at or before the Bid Deadline a Superior Bid (as defined in the Receivership Order) in accordance with the Sale Process, the

Receivership Order authorizes the Receiver to take all actions or steps necessary to complete the Sale in accordance with the terms of the Purchase Agreement, without further approval of the Canadian Court. However, the Sale Process provides that the Receiver shall apply to the Canadian Court for approval of the appropriate Vesting Order. A hearing to consider approval of the Vesting Order is currently scheduled for November 22, 2013.

PURCHASE AGREEMENT

14. The following is a summary² of certain material provisions of the Purchase Agreement.³ The Receiver believes that the inclusion of these provisions of the Purchase Agreement is fair and reasonable under the circumstances, is the result of good-faith, arm's-length negotiations, and is in the best interests of the Debtors, their creditors, and other stakeholders.

a. Purchased Assets. Upon and subject to the terms of the Purchase Agreement, the Vendor⁴ 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). Purchased Assets shall be 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)

² Any summary of, or reference to, the terms and conditions of the Purchase Agreement, the Approval Order or the Vesting Order herein are qualified in their entirety by the actual terms and conditions of the Purchase Agreement, the Approval Order and the Vesting Order. To the extent there is any inconsistency between any such summary or reference herein and the actual terms and conditions of the Purchase Agreement, the Approval Order and the Vesting Order, the actual terms and conditions of the Purchase Agreement, the Approval Order and the Vesting Order shall control.

³ Pursuant to Local Rule 6004-1(b)(iv), a Sale Motion (as defined in the Local Rules) must highlight certain provisions contained in the proposed form of sale order and/or the underlying purchase agreement. The Receiver has highlighted below the relevant provisions of the Purchase Agreement which implicate Local Rule 6004-1(b)(iv) by providing a citation, in bold, to the relevant sections of the Purchase Agreement, with an accompanying parenthetical identifying the Local Rule implicated. **In addition, the Receiver highlights that, pursuant to the proposed U.S. Sale Order, it is requesting (i) the Sale to be approved under section 363(f) of the Bankruptcy Code free and clear of any Interest (as defined in the U.S. Sale Order) and (ii) a waiver of Bankruptcy Rule 6004(h).**

⁴ All capitalized terms used but not otherwise defined in this paragraph 14 shall have the meanings ascribed to such terms in the Purchase Agreement.

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).

b. Excluded Assets. Notwithstanding section 2.01 of the Purchase Agreement or any other provisions of the Purchase Agreement to the contrary, the Debtors will retain their respective right, title, benefit, and interest in and to, and the Purchaser will have no rights with respect to the right, title, benefit, and interest of any of the Debtors in and to, the Excluded Assets.

c. Purchase Price. The Purchase Price payable to the Vendor for the Purchased Assets will be the aggregate of: (i) the amount of the obligations of the Debtors to Callidus as at the Closing Date less CDN\$3,000,000 and (ii) 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.

d. Satisfaction of Purchase Price. The Purchase Price shall be satisfied as follows: (i) 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; (ii) as to the Assumed Priority Payables, on or prior to the Time of Closing, the Purchaser shall assume the Assumed Priority Payables; and (iii) 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.

e. Taxes. Subject to Sections 2.06(2) and (3) of the Purchase Agreement, 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. 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.

f. Assumed Obligations. At and from the date of Closing, the Purchaser shall assume and be liable for the Assumed Obligations, which shall consist of (i) all Transferred Employee Liabilities payable or related to any Transferred Employees; (ii) the liabilities and obligations of any NA Debtor under any of the Assumed Contracts; (iii) 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 (iv) any liability or obligation which is agreed in writing to be assumed by the Purchaser.

g. 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 the Purchase Agreement or as a result of the transactions described in the Purchase 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.
Purchase Agreement § 2.08 (Local Rule 6004-1(b)(iv)(L)).

h. Successor Liability. To the extent permissible under the Approval Order and the Vesting Order, the Purchaser, or its affiliates, members, and shareholders, shall not be deemed, as a result of any action taken in connection with the Sale or the Purchaser’s post-closing use or operation of the Purchased Assets, to: (a) be a successor to the Debtors; (b) have, *de facto* or otherwise, merged or consolidated with or into the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Obligations, the transfer of the Purchased Assets to the Purchaser under the Purchase Agreement, the Approval Order, the Vesting Order, and the U.S. Sale

Order shall not result in the Purchaser Releasees having any liability or responsibility whatsoever: (y) for any Interest against the Debtors or against an insider of the Debtors; or (z) to the Debtors, except as is expressly set forth in the Purchase Agreement, the Approval Order, the Vesting Order, the U.S. Sale Order, and/or any other order of the Canadian Court. Without limiting the generality of the foregoing, except as otherwise provided in the Purchase Agreement, the Approval Order, the Vesting Order, or any other order of the Canadian Court, the conveyance of the Debtors' rights, title, and interest in the Purchased Assets to Purchaser under the Purchase Agreement shall not result in any Purchaser Releasee having any liability or responsibility whatsoever for any:

- (a) Interest, whether at law or in equity, whether by payment, setoff, or otherwise, directly or indirectly;
- (b) obligation under any of the Debtors' labor or employment agreements;
- (c) of the Debtors' mortgages, deeds of trust, and security interests;
- (d) intercompany loans and receivables between the Debtors and any non-debtor subsidiary;
- (e) of the Debtors' pension, welfare, compensation or other employee benefit plans, agreements, practices and programs
- (f) any of the Debtors' other employee, worker's compensation, occupational disease, unemployment, or temporary disability related claim, including without limitation, claims that might arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1976 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; or
- (g) successor or vicarious liabilities of any kind or character, including, but not limited to, federal, state or other tax liabilities, U.S. or foreign pension liabilities, or liabilities based on any theory of antitrust, environmental, labor law, alter ego, veil piercing, continuity of enterprise, mere continuation, product line, *de facto* merger or substantial continuity, whether known or unknown, whether legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 15 Cases, whether imposed by agreement, understanding, law, equity or otherwise with respect to any of the Debtors or any obligations of the Debtors, including, but not limited to, in the case of liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Time of Closing or any taxes in connection with, or in any way relating to the

cancellation of debt of the Debtors or their affiliates. **U.S. Sale Order ¶10 (Local Rule 6004-1(b)(iv)(L)).**

i. Closing Date. Means the date that is two (2) Business 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. **Purchase Agreement § 1.01 (Local Rule 6004-1(b)(iv)(E)).**

j. Record Retention. 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. 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. **Purchase Agreement § 9.01 (Local Rule 6004-1(b)(iv)(J)).**

k. Sale Process. The Purchaser acknowledges and agrees to the employment of a marketing process to determine whether a Superior Bid can be obtained for the Purchased Assets.

l. Bid Deadline. November 19, 2013 at 10:00 a.m. (Toronto Time).

m. Superior Bid. A Superior Bid is 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: (i) the offer must be an irrevocable offer; (ii) 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; (iii) 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; (iv) 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; (v) the offer must be made by an offeror which can demonstrate the financial ability to complete the transaction; and (vi) the offer must contemplate a closing date of no later than December 31, 2013.

RELIEF REQUESTED

15. Subject to the entry of the Vesting Order, by this Motion, the Receiver respectfully requests that this Court enter the U.S. Sale Order, substantially in the form annexed hereto as Exhibit A, pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, and 1521 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9014 and Local Rule 6004-1:

(a) recognizing and enforcing the Approval Order and Vesting Order; (b) authorizing the Sale of the Debtors' right, title, and interest in and to the Purchased Assets free and clear of any and all Interests; (c) authorizing and approving, to the extent provided for in the Vesting Order, the assignment of the Assumed Contracts; and (d) granting certain related relief.

16. Based on the lack of interest generated during the marketing process employed prior to the commencement of the Canadian Proceeding by Canaccord and KPMG, the results of the Sale Process, and the favorable terms of the Purchase Agreement, the Receiver believes that the Sale of the Purchased Assets in accordance with the terms and conditions of the Purchase Agreement, the Approval Order, the Vesting Order and the U.S. Approval Order represents the best realization of value for the Debtors' creditors and other stakeholders under the circumstances. Pursuant to sections 4.01 and 4.02 of the Purchase Agreement, entry of the U.S. Sale Order, substantially in the form annexed hereto as Exhibit A, is a condition precedent to the consummation of the Sale. This Court's recognition and approval of the Approval Order and Vesting Order will permit the Receiver to sell the Purchased Assets without disruption and in a

timely and efficient manner. Absent the relief requested herein, the Debtors and their creditors will potentially suffer significant, if not irreparable, harm due to an inability to close the Sale.

BASIS FOR RELIEF REQUESTED

A. The Court Should Recognize and Enforce the Approval Order and Vesting Order and Authorize the Sale Pursuant to Section 363 of the Bankruptcy Code

17. As set forth more fully in the Receiver's Report and the Chapter 15 Petitions, the Receiver commenced these Chapter 15 Cases to obtain recognition of the Canadian Proceeding as a "foreign nonmain" proceeding under section 1517 of the Bankruptcy Code, and to seek certain related relief from this Court, including, this Court's recognition and enforcement of a sale of substantially all of the Debtors' assets. On October 30, 2013, this Court entered the Provisional Order and scheduled a hearing to consider recognition of the Canadian Proceeding for November 25, 2013.

18. Section 1521 of the Bankruptcy Code provides, in relevant part, that "[u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of [chapter 15 of the Bankruptcy Code] and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including granting any . . . relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) [of the Bankruptcy Code]." *Id.* § 1521(a)(7).

19. Section 363 of the Bankruptcy Code therefore applies to the Sale in connection with Purchased Assets located within the territorial jurisdiction of the United States. See *In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 Bankr. LEXIS 5367, at *18 (Bankr. D. Del. Nov. 16, 2012) (finding that section 363 of the Bankruptcy Code applies to transfers of assets located within the United States outside of the ordinary course of business in connection

with cases commenced under chapter 15 of the Bankruptcy Code). Section 363(b)(1) provides, in relevant part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan. However, courts in this Circuit, and in other districts, have required that the decision to sell assets outside the ordinary course of business be based upon the sale proponent’s sound business judgment. See Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991); see also In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996).

20. The “sound business judgment” test requires a proponent of a sale to establish four elements in order to justify the sale or lease of property outside the ordinary course of business. These factors are (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the trustee or debtor in possession has obtained a fair and reasonable price, and (d) that the purchaser has acted good faith. In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); In re Exaeris Inc., 380 B.R. 741, 744 (Bankr. D. Del. 2008); Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989).⁵

⁵ Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case. Section 105(a) states that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Id. § 105(a). Provided that a bankruptcy court employs its equitable powers to achieve a result consistent with the Bankruptcy Code,

21. The Receiver submits that ample business justification exists to sell the Purchased Assets to the Purchaser. The Sale satisfies all four conditions set forth in Abbotts Dairies. First, sound business purposes justify the Sale. The Receiver believes that the Sale presents the best opportunity for the Debtors to maximize the value of their assets. If approved and consummated, the Sale will, among other things, (i) satisfy a significant portion of the obligations of the Debtors to Callidus under the Loan Agreement, (ii) provide for the satisfaction of the secured claims of creditors with liens ranking in priority to the obligations owed by the Debtors to Callidus, and (iii) provide for the assumption by the Purchaser of the Assumed Obligations, which includes the Transferred Employee Liabilities related to Transferred Employees. Stated differently, the Sale will preserve the Debtors' ongoing business operations to the benefit of creditors and other stakeholders.

22. Second, the Receiver believes that the Purchase Price represents a fair and reasonable price for the Purchased Assets. In connection with the prepetition marketing process, as detailed in the Receiver's Report, no interested party was willing to offer more than \$15 million, subject to certain downward adjustments, for the Purchased Assets and was still subject to further due diligence and exclusivity provisions. The Purchase Price, which is the aggregate amount of the obligations of the Debtors to Callidus, less CDN\$3,000,000 and the aggregate amount of the Priority Payables, far exceeds the highest amount previously offered by a potential purchaser during the prepetition marketing process.

23. Third, fair and reasonable notice has been provided to interested parties of the Sale. Pursuant to the terms of the Sale Process Order, the Receiver is conducting a process to solicit higher and better offers for the Purchased Assets. Notice of the Sale will be published in

the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002).

The Wall Street Journal (U.S. Edition). In addition, all known creditors, holders of Interests, and parties to Assumed Contracts are being served with notice of this Motion in accordance with the *Order Specifying Form and Manner of Service of Notice* [Docket No. 18].

24. Fourth, as discussed more fully below, and as described in the Receiver's Report and the Boyer Affidavit, the negotiation process undertaken with respect to the Purchase Agreement satisfies the good faith requirement. The Purchase Agreement is the product of good faith and arm's-length negotiations among the parties.

25. In addition, granting the requested relief is in the public interest. The purpose of chapter 15 of the Bankruptcy Code is:

[T]o incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(1) cooperation between—

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor's assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. § 1501(a). In addition to the benefits of the Sale that have already been described above, the Sale contemplates that the Purchaser will extend offers to the majority of the current employees of the Debtors in the U.S. and Canada. Receiver's Report § 7.1.

26. Courts in this District have granted relief similar to the relief requested in this Motion. See, e.g., Arctic Glacier International Inc., Case No. 12-10605 (KG) (Bankr. D.

Del. July 17, 2012) (recognizing and enforcing sale order entered by Canadian court and separately authorizing and approving sale free and clear of any and all liens, claims, encumbrances and other interests under section 363 and approving the assignment of assumed contracts); In re EarthRenew IP Holdings LLC, Case No. 10-13363 (CSS) (Bankr. D. Del. February 18, 2011) (recognizing and enforcing sale order entered by Canadian court and separately authorizing and approving the sale free and clear of any and all liens, claims, encumbrances and other interests under section 363 of the Bankruptcy Code); In re Grant Forest Products, Case No. 10-11132 (PJW) (Bankr. D. Del. April 26, 2010) (same); In re Destinator Technologies Inc., Case No. 08-11003 (CSS) (Bankr. D. Del. July 8, 2008) (same).

27. This Court's recognition and enforcement of the Approval Order and Vesting Order is not only warranted but is critical to achieving the anticipated results of the Sale, as it will permit the Receiver to sell the Purchased Assets without disruption and provide further certainty to the Sale and to the Purchaser. Pursuant to sections 4.01 and 4.02 of the Purchase Agreement, entry of the U.S. Sale Order, substantially in the form annexed hereto as Exhibit A, is a condition precedent to the consummation of the Sale. Absent the relief requested herein, the Debtors will likely suffer substantial, if not irreparable, harm from the inability to sell the Purchased Assets without interference and in a manner that will allow the Debtors to maximize recoveries for all creditors and other stakeholders.

28. For all of the foregoing reasons, the Receiver respectfully submits that there is more than ample justification for this Court to enter the U.S. Sale Order, thereby recognizing and enforcing the Approval Order and Vesting Order and authorizing the Sale pursuant to section 363 of the Bankruptcy Code.

**B. The Court Should Authorize and Approve the Sale
Free and Clear of Interests and Successor Liability
Pursuant to Section 363(f) of the Bankruptcy Code**

29. The Receiver also respectfully requests that this Court authorize the Sale free and clear of Interests (as defined in the U.S. Sale Order). Under section 363(f) of the Bankruptcy Code, a trustee or a debtor in possession may sell all or any part of a debtor's property free and clear of any and all liens, claims, encumbrances, and other interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting such a lien, claim or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a bona fide dispute, or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); In re P.K.R. Convalescent Ctrs., Inc., 189 B.R. 90, 93-94 (Bankr. E.D. Va. 1995) (“[Section] 363 covers more situations than just sales involving liens . . . Section 363(f) addresses sales free and clear of any interest . . .”); Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that section 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met). In addition, a court may authorize the sale of a debtor's assets free and clear of any liens, claims or encumbrances under section 105 of the Bankruptcy Code. See Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.”).

30. The Receiver respectfully submits that a sale of the Purchased Assets other than one free and clear of all Interests, except as otherwise provided in the Purchase

Agreement, would yield substantially less value for the Debtors and their creditors than the Sale will, and that the Sale free and clear of all Interests is in the best interests of the Debtors, their creditors, and other parties in interest.

31. With respect to any and all creditors that may assert an Interest in the Purchased Assets, the Receiver submits that at least one of the subsections of 363(f) applies to such creditors and, in most cases, more than one of the subsections of 363(f) is satisfied. Notably, Callidus has consented to the Sale pursuant to the terms of the Purchase Agreement, the Approval and Vesting Order, and the U.S. Sale Order and, with respect to liens that rank in priority to the obligations owed to Callidus by the Debtors under the Loan Agreement, a component of the Purchase Price is the Priority Payables Amount. Accordingly, the Receiver submits that the sale of the Purchased Assets free and clear of all Interests, other than as provided in the Purchase Agreement, satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

32. Furthermore, it is well established that a bankruptcy court has the power under section 363(f) to approve the sale of a debtor's assets free and clear of successor liability claims against the debtor. In re TWA Airlines, Inc., 322 F.3d 283, 288-90 (3d Cir. 2003) (holding that successor liability claims are "interests in property" within the meaning of section 363(f) of the Bankruptcy Code); United Mine Workers of Am. Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.), 99 F.3d 573 (4th Cir. 1996) (same). Therefore, based on the applicable precedent, the Receiver requests that this Court authorize the Sale of the Purchased Assets to the Purchaser free and clear of claims based upon successor liability. In this way, the Purchaser will obtain increased certainty concerning the Excluded Liabilities as to the Purchased Assets in the United States. The Receiver submits that the relief requested herein is

an appropriate exercise of this Court's authority under chapter 15 of the Bankruptcy Code and does not conflict with the relief granted by the Canadian Court in the Approval Order and will not conflict with the Vesting Order.

**C. This Court Should Recognize the Canadian Court's
Authorization to Assign the Assumed Contracts to the Purchaser**

33. The Purchase Agreement requires, as an integral part of the Sale, the assignment of the Assumed Contracts as effectuated pursuant to the terms of the Vesting Order. It is contemplated that the Vesting Order provide the following or such other similar provisions:

- a. The Assumed Contracts be transferred to, and will remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms.
- b. The assignment of the rights and obligations of the Debtors under the Assumed Contracts to the Purchaser will be valid and binding upon all of the counterparties to the Assumed Contracts, without further documentation, as if the Purchaser was a party to the Assumed Contracts, notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to an Assigned Contract.
- c. Each counterparty to the Assumed Contracts will be prohibited from exercising any right or remedy under the Assumed Contracts by reason of any defaults thereunder arising from the commencement or pendency of the Canadian Proceeding or the chapter 15 cases or the solvency or financial condition of the Debtors.

34. It is an appropriate exercise of business judgment for the Debtors to agree to assign the Assumed Contracts as required under the Purchase Agreement. Additionally, the Receiver submits that the notice and protections for counterparties that will be set forth in the Vesting Order and implemented in the Canadian Proceeding are adequate to protect the rights of counterparties to the Assumed Contracts and are consistent with the relief typically afforded to debtors and purchasers under sections 363 and 365 of the Bankruptcy Code. Moreover, the Purchaser is able and has agreed to assume and perform the obligations of the Debtors under the

Assumed Contracts in accordance with their terms, including the payment of arrears that are not required to be satisfied by the Debtors in accordance with the Purchase Agreement. As such, the Receiver respectfully submits that enforcement in the United States of the assignment of the Assumed Contracts to the Purchaser does not present any public policy conflict or any issue concerning protection of the interests of the parties to the Assumed Contracts that would prevent this Court from entering the U.S. Sale Order.

D. The Court Should Afford the Purchaser All Protections Under Sections 363(m) and (n) of the Bankruptcy Code as a Good Faith Purchaser

35. In addition to the relief requested above, the Receiver requests that the Purchaser receive the protections set forth in sections 363(m) and (n) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define “good faith,” courts have stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” In re Abbots Dairies of Pa., 788 F.2d at 147. Courts have held that in order to demonstrate a lack of good faith, a party would have to show “fraud or collusion between the purchaser and [seller] or an attempt to take grossly unfair advantage [of other potential purchasers.]” Id.

36. As described in the Receiver’s Report and the Boyer Affidavit, the Purchase Agreement was negotiated without fraud or collusion, in good faith and from an arm’s-length bargaining position, and was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors under the Bankruptcy Code or under the

laws of the United States, any state, territory, possession thereof, or the District of Columbia. Furthermore, neither the Purchaser nor any of its affiliates or their respective representatives is an “insider” of any of the Debtors, as that term is defined in Bankruptcy Code section 101(31). To the Receiver’s knowledge, no party has engaged in any conduct that would cause or permit the Purchase Agreement to be set aside under section 363(n) of the Bankruptcy Code. Accordingly, the Receiver seeks a finding that the Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and has not violated section 363(n) of the Bankruptcy Code.

WAIVER OF RULE 6004(h)

37. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Receiver requests that the U.S. Sale Order, once entered, be effective immediately by providing that, to the extent applicable, the 14-day stay under Bankruptcy Rule 6004(h) is waived.

38. Time is of the essence with respect to the U.S. Sale Order.

39. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen (14) day stay period, Collier on Bankruptcy suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy, ¶6004.11 (L. King, 16th rev. ed. 2011). Furthermore, Collier’s provides that if an objection is filed and overruled,

and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

40. Accordingly, the Receiver hereby requests that the Court waive the fourteen-day stay period under Bankruptcy Rule 6004(h).

NOTICE

41. Notice of this Motion has been provided to: (i) all known creditors of the Debtors or holders of Interests; (ii) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date; (iii) the Office of the United States Trustee for the District of Delaware; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the United States Department of Justice; (vii) counsel for the Purchaser; (viii) counsel to Callidus; (ix) all persons or entities known to have liens on the Purchased Assets; (x) all counterparties to the Assumed Contracts; (xi) all parties that expressed an interest in the Debtors as a result of the prepetition marketing process employed by Cannaccord and KPMG; and (xii) all other persons to whom notice is required pursuant to this Court's *Order Specifying Form and Manner of Service of Notice* [Docket No. 18]. In light of the nature of the relief requested, the Receiver submits that no other or further notice is required.

NO PRIOR REQUEST

42. No prior request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court enter the U.S. Sale Order, substantially in the form annexed hereto as Exhibit A, granting (i) the relief requested herein, and (ii) such other and further relief as the Court may deem proper.

Dated: Wilmington, Delaware
November 2, 2013

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Debtors*

EXHIBIT A

01:14205507.4

DLI-6404089v3

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Xchange Technology Group LLC, *et al.*¹,

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 13-12809 (KG)

(Jointly Administered)

Ref. Docket No. ____

**ORDER PURSUANT TO SECTIONS 105(A), 363, 1501,
AND 1521 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004,
AND 9014, FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE
APPROVAL ORDER AND VESTING ORDER, (II) AUTHORIZING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY
AND ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,
(III) AUTHORIZING ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the Motion (the "Motion")² of Duff & Phelps Canada Restructuring Inc., in its capacity as the court-appointed receiver and authorized foreign representative (the "Receiver") for the above-captioned debtors (collectively, the "Debtors") in the proceeding (the "Canadian Proceeding") commenced under Canada's *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, and pending before the Ontario Superior Court of Justice, Commercial List (the "Canadian Court"), for the entry of an order, pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, and 1521 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1 of the Local Rules of

¹ The last four digits of the United States Tax Identification Number, or similar foreign identification number, as applicable, follow in parentheses: Xchange Technology Group LLC (9024); BlueRange Technology Corp. (0843); BlueRange Technology Inc. (84663 1695); IT Xchange Corp. (8738); IT Xchange Financial Services LLC (3557); IT Xchange Inc. (89168 2031); and Partstock Computer LLC (9157).

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (a) recognizing and enforcing paragraphs 4-5 of the Receivership Order (as defined below) (such paragraphs in the Receivership Order, the “Approval Order”) and the Vesting Order, pursuant to which the Canadian Court will have authorized the sale and transfer (the “Sale”) by the Receiver of the Debtors’ right, title, and interest in and to substantially all of the Debtors’ assets (collectively, the “Purchased Assets”) to 2393134 Ontario Inc., or such other purchaser that has submitted a Superior Offer (as defined in that certain *Asset Purchase Agreement* (the “Purchase Agreement”), by and between the Receiver and 2393134 Ontario Inc., an entity wholly owned by Callidus Capital Corporation (the “Purchaser”), dated October 25, 2013, a copy of which is attached hereto as Exhibit B), free and clear of all claims, liabilities and encumbrances, except as set forth in the Purchase Agreement; (b) authorizing, pursuant to section 363 of the Bankruptcy Code, the Sale of the Debtors’ right, title, and interest in and to the Purchased Assets to the Purchaser, free and clear of all Interests (as defined in the U.S. Sale Order), except as otherwise provided in the Purchase Agreement; (c) authorizing and approving, to the extent provided for in the Vesting Order, the assignment of the Assumed Contracts (as defined in the Purchase Agreement); and (d) granting certain related relief; and this Court having entered the *Order Granting Recognition of Foreign Nonmain Proceeding and Certain Related Relief* [Docket No. ____] (the “Recognition Order”); and upon the Receiver’s Report and such other reports that have been filed by the Receiver in connection with the Sale Process and Sale [Docket Nos. ____]; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the recognition and enforcement of the Approval Order and the Vesting Order and the approval of the Purchase Agreement and transactions contemplated thereby; and the Canadian Court having entered the Approval Order and Vesting

Order; and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at a hearing before this Court (the “Sale Hearing”); and upon the record of the Sale Hearing and these chapter 15 cases, and after due deliberation thereon, and good cause appearing therefor, and in accordance with Rule 7052 of the Bankruptcy Rules, it is hereby

FOUND AND DETERMINED THAT:

A. The Canadian Court has duly entered the Approval Order and Vesting Order: (i) approving and authorizing the Vendor’s execution of the Purchase Agreement and consummation of the sale of the Purchased Assets and the assignment of the Assumed Contracts free and clear of all Interests; and (ii) requesting aid and recognition from this Court to give effect to the Approval Order and Vesting Order.

B. This Court has jurisdiction and authority to hear and determine the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue of these chapter 15 cases and the Motion in this Court and this District is proper under 28 U.S.C. § 1410.

C. Based on the affidavits of service filed with, and representations made to, this Court: (i) notice of the Motion, the Sale Hearing, and the Sale was proper, timely, adequate, and sufficient under the circumstances of these Chapter 15 Cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules; and (ii) no other or further notice of the Motion, the Sale Hearing, the Sale, or the entry of the U.S. Sale Order is necessary or shall be required.

D. The Receiver provided a reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein to the necessary parties in interest, including the following: (i) all known creditors of the Debtors or holders of Interests;

(ii) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date; (iii) the Office of the United States Trustee for the District of Delaware; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the United States Department of Justice; (vii) counsel for the Purchaser; (viii) counsel to Callidus; (ix) all persons or entities known to have liens on the Purchased Assets; (x) all counterparties to the Assumed Contracts; (xi) all parties that expressed an interest in the Debtors as a result of the prepetition marketing process employed by Cannaccord and KPMG; and (xii) all other persons to whom notice is required pursuant to this Court's *Order Specifying Form and Manner of Service of Notice* [Docket No. 18].

E. The U.S. Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

F. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m), and (n), 1501, and 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

G. The Vesting Order provides for the assignment of the Assumed Contracts, as permitted under the Bankruptcy and Insolvency Act, and such provisions of the Bankruptcy and Insolvency Act are consistent with section 365(f) of the Bankruptcy Code. As such, enforcement in the United States of the assignment of the Assumed Contracts to the Purchaser does not present any public policy conflict or any issue concerning protection of the interests of the parties to the Assumed Contracts that would prevent this Court from entering the U.S. Sale Order.

H. Based on information contained in the Receiver's Report and the Boyer Affidavit, the Debtors, through its financial advisor, conducted a prepetition marketing process to solicit interest in refinancing the Debtors' secured obligations. The Canadian Court found that the prepetition marketing process was sufficient and appropriate under the circumstances to support approval of the Sale pursuant to the terms of the Purchase Agreement and entered the Approval Order.

I. The Receiver has recommended the Sale in accordance with the Purchase Agreement, including the assignment of the Assumed Contracts. The Purchaser is able and has agreed to assume and perform the obligations of the Debtors under the Assumed Contracts in accordance with their terms, including the payment of arrears in accordance with the Purchase Agreement and it is appropriate that the Purchased Assets, including the Assumed Contracts, be transferred, assigned, and vested in the Purchaser.

J. The consideration provided by the Purchaser for the Purchased Assets is the highest or otherwise best offer.

K. The Purchase Price constitutes fair consideration and reasonably equivalent value for the Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

L. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale.

M. Time is of the essence in consummating the Sale. To maximize the value of the Purchased Assets, it is essential that the Sale occur promptly. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rule 6004.

N. Based upon information contained in the Receiver's Report and the Boyer Affidavit, the negotiations over the terms of the Purchase Agreement were conducted fairly, in good faith, and without collusion, and thus the Purchaser has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code, and neither the Receiver nor the Purchaser engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

O. Neither the Purchaser nor any of its affiliates or their respective representatives is an "insider" of any of the Debtors, as that term is defined in Bankruptcy Code section 101(31).

P. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

Q. The Receiver may sell the Purchased Assets free and clear of all Interests, to the extent provided in the Purchase Agreement, the Approval Order, the Vesting Order, and the U.S. Sale Order, because, with respect to each creditor asserting an Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to Bankruptcy Code section 363(f)(2).

R. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the

Debtors, their creditors, and other parties in interest if either: (i) the sale of the Purchased Assets to the Purchaser was not free and clear of all Interests, except as otherwise provided in the Purchase Agreement; or (ii) the Purchaser would, or in the future could, be liable for any of such Interests or any claims against the Debtors based upon successor or vicarious liability or otherwise, except as provided in Purchase Agreement.

S. A sale of the Purchased Assets other than one free and clear of all Interests, except as otherwise provided in the Purchase Agreement, would yield substantially less value than the Sale; thus, the Sale free and clear of all Interests, in addition to all of the relief provided herein, is in the best interests of the Debtors, their creditors, and other parties in interest.

T. All findings of fact and conclusions of law announced by this Court at the Sale Hearing are incorporated herein.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted.
2. The Approval Order and Vesting Order, copies of which are annexed to the hereto as Exhibit 1 and Exhibit 2, respectively, are recognized in full and given full force and effect in the United States.
3. The Sale pursuant to the terms of the Purchase Agreement and the transfer and assignment of the Purchased Assets located within the United States is approved and authorized pursuant to sections 363 and 1521 of the Bankruptcy Code.
4. All objections to the entry of the U.S. Sale Order that have not been withdrawn, waived, or settled, or otherwise resolved pursuant to the terms hereof, are denied and overruled on the merits, with prejudice.

5. Pursuant to sections 105, 363, and 1521 of the Bankruptcy Code, and to the extent permitted by the Approval Order and the Vesting Order, each of the Debtors, the Purchaser, and the Receiver are authorized to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser in accordance with the Purchase Agreement, the Approval Order, the Vesting Order, and the U.S. Sale Order; and (b) perform, consummate, implement, and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale.

Transfer of the Purchased Assets

6. Pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, and as provided for in the Approval Order, and the Vesting Order, upon delivery of the Receiver's Certificate to the Purchaser in accordance with the Vesting Order, the Purchased Assets shall absolutely vest, without further instrument of transfer or assignment, in the Purchaser (or such other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate (as such term is defined in the Purchase Agreement) of the Purchaser that agrees to be jointly and severally liable with the Purchaser) all rights, title, and interest of the Debtors to the Purchased Assets and shall be a legal, valid, and effective transfer of the Purchased Assets free and clear any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, options, warrants, trusts or deemed trusts (whether contractual, statutory, or otherwise), encumbrances, obligations, liabilities, demands, guarantees, restrictions, contractual commitments, rights, including without limitation, rights of first refusal and rights of set-off, liens, executions, levies, penalties, charges, or other financial or monetary claims, adverse claims, or rights of use, puts or forced sales provisions exercisable as a consequence of or arising from the closing of the Sale,

whether arising prior to or subsequent to the commencement of the Canadian Proceeding and these Chapter 15 Cases, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise, actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, complaint, suit, investigation, dispute, petition or proceeding by or before any governmental authority or person at law or in equity whether imposed by agreement, understanding, law, equity or otherwise, and any claim or demand resulting therefrom including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Receivership Order and/or any subsequent charges created by the Canadian Court; (b) all charges, security interests, or claims evidenced by any personal property registry system in the United States; (c) Excluded Liabilities (as defined in the Purchase Agreement); and (d) those claims listed on [Schedule []] of the Vesting Order (all the foregoing in this paragraph 6, collectively, the “Interests”); provided, however, that nothing contained herein shall derogate from the obligations of the Purchaser (or such other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) to assume the Assumed Obligations, including the Assumed Priority Payables, and to perform its obligations under the Assumed Contracts, as set forth in the Purchase Agreement.

7. Except as expressly provided in the Purchase Agreement, the Approval Order, the Vesting Order, and/or the U.S. Sale Order, pursuant to sections 105(a), 363(f), and 1521 of the Bankruptcy Code, upon the time of closing of the Sale (the “Time of Closing”): (a) the Purchased Assets shall be sold, transferred, or otherwise conveyed to Purchaser (or such other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that

no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, with all such Interests to attach to the proceeds of Sale of the Purchased Assets in the order of their priority, and with the same validity, priority, force, and effect which they now have as against the Purchased Assets, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all parties in interest with respect to such Interests; (b) no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Interests; and (c) the Purchase Agreement, the Sale, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All persons or entities holding Interests in, to or against the Purchased Assets are forever barred from asserting such Interests against the Purchaser, its affiliates, successors and assigns, and current affiliates, officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives (collectively, the "Purchaser Releasees") or such Purchased Assets after the Time of Closing.

8. None of the Purchaser Releasees shall have or incur any liability to, or be subject to any action by any Debtor, or any of the Debtors' predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the Purchase Agreement, or the entry into and consummation of the Sale, except as expressly provided in the Purchase Agreement, the Approval Order, the Vesting Order, and/or the U.S. Sale Order.

9. Except as otherwise provided in the Purchase Agreement, any and all Purchased Assets and in the possession or control of any person or entity, including, without limitation, any vendor, supplier, or employee of the Debtors shall be transferred to the Purchaser

(or such other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) free and clear of all Interests, and, upon reasonable request of the Purchaser, all such persons or entities are directed to surrender possession of the Purchased Assets to the Purchaser (or such other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) at the Time of Closing.

10. To the extent permissible under the Approval Order and the Vesting Order, the Purchaser, or its affiliates, members, and shareholders, shall not be deemed, as a result of any action taken in connection with the Sale or the Purchaser's post-closing use or operation of the Purchased Assets, to: (a) be a successor to the Debtors; (b) have, *de facto* or otherwise, merged or consolidated with or into the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Obligations, the transfer of the Purchased Assets to the Purchaser under the Purchase Agreement, the Approval Order, the Vesting Order, and the U.S. Sale Order shall not result in the Purchaser Releasees having any liability or responsibility whatsoever: (y) for any Interest against the Debtors or against an insider of the Debtors; or (z) to the Debtors, except as is expressly set forth in the Purchase Agreement, the Approval Order, the Vesting Order, the U.S. Sale Order, and/or any other order of the Canadian Court. Without limiting the generality of the foregoing, except as otherwise provided in the Purchase Agreement, the Approval Order, the Vesting Order, or any other order of the Canadian Court, the conveyance of the Debtors' rights, title, and interest in the Purchased Assets to Purchaser under the Purchase Agreement shall not result in any Purchaser

Releasee having any liability or responsibility whatsoever for any: (a) Interest, whether at law or in equity, whether by payment, setoff, or otherwise, directly or indirectly; (b) obligation under any of the Debtors' labor or employment agreements; (c) of the Debtors' mortgages, deeds of trust, and security interests; (d) intercompany loans and receivables between the Debtors and any non-debtor subsidiary; (e) of the Debtors' pension, welfare, compensation or other employee benefit plans, agreements, practices and programs; (f) any of the Debtors' other employee, worker's compensation, occupational disease, unemployment, or temporary disability related claim, including without limitation, claims that might arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1976 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; or (g) successor or vicarious liabilities of any kind or character, including, but not limited to, federal, state or other tax liabilities, U.S. or foreign pension liabilities, or liabilities based on any theory of antitrust, environmental, labor law, alter ego, veil piercing, continuity of enterprise, mere continuation, product line, *de facto* merger or substantial continuity, whether known or unknown, whether legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 15 Cases, whether imposed by agreement, understanding, law,

equity or otherwise with respect to any of the Debtors or any obligations of the Debtors, including, but not limited to, in the case of liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Time of Closing or any taxes in connection with, or in any way relating to the cancellation of debt of the Debtors or their affiliates.

11. The entry of the U.S. Sale Order: (a) is and shall be effective as a determination that, upon the Time of Closing, except as expressly provided in the Purchase Agreement, the Approval Order, the Vesting Order, and/or the U.S. Sale Order, all Interests existing as to the Purchased Assets prior to the Time of Closing, have been released, extinguished, expunged, and discharged as against the Purchased Assets; and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Purchaser (or such other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) is the assignee of the Purchased Assets free and clear of all Interests, except as expressly provided in the Purchase Agreement, the Approval Order, the Vesting Order, and/or the U.S. Sale Order.

12. Each and every federal, state, and local governmental agency or department is authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the transaction contemplated by the Purchase Agreement.

13. Except with respect to enforcing the terms of the Purchase Agreement, the Approval Order, the Vesting Order, or the U.S. Sale Order, absent a stay pending appeal, no person shall take any action to prevent or enjoin or otherwise interfere with consummation of the transaction contemplated in or by the Purchase Agreement.

14. Effective as of the Time of Closing, the Approval Order, the Vesting Order and the U.S. Sale Order shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Purchased Assets.

Treatment of Executory Contracts and Unexpired Leases

15. As provided in the Purchase Agreement, the Approval Order and the Vesting Order, upon delivery of the Receiver's Certificate, the Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser (or such other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser) in accordance with their respective terms. The transfer and assignment of the Assumed Contracts shall be valid notwithstanding any restriction, condition, or prohibition contained in any such Assigned Contract relating to the assignment thereof, (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer or requires the consent of any party to such assignment or transfer.

16. As provided in paragraph [] of the Vesting Order, the assignment of the rights and obligations of the Debtors under the Assumed Contracts to the Purchaser (or such

other person(s) as the Purchaser may direct and the Receiver may agree; provided, however, that no agreement will be required if such transfer is to an Affiliate of the Purchaser that agrees to be jointly and severally liable with the Purchaser), pursuant to section 2.01 of the Purchase Agreement, is valid and binding upon all of the counterparties to the Assumed Contracts, without further documentation, as if the Purchaser was a party to the Assumed Contracts, notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to an Assigned Contract.

17. As provided in paragraph [] of the Vesting Order, each counterparty to the Assumed Contracts is prohibited from exercising any right or remedy under the Assumed Contracts by reason of any defaults thereunder arising from the commencement or pendency of the Canadian Proceeding or these Chapter 15 Cases or the solvency or financial condition of the Debtors.

18. To the extent there may be any dispute arising from the U.S. Sale Order's treatment of any Assumed Contract, including, but not limited to, disputes related to an attempted post-Sale modification or termination of any Assumed Contract subject to this Court's jurisdiction, regardless of whether such modification or termination is based upon restrictions or prohibitions contained in any Assumed Contract relating to the assignment thereof, this Court shall retain jurisdiction to enforce any and all terms and provisions of the Purchase Agreement, the Approval Order, the Vesting Order, and/or U.S. Sale Order with respect to any such Assigned Contract.

Additional Provisions

19. The Purchaser, as a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to all of the protections of section 363(m) of

the Bankruptcy Code. The reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale unless, prior to the Time of Closing, such authorization is duly stayed pending appeal.

20. The terms and provisions of the Purchase Agreement and the U.S. Sale Order shall be binding on and inure to the benefit of the Debtors, the Purchaser, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, the Purchaser and the Debtors' creditors, including any trustee(s), examiner(s), or receiver(s) appointed in these cases or under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions shall likewise be binding on such trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

21. Subject to the terms and conditions of the Approval Order, the Vesting Order and the Purchase Agreement, provisions of the Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement among the Debtors and the Purchaser in a writing signed by the Debtors and the Purchaser without further action or order of this Court.

22. The failure to include any particular provision of the Approval Order, the Vesting Order, the Purchase Agreement, or any related agreements in the U.S. Sale Order shall not diminish or impair the effectiveness of that provision, it being the intent of this Court that the Approval Order, the Vesting Order, the Purchase Agreement, and any related agreements, with such amendments thereto as may be made by the parties in accordance with the Approval Order, the Vesting Order and the Purchase Agreement be approved and authorized in their entirety.

23. Notwithstanding any provision in the Bankruptcy Rules to the contrary:

(a) the terms of the U.S. Sale Order shall be immediately effective and enforceable upon its entry; (b) the Debtors, the Purchaser, and the Receiver are not subject to any stay in the implementation, enforcement or realization of the relief granted in the U.S. Sale Order; and (c) the Debtors, the Purchaser, and the Receiver may, in their discretion and without further delay, take any action and perform any act authorized under the Approval Order, the Vesting Order and/or the U.S. Sale Order.

24. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these Chapter 15 Cases or the consummation of the Sale.

25. Nothing in the U.S. Sale Order shall be deemed to waive, release, extinguish or estop the Debtors or the Receiver from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not a Purchased Asset.

26. The provisions of the U.S. Sale Order are nonseverable and mutually dependent.

27. Other than as explicitly set forth herein, this Court shall retain jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the implementation or interpretation of the U.S. Sale Order.

Dated: November __, 2013
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge

EXHIBIT B

Purchase Agreement

01:14205507.4

ASSET PURCHASE AGREEMENT

This Agreement made this 25th 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"), ITXchange 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:

Schedule	Description
Schedule "A"	Assumed Contracts
Schedule "B"	Leased Premises
Schedule "C"	Purchased Assets

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., 14th Floor
Toronto, ON M5H 2R2

Attention: Bobby Kofman & David Sieradski
Email: bobby.kofman@duffandphelps.com
& david.sieradski@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