

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

-and-

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**PRE-FILING REPORT OF RSM CANADA LIMITED,
IN ITS CAPACITY AS PROPOSED RECEIVER OF THE RESPONDENT**

May 26, 2021

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I. INTRODUCTION

1. Kensington Private Equity Fund is making an application to this Court for the appointment of RSM Canada Limited (“**RSM**”) as the receiver, without security, of all of the assets, undertakings and properties of O2 Industries Inc. (“**O2**” or the “**Debtor**”) with limited powers.
2. RSM has consented to act as receiver (the “**Receiver**”) if appointed by this Court.
3. RSM is filing this report (the “**Pre-filing Report**”) in its capacity as proposed Receiver (the “**Proposed Receiver**”).
4. The affidavit of Richard Nathan sworn on May 25, 2021 and filed in support of the Applicant’s application provides, *inter alia*, the Applicant’s background, including the reasons for the commencement of these proceedings (the “**Affidavit**”).
5. The principal purpose of these proceedings is to market and sell the business and assets of the Debtor.
6. Pursuant to the draft receivership order, the powers of the Receiver include the following:
 - to market the Property (as defined therein) pursuant to the sale procedures and the stalking horse sale agreement attached to this Pre-Filing Report (the “**Sale Procedures**”);
 - to monitor the business of the Debtor; and
 - to control the Debtor’s cash receipts and disbursements.
7. The draft receivership order also provides that the Receiver shall not (a) manage or operate the business of the Debtor, or (b) take possession or control of any

Property of the Debtor other than the Funds in the Post Receivership Accounts (as defined in the draft receivership order).

Purpose of Report

8. The purpose of this Pre-filing Report to the Court is to provide information to the Court on the proposed Sale Procedures and the proposed stalking horse agreement referred to therein (the “**Stalking Horse Agreement**”).

Terms of Reference

9. In preparing this report and making the comments herein, the Proposed Receiver has relied upon information provided by the Applicant (the “**Information**”). Certain of the information contained in this Pre-filing Report may refer to, or is based on, the Information. Since the Information has been provided by other parties, the Proposed Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Proposed Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Proposed Receiver expresses no opinion or other form of assurance in respect of the Information.
10. Capitalized terms not defined in this Pre-filing Report are as defined in the Affidavit.
11. Unless otherwise stated, all dollar amounts contained in the Pre-filing Report are expressed in US dollars.

II. BACKGROUND

12. The Pre-filing Report should be read in conjunction with the Affidavit. Certain of the information provided in the Affidavit has not been included herein in order to avoid unnecessary duplication.
13. The Debtor is an Ontario company that designs and sells personal respirators for consumer, healthcare, and military/law enforcement markets.
14. Kensington Capital Partners Limited (together with its affiliates and managed funds, "**Kensington**"), is a Canadian alternative asset management firm that holds a portfolio of global private equity investments. The Applicant, Kensington Private Equity Fund (the "**Agent**"), is an investment fund managed by Kensington.
15. The Agent is a secured creditor of O2, the respondent in this application pursuant to three convertible promissory notes issued by the Debtor to the Agent and a general security agreement. The Debtor is currently indebted to the Agent in the amount of US\$2,030,574.29 as of May 25, 2021 (inclusive of accrued interest but exclusive of expenses, costs and other charges).
16. The Debtor is in default on its obligations to the Agent.
17. On May 14, 2021, the Applicant delivered a letter to the Debtor declaring all obligations owing by the Debtor to the Agent to be due and payable and demanding payment in full of the obligations, together with Notice of Intention to Enforce Security.
18. On May 18, 2021, the Debtor waived its rights to the notice period provided for in the Notice of Intention to Enforce Security and consented to the immediate enforcement of the Agent's security, including the appointment of a receiver.

III. THE SALES PROCESS

19. As part of its application for the Receivership Order, the Applicant is seeking approval for the proposed Sale Procedures pursuant to which the Receiver will solicit proposals for the sale of all or certain of the Property.
20. The Sale Procedures contemplates the marketing of the Property by the Receiver.
21. In order to set a floor price and ensure that only serious offers are received for the purchase of the Property, 2841551 Ontario Limited, who the Receiver understands is related to Kensington, is proposing to act as the stalking horse bidder in the sale process (the “**Stalking Horse Bidder**”) and has prepared a form of asset purchase agreement for the acquisition of substantially all of the business and assets of the Debtor (the “**Stalking Horse Agreement**”).
22. The Stalking Horse Agreement, a copy of which is attached to this report as **Appendix “A”**, is described below.

IV. STALKING HORSE AGREEMENT

23. The key provisions of the Stalking Horse Agreement are set out below (defined terms are as set out in the Stalking Horse Agreement):
 - (i) the Purchase Price payable to the Receiver for the Purchased Assets shall be equal to the sum of the following amounts (collectively, the “**Purchase Price**”):
 - (a) Priority Claims;
 - (b) the Cure Costs;
 - (c) the Senior Secured Obligations; and

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- (d) the amount of CDN\$100,000, estimated by the Receiver to be the aggregate fees, disbursements and expenses of the Receiver for the period from the Closing Time to the Discharge Date (the “**Estimated Fees**”);
- (ii) the Stalking Horse Bidder shall pay and satisfy the Purchase Price on the Closing Date as follows:
- (a) payment in cash or assumption of the Priority Claims;
 - (b) payment in cash of all Cure Costs;
 - (c) payment of the Estimated Fees in cash to the Receiver; and
 - (d) the irrevocable release and discharge by the Kensington Lenders of the Company and the Receiver from the Senior Secured Obligations;
- (iii) the Stalking Horse Bidder will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder);
- (iv) the Stalking Horse Bidder acknowledges and agrees that, except as expressly set forth in the sale agreement, the purchased assets and the business related thereto are purchased and the assumed liabilities are assumed by the Stalking Horse Bidder on an “AS IS, WHERE IS” basis;
- (v) the assets being purchased are all of the right, title, benefit and interest of the Receiver and the Debtor in, to and under, or relating to, the assets, property and undertaking owned or used or held for use in connection with the Business (the “**Purchased Assets**”) including the following properties, assets and rights:
- a) Cash;

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- b) Purchased Contracts;
 - c) Purchased Equipment;
 - d) Purchased Inventory and Supplies;
 - e) Intellectual Property;
 - f) Insurance;
 - g) Goodwill;
 - h) Warranty Rights;
 - i) Books and Records;
 - j) Authorizations;
 - k) Real Property Leases;
 - l) Personal Property Leases;
 - m) Prepaid Expenses;
 - n) IT Systems;
 - o) Actions;
 - p) Related Party Amounts; and
 - q) Tax refunds.

but, in each case excludes any Excluded Assets;

(vi) the Purchased Assets will not, and will not be deemed to, include any of the following assets of the Company (collectively, the “**Excluded Assets**”):

- a) Receivables;

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- b) Excluded Contracts;
 - c) Excluded Equipment;
 - d) Excluded Inventory and Supplies;
 - e) Employee Plans;
 - f) original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Company, in each case that do not relate to the Business or the Purchased Assets;
 - g) all of the Company's rights and benefits under the Stalking Horse Agreement and the Transaction;
 - h) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period or in furtherance of or in connection with the Transaction, or otherwise in compliance with the terms of the Stalking Horse Agreement;
 - i) shares, partnership or joint venture interests and any other securities of any Person owned or held by the Company or any of its affiliates, including the shares of Hangzhou Oxygen Technology Co. Ltd. owned by the Company;
 - j) all minute books, share ledgers, corporate seals and stock certificates

of the Company; or

k) any other assets as may be expressly designated by the Stalking Horse Bidder in writing prior to Closing.

24. Subject to Closing, the Stalking Horse Bidder agrees to assume, pay, discharge, perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Company with respect to the Purchased Assets (collectively, the “**Assumed Liabilities**”), which Assumed Liabilities consist solely of:

- (a) all obligations and liabilities under the Assigned Agreements to the extent first arising and relating to the period on or after the Closing Date;
- (b) all obligations and liabilities related to the operation of the Purchased Assets on or after the Closing Date; and
- (c) the Assumed Employee Obligations, being comprised of:
 - (i) all liabilities for salary, wages, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date; and
 - (ii) all liabilities for vacation pay entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date.

V. PROPOSED RECEIVER'S VIEW OF THE STALKING HORSE AGREEMENT

25. The Proposed Receiver is of the view that a "Stalking Horse" sales process is appropriate in this proceeding in that, among other things, the process provides assurance to the marketplace that, notwithstanding the receivership, the operations of the business will continue following the closing of the Transaction.
26. While the Proposed Receiver is not in a position at this time to conclude that the purchase price set out in the Stalking Horse Agreement is the most advantageous to the stakeholders in this proceeding, it does establish a "floor price" for the assets. In addition, as there is no "break fee" provided for in the Stalking Horse Agreement in the event that the Stalking Horse Bidder is not the Successful Bidder, there is no additional amount that will be required to be paid to the Stalking Horse Bidder in the event the Stalking Horse Bidder is not the Successful Bidder.

VI. THE SALE PROCEDURES

27. Capitalized terms used in this section of this Pre-filing Report are as defined in the Sale Procedures a copy of which is attached hereto as **Appendix "B"**, unless otherwise defined.
28. The Proposed Receiver, if the Receivership Order is granted, seeks approval to implement the Sale Procedures that, if approved, will establish the procedures for the sales and marketing process pursuant to which the Receiver will seek offers superior to the Stalking Horse Agreement for the Property, and will set out the requirements for the submission of offers by interested parties.

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29. The Sale Procedures contemplate that parties which execute a Confidentiality Agreement, will be given access to information in the confidential Data Room.
30. A Potential Bidder, other than the Stalking Horse Bidder, that wishes to deliver a bid shall deliver a written binding offer for a Transaction (a “**Bid**”) to the Receiver so as to be received by the Receiver no later than 5:00 pm (Eastern Time) on July 8, 2021 (the “**Bid Deadline**”).
31. A Bid will be deemed to be a “**Qualified Bid**” only if the Bid complies with the following:
- it includes an executed Definitive Agreement, together with a blackline against the Stalking Horse Agreement, describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the purchase price (the “**Purchase Price**”), and the structure and financing of the proposed Transaction;
 - the Transaction shall, on closing, provide cash proceeds, in immediately available funds, sufficient to pay in full in cash the aggregate of the Priority Claims plus the Senior Secured Obligations, plus US\$160,000;
 - it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;
 - it fully discloses any conditions or approvals required to consummate the Bid and the time period within which the Bidder expects to satisfy such conditions or obtain such approvals;

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- it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
 - it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court and (ii) thirty (30) calendar days following the Bid Deadline (the “**Irrevocable Bid Date**”), provided that if such Potential Bidder’s Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;
 - it includes or is accompanied by evidence satisfactory to the Receiver of the financial ability of the Potential Bidder to consummate the Transaction contemplated by the Bid;
 - it is not conditioned on the outcome of unperformed due diligence or obtaining financing;
 - it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Receiver) payable to the order of the Receiver, in trust, in an amount equal to 15% of the Purchase Price in the Bid, which Deposit is to be held by the Receiver and dealt with in accordance with the Sale Procedures;
 - it includes a commitment to close the Transaction contemplated by the Bid by no later than July 30, 2021 (the “**Outside Date**”);
 - it contains such other information as may reasonably be requested by the Receiver; and
 - it is received prior to the Bid Deadline.

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32. In the event that the Receiver determines that no Qualified Bids are received, the Receiver is to promptly proceed to seek Court approval of the Stalking Horse Bid as the Successful Bid and, provided that such Court approval is granted, proceed to complete the Transaction contemplated by the Stalking Horse Agreement.
33. The Receiver will (a) review and evaluate the Stalking Horse Bid and each Qualified Bid, and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Stalking Horse Bidder or the Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to the Sale Procedures. Any Successful Bid will be subject to approval by the Court.
34. If one or more Qualified Bids, in addition to the Stalking Horse Bid, is received by the Bid Deadline, the Receiver will proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each Qualified Bidder who each will be invited by the Receiver to attend the Auction (each, an “**Auction Bidder**”). There are to be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. The Stalking Horse Bidder constitutes an Auction Bidder in all circumstances in which an Auction is conducted.
35. If an Auction is conducted, it is to be conducted in accordance with the following procedures:
- The Auction shall commence at a time to be designated by the Receiver on July 15, 2021 (the “**Auction Date**”) at the Toronto offices of the Receiver or by electronic communication means (including videoconference, teleconference or such other reasonable means as the Receiver deems

appropriate) and will continue thereafter until completed, subject to such adjournments as the Receiver may consider appropriate;

- The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
- Except as otherwise permitted in the Receiver's discretion, only the Receiver and the Auction Bidders, and in each case their respective professional advisors, will be entitled to attend the Auction. Each Auction Bidder will appear at the Auction through a duly authorized representative that will be designated by the Auction Bidder as its spokesperson;
- Except as otherwise set forth in the Sale Procedures, the Receiver may waive and/or employ and announce at the Auction additional procedures that are reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with the Sale Procedures, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Receiver's judgement, to result in the solicitation of the highest and best offer;
- Not less than two (2) Business Days prior to the Auction, the Receiver will (i) identify the highest or otherwise best Qualified Bid or Stalking Horse Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments valued at not

less than US\$75,000 in excess of the Opening Bid or such other amounts to be determined by the Receiver prior to, and announced at, the Auction. Each Auction Bidder will, if requested by the Receiver, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;

- All Auctions Bidders shall have the right, at any time during the Auction, to request that the Receiver announce to all Auction Bidders, subject to any potential new bids, the then-current highest or otherwise best bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any questions such Auction Bidder may have on the then-current highest or otherwise best bid;
- Each Auction Bidder will be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids;
- The Auction will continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction will be closed and the Auction Bidder that submitted the highest or otherwise best bid will be designated as the Successful Bidder; and
- Upon selection of a Successful Bidder, the Successful Bidder will, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder's bid and any modifications submitted and agreed to during the Auction.

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36. For all purposes of the Sale Process, the Stalking Horse Bidder will be entitled to credit bid all or any portion of the Senior Secured Obligations, at the face value of such obligations. In the event that the Receiver designates a Qualified Bid, the Stalking Horse Bidder will have the right, as part of an Auction, to supplement its Stalking Horse Bid with additional cash or other consideration such that the revised Stalking Horse Bid includes aggregate consideration in excess of the amount of the Senior Secured Obligations and the Priority Claims.
37. Following the determination of the Successful Bid, the Receiver will apply to Court for an order approving a Successful Bid, which Approval Motion, subject to Court availability, shall be held on or prior to July 22, 2021 (the “**Approval Hearing Date**”).
38. The Receiver will implement the Successful Bid by no later than the Outside Date.
39. The Sale Procedures will be posted to the Receiver’s website. Any potential interested party that contacts the Receiver will be invited to participate in the Sale Procedures.
40. In the Proposed Receiver’s view, the Sale Procedures:
- (a) are consistent with sale procedures used in other Court-supervised stalking horse sales processes;
 - (b) provide a reasonable opportunity for competing bidders to submit offers superior to the Stalking Horse Agreement;
 - (c) are sufficient to generate the highest and best offer; and
 - (d) are reasonable and appropriate in the circumstances.

VII. SECURITY OPINION

41. The Proposed Receiver has received, as at the date of this report, a verbal opinion from Chaitons LLP, independent counsel the Proposed Receiver proposes to retain if the Receivership Order is granted, that, subject to standard qualifications and limitations, the Security provided to the Agent is perfected, valid and enforceable in accordance with its terms.

VIII. CONCLUSION

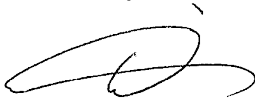
42. Based on the foregoing, subject to the Receivership Order being granted, the Proposed Receiver respectfully recommends that the Court make an Order approving:

- (i) the Stalking Horse Agreement; and
- (ii) the Sale Procedures.

All of which is respectfully submitted to this Court as of this 26th day of May, 2021.

RSM CANADA LIMITED

In its capacity as Proposed Receiver
of O2 Industries Inc.
and not in its personal capacity



For: Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

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ASSET PURCHASE AGREEMENT

RSM CANADA LIMITED
in its capacity as the court-appointed receiver of
O2 INDUSTRIES INC., and not in its personal or corporate capacity

as the Receiver

- and -

2841551 ONTARIO LIMITED

as the Buyer

- and -

O2 INDUSTRIES INC.

as the Company

Made as of [●], 2021

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of [●], 2021

AMONG:

RSM CANADA LIMITED, in its capacity as the court-appointed receiver of the Company (the “**Receiver**”), and not in its personal or corporate capacity

- and -

2841551 ONTARIO LIMITED, a corporation organized under the laws of the Province of Ontario (the “**Buyer**”)

- and -

O2 Industries Inc., a corporation incorporated under the laws of the Province of Ontario (the “**Company**”)

RECITALS:

- A. The Company is presently indebted to the Kensington Lenders pursuant to the Promissory Notes and the Assignment and Agency Agreement.
- B. The Buyer, an affiliate of the Kensington Lenders, wishes to purchase certain of the assets and property of the Company as detailed herein.
- C. The Kensington Lenders intend to bring an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) seeking an order (the “**Appointment Order**”) appointing the Receiver as receiver of all the assets, undertakings and properties of the Company, approving the Sale Procedures, and designating this Agreement as the stalking horse agreement for purposes of the Sale Procedures.
- D. Subject to the designation of the Transaction as the Successful Bid pursuant to the Sale Procedures, the granting of the Approval Order and the other conditions set forth herein, the Receiver has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase, acquire, assume and accept from the Receiver and the Company, the Purchased Assets and the Assumed Liabilities, on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**Actions**” means any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Company related to the Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of the Company in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered by the Company prior to the Closing Time;
- (b) “**affiliate**” has the same meaning as “affiliate” under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended;
- (c) “**Agreement**” means this purchase agreement and all Appendices, Exhibits and Schedules attached hereto, in each case as the same may be supplemented, amended, restated or replaced from time to time; and the expressions “Article”, “Section”, “Schedule” and “Exhibit” followed by a number or letter mean and refer to the specified Article, Section, Schedule or Exhibit of this Agreement;
- (d) “**Applicable Law**” means any statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority that applies in whole or in part to the Company, the Transaction, the Purchased Assets, the Receiver or the Buyer;
- (e) “**Appointment Order**” has the meaning given to it in the recitals of this Agreement;
- (f) “**Approval Order**” means an approval and vesting order of the Court, *inter alia*, (i) approving the Transaction, and (ii) effective upon the delivery of the Receiver’s Vesting Certificate to the Buyer, vesting in the Buyer all of the right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances, which order shall be in form and substance acceptable to the Receiver and the Buyer;
- (g) “**Assigned Agreements**” means, collectively, the Purchased Contracts, the Real Property Leases and the Personal Property Leases;
- (h) “**Assignment and Agency Agreement**” means the Assignment and Agency Agreement dated May 10, 2021 between the Company and the Kensington Lenders;

- (i) “**Assignment Order**” means an order of the Court authorizing and approving the assignment of a Consent Required Agreement, which order shall be in form and substance acceptable to the Receiver and the Buyer;
- (j) “**Assumed Employee Obligations**” has the meaning given to it in Section 9.2;
- (k) “**Assumed Liabilities**” has the meaning given to it in Section 3.1;
- (l) “**Authorizations**” means all orders, permits, approvals, waivers, licences or authorizations of any Governmental Authority issued to or in respect of the Company, the Business or the Purchased Assets;
- (m) “**Books and Records**” means all books, records, operating manuals, engineering standards, designs, specifications, sales books, customer and supplier lists, and export of the Company’s databases for the assets, books of account, employee personal records of Transferred Employees, Tax records and books and other sales and business records relating or pertaining to the Business or the Purchased Assets;
- (n) “**Business**” means the business now carried on by the Company, comprising the designing, manufacturing, marketing and sale of reusable respirators and related ancillary products;
- (o) “**Business Day**” means any day of the year on which national banking institutions in Toronto, Ontario are open to the public for conducting business and are not required or authorized by Applicable Law to close;
- (p) “**Buyer**” has the meaning given to it in the preamble to this Agreement;
- (q) “**Cash**” means all cash and cash equivalents, bank accounts and bank balances, monies in possession of banks and other depositories, refunds or rebates, term deposits and similar cash property, in each case of the Company, and includes (i) Cash held by or for the benefit of the Company at the Closing Time, and (ii) Cash received by the Company, or held by or for the benefit of the Company, from and after the Closing Time that is received in respect of, or relates to, a Receivable in existence as of the Closing Time;
- (r) “**Closing**” means the completion of the Transaction pursuant to the terms and conditions of this Agreement at the time set forth in Section 8.1 and of all other transactions contemplated by this Agreement that are to occur concurrently with the sale and purchase of the Purchased Assets;
- (s) “**Closing Date**” means the date on which all of the conditions in Sections 7.1 to 7.3 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date, but subject to the satisfaction and waiver of such conditions), or such other date as may be agreed upon by the Receiver and the Buyer, provided however that the Closing Date shall be no later than the Outside Date;

- (t) “**Closing Time**” means 12:01 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Receiver and the Buyer agree that the Closing Time shall take place;
- (u) “**Company**” has the meaning given to it in the preamble to this Agreement;
- (v) “**Company Employees**” means the employees of the Company, whether full-time or part-time, on leave or on disability and including those on statutory or other absences, employed on the Closing Date;
- (w) “**Consent Required Agreement**” has the meaning given to it in Section 3.3;
- (x) “**Contract**” means any contract, agreement, lease, sublease, licence, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on the Company or any part of its assets or property (personal, real, tangible, intangible or otherwise) under Applicable Law;
- (y) “**Court**” has the meaning given to it in the recitals to this Agreement;
- (z) “**Cure Costs**” means, in respect of a Consent Required Agreement, the amount that the Buyer agrees to pay in satisfaction of any monetary defaults thereunder;
- (aa) “**Discharge Date**” means the date on which the Receiver is discharged as receiver of the Company pursuant to Court order;
- (bb) “**Employee Plans**” means all oral and written employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive or performance compensation, equity compensation, savings, severance or termination pay, retirement, supplementary retirement, registered or unregistered retirement savings, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, policy, agreement, practice, undertaking or arrangement, and every other oral or written benefit plan, program, policy, agreement, practice, undertaking or arrangement sponsored, maintained or contributed to or required to be contributed to by the Company for the benefit of the current or former directors, officers, employees, contractors, consultants and representatives of the Company in respect of the Business and/or their respective dependants or beneficiaries, by which the Company is bound or with respect to which the Company participates or has any actual or potential liability, other than statutory benefit plans which the Company is required to participate in or comply with, including the Canada Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;
- (cc) “**Encumbrance**” means any security interest, lien, prior claim, charge, hypothec, hypothecation, reservation of ownership, pledge, encumbrance, trust (including any statutory, constructive or deemed trust), mortgage or adverse claim of any nature or kind whatsoever;

- (dd) “**Estimated Fees**” has the meaning given to it in Section 2.4(d);
- (ee) “**Excluded Assets**” has the meaning given to it in Section 2.2;
- (ff) “**Excluded Assets Schedule**” means Schedule B to this Agreement;
- (gg) “**Excluded Contracts**” means all Contracts of the Company that are not Purchased Contracts;
- (hh) “**Excluded Equipment**” means all equipment and personal property, including fixed and tangible assets, machinery, chattels, furniture, computer hardware and other tangible assets listed on the Excluded Assets Schedule;
- (ii) “**Excluded Inventory and Supplies**” means any inventories of products and merchandise including raw materials, supplies, packaging, work in process and finished goods related to the Business which (a) are sold or otherwise disposed of during the Interim Period in the Ordinary Course, or (b) are listed on the Excluded Assets Schedule;
- (jj) “**Excluded Liabilities**” has the meaning given to it in Section 3.2;
- (kk) “**General Conveyance and Assumption Agreement**” means a general conveyance and assumption agreement with respect to the Purchased Assets and the Assumed Liabilities in form and substance acceptable to the Receiver and the Buyer, acting reasonably;
- (ll) “**General Security Agreement**” means the general security agreement dated as of March 31, 2021 between the Company and KPEF;
- (mm) “**Goodwill**” means the goodwill of the Business, including the right of the Buyer to represent itself as carrying on the Business in continuation of and in succession to the Company;
- (nn) “**Governmental Authority**” means: (i) any national, federal, provincial, state, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;
- (oo) “**GST/HST**” means goods and services tax payable under the GST/HST Legislation, including “harmonized sales tax”;
- (pp) “**GST/HST Legislation**” means Part IX of the *Excise Tax Act* (Canada);
- (qq) “**Insurance**” means (i) Contracts of insurance, insurance policies and insurance plans of the Company, to the extent transferable; (ii) any insurance proceeds net of any deductibles and retention recovered by the Company under all other

Contracts of insurance, insurance policies (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) and insurance plans during the Interim Period; and (iii) the full benefit of the Company's rights to insurance claims (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) relating to the Business and amounts recoverable in respect thereof net of any deductible;

- (rr) “**Intellectual Property**” means all rights, interests and benefits of the Company, through ownership, licensing or otherwise, in (i) any trademarks, trade names, business names, brand names, services marks, copyrights, trade secrets, industrial designs, inventions, patents, formulas, processes, know how, technology, manufacturing, engineering and other technical drawings and manuals, blue prints, research and development reports, technical information, technical assistance, engineering data, design and engineering specifications, telephone numbers, domain names, domain name registrations, website names and worldwide web addresses, social media accounts and social media handles and other communication addresses, and related goodwill, and (ii) any applications or registrations of the foregoing, issued patents, continuations in part, divisional applications or analogous rights therefor, in each case whether registered or not, including the Intellectual Property listed on the Purchased Assets Schedule;
- (ss) “**Interim Period**” means the period from and after the date hereof up to and including the Closing Date;
- (tt) “**IT Systems**” means all software (including source code and object code form), computer hardware, licenses, and documentation therefor and rights therein owned by the Company, and any other information technology systems owned or used by the Company, including, all electronic data processing systems, cloud services, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material;
- (uu) “**Kensington Lenders**” means, collectively, KPEF, Kensington Venture Fund II, L.P. and Kensington (Parallel) Venture Fund II, L.P.;
- (vv) “**KPEF**” means Kensington Private Equity Fund;
- (ww) “**Offered Employees**” has the meaning given to it in Section 9.1(a);
- (xx) “**Ordinary Course**” means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the recent past practices of the Person having regard to the recent circumstances leading up to and including the transactions contemplated by this Agreement and, as applicable, subject to the Appointment Order;

- (yy) “**Outside Date**” means July 30, 2021 or such later date as may be agreed by the Buyer and the Receiver;
- (zz) “**Parties**” means, collectively, the Receiver, the Buyer and the Company, and “**Party**” means any of them;
- (aaa) “**Permitted Encumbrances**” means the Encumbrances expressly listed as permitted Encumbrances in the Approval Order;
- (bbb) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, co-operative, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;
- (ccc) “**Personal Property Leases**” means all leases of personal or moveable property of the Company listed on the Purchased Assets Schedule;
- (ddd) “**Premises**” means the premises leased and occupied by the Company located at 5 Michael Street, Suite #2, Kitchener, Ontario, N2G 1L7;
- (eee) “**Prepaid Expenses**” means all prepaid expenses, including *ad valorem* Taxes, of the Company, and all deposits of the Company with any Person, including any supplier, public utility, lessor under any Personal Property Lease or Real Property Lease, or Governmental Authority;
- (fff) “**Priority Claims**” means any liabilities, obligations or claims, other than the Receiver’s Borrowings Obligations, that rank in priority to the Promissory Notes Obligations pursuant to Applicable Law;
- (ggg) “**Promissory Notes**” means, collectively, (A) the convertible promissory note dated March 31, 2021 in the principal amount of \$1,001,216.44 issued by the Company to KPEF, (B) the convertible promissory note dated April 13, 2021 in the principal amount of \$650,000 issued by the Company to KPEF, and (C) the convertible promissory note dated May 10, 2021 in the principal amount of \$350,000 issued by the Company to KPEF, in each case as amended, supplemented, amended and restated, replaced or otherwise modified from time to time;
- (hhh) “**Promissory Notes Obligations**” means all obligations of any kind or nature owing to the Kensington Lenders, including all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to the Promissory Notes, the General Security Agreement, and the Assignment and Agency Agreement;
- (iii) “**Purchase Price**” has the meaning given to it in Section 2.4;
- (jjj) “**Purchased Assets**” has the meaning given to it in Section 2.1;

- (kkk) **“Purchased Assets Schedule”** means Schedule A to this Agreement;
- (lll) **“Purchased Contracts”** means the Contracts listed on the Purchased Assets Schedule;
- (mmm) **“Purchased Equipment”** means all equipment and personal property owned by the Company wherever located, including all fixed and tangible assets, machinery, chattels, tooling, furniture, computer hardware and other tangible assets, but excluding Excluded Equipment;
- (nnn) **“Purchased Inventory and Supplies”** means all of the Company’s inventory, merchandise, samples and supplies, including raw materials, work in process, finished goods, and packaging and shipping supplies, but excluding Excluded Inventory and Supplies;
- (ooo) **“Real Property Leases”** means the Company’s leasehold interest in the leases, agreements to lease, subleases or licences listed on the Purchased Assets Schedule;
- (ppp) **“Receivables”** means all future payments made by cash, cheque, automatic clearing houses, direct or pre-authorized debit, wire transfer, electronic money transfers, PayPal money transfers, credit card, debit card, charge card or other forms of payment related to the Business, including for goods, services or facilities provided by the Company but excluding, for greater certainty, Related Party Amounts;
- (qqq) **“Receiver”** has the meaning given to it in the recitals to this Agreement;
- (rrr) **“Receiver’s Borrowings Obligations”** means all obligations of any kind or nature owing by the Receiver to any Kensington Lender or its affiliate that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements;
- (sss) **“Receiver’s Vesting Certificate”** means the Receiver’s certificate contemplated by the Approval Order;
- (ttt) **“Receivership Proceedings”** means the proceedings in respect of the Company commenced pursuant to the Appointment Order;
- (uuu) **“Related Party Amounts”** means any indebtedness, liabilities or other amounts owed or payable to the Company from current or former directors, officers, employees or shareholders of the Company;
- (vvv) **“Representatives”** means, in respect of any Party, its and its affiliates’ directors, officers, employees, agents and advisors (including financial and legal advisors);

- (www) “**Sale Procedures**” means the procedures for the conduct of a sale process in respect of the business and assets of the Company approved by the Court pursuant to the Appointment Order, which procedures shall be in substantially the form attached hereto as Schedule C or otherwise in form and substance acceptable to the Receiver and the Buyer;
- (xxx) “**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations;
- (yyy) “**Successful Bid**” shall have the meaning given to it in the Sale Procedures;
- (zzz) “**Tax**” and “**Taxes**” means all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, including (a) those levied on, or measured by, or referred to as income, gross receipts, earnings, profits, capital, corporate, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, license, franchising, real or personal property, payroll, employment, wage, employer health, social services, severance, utility, occupation, premium, windfall, education and social security taxes, all surtaxes, all custom duties and import and export taxes, all license, franchise and registration fees and all employment and unemployment insurance, health insurance and Canada and other government pension plan premiums, workers’ compensation levies, and retirement contributions, including those imposed by any Governmental Authority, and (b) any liability for the payment of any amount of the type described in the immediately preceding clause (a) as a result of being a “transferee” (within the meaning of section 160 of the Tax Act or any other Applicable Laws) of another taxpayer or entity or a member of a related, non-arm’s length, affiliated or combined group;
- (aaaa) “**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time;
- (bbbb) “**Tax Refunds**” means the benefit of the Company to any Tax refunds (including in respect of any overpayment of Taxes), rebates or credits (including refundable credits) payable or paid to the Company, net of any amounts withheld by any Governmental Authority having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Company to any claim or right of the Company to any such refund, rebate, or credit in respect of Taxes, including in any case any interest thereon received or receivable from any Governmental Authority, but for greater certainty, only to the extent that such refund, rebate or credit relates to a taxable period ending on or before the Closing Date or, in respect of a taxable period that includes but does not end on the Closing Date, the portion thereof up to and including the Closing Date;
- (cccc) “**Transaction**” means the purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement and any of the other transactions contemplated by this Agreement;

- (dddd) **“Transferred Employees”** means solely those Offered Employees who accept the offer of employment made by the Buyer or its affiliate(s) pursuant to Section 9.1 and who actually commence employment with the Buyer or its affiliates on their first scheduled shift after Closing;
- (eeee) **“Transfer Taxes”** has the meaning given to it in Section 2.8(a);
- (ffff) **“Warranty Rights”** means all warranty, product guarantee or similar rights against manufacturers, contractors or suppliers relating to any of the Purchased Assets, to the extent the foregoing are transferable to the Buyer.

1.2 Appendices and Schedules

The following Schedules form part of this Agreement:

Schedule A	Purchased Assets Schedule
Schedule B	Excluded Assets Schedule
Schedule C	Sale Procedures

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Interpretations

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States dollars.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.8 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 and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, 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 any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the Receiver and the Buyer. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law, Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of or in connection with this Agreement or the Transaction or any part thereof, including all matters of construction, validity and performance, as well as the rights and obligations of the Parties hereunder or thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the courts of the Court for the resolution of any such disputes arising under or in connection with this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.8 shall be deemed effective service of process on such Party.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, the Receiver and the Company agree to sell, assign, transfer and convey to the Buyer, and the Buyer agrees to purchase, assume and accept from the Receiver and the Company, free and clear of all Encumbrances other than Permitted Encumbrances, all of the right, title, benefit and interest of the Receiver and the Company in, to and under, or relating to, the assets, property and undertaking owned or used or held for use in connection with the Business (the “**Purchased Assets**”), including the following properties, assets and rights:

- (a) Cash;
- (b) Purchased Contracts;
- (c) Purchased Equipment;
- (d) Purchased Inventory and Supplies;
- (e) Intellectual Property;
- (f) Insurance;
- (g) Goodwill;
- (h) Warranty Rights;
- (i) Books and Records;
- (j) Authorizations;
- (k) Real Property Leases;
- (l) Personal Property Leases;
- (m) Prepaid Expenses;
- (n) IT Systems;
- (o) Actions;
- (p) Related Party Amounts; and
- (q) Tax Refunds,

but, for greater certainty, in each case excluding any Excluded Assets.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets shall not, and will not be deemed to, include any of the following assets of the Company (collectively, the “**Excluded Assets**”):

- (a) Receivables;
- (b) Excluded Contracts;
- (c) Excluded Equipment;
- (d) Excluded Inventory and Supplies;

- (e) Employee Plans;
- (f) original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Company, in each case that do not relate to the Business or the Purchased Assets;
- (g) all of the Company's rights and benefits under this Agreement and the Transaction;
- (h) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period or in furtherance of or in connection with the Transaction, or otherwise in compliance with the terms of this Agreement;
- (i) shares, partnership or joint venture interests and any other securities of any Person owned or held by the Company or any of its affiliates, including the shares of Hangzhou Oxygen Technology Co. Ltd. owned by the Company;
- (j) all minute books, share ledgers, corporate seals and stock certificates of the Company; or
- (k) any other assets as may be expressly designated by the Buyer in writing prior to Closing.

2.3 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS RELATED THERETO ARE PURCHASED AND THE ASSUMED LIABILITIES ARE ASSUMED BY THE BUYER ON AN "AS IS, WHERE IS" BASIS AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED LIABILITIES, AND WITHOUT ANY RECOURSE TO THE RECEIVER OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS OR ADVISORS. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS RELATED THERETO AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE BUYER'S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE RECEIVER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Receiver in this Agreement or in any instrument furnished in

connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, latent defects, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded. The provisions of this Section 2.3 shall survive and not merge on Closing.

2.4 Purchase Price

The Purchase Price payable by the Buyer to the Receiver for the Purchased Assets shall be equal to the sum of the following amounts (collectively, the “**Purchase Price**”):

- (a) the Priority Claims;
- (b) the Cure Costs;
- (c) the Senior Secured Obligations; and
- (d) the amount of CDN\$100,000, estimated by the Receiver to be the aggregate fees, disbursements and expenses of the Receiver for the period from the Closing Time to the Discharge Date (the “**Estimated Fees**”).

2.5 Satisfaction of Purchase Price

The Buyer shall pay and satisfy the Purchase Price on the Closing Date as follows:

- (a) the Buyer shall pay in cash or shall assume the Priority Claims;
- (b) the Buyer shall pay in cash all Cure Costs;
- (c) the Buyer shall pay the Estimated Fees in cash to the Receiver; and
- (d) the Buyer shall cause the Kensington Lenders to irrevocably release and discharge the Company and the Receiver, as applicable, from the Senior Secured Obligations.

2.6 Adjustment for Estimated Fees

If the aggregate of the actual fees, disbursements and expenses incurred by the Receiver during the period from the Closing Time to the Discharge Date is (a) less than the Estimated Fees, any surplus shall be paid by the Receiver to the Buyer within three (3) Business Days of the Discharge Date, or (b) greater than the Estimated Fees, any deficiency shall be paid by the Buyer to the Receiver within three (3) Business Days of the Discharge Date.

2.7 Purchase Price Allocation

The Buyer shall, acting reasonably, prepare and deliver to the Receiver an allocation of Purchase Price among the Purchased Assets within 30 days following Closing. Such allocation shall be binding on the Buyer, the Receiver and the Company, and the Buyer, the Receiver and the Company will file all Tax returns in a manner consistent with such allocation.

2.8 Tax Matters

- (a) All amounts payable by the Buyer pursuant to this Agreement are exclusive of any GST/HST and all transfer, documentary, sales, use, registration and provincial sales Taxes arising in connection with the sale, conveyance, assignment and transfer of the Purchased Assets to the Buyer (collectively, “**Transfer Taxes**”). The Buyer will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder). The Parties will cooperate with each other in good faith and will use commercially reasonable efforts to assist the Buyer in mitigating such Taxes. If the Receiver is required by any Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer will pay such amounts to the Receiver concurrent with the payment of any consideration payable pursuant to this Agreement or, if arising after Closing, forthwith, and the Receiver will pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (b) At the Closing, the Parties shall jointly execute an election under Section 167 of the GST/HST Legislation to cause the sale of the Purchased Assets to take place on a HST-free basis under the GST/HST Legislation and the Buyer shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) At the Closing, the Parties shall, if applicable, execute jointly an election in prescribed form under Section 22 of the Tax Act and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date.
- (d) If requested by the Buyer, the Buyer and the Receiver and/or the Company (as applicable) shall jointly make and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of the applicable provincial Tax law, if applicable and available, in respect of the Buyer’s assumption of the Company’s obligations in respect of any deferred revenue of the Business (and, if such election is made, a portion of the Purchased Assets having a value equal to the elected amount shall be transferred by the Receiver to the Buyer for the assumption of such obligations by the Buyer), in either case in prescribed manner and within the prescribed time limits applicable to such election(s).
- (e) The Buyer shall be entitled to receive from the Receiver and/or the Company all Tax Refunds. The Buyer and the Receiver shall execute all documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax Refunds. The Receiver will promptly pay to the Buyer all such Tax Refunds.
- (f) The Buyer agrees to indemnify and save the Receiver harmless from and against all claims and demands for payment of all Transfer Taxes payable by the Buyer in connection with the purchase of the Purchased Assets, including penalties and

interest thereon and any liability or costs incurred as a result of any failure by the Buyer to pay such Taxes when due.

- (g) The Parties agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any inquiry of any Governmental Authority relating to Tax matters.

ARTICLE 3 ASSUMED LIABILITIES AND EXCLUDED LIABILITIES

3.1 Assumed Liabilities

Subject to Closing, the Buyer agrees to assume, pay, discharge, perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Company with respect to the Purchased Assets (collectively, the “**Assumed Liabilities**”), which Assumed Liabilities shall exclude the Excluded Liabilities and shall consist solely of:

- (a) all obligations and liabilities under the Assigned Agreements to the extent first arising and relating to the period on or after the Closing Date;
- (b) all obligations and liabilities related to the operation of the Purchased Assets on or after the Closing Date; and
- (c) the Assumed Employee Obligations.

3.2 Excluded Liabilities

Except as expressly assumed by the Buyer pursuant to Section 3.1, the Buyer shall not assume, accept or undertake any debt, obligation, duty or liability of the Company of any kind or nature whatsoever, whether accrued, contingent, known or unknown, express or implied, direct or indirect, liquidated or unliquidated, contingent or otherwise, and whether due or to become due (the “**Excluded Liabilities**”), which Excluded Liabilities, without limitation, shall include the following liabilities or obligations:

- (a) except as expressly included in Assumed Liabilities, all liabilities, obligations, present and future actions, causes of action, lawsuits, damages, judgements, executions or claims relating to or arising out of the conduct or operation of the Business or the Purchased Assets prior to the Closing Date, including all liabilities, obligations, claims and causes of action relating to or arising from breaches of contract, violations of Applicable Law, product liability, warranties, or tortious or illegal conduct;

- (b) all liabilities and obligations relating to the Excluded Assets;
- (c) all liabilities and obligations of the Company under the Assigned Agreements incurred or relating to the period prior to the Closing Date, except any Cure Costs agreed to by the Buyer in respect of Consent Required Agreements (which Cure Costs shall be paid by the Buyer in accordance with this Agreement);
- (d) indebtedness for borrowed money, including the Senior Secured Obligations;
- (e) all liabilities and obligations for (i) all Taxes of the Company for any Tax period; (ii) all Taxes relating to the Purchased Assets for periods (or any portion thereof) ending on or prior to the Closing Date, including any Taxes based upon operation, possession, use or ownership of the Purchased Assets, (iii) any Taxes in respect of any payments to Persons employed or retained in connection with the Business in respect of any period prior, and any related obligation to withhold or remit Taxes, even though a claim may be made after the Closing Date, and (iv) any Taxes relating to the Excluded Assets;
- (f) other than the Assumed Employee Obligations, all liabilities and obligations relating to the employment or the termination of the employment of the Company Employees (including Transferred Employees), including termination and severance obligations;
- (g) all liabilities, obligations or causes of action asserted or that may be asserted by (i) Sigma Worldwide, LLC, including in proceedings before the Ontario Superior Court of Justice bearing court file number CV-21-00660483-0000, and (ii) The Interpublic Group of Companies Canada, Inc. d/b/a Huge Canada, including in proceedings before the Ontario Superior Court of Justice bearing court file number CV-21-00659511-0000; and
- (h) any other obligations or liabilities expressly excluded from the Assumed Liabilities under this Agreement.

3.3 Consent Required Agreements

In the event that there are any Assigned Agreements or Authorizations that are not assignable in whole or in part to the Buyer without the consent, approval or waiver of any counterparty to such Assigned Agreement or issuer of such Authorization (each, a “**Consent Required Agreement**”):

- (a) the Parties shall, at the direction of the Buyer, use commercially reasonable efforts to obtain any such consent, approval or waiver in respect of a Consent Required Agreement;
- (b) if any consent, approval or waiver is not obtained for any Consent Required Agreement, the Receiver, if requested by the Buyer in its sole discretion, shall as soon as reasonably practicable bring a motion before the Court seeking the issuance of an Assignment Order with respect to each such Consent Required Agreement;

- (c) the determination as to whether to pay Cure Costs in order to obtain any required consent, approval or waiver, and the determination as to whether to seek an Assignment Order in respect of a Consent Required Agreement that, if granted, will necessitate the payment of Cure Costs, shall be made by the Buyer in its sole discretion;
- (d) the payment of any Cure Costs payable to obtain the consent, approval or waiver of any counterparty to an Assigned Agreement or as a condition to obtaining an Assignment Order in respect of any Consent Required Agreement shall be the responsibility of the Buyer; and
- (e) where any required consent, approval or waiver in respect of a Consent Required Agreement or, in the alternative, an Assignment Order in respect of such Consent Required Agreement, has not been obtained as of the Closing Time, nothing in this Agreement shall be construed as an assignment of such Consent Required Agreement, the Buyer shall have no responsibility whatsoever in respect of such Consent Required Agreement, and such Consent Required Agreement shall constitute an Excluded Asset for purposes of this Agreement.

3.4 Additions to Purchased Assets, Excluded Assets and Excluded Liabilities

Notwithstanding anything to the contrary herein, the Buyer shall have the right, at any time prior to the Closing Time, by notice in writing to the Receiver and without any adjustment to the Purchase Price, to deem (a)(i) any asset or agreement of the Company (including any asset or agreement that is otherwise identified herein as a Purchased Asset) to be an Excluded Asset, and (ii) any liability or obligation of the Company (including any liability or obligation that is otherwise identified herein as an Assumed Liability) to be an Excluded Liability, in each case for all purposes of this Agreement, in which case such Excluded Asset or Excluded Liability, as the case may be, shall not be assigned or transferred to or assumed by, and shall not vest in, the Buyer at Closing, and (b) any asset or agreement of the Company (including any asset or agreement that is otherwise identified herein as an Excluded Asset) to be a Purchased Asset for all purposes of this Agreement. The Schedules to this Agreement may be updated by the Buyer at any time prior to the Closing Time to reflect any actions taken by the Buyer pursuant to this Section 3.4. There shall be no adjustment to the Purchase Price as a result of any designation or modification of Purchased Assets, Excluded Assets, Assumed Liabilities or Excluded Liabilities pursuant to this Section 3.4.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

The Receiver and the Company, as applicable, represent and warrant as follows to the Buyer as of the date hereof and acknowledge and confirms that the Buyer is relying upon the following representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

4.1 Existence

The Receiver has been appointed as the receiver of the assets and property of the Company pursuant to the Appointment Order.

4.2 Corporate Power

- (a) The Receiver is duly organized and validly existing under the laws of its jurisdiction of organization.
- (b) Subject to the issuance and entry of the Approval Order, the Receiver has the power, authority and capacity to enter into and perform its obligations under this Agreement.
- (c) Subject to the issuance and entry of the Approval Order, the Company has the power to enter into and perform its obligations under this Agreement.

4.3 Residence of the Receiver and Company

Neither the Receiver nor the Company is a non-resident of Canada for the purposes of the Tax Act.

4.4 Due Authorization and Enforceability of Obligations

Pursuant to the Appointment Order, and subject to the issuance of the Approval Order, this Agreement has been duly and validly executed by the Receiver and the Company and constitutes a valid and binding obligation of the Receiver and the Company enforceable against such Parties in accordance with its terms.

4.5 Registration

The Company is registered for purposes of the GST/HST Legislation, and its registration number is [●].

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Receiver as follows, and acknowledges that the Receiver is relying upon the following representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

5.1 Corporate Power

The Buyer:

- (a) is a corporation duly organized and validly existing and in good standing under the Applicable Laws of its jurisdiction of formation; and

- (b) has the power, capacity and authority to enter into and perform its obligations under this Agreement and carry on business.

5.2 Residence of the Buyer

The Buyer is not a non-resident of Canada for the purposes of the Tax Act.

5.3 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Buyer. This Agreement has been duly and validly executed by the Buyer and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms.

5.4 GST/HST Legislation

The Buyer will be registered for purposes of the GST/HST Legislation prior to Closing and shall provide the Receiver with its registration number prior to Closing.

5.5 Diligence

The Buyer acknowledges and agrees that: (a) it is purchasing the Purchased Assets and assuming the Assumed Liabilities on an “as is, where is” basis; (b) it has relied upon its own independent review, investigation and inspection of the documents and information made available by or on behalf of the Receiver or the Company for the purpose of the Transaction; (c) except as expressly set forth in this Agreement, it is not relying upon any written or oral statements, documents, information, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Business or the Assumed Liabilities; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence.

ARTICLE 6 OTHER AGREEMENTS

6.1 Conduct Prior to Closing

During the Interim Period, the Company shall conduct the Business in the Ordinary Course, except to the extent required to allow the Receiver and the Company to comply with their obligations under this Agreement or as may be permitted with the written consent of the Buyer, subject in all cases to the Appointment Order and any other Court orders granted in the Receivership Proceedings. Without limiting the generality of the foregoing, the Company shall:

- (a) maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course;

- (b) preserve intact the Goodwill and maintain satisfactory relationships with suppliers, customers, landlords, Governmental Authorities and all other Persons with whom the Company has a business relationship;
- (c) not convey, encumber or otherwise dispose of any of the Purchased Assets except in the Ordinary Course;
- (d) not amend or modify any Assigned Agreement in any material respect, waive any material rights in respect of any Assigned Agreement or disclaim any Assigned Agreement;
- (e) not enter into any material contract or agreement in respect of the Business;
- (f) not enter into any settlement of any claim, cause of action or litigation by or against the Company;
- (g) preserve and maintain in force and in good standing all Authorizations;
- (h) continue and keep in full force and effect all insurance coverage currently held by the Company; and
- (i) comply in all material respects with all Applicable Laws relating to the conduct of the Business and the ownership and use of the Purchased Assets.

6.2 Sale Procedures

- (a) The Receiver shall conduct the sale process in respect of the business and assets of the Company in accordance with the Sale Procedures and shall not seek any amendment or modification to the Sale Procedures without the prior consent of the Buyer or further order of the Court.
- (b) If the Transaction is designated as the Successful Bid pursuant to the Sale Procedures, the Receiver shall as soon as reasonably practicable serve and file a motion, on notice to the service list in the Receivership Proceedings and any other Person reasonably requested by the Buyer, seeking the Approval Order.
- (c) All motion materials of the Receiver in respect of the Approval Order and the Assignment Order, if applicable, shall be in form and substance acceptable to the Buyer and provided sufficiently in advance to the Buyer for review and comment.

6.3 Access to Information

Until the Closing and to the extent permitted by Applicable Law, the Company shall provide the Buyer and its Representatives, during normal business hours and upon reasonable advance notice, reasonable access to the Premises and shall furnish them with all such information relating to the Business and the Purchased Assets as the Buyer may reasonably request in connection with the Transaction.

6.4 Access to Third Parties

The Receiver and the Company shall co-operate with the Buyer in arranging any such meetings or discussions as the Buyer or its Representatives may reasonably request with employees, customers, suppliers, lessors or other Persons having a business relationship with the Company, and the Company shall provide the Buyer with such assistance, documentation and materials as the Buyer may reasonably request in connection with the preparation for and participation in such meetings and discussions. The Receiver shall be entitled to have a Representative present in connection with any such meetings or discussions.

ARTICLE 7 CONDITIONS

7.1 Conditions for the Benefit of the Buyer

The obligation of the Buyer to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **Truth of Representations and Warranties.** The respective representations and warranties of the Receiver and the Company contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date (except for those representations and warranties that are made as of a specific time or date), which shall be certified by the Receiver and the Company, as the case may be, pursuant to certificates delivered by each of the Receiver and the Company to the Buyer at Closing;
- (b) **Performance of Covenants.** The Receiver and the Company shall have performed, in all material respects, each of their covenants and agreements to be performed by them at or prior to the Closing, which shall be certified by the Receiver and the Company, as the case may be, pursuant to certificates delivered by each of the Receiver and the Company to the Buyer at Closing;
- (c) **Deliverables.** The Receiver must have delivered to the Buyer the documents contemplated in Section 8.2, in each case in form and substance satisfactory to the Buyer, acting reasonably; and
- (d) **Assignment Order.** If requested by the Buyer to cause the assignment of a Consent Required Agreement, the Court shall have issued an Assignment Order in respect of such Consent Required Agreement, such Assignment Order shall be in form and substance acceptable to the Buyer in its sole discretion, and such Assignment Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.

The conditions in this Section 7.1 are for the exclusive benefit of the Buyer. Any condition in this Section 7.1 may be waived by the Buyer in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part.

7.2 Conditions for the Benefit of the Receiver

The obligation of the Receiver to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **Truth of Representation and Warranties.** The representations and warranties of the Buyer contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), which shall be certified by the Buyer pursuant to a certificate delivered to the Receiver at Closing;
- (b) **Performance of Covenants.** The Buyer must shall have performed, in all material respects, each of its covenants and agreements to be performed by it at or prior to the Closing, which shall be certified by the Buyer pursuant to a certificate delivered to the Receiver at Closing;
- (c) **Deliverables.** The Buyer must have delivered to the Receiver the documents contemplated in Section 8.3, in each case in form and substance satisfactory to the Receiver, acting reasonably.

The conditions in this Section 7.2 are for the exclusive benefit of the Receiver. Any condition in this Section 7.2 may be waived by the Receiver in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part.

7.3 Mutual Conditions

The obligation of the Buyer and the Receiver to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **No Legal Action.** No provision of any Applicable Laws and no judgment, injunction, order or decree by any Person that prohibits the consummation of the Transaction pursuant to and in accordance with this Agreement shall be in effect, pending or threatened;
- (b) **Appointment Order.** The Court shall have issued the Appointment Order in form and substance acceptable to the Receiver and the Buyer, and such Appointment Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.
- (c) **Successful Bid.** The Transaction shall have been designated as the Successful Bid pursuant to the Sale Procedures.

- (d) **Approval Order.** The Court shall have issued the Approval Order in form and substance acceptable to the Receiver and the Buyer, and such Approval Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.

The conditions in this Section 7.3 are for the mutual benefit of the Buyer and the Receiver. Any condition in this Section 7.3 may be waived jointly by the Buyer and the Receiver in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part.

ARTICLE 8 CLOSING

8.1 Date, Time and Place of Closing

The completion of the Transaction will take place at the offices of Goodmans LLP, at 333 Bay Street, Suite 3400, Toronto, Ontario M5H 3S7 at 10:00 a.m. (Toronto time) on the Closing Date, or at such other place (including virtually through electronic exchange of documents), on such other date and at such other time as may be agreed upon in writing by the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that the Transaction will be deemed to have closed effective as of the Closing Time.

8.2 Receiver Deliverables at Closing

At Closing, the Receiver will deliver or cause to be delivered to the Buyer the following:

- (a) the General Conveyance and Assumption Agreement signed by the Receiver and the Company;
- (b) if applicable, the elections referred to in Section 2.8, in each case signed by the Receiver;
- (c) the certificates of the Receiver and the Company referred to in Section 7.1;
- (d) the Receiver's Vesting Certificate; and
- (e) all other documents reasonably requested by the Buyer to be entered into or delivered by the Receiver or the Company at Closing pursuant to the terms of this Agreement.

8.3 Buyer Deliverables at Closing

At Closing, the Buyer will deliver or cause to be delivered to the Receiver the following:

- (a) the Purchase Price, in the manner set forth in Section 2.5, including evidence satisfactory to the Receiver, acting reasonably, that the Kensington Lenders have irrevocably released and discharged the Company and the Receiver from the Senior Secured Obligations;

- (b) the General Conveyance and Assumption Agreement signed by the Buyer;
- (c) if applicable, the elections referred to in Section 2.8, in each case signed by the Buyer;
- (d) the certificates of the Buyer referred to in Section 7.2;
- (e) the Buyer's GST/HST registration number; and
- (f) all other documents reasonably requested by the Receiver to be entered into or delivered by the Buyer at Closing pursuant to the terms of this Agreement.

8.4 Possession of Assets

The Purchased Assets shall be and remain until Closing at the risk of the Company. On Closing, the Buyer shall take possession of the Purchased Assets where situate at Closing. The Buyer acknowledges that neither the Receiver nor the Company has any obligation to deliver physical possession of the Purchased Assets to the Buyer. If following the Closing Time the Receiver or the Company comes into possession or control of a Purchased Asset, the Receiver or the Company, as applicable, shall promptly notify the Buyer and release the Purchased Asset to the Buyer or as the Buyer may direct. If following the Closing Time the Buyer comes into possession or control of an Excluded Asset, the Buyer shall promptly notify the Receiver and release the Excluded Asset to the Receiver or as the Receiver may direct and, for greater certainty, no right, title or interest in and to such Excluded Asset shall, or shall be deemed to, vest in the Buyer.

ARTICLE 9 EMPLOYEES

9.1 Employees

- (a) At least five days prior to the Closing Date, the Buyer shall make a written offer of employment, effective as of the Closing Date and contingent upon the Closing, to such Company Employees as the Buyer shall determine in its sole discretion (the "**Offered Employees**") on terms and conditions determined by the Buyer in its sole discretion. Notwithstanding the foregoing, nothing herein shall be construed as to prevent the Buyer, at its sole responsibility, liability and obligation, from terminating the employment of any Transferred Employee, consistent with applicable law, at any time following the Closing Date.
- (b) Each Transferred Employee shall be given credit by the Buyer for all service with the Company and its predecessors solely to the extent as is required by statute, but not for common law purposes.
- (c) The Parties agree that nothing in this Section 9.1, whether express or implied, is intended to create any third party beneficiary rights in any Transferred Employee.

9.2 Assumed Employee Obligations

The Buyer will assume and be responsible for the following obligations and liabilities in respect of Transferred Employees (collectively, the “**Assumed Employee Obligations**”):

- (a) all liabilities for salary, wages, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date;
- (b) all liabilities for vacation pay entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date; and
- (c) all liabilities for claims for injury, disability, death or workers’ compensation arising from or related to employment of the Transferred Employees from and after the Closing Date, but excluding any claims arising from and after the Closing Date but related to the employment of the Transferred Employees by the Company prior to the Closing Date.

ARTICLE 10 TERMINATION

10.1 Termination

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

- (a) by mutual written consent of the Receiver and the Buyer;
- (b) by the Buyer, if:
 - (i) the Sale Procedures are not approved by the Court in form and substance acceptable to the Buyer or if the Sale Procedures are amended or modified without the prior consent of the Buyer;
 - (ii) a transaction other than the Transaction is designated by the Receiver as the Successful Bid pursuant to the Sale Procedures;
- (c) by the Receiver or the Buyer, if the Closing has not occurred on or before the Outside Date; provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach by a Party of any representation, warranty, covenant or agreement contained in this Agreement, then the breaching Party may not terminate this Agreement pursuant to this Section 10.1(c);
- (d) by the Receiver, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty and such violation or breach has not been waived by the Receiver or cured within five Business Days after written notice thereof from the Receiver to the Buyer, unless the Receiver is in material breach of its obligations under this Agreement; and

- (e) by the Buyer, if there has been a material violation or breach by the Receiver or the Company of any covenant, representation or warranty and such violation or breach has not been waived by the Buyer or cured within five Business Days after written notice thereof from the Buyer to the Receiver or the Company, unless the Buyer is in material breach of its obligations under this Agreement.

10.2 Effect of Termination

In the event of termination of this Agreement in accordance with its terms, this Agreement shall become void and of no further force and effect, except for Section 1.10 (Governing Law, Jurisdiction and Venue) and Article 11 (General Matters), each of which shall survive termination. Nothing in this Section 10.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

ARTICLE 11 GENERAL MATTERS

11.1 Further Assurances

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

11.2 Structuring

The Receiver shall consider and negotiate in good faith any proposed modifications to this Agreement and the structure of the Transaction requested by the Buyer to implement the Transaction in a tax efficient manner, including, where possible, to maximize the value and ability of the Buyer to obtain the benefit of any existing tax attributes of the Company.

11.3 Personal Information

The Buyer acknowledges that it is aware, and it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Buyer and its Representatives pursuant to this Agreement and/or the Transaction. The Buyer agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to them.

11.4 Survival

None of the representations, warranties, agreements or covenants of any of the Parties set forth in this Agreement shall survive Closing, except for Section 1.10 (Governing Law), Article 11 (General Matters) and any other covenant or agreement that by its express terms is to survive or

to be performed after Closing, in each case solely to the extent they are to be performed or operate by their express terms after the Closing.

11.5 Expenses

Each of the Receiver and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation of this Agreement and the completion of the Transaction, provided that, for greater certainty, all such expenses incurred by the Buyer shall constitute Senior Secured Obligations pursuant to the terms of the Promissory Notes and the General Security Agreement.

11.6 Time of the Essence

Time will be of the essence in this Agreement.

11.7 Successors and Assigns

This Agreement may not be assigned by the Receiver or the Company without the prior written consent of the Buyer. This Agreement may not be assigned by the Buyer without the prior written consent of the Receiver, provided however that the Buyer shall be permitted, without the consent of the Receiver or the Company, to assign its rights and obligations under this Agreement in whole or in part to one or more affiliates of or funds managed by any of the Kensington Lenders where such assignee(s) agree(s) in writing to be bound by the terms of this Agreement to the extent of the assignment, and notwithstanding such assignment the Buyer shall remain liable for any obligations under this Agreement not performed by such assignee(s).

11.8 Notices

Any notice or other communication under this Agreement shall be in writing and may be delivered personally, by courier or by email, addressed:

If to the Buyer at:

95 St. Clair Avenue West, Suite 905
Toronto, Ontario
M4V 1N6

Attention: Richard Nathan
E-mail: accounting@kcpl.ca and legal@kcpl.ca

with a copy to: Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Attention: Tim Heeney and Bradley Wiffen
E-mail: theeney@goodmans.ca / bwiffen@goodmans.ca

If to the Receiver or the Company at:

RSM Canada Limited
11 King Street West
Suite 700, Box 27
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
E-mail: bryan.tannenbaum@rsmcanada.com

with a copy to: Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON
M2N 7E9

Attention: Harvey Chaiton
E-mail: harvey@chaitons.com

Any such notice of other communication, if given by personal delivery or by courier, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day or on a day that is not a Business Day, will be deemed to have been given on the next Business Day after the date of the transmission.

11.9 Amendment

This Agreement may be amended as to all Parties by instrument in writing signed by the Buyer and the Receiver.

11.10 Counterparts, Electronic Signatures

This Agreement may be signed in any number of counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by email, PDF or other

electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

11.11 Receiver's Capacity

It is acknowledged by the Buyer that the Receiver is entering into this Agreement solely in its capacity as Court-appointed Receiver and that the Receiver shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Receiver shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of the Company and shall not apply to its personal property and other assets held by it in any other capacity.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

RECEIVER

RSM CANADA LIMITED, in its capacity as the court-appointed receiver of O2 INDUSTRIES INC., and not in its personal or corporate capacity

Per: _____
Name:
Title:

BUYER

[●]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

COMPANY

O2 INDUSTRIES INC.

Per: _____
Name:
Title:

SCHEDULE A

PURCHASED ASSETS SCHEDULE

[To be completed by the Buyer prior to the Closing Time]

SCHEDULE B

EXCLUDED ASSETS SCHEDULE

[To be completed by the Buyer prior to the Closing Time]

SCHEDULE C

SALE PROCEDURES

[Attached.]

B

**SALE PROCEDURES
FOR THE SALE OF THE BUSINESS AND PROPERTY OF
O2 INDUSTRIES INC.**

1. On May 27, 2021, RSM Canada Limited was appointed as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of O2 Industries Inc. (the “**Company**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).

2. The Appointment Order approved the procedures set forth herein (the “**Sale Procedures**”) for soliciting and selecting bids for a sale transaction (a “**Transaction**”) in respect of all or certain of the property, assets and undertakings of the Company (the “**Property**”) and authorized and directed the Receiver to carry out the Sale Procedures.

Defined Terms

3. Capitalized terms used and not otherwise defined in the body of these Sale Procedures shall have the meanings given to them in **Appendix “A”**.

Solicitation Process and Timeline

4. The Company has received a Transaction bid from 2841551 Ontario Limited (the “**Stalking Horse Bidder**”) pursuant to an asset purchase agreement in substantially the form attached to the pre-filing report of the proposed Receiver dated May 26, 2021 (the “**Stalking Horse Agreement**”) which constitutes a qualified bid for all purposes and at all times under these Sale Procedures (the “**Stalking Horse Bid**”). The Stalking Horse Bid shall serve as the “stalking horse” bid for the purposes of the sale process governed by these Sale Procedures (the “**Sale Process**”). The Stalking Horse Agreement may be modified or amended prior to its execution as agreed to by the Stalking Horse Bidder and the Receiver and may be modified or amended following its execution in accordance with its terms.

5. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids for a Transaction pursuant to these Sale Procedures.

6. These Sale Procedures describe the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Company, its Property, and its businesses and operations (the “**Business**”), the manner in which a bid becomes a Qualified Bid, the receipt and review of bids received, the ultimate selection of a Successful Bid and the approval thereof by the Court.

7. The Receiver shall implement these Sale Procedures with the assistance of the Company and, where specified, in consultation with the Stalking Horse Bidder. In the event that there is disagreement as to the interpretation or application of these Sale Procedures, the Court will have jurisdiction to hear and resolve any such dispute.

8. The following table sets out the deadlines under the Sale Process, each of which can be extended by up to seven (7) days by the Receiver in its discretion, or for a longer period with the consent of the Stalking Horse Bidder or by Court order:

Milestone	Deadline
Commencement of Sale Process	Promptly following the granting of the Appointment Order
Bid Deadline	July 8, 2021
Auction Date	July 15, 2021
Approval Hearing Date	July 22, 2021
Outside Date	July 30, 2021

Solicitation of Interest

9. As soon as reasonably practicable following the granting of the Appointment Order, the Receiver shall, with the assistance of the Company: (a) prepare a list of potential bidders (each, a **“Potential Bidder”**) who may be interested in pursuing a Transaction; (b) prepare a marketing presentation describing the Company, the Business and the Property and the opportunity to participate in the Sale Process (the **“Marketing Presentation”**); and (c) establish a data room (the **“Data Room”**) of due diligence materials, including the Marketing Presentation (the **“Diligence Materials”**) that the Receiver believes may be useful for Potential Bidders.

10. As soon as reasonably practicable following the granting of the Appointment Order, the Receiver shall contact Potential Bidders to introduce the opportunity and shall provide the Marketing Presentation to each Potential Bidder that executes a Confidentiality Agreement. The Receiver shall post a copy of the Sale Procedures on the website maintained by the Receiver and shall post a notice of the Sale Process, substantially in the form attached as **Appendix “B”** hereto, in one or more newspapers or other publications determined by the Receiver.

Participation Requirements

11. Unless otherwise provided for herein, ordered by the Court or agreed by the Receiver, in order to participate in the Sale Process and be granted access to the Diligence Materials, a Potential Bidder must deliver to the Receiver, at the address specified in **Appendix “C”** hereto (including by email), (a) an executed confidentiality agreement in form and substance satisfactory to the Receiver (the **“Confidentiality Agreement”**), which shall inure to the benefit of any Successful Bidder that completes a Transaction contemplated by the Successful Bid, and (b) such other information as the Receiver may request to ascertain the identity of the Potential Bidder, including its direct and indirect owners.

12. Potential Bidders shall be provided with access to the Data Room. The Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Data Room, the Diligence Materials or any other information provided by the Receiver or its agents in respect of the Business or Property of the Company, except to the extent expressly provided in any definitive sale agreement executed and delivered by the Receiver (a **“Definitive Agreement”**).

13. The Receiver reserves the right to withhold or delay the disclosure of any Diligence Materials that it determines are business sensitive or otherwise not appropriate for disclosure to a Potential Bidder who is a strategic buyer, competitor, supplier or other person with a business relationship with the Company until such time as the Receiver determines, in its discretion, that

such Potential Bidder has (a) a *bona fide* intent to submit a Bid, and (b) the financial capability to consummate a Transaction.

14. Potential Bidders shall direct information requests with respect to the Sale Process to the Receiver or such other individuals as the Receiver may authorize. Potential Bidders shall provide the Receiver with advance notice, and obtain the prior consent of the Receiver, before commencing or continuing any communications or discussions with any director, officer, agent, employee, supplier, customer, creditor or shareholder of the Company concerning the Company or its Business, Property, financial condition, or prospects, and the Receiver shall have the option to oversee or participate in any such communications or discussions.

Bids

15. A Potential Bidder, other than the Stalking Horse Bidder, that wishes to deliver a bid shall deliver a written binding offer for a Transaction (a “**Bid**”) to the Receiver at the addresses specified in **Appendix “C”** hereto (including by email) so as to be received by the Receiver no later than 5:00 p.m. (Eastern Time) on the Bid Deadline.

16. A Bid will be deemed to be a “**Qualified Bid**” only if the Bid complies with all of the following:

- (a) it includes an executed Definitive Agreement, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted by the Receiver in Word format in the Data Room), describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the purchase price (the “**Purchase Price**”), and the structure and financing of the proposed Transaction;
- (b) the Transaction shall, on closing, provide cash proceeds, in immediately available funds, sufficient to pay in full in cash the aggregate of the Priority Claims, *plus* the Senior Secured Obligations, *plus* US\$160,000;
- (c) it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;
- (d) it fully discloses any conditions or approvals required to consummate the Bid and the time period within which the Potential Bidder expects to satisfy such conditions or obtain such approvals;
- (e) it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (f) it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court and (ii) thirty (30) calendar days following the Bid Deadline (the “**Irrevocable Bid Date**”), provided that if such Potential Bidder’s Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;

- (g) it includes or is accompanied by evidence satisfactory to the Receiver of the financial ability of the Potential Bidder to consummate the Transaction contemplated by the Bid;
- (h) it is not conditioned on the outcome of unperformed due diligence or obtaining financing;
- (i) it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Receiver) payable to the order of the Receiver, in trust, in an amount equal to 15% of the Purchase Price in the Bid, which Deposit is to be held by the Receiver and dealt with in accordance with these Sale Procedures;
- (j) it includes a commitment to close the Transaction contemplated by the Bid by no later than the Outside Date;
- (k) it contains such other information as may reasonably be requested by the Receiver; and
- (l) it is received prior to the Bid Deadline.

Review of Bid(s)

17. Following the Bid Deadline, the Receiver shall assess any Bids received and determine whether such bids constitute Qualified Bids. The Receiver, in consultation with the Stalking Horse Bidder, may waive compliance with any one or more of the requirements specified herein and deem any non-compliant Bid to be a Qualified Bid, provided that the Receiver shall not be entitled to waive the requirements of Sections 16(b) or 16(i) without the prior consent of the Stalking Horse Bidder.

18. Following the receipt of any Bid the Receiver may seek clarification with respect to any of the terms or conditions of such Bid and/or request one or more amendments to such Bid prior to determining if such Bid should be considered a Qualified Bid.

19. In the event that the Receiver determines that there are no Qualified Bids, the Receiver shall promptly proceed to seek Court approval of the Stalking Horse Bid as the Successful Bid and, provided that such Court approval is granted, proceed to complete the Transaction contemplated by the Stalking Horse Agreement.

Selection of Successful Bid

20. The Receiver shall (a) review and evaluate the Stalking Horse Bid and each Qualified Bid, and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Stalking Horse Bidder or the Potential Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to these Sale Procedures. Any Successful Bid shall be subject to approval by the Court.

21. If the Receiver receives one or more Qualified Bids, it shall proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each Potential Bidder that submits a Qualified Bid and is invited to attend the Auction by the Receiver having regard to the terms of its Qualified Bid (each, an “**Auction Bidder**”). There shall be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. For greater certainty, the Stalking

Horse Bidder shall constitute an Auction Bidder in all circumstances in which an Auction is conducted.

22. If an Auction is conducted, it shall be conducted in accordance with the following procedures:

- (a) The Auction shall be conducted at a time to be designated by the Receiver on the Auction Date at the Toronto offices of the Receiver or by electronic communication means (including videoconference, teleconference or such other reasonable means as the Receiver deems appropriate) and shall continue thereafter until completed, subject to such adjournments as the Receiver may consider appropriate;
- (b) The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
- (c) Except as otherwise permitted in the Receiver's discretion, only the Receiver and the Auction Bidders, and in each case their respective professional advisors, shall be entitled to attend the Auction. Each Auction Bidder shall appear at the Auction through a duly authorized representative that shall be designated by the Auction Bidder as its spokesperson;
- (d) Except as otherwise set forth herein, the Receiver may waive and/or employ and announce at the Auction additional procedures that are reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with these Sale Procedures, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Receiver's judgement, to result in the solicitation of the highest and best offer;
- (e) Not less than two (2) Business Days prior to the Auction, the Receiver shall (i) identify the highest or otherwise best Qualified Bid or Stalking Horse Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments valued at not less than US\$75,000 in excess of the Opening Bid or such other amounts to be determined by the Receiver prior to, and announced at, the Auction. Each Auction Bidder shall, if requested by the Receiver, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;
- (f) All Auctions Bidders shall have the right, at any time during the Auction, to request that the Receiver announce, subject to any potential new bids, the then-current highest or otherwise best bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any questions such Auction Bidder may have on the then-current highest or otherwise best bid;
- (g) Each Auction Bidder shall be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids;

- (h) The Auction shall continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction shall be closed and the Auction Bidder that submitted the highest or otherwise best bid shall be designated as the Successful Bidder; and
- (i) Upon selection of a Successful Bidder, the Successful Bidder shall, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder's bid and any modifications submitted and agreed to during the Auction.

23. For all purposes of the Sale Process, the Stalking Horse Bidder shall be entitled to credit bid all or any portion of the Senior Secured Obligations, at the face value of such obligations. In the event that the Receiver designates a Qualified Bid, the Stalking Horse Bidder shall have the right, as part of an Auction, to supplement its Stalking Horse Bid with additional cash or other consideration such that the revised Stalking Horse Bid includes aggregate consideration in excess of the amount of the Senior Secured Obligations and the Priority Claims.

Court Approval

24. The Receiver shall apply to the Court (the "**Approval Motion**") for an order (the "**Approval Order**") approving a Successful Bid, which Approval Motion, subject to Court availability, shall be held on or prior to the Approval Hearing Date.

25. The Receiver shall implement the Successful Bid by no later than the Outside Date.

Deposits

26. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account.

27. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied (without interest) to the Purchase Price to be paid by the Successful Bidder upon closing of the Successful Bid and will be non-refundable.

28. The Deposits of bidders not selected as the Successful Bidder shall be returned, without interest, to such bidders within two (2) Business Days of the Irrevocable Bid Date.

29. The Stalking Horse Bidder shall not be required to provide a Deposit.

Approvals

30. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required at law in order to implement or complete a Successful Bid.

No Amendment

31. Except as expressly set forth herein, there shall be no amendments to these Sale Procedures without the consent of the Receiver and the Stalking Horse Bidder or further Order of the Court.

“As Is, Where Is”

32. Any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description except to the extent expressly provided under a Definitive Agreement with a Successful Bidder executed and delivered by the Receiver.

Further Orders

33. At any time during the Sale Process, the Receiver may apply to the Court, following consultation with the Stalking Horse Bidder, for advice and directions with respect to the discharge of its powers and duties hereunder.

Appendix “A” Definitions

For purposes of the Sale Procedures, the following terms shall have the following meanings:

“**Business Day**” means a day, other than a Saturday, Sunday, or a day on which banks in Toronto, Ontario are authorized or obligated by applicable law to close or otherwise are generally closed.

“**Kensington**” means KPEF, Kensington Venture Fund II, L.P., Kensington (Parallel) Venture Fund II, L.P., the Stalking Horse Bidder, and each of their respective affiliates and assignees.

“**KPEF**” means Kensington Private Equity Fund.

“**Receiver’s Borrowings Obligations**” means all obligations of any kind or nature owing by the Receiver to Kensington that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements.

“**Priority Claims**” mean all claims other than the Receiver’s Borrowings Obligations ranking in priority to the Promissory Note Obligations and includes, for greater certainty, the post-closing fees of the Receiver and its counsel;

“**Promissory Note Obligations**” means, collectively, all present and future obligations of any kind or nature owing by the Company to Kensington including, without limitation, all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to, or in connection with (a) the Convertible Promissory Note dated March 31, 2021 in the principal amount of US\$1,001,216.44 issued by the Company to KPEF, (b) the Convertible Promissory Note dated April 13, 2021 in the principal amount of US\$650,000.00 issued by the Company to KPEF, (c) the Convertible Promissory Note dated May 10, 2021 in the principal amount of US\$350,000 issued by the Company to KPEF, and (d) the General Security Agreement dated as of March 31, 2021 between the Company and KPEF, in each case as amended, supplemented, amended and restated, replaced, or otherwise modified from time to time.

“**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations.

**Appendix “B”
Form of Notice**

**Acquisition Opportunity
Invitation for Offers to Purchase
DESIGNER AND DISTRIBUTOR OF
RESPIRATORY PROTECTION PRODUCTS**

RSM Canada Limited, in its capacity as Court-appointed Receiver (the “Receiver”) of an Ontario company (the “Company”) that designs, produces and distributes respiratory protection products (respirators, masks and accessories) invites offers for the purchase of the business and assets of the Company including inventory, fixed assets and intellectual property, pursuant to a Court Approved Sales Process.

All offers must be received by the Receiver at the address set out below, on or before 5:00 p.m. (EST – Toronto), July 8, 2021.

For further information and in order to obtain a copy of the Sales Procedures and confidentiality agreement, please contact:

RSM Canada Limited
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7
Attn: Brenda Wong
T: 647 727 3621 | F: 416 480 2646
E: brenda.wong@rsmcanada.com



Visit rsmcanada.com/about-us for more information regarding RSM Canada Limited.

**Appendix “C”
Receiver Address for Notices**

If to the Receiver:

RSM Canada Limited
11 King Street West
Suite 700, Box 27
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
Email bryan.tannenbaum@rsmcanada.com

With a copy to:

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

Attention: Harvey Chaiton
Email: harvey@chaitons.com