

Court File No. 35-2041153

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST MUSTANG GP LTD.**

Court File No. 35-2041155

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

Court File No. 35-2041157

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST POWER MUSTANG GENERATION LTD.**

**MOTION RECORD  
(Returnable October 19, 2015)**

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

**Harvey Chaiton (LSUC #21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849

**Maya Poliak (LSUC #54100A)**  
Tel: 416-218-1161  
Fax: 416-218-1844

**Lawyers for Harvest Mustang GP  
Ltd., Harvest Ontario Partners  
Limited Partnership and Harvest  
Mustang Generation Ltd.**

**TO: ATTACHED SERVICE LIST**

**SERVICE LIST**  
(October 15, 2015)

**TO: CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton**  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
[Harvey@chaitons.com](mailto:Harvey@chaitons.com)

**Maya Poliak**  
Tel: (416) 218-1161  
Fax: (416) 218-1844  
[maya@chaitons.com](mailto:maya@chaitons.com)

Lawyers for Harvest Mustang GP Ltd., Harvest Ontario Partners Limited Partnership and Harvest Power Mustang Generation Ltd.

**AND TO: GOODMANS LLP**  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**L. Joseph Latham**  
Tel: (416) 597-4211  
Fax: (416) 979-1234  
[jlatham@goodmans.ca](mailto:jlatham@goodmans.ca)

Lawyers for Harvest Power Inc.

**AND TO: DELOITTE RESTRUCTURING INC.**  
1005 Skyview Drive, Suite 200  
Burlington, ON L7P 5B1

**Rob Biehler**  
Tel: (905) 315-5785  
Fax: (905) 315-6700  
[rbiehler@deloitte.ca](mailto:rbiehler@deloitte.ca)

Proposal Trustee

**AND TO: BROWN, BEATTIE O'DONOVAN LLP**  
380 Wellington Street, 16<sup>th</sup> Floor  
London, ON N6A 5B5

**James Fisher**  
Tel: (519) 670-0400  
Fax: (519) 679-6350  
[jfisher@bbo.on.ca](mailto:jfisher@bbo.on.ca)

Lawyers for Proposal Trustee

**AND TO: SISKINDS LLP**  
680 Waterloo Street  
PO Box 2520, Station B  
London, ON N6A 3V8

**Barry C. Cleaver**  
Tel: (519) 660-7808  
Fax: (519) 660-7809  
[Barry.cleaver@siskinds.com](mailto:Barry.cleaver@siskinds.com)

Lawyers for Stormfisher Ltd.

**AND TO: ROBINS APPLEBY LLP**  
120 Adelaide Street West  
Suite 2600  
Toronto, ON M5H 1T1

**Robert S. Choi**  
Tel: (416) 360-3701  
Fax: (416) 848-0306  
[rchoi@robapp.com](mailto:rchoi@robapp.com)

Lawyers for Badger Daylighting Limited Partnership

**AND TO: GOWLING LAFLEUR HENDERSON LLP**

100 King St. West  
Suite 1600, 1 First Canadian Place  
Toronto, ON M5X 1G5

**Clifton P. Prophet**

Tel: (416) 862-3509  
Fax: (416) 863-3509  
[Clifton.prophet@gowlings.com](mailto:Clifton.prophet@gowlings.com)

Lawyers for Waste Management of Canada Corporation

**AND TO: GOWLING LAFLEUR HENDERSON LLP**

100 King St. West  
Suite 1600, 1 First Canadian Place  
Toronto, ON M5X 1G5

**Christopher M. Stanek**

Tel: (416) 862-4369  
Fax: (416) 862-7661  
[Chris.stanek@gowlings.com](mailto:Chris.stanek@gowlings.com)

Lawyers for GL&V Canada Inc., Ovivo Division

**AND TO: CANADA REVENUE AGENCY  
c/o DEPARTMENT OF JUSTICE**

Ontario Regional Office  
The Exchange Tower, Box 36  
130 King St. W., Suite 3400  
Toronto, ON M5X 1K6

**Diane Winters**

Tel : (416) 973-3172  
Fax : (416) 973-0810  
[diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

**AND TO: MINISTRY OF FINANCE (ONTARIO)**

Legal Services Branch  
33 King Street West, 6<sup>th</sup> Floor  
Oshawa, ON L1H 8H5

**Attention: Kevin O' Hara LL.M, Senior Counsel**

Tel: (905) 433-6934  
Fax: (905) 436-4510  
[Kevin.ohara@ontario.ca](mailto:Kevin.ohara@ontario.ca)

**AND TO: MINISTRY OF THE ENVIRONMENT (ONTARIO)**

Public Information Centre  
1st Floor, 135 St. Clair Avenue West  
Toronto, ON M4V 1P5

Justin Jacob  
Tel: (416) 314-6589  
[Justin.jacob@ontario.ca](mailto:Justin.jacob@ontario.ca)

**AND TO: CITY OF LONDON**

300 Dufferin Avenue  
Suite 1014  
London ON N6B 1Z2

**Geoffrey Belch**  
Tel: (519) 661-2500 x 4708  
[gbelch@london.ca](mailto:gbelch@london.ca)

**AND TO: BANK OF MONTREAL**

2<sup>nd</sup> Floor, 234 Simcoe Street  
Toronto, ON M5T 1T4

**AND TO: ROYNAT INC.**

Suite 1500, 4710 Kingsway Street  
Burnaby, BC V5H 4M2

# **INDEX**

Court File No. 35-2041153

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST MUSTANG GP LTD.**

Court File No. 35-2041155

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

Court File No. 35-2041157

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST POWER MUSTANG GENERATION LTD.**

**INDEX**

<b>Tab</b>	<b>Document</b>
1	Notice of Motion
2	Affidavit of Wayne H. Davis sworn October 13, 2015
A	Notices of Intention to Make a Proposal
B	Corporate Chart
C	Harvest Mustang GP Ltd. Personal Property Security Registration Report
D.	Harvest Ontario Partners Limited Partnership Personal Property Security Registration Report
E	Harvest Power Mustang Generation Ltd. Personal Property Security Registration Report
F	Parcel Register Search
G	Assignment of Debt and Security Interest dated August 7, 2015 (redacted)

- H Cash Flow for the period September 25, 2015 to December 25, 2015
- I DIP Term Sheet
- J Insurance Policy
- K Stalking Horse Asset Purchase Agreement
- 3 Draft Order



TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF MUSTANG GP LTD.**

Court File No. 35-2041155

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

Court File No. 35-2041157

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF HARVEST POWER MUSTANG GENERATION LTD.**

**NOTICE OF MOTION**

**HARVEST MUSTANG GP LTD., HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP and HARVEST POWER MUSTANG GENERATION LTD.** (collectively, the “**Debtors**”), will make a motion to a Judge on Monday, October 19, 2015 at 9:30 a.m., or as soon after that time as the motion can be heard, at 80 Dundas Street, London, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR** an order:

- (a) abridging the time for service of the Debtors’ Motion Record so that the motion is properly returnable on October 19, 2015;
- (b) administratively consolidating the Debtors’ proposal proceedings;
- (c) authorizing the Debtors to enter into an Interim Financing Term Sheet (the “**DIP Term Sheet**”) with StormFisher Environmental Ltd. (in this

- capacity, the “**DIP Lender**”), approving the DIP Term Sheet and granting the DIP Lender a super priority charge on all of the Debtors’ property, assets and undertakings as security for all of the Debtors’ obligations to the DIP Lender under the DIP Term Sheet;
- (d) granting a charge in an amount not to exceed \$150,000 in favour of the Debtors’ legal counsel, the Proposal Trustee and its legal counsel to secure payment of their reasonable fees and disbursements;
  - (e) granting a charge in an amount not to exceed \$2,000,000 in favour of the Debtors’ directors and officers;
  - (f) approving the process described herein for the sale and marketing of the Debtors’ business and assets (the “**Sale Process**”);
  - (g) approving the agreement of purchase and sale between StormFisher Environmental Ltd. (“**SFE**”) and the Debtors (the “**Stalking Horse APA**”); and
  - (h) granting the Debtors an extension of time to make a proposal to creditors.

**THE GROUNDS FOR THE MOTION ARE:**

1. On September 29, 2015 (the “**Filing Date**”), Harvest Mustang GP Ltd. (“**Mustang GP**”), Harvest Ontario Partners Limited Partnership (“**Harvest Ontario**”) and Harvest Power Mustang Generation Ltd. (“**Mustang Generation**”, and collectively, the “**Debtors**”) each filed a Notice of Intention to Make a Proposal (collectively, the “**NOIs**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) as amended. Deloitte Restructuring Inc. was named proposal trustee in the Debtors’ NOIs (the “**Proposal Trustee**”)
2. The Debtors operate a biogas electricity generation facility in London, Ontario (the “**Plant**”).

3. The Debtors' working capital and operating losses were funded by its parent company, Harvest Power, Inc. ("**Harvest Power**") and its various subsidiaries by way of unsecured loans. In early 2015, Harvest Power advised the Debtors that they were not prepared to continue to fund their operating losses.

4. In or around January 2015, the Debtors' defaulted on their obligations to Farm Credit Canada ("**FCC**"), the Debtors' senior secured creditor at that time. In February 2015, FCC commenced a process to find a party to acquire its debt and security (the "**FCC Debt and Security**"), with the assistance of the Debtors. During this time period, FCC also advised the Debtors that it was not prepared to fund any restructuring process or provide additional financing. FCC's marketing process was terminated in July 2015 with no third parties providing an offer that FCC considered to be acceptable.

5. In August 2015, 2478223 Ontario Limited (an indirect subsidiary of Harvest Power) ("**247**") purchased and took assignment of FCC's debt and security (the "**FCC Debt and Security**") at a substantial discount pursuant to an Assignment of Debt and Security Interest dated as of August 7, 2015.

6. Shortly after 247 acquired the FCC Debt and Security, Stormfisher Ltd. ("**Stormfisher**"), a competitor of Harvest Power, advised 247 that it was interested in purchasing the FCC Debt and Security in the hopes of acquiring the Debtors' business. Stormfisher also advised that it was prepared to participate in the Debtors' sale process as a stalking horse bidder and a DIP lender.

7. On September 25, 2015, 247 assigned all of its debt and security to SFE, a subsidiary of Stormfisher established for the purpose of purchasing the Debtors' assets. The FCC Debt and Security was purchased by SFE at a substantial discount from the amount paid by FCC and included a cash component, a promissory note and a minority equity interest in SFE.

8. On September 29, 2015, the Debtors commenced these proceedings under the BIA for the purpose of conducting a process for the sale of the Debtors' business as a

going-concern to SFE as a stalking horse bidder or another purchaser in the Sale Process. The Sale Process is described in detail in the Davis Affidavit. The Sale Process includes a bid deadline of November 23, 2015.

9. Under the BIA, the stay of proceedings will expire on October 29, 2015. In order to commence and advance the Sale Process, the Debtors are seeking an extension of time to file a proposal for 45 days or until December 11, 2015.

10. The Debtors are acting in good faith and with due diligence in seeking to preserve their business on a going concern basis for the benefit of all of their stakeholders.

11. Without the extension the Debtors will not be in a position to make a viable proposal to their creditors and will become bankrupt to the detriment of their stakeholders. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. The extension is supported by SFE and the Proposal Trustee. If the extension applied for is granted, the Debtors would likely be able to make a viable proposal to their creditors following the completion of the Sale Process.

12. The facts and circumstances set out in the Davis Affidavit and the First Report of the Proposal Trustee (the “**First Report**”).

13. *Bankruptcy and Insolvency General Rules*, C.R.C., c.368, s.3

14. *Courts of Justice Act*, R.R.O. 1990 Reg. 194, *Ontario Rules of Civil Procedure*, Rule 1.04(1)

15. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, ss. 50.6, 60.4, 64.1, 65.13 and 50.4(9)

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

16. The Affidavit of Wayne H. Davis sworn October 13, 2015;

17. First Report of the Proposal Trustee; and
18. Such other material as counsel may advise and this Honourable Court may permit.

Date: October 15, 2015

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

**Harvey Chaiton** LSUC# 21592F  
Tel: (416) 218-1129  
Fax: (416) 218-1849

**Maya Poliak** LSUC# 54100A  
Tel: (416) 218-1161  
Fax: (416) 218-1844

Lawyers for the Debtors

TO: SERVICE LIST

TAB 2

Court File No. 35-2041153

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF MUSTANG GP LTD.**

Court File No. 35-2041155

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

Court File No. 35-2041157

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF HARVEST POWER MUSTANG GENERATION LTD.**

**AFFIDAVIT OF WAYNE H. DAVIS**

**(Sworn October 13, 2015)**

I, Wayne H. Davis of the City of Waltham, Commonwealth of Massachusetts,  
MAKE OATH AND SAY:

1. I am the Chief Executive Officer of Harvest Mustang GP Ltd., and as such, I have knowledge of the matters to which I hereinafter depose. Where information contained in this affidavit is based on information I have received from other sources, I have stated the source of that information, and in all such cases I believe that information to be true.
2. On September 29, 2015 (the "**Filing Date**"), Harvest Mustang GP Ltd. ("**Mustang GP**"), Harvest Ontario Partners Limited Partnership ("**Harvest Ontario**") and Harvest Power Mustang Generation Ltd. ("**Mustang Generation**", and collectively, the "**Debtors**") each filed a Notice of Intention to Make a Proposal (collectively, the "**NOIs**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") as amended. Deloitte Restructuring Inc. ("**Deloitte**") was named



proposal trustee in the Debtors' NOIs (the "**Proposal Trustee**"). Copies of the NOIs are collectively attached hereto as **Exhibit "A"**.

3. This affidavit is made in support of a motion by the Debtors for an order, *inter alia*:

- (a) administratively consolidating the Debtors' proposal proceedings;
- (b) authorizing the Debtors to enter into an Interim Financing Term Sheet (the "**DIP Term Sheet**") with StormFisher Environmental Ltd. (in this capacity, the "**DIP Lender**"), approving the DIP Term Sheet and granting the DIP Lender a super priority charge on all of the Debtors' property, assets and undertakings as security for all of the Debtors' obligations to the DIP Lender under the DIP Term Sheet;
- (c) granting a charge in an amount not to exceed \$150,000 in favour of the Debtors' legal counsel, the Proposal Trustee and its legal counsel (the "**Administration Charge**") to secure payment of their reasonable fees and disbursements;
- (d) granting a charge in an amount not to exceed \$2,000,000 in favour of the Debtors' directors and officers;
- (e) approving the process described herein for the sale and marketing of the Debtors' business and assets (the "**Sale Process**");
- (f) approving the agreement of purchase and sale between StormFisher Environmental Ltd. ("**SFE**") and the Debtors (the "**Stalking Horse APA**"); and
- (g) granting the Debtors an extension of time to make a proposal to creditors.

## THE DEBTORS

4. The Debtors are indirect subsidiaries of Harvest Power, Inc. (“**Harvest Power**”), a privately owned Delaware corporation established in 2008 that develops, builds, owns, and operates facilities that produce renewable energy and soil enhancement products from discarded organic materials. Harvest Power, through its subsidiaries, supplies soils, mulches, electricity and engineered fuels, among other products, to governments, communities, businesses, and individuals. A corporate chart of the Debtors is attached hereto as **Exhibit “B”**.

5. Mustang Generation was established in July 2010 for the purpose of acquiring certain assets related to an energy generation development opportunity in London, Ontario. On October 7, 2010, Mustang Generation purchased the property municipally known as 1087 Green Valley Road, London, Ontario (the “**Property**”) from London Biogas Generation Inc., a subsidiary of Stormfisher Ltd. (“**Stormfisher**”) in order to design, build, own and operate a biogas electricity generation facility (the “**Plant**”) on the Property (the “**London Project**”).

6. On November 10, 2011, the Harvest Ontario limited partnership was formed between Harvest Power Canada Ltd. (“**Harvest Canada**”), MustangGP and Waste Management of Canada Corporation (“**Waste Management**”). The partnership with Waste Management was formed to allow the Plant to accept organic waste in order to generate renewable electricity under a Power Purchase Agreement with Ontario Power Generation Inc. pursuant to the Renewable Energy Standard Offer Program (RESOP). After the partnership was established, Mustang Generation became a 100% owned subsidiary of Harvest Ontario and, in June 2012, Mustang Generation’s personal property, was transferred to Harvest Ontario. Mustang Generation remains the registered owner of the Property.

7. The Plant currently employs 12 part time and full time non-union employees.

## CREDITORS

### FCC AND 2478223 ONTARIO LIMITED

8. Until August 2015, Farm Credit Canada (“FCC”) was the senior secured creditor of the Debtors. As discussed in greater detail below, in August 2015, 2478223 Ontario Limited (a subsidiary of Harvest Canada) (“247”) purchased and took assignment of FCC’s debt and security (the “FCC Debt and Security”). Shortly prior to the Filing Date, SFE purchased and took assignment of the FCC Debt and Security from 247.

9. The following paragraphs summarize the FCC Debt and Security.

10. On May 2, 2011, Mustang Generation entered into a credit agreement with FCC to secure up to \$11,000,000 in construction financing to partially finance the completion of the Plant (the “FCC Loan”). At the time that Mustang Generation’s assets (other than the Property) were transferred to Harvest Ontario, the FCC Loan was amended, as of June 5, 2012 to substitute Harvest Ontario for Mustang Generation as the borrower. In December of 2013, the FCC Loan was converted from a demand facility to a 12 year term loan (“FCC Term Loan”). The FCC Term Loan is secured by a mortgage on the Property and by a first security interest on all of Harvest Ontario’s and Mustang Generation’s personal property used in connection with the operation of the Plant.

11. As additional security for the FCC Term Loan, FCC was granted an unlimited secured guarantee by Mustang Generation and a limited unsecured guarantee by Harvest Canada.

### BMO

12. As part of Harvest Ontario’s Environmental Compliance Approval, Harvest Ontario arranged for the issuance of an irrevocable standby letter of credit, issued by Bank of Montreal (“BMO”). The letter of credit provides for payment to the Ministry of Environment to fund the transportation, site clean-up, and disposal of all waste at the Property. Harvest Ontario was required to post 100% cash collateral with BMO in the approximate amount of \$400,000 in order to secure its reimbursement obligation to BMO

in the event the Ministry of Environment demanded payment from BMO under the standby letter of credit.

### **Other Secured Creditors**

13. I am advised by the Debtors' legal counsel, Chaitons LLP ("**Chaitons**") that Chaitons obtained searches from the Personal Property Security Registration System in the province of Ontario in respect of registrations under the *Personal Property Security Act* ("**PPSA**") which were outstanding against the Debtors as at October 13, 2015 and which disclose the particulars of the following registrations in order of registration:

- (a) Harvest Ontario:
  - (i) FCC in respect of all collateral classifications other than consumer goods. On August 12, 2015, 247 filed change statement to reflect the assignment of FCC's Debt and Security to 247;
  - (ii) BMO in respect of accounts.
- (b) Mustang Generation:
  - (i) FCC in respect of all collateral classifications other than consumer goods. On August 12, 2015, 247 filed change statement to reflect the assignment of FCC's Debt and Security to 247;
  - (ii) BMO in respect of accounts; and
  - (iii) Roynat Inc. in respect of certain equipment.

14. There are no registrations outstanding against Mustang GP. Copies of the PPSA searches against Harvest Ontario, Mustang Generation and Mustang GP are attached hereto as **Exhibits "C" to "E"**.

15. I am advised by Chaitons that a title search for the Property discloses, among other things, the following registrations:

- (a) a first ranking charge registered on February 28, 2012 in favour of FCC securing the principal amount of \$11,000,000, transferred to 247 by way of a transfer of charge registered on August 14, 2015 and transferred to SFE by way of a transfer of charge registered on October 8, 2015; and
- (b) a construction lien in the principal amount of \$239,191 registered by Badger Daylighting Limited Partnership (“**Badger**”) on July 2, 2015. The validity and priority of the Badger lien is disputed by the Debtors and 247.

A copy of the title search for the Property dated October 13, 2015 is attached hereto as **Exhibit “F”**.

### **Related Party Loans**

16. Harvest Power and its various subsidiaries have made loans to the Debtors in the total approximate amount of \$4.1 million to fund the Debtors’ working capital. These loans are unsecured, non-interest bearing and have no fixed terms of repayment. In addition, Harvest Power and its subsidiaries provide the Debtors with a number of services, including bookkeeping and human resources, for which the Debtors historically never made payments.

17. In addition to the unsecured loans made by Harvest Power and its various subsidiaries, Harvest Power and its subsidiaries have invested in excess of \$8.9 million in the Debtors by way of equity.

### **THE DEBTORS’ FINANCIAL DIFFICULTIES**

18. The Debtors retained GL&V Canada Inc., Ovivo Division (“**Ovivo**”) as a general contractor for the construction of the Plant. As a result of design issues, cost overruns and delays, the substantial completion of the Plant’s construction was delayed by almost one year to April 2013. Furthermore, some elements of construction were never completed, which has caused production issues for the Plant.

19. As a consequence of the delays and other issues, the Debtors' refused to pay certain amounts claimed by Ovivo and Ovivo commenced an action against the Debtors in 2013 for payment of in excess of \$10,000,000 and registered a lien against the Property (the "**Ovivo Litigation**"). The Ovivo Litigation proceeded to arbitration and was ultimately settled earlier this year. As a result of that settlement, Ovivo received a payment of just over \$1,000,000 from the holdback held by Harvest Ontario on or about February 17, 2015 and received a 24% limited partnership interest in Harvest Ontario.

20. The Debtors experienced significant launch challenges as a consequence of delays in the Plant's construction, together with other issues such as slower than expected feedstock acquisition, higher than anticipated labour costs and significant delays in obtaining approval from the Canadian Food Inspection Agency for marketing and sale of the fertilizer produced at the Plant. In addition, the litigation costs associated with the Ovivo Litigation caused a substantial drain on the Debtors' working capital resources.

21. As a consequence of the issues identified above, the Plant revenue in 2013 and 2014 fell substantially short of expectations. The Plant has not met its production expectations, has had negative EBITDA every year since commencing operations and is no longer projected to realize its long term financial targets without significant new investment. For the year to date time period ending September 2015, the Debtors had an operating loss of approximately \$4.8 million.

22. The Debtors had advised FCC of the Ovivo Litigation and the settlement thereof. The Ovivo Litigation was a technical breach of the FCC security documents. In addition, Harvest Ontario defaulted on its interest payments due to inadequate cash flow. As a result, on or about January 30, 2015, Harvest Ontario and FCC entered into a waiver of defaults and an agreement that Harvest Ontario would have an interest payment holiday for 90 days. Shortly after the waiver document was signed, FCC began a process to find a party to acquire the debt and security of Harvest Ontario. That process started on or about February of 2015 and culminated in July of 2015 with no third parties providing an offer that FCC considered to be acceptable.

23. Given the likely complete loss on its equity and unsecured claims in Harvest Ontario, in early 2015, Harvest Power advised the Debtors that they were not prepared to continue to fund their operating losses. In the absence of Harvest Power's continued financial support, the Debtors are unable to continue to carry on business.

24. As a consequence of the foregoing, the Debtors began to consider their alternatives, including commencement of a BIA proposal process and a process for the sale of their business. The Debtors were working with FCC throughout this time, including in assisting with its efforts to sell the FCC Debt and Security. In June of 2015, the Debtors inquired, among other things, if FCC was prepared to fund a restructuring process that would include a process to solicit a going concern sale of the Debtors' business. FCC advised the Debtors that it was not prepared to provide additional financing and instead continued with its process to sell its debt and security.

25. On July 9, 2015, FCC demanded payment of the FCC Term Loan from Harvest Ontario and served a Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA.

26. Subsequently, on August 7, 2015, 247, purchased all of FCC's right, title and interest in and to the debt and security held by FCC at a substantial discount, pursuant to an Assignment of Debt and Security Interest dated as of August 7, 2015. A copy of the redacted Assignment of Debt and Security Interest is attached hereto as **Exhibit "G"**. Shortly after the assignment, 247 released Harvest Canada from its limited recourse guarantee of the debt and security that 247 had purchased.

27. Stormfisher was the party that conceived of the London Project, had commenced it and had subsequently sold the assets for the London Project to Mustang Generation. Stormfisher had remained close to the Harvest Power group throughout the intervening period and, in fact, certain of the Stormfisher personnel had in the past worked on a contract basis for Harvest Power, Inc. Stormfisher was aware of the financial difficulties facing the Debtors and had participated in the debt sale process which FCC had run. Shortly after 247 acquired the FCC Debt and Security, 247 was advised by Stormfisher that it was interested in purchasing the FCC Debt and Security in the hopes of acquiring

the Debtors' business. Stormfisher also advised that it was prepared to participate in the Debtors' sale process as a stalking horse bidder and a DIP lender.

28. On September 25, 2015, 247 assigned all of its debt and security to SFE, a subsidiary of Stormfisher established for the purpose of purchasing the Debtors' assets. The FCC Debt and Security was purchased by SFE at a substantial discount and included a cash component, a promissory note and a minority equity interest in SFE. A copy of the assignment agreement is attached hereto as **Confidential Exhibit "1"**.

29. On September 29, 2015, the Debtors commenced these proceedings under the BIA for the purpose of conducting a process for the sale of the Debtors' business as a going-concern with SFE standing as a stalking horse bidder. Given the lack of success of the debt sale process run by FCC, and the Debtors' knowledge of the difficulties facing the renewable energy industry in general and the concerns facing the Debtors in particular, the Debtors believe that it is necessary and appropriate to have a stalking horse bidder in place to backstop a sales process, and for that reason have agreed to work with SFE to attempt to conduct such a sales process and, ultimately, a going concern sale transaction to maintain the Plant in operation.

## **DIP LOAN**

30. The Debtors, with the assistance of the Proposal Trustee, prepared a consolidated cash flow forecast for the time period commencing September 25, 2015 through to December 25, 2015 (the "**Cash Flow**"). The Cash Flow demonstrates that the Debtors will require additional funds to enable them to carry on business during the restructuring process and fund the Sale Process, working capital and the costs of these proceedings. A copy of the Cash Flow is attached hereto as **Exhibit "H"**.

31. SFE, in its capacity as the proposed DIP Lender has offered to make available to the Debtors a debtor-in possession loan in the maximum amount of \$1,000,000 (the "**DIP Loan**") pursuant to the terms of the DIP Term Sheet, substantially in the form attached hereto as **Exhibit "I"**, to fund the cash shortfall anticipated in the Cash Flow.



32. It is a fundamental term of the DIP Term Sheet that the Court grant an order on terms acceptable to the DIP Lender which, among other things, grants the DIP Lender a charge, which shall rank behind the Administration Charge and the D&O Charge (each as defined below), but in priority to all other claims and encumbrances (the “**DIP Charge**”).

33. The Debtors believe that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, the Debtors will not be able to conduct the Sale Process and will be forced to immediately shut down the Plant and commence a liquidation of its assets.

#### **ADMINISTRATIVE PROFESSIONAL CHARGE**

34. In order to protect the fees and expenses of each of the Debtors’ legal counsel, the Proposal Trustee and counsel for the Proposal Trustee, the Debtors seek a charge on their property and assets in an amount of \$150,000, ranking in priority to all claims and encumbrances, including the DIP Charge and the D&O Charge.

#### **D&O CHARGE**

35. As part of these proceedings, the Debtors are seeking a charge on their property and assets in favour of their directors and officers in the amount not to exceed \$2,000,000 ranking in priority to all other claims and encumbrances, with the exception of the Administration Charge (the “**D&O Charge**”) as security for the Debtors’ indemnification for possible liabilities that may be incurred by the directors and officers of the Debtors after the filing date, including wages, vacation pay, source deductions and environmental liabilities.

36. In the event a going concern sale of the Debtors’ business to the Stalking Horse Bidder or another purchaser is not completed, the Debtors will be required to conduct an orderly wind down of the Plant’s operations.

37. A wind-down or shut down of the Plant may cause substantial environmental issues which need to be remedied in accordance with Ministry of Environment’s guidelines. In particular, the methane gas produced as a result of the anaerobic digestion

process will need to be properly cared for by either fueling the Plant's engines with such methane gas to produce electricity or flaring such methane gas. Additionally, the agricultural by-product from the anaerobic digestion process will need to be safely disposed of in accordance with the guidelines and regulations prescribed by the Ministry of Environment. Further the Plant's equipment, including tunnels and tanks will require safe and appropriate cleaning of residual material.

38. Attached hereto as **Exhibit "J"** is an insurance policy obtained by Harvest Power, which extends to its subsidiaries and directors and officers of the subsidiaries.

39. The existing insurance policy may not be sufficient to cover the Debtors' director and officer employment and environmental liabilities in the event of the Plant's closure.

40. There is a risk that without the D&O Charge, the Debtors' directors and officers might resign from their positions which would jeopardize these proceedings. The Debtors believe that the quantum of the proposed D&O Charge is reasonable given the circumstances.

#### **SALE PROCESS AND STALKING HORSE AGREEMENT**

41. The Debtors, in consultation with the Proposal Trustee, and subject to the approval of this Court, developed a sale process described in the Proposal Trustee's First Report to the Court (the "**Sale Process**"). The Sale Process will be administered by the Debtors with the assistance of the Proposal Trustee. As part of the Sales Process, the Debtors will enter into the Stalking Horse APA, substantially in the form attached hereto as **Exhibit "K"** which establishes the floor price for the Debtors' business and assets.

42. SFE (in this capacity, the "**Stalking Horse Purchaser**") is prepared to purchase the business and assets of the Debtors on a going-concern basis pursuant to the terms of the Stalking Horse APA for a purchase price equal to: (i) \$250,000 of the Debtors' total secured obligations to SFE (plus the DIP Loan); (ii) any amounts ranking in priority to SFE's security, including the amounts secured by: (a) the Administration Charge; (b) the D&O Charge; (c) the amount estimated by the Proposal Trustee to be the aggregate fees, disbursements and expenses for the period from and after closing of the transaction for the sale

the Debtors' business to the completion of the BIA Proceedings and the discharge of Deloitte Restructuring Inc. as trustee in bankruptcy of estate of the Debtors. It is my understanding, based upon the discussions between 247 and SFE, that SFE is prepared to credit bid up to the entire amount of the pre-filing debt and the DIP Loan under the Stalking Horse APA, if necessary to acquire the assets of the Debtors.

43. The following is a summary of the Sale Process and material milestones. All terms not otherwise defined herein, shall have the meaning assigned to such terms in the Stalking Horse APA:

- (a) Sale Process will be commenced immediately following the date of the order approving same (the "**Sale Process Approval Date**").
- (b) Commencing immediately after the Sale Process Approval Date, the Debtors and the Proposal Trustee will contact prospective purchasers and will provide a teaser summary of the Debtors' business in order to solicit interest ("**Teaser**"). The Proposal Trustee will obtain a Non-disclosure Agreement ("**NDA**") from interested parties who wish to receive a Confidential Information Memorandum ("**CIM**") and undertake due diligence. Following the execution of an NDA, the Proposal Trustee will provide access to an electronic data room ("**Data Room**") to prospective purchasers.
- (c) At the request of interested parties, the Proposal Trustee will facilitate plant tours and management meetings.
- (d) Shortly following the Sale Process Approval Date, the Proposal Trustee will advertise the opportunity in The Globe & Mail – National edition.
- (e) Bid deadline for prospective purchasers will be 35 days following the Sale Process Approval Date (the "**Bid Deadline**"). Any qualified bid must be accompanied by a cash deposit of 10% of the purchase price.

- (f) The Debtors together with the Proposal Trustee will review all Superior Bids received to determine which Superior Bid it considers to be the most favourable and will then notify the successful party that its Superior Bid has been selected as the winning bid (the “**Winning Bidder**”). Upon the selection of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Debtors.
- (g) If one or more Superior Bid is received, the Debtors shall make a motion to the Court within 7 Business Days following the selection of the Winning Bidder (the “**Sale Approval Date**”) for an order approving the agreement of purchase and sale between the Winning Bidder and the Debtors (the “**Winning APA**”) and to vest the Assets in the Winning Bidder.
- (h) Closing of the Winning APA will take place within 1 business day from the Sale Approval Date.
- (i) In the event that a Superior Bid is not received by the Bid Deadline, the Debtors will bring a motion as soon as possible following the Bid Deadline for an order approving the Stalking Horse APA.

#### **STAY EXTENSION**

44. Under the BIA, the stay of proceedings will expire on October 29, 2015. The Debtors are acting in good faith and with due diligence in seeking to preserve their business on a going concern basis for the benefit of all of their stakeholders.

45. In order to commence and advance the Sale Process, the Debtors are seeking an extension of time to file a proposal for 45 days or until December 11, 2015.

46. Without the extension the Debtors will not be in a position to make a viable proposal to their creditors and will become bankrupt to the detriment of their stakeholders. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. The extension is supported by SFE and the Proposal Trustee. If

the extension applied for is granted, the Debtors would likely be able to make a viable proposal to their creditors following the completion of the Sale Process.

**ADMINISTRATIVE CONSOLIDATION**

47. The Debtors will seek an order administratively consolidating their proposal proceedings. The relief is sought by the Debtors to avoid a multiplicity of proceedings and unnecessary costs. The Debtors operate essentially as one integrated entity with all of their administrative, human resource and financial functions performed on a consolidated basis. Mustang GP, as the general partner of Harvest Ontario, is liable for all of Harvest Ontario's obligations. Harvest Ontario and Mustang Generation have the same secured creditors and secured obligation.

48. I swear this affidavit in support of the Debtors' motion for the relief set out in paragraph 3 of this Affidavit.

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF Middlesex

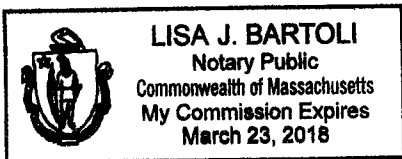
I HEREBY CERTIFY that on this 13 day of October, 2015, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Wayne D. Davis, who acknowledged himself/herself to be the CEO of Harvest Mustang GP Ltd., and that he/she, as such CEO, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Witness my hand and Notarial Seal.

Lisa J. Bartoli

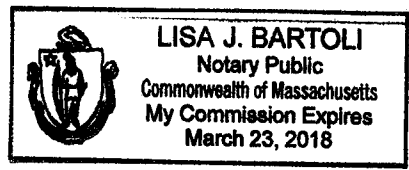
Notary Public  
My commission expires 03/23/2018

Wayne H. Davis  
WAYNE H. DAVIS



THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

  
\_\_\_\_\_  
A NOTARY PUBLIC





**Industry Canada**  
**Office of the Superintendent**  
**of Bankruptcy Canada**

**Industrie Canada**  
**Bureau du surintendant**  
**des faillites Canada**

District of Ontario  
Division No. 05 - London  
Court No. 35-2041157  
Estate No. 35-2041157

In the Matter of the Notice of Intention to make a proposal of:

**Harvest Power Mustang Generation Ltd.**  
Insolvent Person

**DELOITTE RESTRUCTURING INC/RESTRUCTURATION**  
**DELOITTE INC**  
Trustee

---

Date of the Notice of Intention: September 29, 2015

---

**CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL**  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: September 29, 2015, 14:08

E-File/Dépôt Electronique

Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902





Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 05 - London  
Court No. 35-2041155  
Estate No. 35-2041155

In the Matter of the Notice of Intention to make a  
proposal of:

**Harvest Ontario Partners Limited Partnership**  
Insolvent Person

**DELOITTE RESTRUCTURING INC/RESTRUCTURATION**  
**DELOITTE INC**  
Trustee

Date of the Notice of Intention: September 29, 2015

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: September 29, 2015, 14:07

E-File/Dépôt Electronique

Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902







Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 05 - London  
Court No. 35-2041153  
Estate No. 35-2041153

In the Matter of the Notice of Intention to make a  
proposal of:

**Harvest Mustang GP Ltd.**  
Insolvent Person

**DELOITTE RESTRUCTURING INC/RESTRUCTURATION  
DELOITTE INC**  
Trustee

Date of the Notice of Intention: September 29, 2015

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: September 29, 2015, 14:06

E-File/Dépôt Electronique

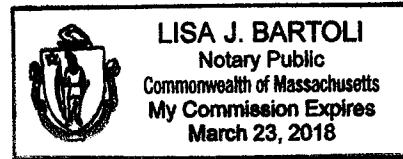
Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902



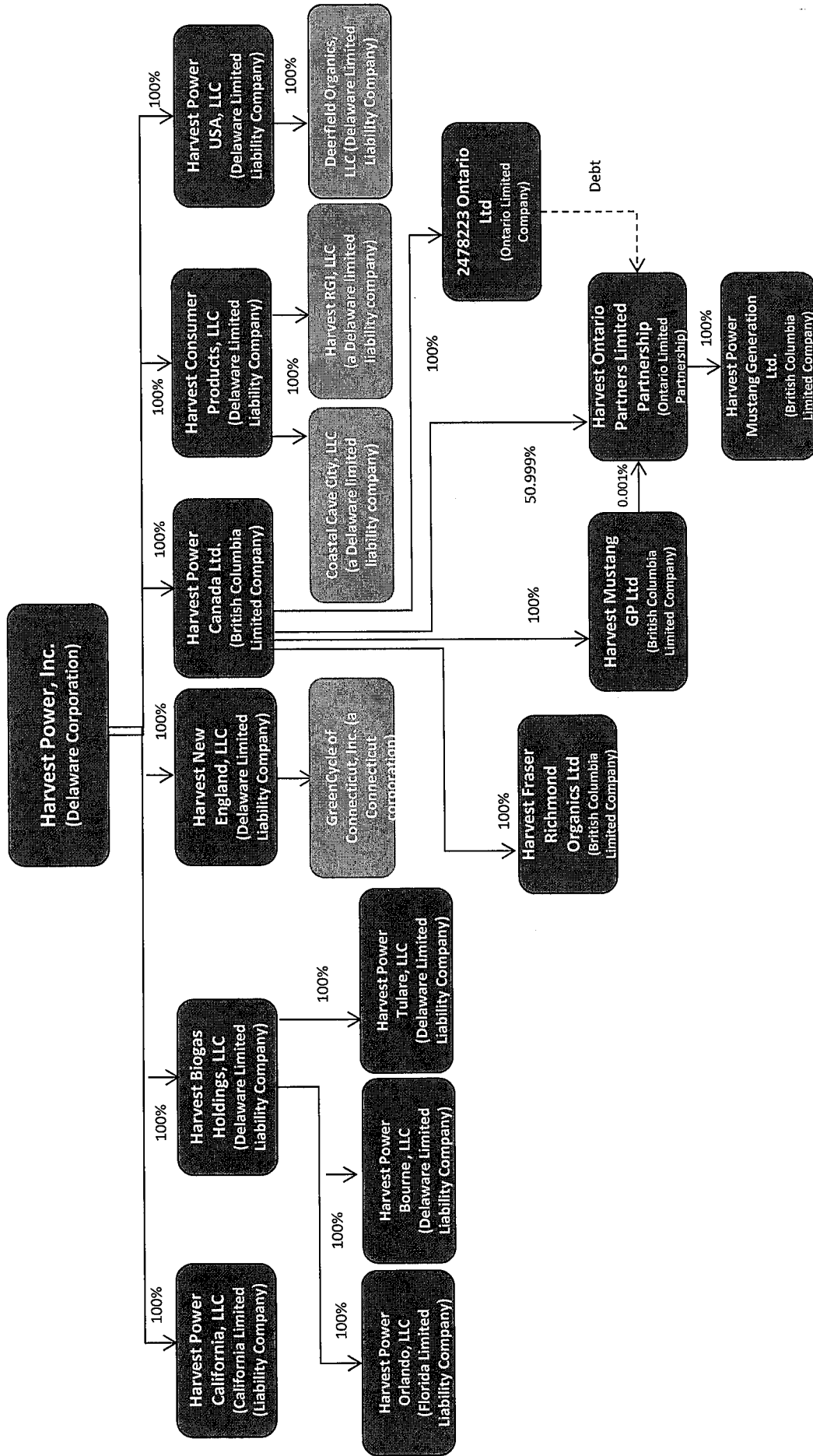
THIS IS **EXHIBIT "B"** REFERRED TO IN THE  
AFFIDAVIT OF **WAYNE H. DAVIS**  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

*Lisa J. Bartoli*  
\_\_\_\_\_  
A NOTARY PUBLIC





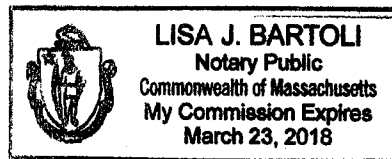
Corporate Structure as of 9/1/15



THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

*Lisa J. Bartoli*

A NOTARY PUBLIC



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154226.65

REPORT : PSSR060  
PAGE : 1  
( 5250)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

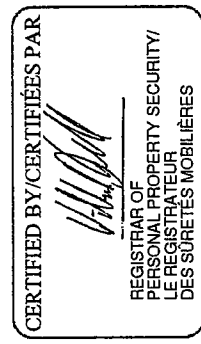
SEARCH CONDUCTED ON : HARVEST MUSTANG GP LTD.

FILE CURRENCY : 12OCT 2015

ENQUIRY NUMBER 20151013154226.65 CONTAINS 1 PAGE(S), 0 FAMILY(IES).

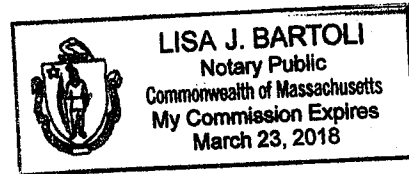
NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

CHATTONS LLP - LYNN LEE  
5000 YONGE STREET, 10TH FLOOR,  
TORONTO ON M2N 7E9



THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

*Lisa J. Bartoli*  
A NOTARY PUBLIC



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 5268)

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154649.32

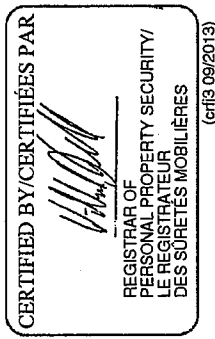
THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
FILE CURRENCY : 12OCT 2015

ENQUIRY NUMBER 20151013154649.32 CONTAINS 10 PAGE(S), 2 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

CHALTONS LLP - LYNN LEE  
5000 YONGE STREET, 10TH FLOOR,  
TORONTO ON M2N 7E9



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 2  
 ( 5269)

RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154649.32

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
 FILE CURRENCY : 12 OCT 2015

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER : 681697395

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
 FILING NO. OF PAGES NO. OF PAGES NUMBER UNDER PERIOD PERIOD  
 001 1 20120925 1705 1532 6454 P PPSA 5

DATE OF BIRTH : [REDACTED] INITIAL SURNAME : [REDACTED]  
 BUSINESS NAME : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
 ADDRESS : 221 CRESCENT STREET SUITE 402 WALTHAM

ONTARIO CORPORATION NO. : MA 02453

DATE OF BIRTH : [REDACTED] INITIAL SURNAME : [REDACTED]  
 BUSINESS NAME : [REDACTED]  
 ADDRESS : [REDACTED]

ONTARIO CORPORATION NO. : [REDACTED]

SECURED PARTY / LIEN CLAIMANT : BANK OF MONTREAL/BANQUE DE MONTREAL  
 ADDRESS : 2ND FLOOR, 234 SIMCOE ST. TORONTO ON M5T 1T4

COLLATERAL CLASSIFICATION : CONSUMER  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED : X  
 MOTOR VEHICLE AMOUNT : [REDACTED] DATE OF MATURITY OR NO FIXED MATURITY DATE : [REDACTED]

YEAR MAKE : [REDACTED] MODEL : [REDACTED] VEHICLE : [REDACTED]

GENERAL COLLATERAL DESCRIPTION : PLEDGE OF INSTRUMENT AND ASSIGNMENT OF PROCEEDS.  
 COLLATERAL DESCRIBED AS ? REDEEMABLE SHORT TERM INVESTMENT  
 CERTIFICATE 0348-9794-929? IN THE PRINCIPAL AMOUNT OF 7\$397,587.00?

REGISTERING AGENT : CSRS  
 ADDRESS : 4126 NORLAND AVE BURNABY BC V5G 3S8

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*  
 CONTINUED ... 3

CERTIFIED BY/CERTIFIÉES PAR  
 REGISTRAR OF PERSONAL PROPERTY SECURITY / LE REGISTREUR DES SÛRETÉS MOBILIÈRES  
 (crljfs 09/2013)





RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154649.32

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
( 5270)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
FILE CURRENCY : 12OCT 2015

FORM 2C FINANCING CHANGES STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER  
01 004 20130925 1936 1531 3238  
RECORD FILE NUMBER 681697395  
CORRECT PERIOD

PAGE AMENDED NO SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL  
01 X A AMENDMENT YEARS

REFERENCE DEBTOR/ TRANSFEROR FIRST GIVEN NAME INITIAL SURNAME

23 BUSINESS NAME HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP

25 OTHER CHANGE AMEND DEBTOR'S NAME FROM HARVEST ONTARIO LIMITED PARTNERSHIP TO  
26 REASON/ DESCRIPTION HARVEST POWER MUSTANG GENERATION LTD.  
27 AMEND DEBTOR'S ADDRESS FROM 221 CRESCENT STREET, SUITE 402, WALTHAM,  
28 DATE OF BIRTH FIRST-GIVEN-NAME INITIAL SURNAME

02/ DEBTOR/ TRANSFEROR BUSINESS-NAME HARVEST POWER MUSTANG GENERATION LTD.  
03/ ADDRESS 1300 - 777 DUNSMUIR STREET VANCOUVER  
04/07 ONTARIO CORPORATION NO. V7Y-1K2

29 ASSIGNOR SECURED PARTY/LIEN-CLAIMANT/ASSIGNEE

08 COLLATERAL CLASSIFICATION ADDRESS  
09 CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MOTOR VEHICLE DATE OF NO. FIXED  
MATURETY OR MATURITY DATE

10 YEAR MAKE MODEL V.I.N.  
11 MOTOR VEHICLE DELETE  
12 GENERAL PLEDGE OF INSTRUMENT AND ASSIGNMENT OF PROCEEDS.  
13 COLLATERAL COLLATERAL DESCRIBED AS ?REDEEMABLE SHORT TERM INVESTMENT  
14 DESCRIPTION CANADIAN SECURITIES REGISTRATION SYSTEMS  
15 REGISTERING AGENT OR ADDRESS 4126 NORLAND AVENUE  
16 SECURED PARTY/ LIEN CLAIMANT BURNABY BC V5G 3S8

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*  
CONTINUED...

CERTIFIED BY/CERTIFIÉES PAR  
REGISTRAR OF PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR DES SURETES MOBILIERES  
(e/2e 09/2013)



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 4  
 ( 5271)

RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 2015101315154649.32

BUSINESS DEBTOR  
 HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
 12 OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER  
 02 004 20130925 1936 1531 3238

21 RECORD FILE NUMBER 681697395  
 REFERENCED PAGE-AMENDED NO SPECIFIC PAGE-AMENDED CHANGE-REQUIRED RENEWAL CORRECT  
 PERIOD

22 REFERENCE DEBTOR/ TRANSFEROR FIRST-GIVEN-NAME INITIAL SURNAME

23 REFERENCE DEBTOR/ TRANSFEROR BUSINESS-NAME

25 OTHER CHANGE REASON/ DESCRIPTION MA 02453 TO 1300 - 777 DUNSMUIR STREET,  
 VANCOUVER, BC V7Y 1K2

26 REASON/ DESCRIPTION DELETE AND ADD GENERAL COLLATERAL DESCRIPTION  
 02/ DATE-OF-BIRTH FIRST-GIVEN-NAME INITIAL SURNAME

05 DEBTOR/ TRANSFEROR BUSINESS-NAME

03/ TRANSFEROR BUSINESS-NAME

06 ADDRESS

04/07 ONTARIO CORPORATION NO

29 ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNER ADDRESS

08 COLLATERAL CLASSIFICATION ADDRESS

09 CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MOTOR VEHICLE DATE OF NO. FIXED  
 YEAR MAKE MODEL V-I-N- AMOUNT MATURITY OR MATURITY DATE

10 MOTOR VEHICLE GENERAL COLLATERAL ADD PLEDGE OF INSTRUMENT AND ASSIGNMENT OF PROCEEDS

11 CERTIFICATE 0348-9794-929? IN THE PRINCIPAL AMOUNT OF ?\$397,587.00?

12 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS

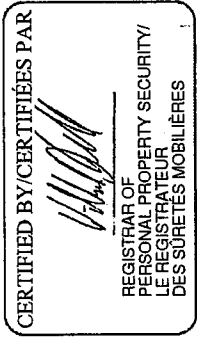
13 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS

14 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS

15 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS

16 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS

17 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS



\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154649.32

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 5  
( 5272)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
FILE CURRENCY 12OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER

03 004 20130925 1936 1531 3238

01 RECORD KFILE NUMBER 681697395

PAGE-AMENDED NO-SPECIFIC-PAGE-AMENDED CHANGE-REQUIRED RENEWAL CORRECT  
004 000 000 000 YEARS PERIOD

REFERENCE DEBTOR/ TRANSFEROR FIRST-GIVEN-NAME INITIAL SURNAME

23 REFERENCE DEBTOR/ TRANSFEROR BUSINESS NAME

25 OTHER CHANGE REASON/ DESCRIPTION DATE OF BIRTH FIRST-GIVEN-NAME INITIAL SURNAME

02/ 05 DEBTOR/ TRANSFEREE BUSINESS NAME ADDRESS

03/ 06 TRANSFEREE BUSINESS NAME ADDRESS

29 ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNEE

ONTARIO CORPORATION NO.

08 COLLATERAL CLASSIFICATION CONSUMER ADDRESS

09 GOODS INVENTORY-EQUIPMENT ACCOUNTS OTHER INCLUDED MOTOR VEHICLE DATE OF NO. FIXED  
Maturity OR Maturity Date

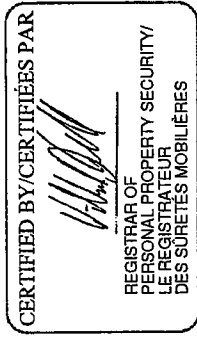
10 YEAR MAKE MODEL V-I-N-

11 MOTOR VEHICLE COLLATERAL DESCRIBED AS REDEEMABLE SHORT TERM INVESTMENT CERTIFICATE  
12 GENERAL 0348-9794-929 IN THE PRINCIPAL AMOUNT OF \$397,587.00 INCLUDING ALL  
13 COLLATERAL RENEWALS AND REPLACEMENTS THEREOF, SUBSTITUTIONS THEREFOR,  
14 DESCRIPTION REINSURING AGENT OR

15 SECURED PARTY/ LIEN CLAIMANT ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 6  
 ( 5273 )

RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154649.32

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
 FILE CURRENCY : 12OCT 2015


FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO.	TOTAL NO. OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	04	004		20130925 1936 1531 3238	
21		FILE NUMBER	681697395		
22		PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	CORRECT PERIOD
23		REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME
24		DEBTOR/TRANSFEROR	BUSINESS NAME	INITIAL	SURNAME
25		OTHER CHANGE REASON/DESCRIPTION	DATE OF BIRTH	FIRST GIVEN NAME	SURNAME
26					
27					
28					
02/05		DEBTOR/TRANSFEREE	BUSINESS NAME	INITIAL	SURNAME
03/06			ADDRESS		
04/07					ONTARIO CORPORATION NO.
29		ASSIGNOR SECURED PARTY/LEEN CLAIMANT/ASSIGNEE			
08					
09		COLLATERAL CLASSIFICATION	ADDRESS		
		CONSUMER			
		GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER			
10					DATE OF MATURITY OR MATURITY DATE
		YEAR	MAKE	MODEL	V.I.N.
11		MOTOR VEHICLE			
12		GENERAL			
13		COLLATERAL			
14		DESCRIPTION			
15		REGISTERING AGENT OR SECURED PARTY/LEEN CLAIMANT			
16					
17					

ACCRETIONS THEREOF AND INTEREST, INCOME AND MONEY THEREFROM AND ALL PROCEEDS THEREOF AND THEREFROM INCLUDING ACCOUNTS.

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

CERTIFIED BY/CERTIFIÉES PAR  
  
 REGISTRAR OF PERSONAL PROPERTY SECURITY / LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES  
 (e/25 09/2013)



RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154649.32

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 7  
( 5274 )

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
FILE CURRENCY : 12 OCT 2015

FORM IC FINANCING STATEMENT / CLAIM FOR LITEN

00 FILE NUMBER  
578764502

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
001 001 20120530 1619 1862 0047 P PFSA 6

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.  
03 NAME BUSINESS NAME HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP MA 02453  
04 ADDRESS 221 CRESCENT STREET, SUITE 402 WALTHAM

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.  
06 NAME BUSINESS NAME FARM CREDIT CANADA  
07 ADDRESS 200 - 1133 ST. GEORGE BOULEVARD MONCTON NB E1E 4E1

08 SECURED PARTY / LITEN CLAIMANT FARM CREDIT CANADA  
09 ADDRESS 200 - 1133 ST. GEORGE BOULEVARD MONCTON NB E1E 4E1

10 COLLATERAL CLASSIFICATION  
CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X X

11 YEAR MAKE MODEL VEHICLE


12 MOTOR VEHICLE

13 GENERAL  
14 COLLATERAL DESCRIPTION  
15

16 REGISTERING HARRISON PENZA LLP (152463/TSR) LONDON ON N6A 5J6  
17 AGENT ADDRESS 450 TALBOT STREET

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 8

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF PERSONAL PROPERTY SECURITY / LE REGISTRATEUR DES SOCIÉTÉS MOBILIÈRES  
(en fs 09/2013)



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154649.32

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
FILE CURRENCY : 12OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER  
001 2 20150812 1344 1590 1375  
CORRECT PERIOD

21 RECORD REFERENCED FILE NUMBER 678764502  
PAGE AMENDED NO. SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL  
001 2 20150812 1344 1590 1375 D ASSIGNMENT YEARS  
CORRECT PERIOD

22 REFERENCE DEBTOR/TRANSFEROR FIRST GIVEN NAME BUSINESS NAME INITIAL SURNAME  
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP

25 OTHER CHANGE REASON/DESCRIPTION DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
26 27 28

02/05 DEBTOR/TRANSFEREE BUSINESS NAME ADDRESS FIRST GIVEN NAME INITIAL SURNAME  
03/06 04/07

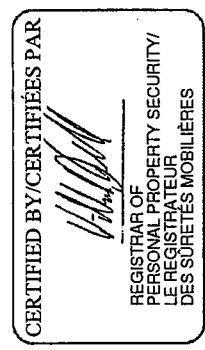
29 ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNEE FARM CREDIT CANADA 2478223-ONTARIO-LIMITED  
08 09 ADDRESS 333 BAY STREET, BAY ADELAIDE CENTRE, TORONTO ON M5H 2S7

10 COLLATERAL CLASSIFICATION ADDRESS MOTOR VEHICLE DATE OF NO. FIXED  
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED AMOUNT MAJORITY OR MATURITY DATE  
YEAR MAKE MODEL V.I.N.

11 MOTOR VEHICLE GENERAL DESCRIPTION REGISTERING AGENT OR ADDRESS ADDRESS ADDRESS ADDRESS  
12 13 14 15 16 17 GOODMANS LLP (JL/MB) 3400-333 BAY STREET, BAY ADELAIDE CENTRE TORONTO ON M5H 2S7

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*  
CONTINUED...

ONTARIO CORPORATION NO.



(r/2fs 09/2013)

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154649.32

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 9  
( 5276)

TYPE OF SEARCH BUSINESS DEBTOR

SEARCH CONDUCTED ON HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
FILE CURRENCY 12OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER

01 002 2 20150812 1344 1590 1375

21 RECORD FILE NUMBER 678764502

RENEWAL CORRECT  
YEARS PERIOD

PAGE AMENDED NO. SPECIFIC PAGE AMENDED CHANGE REQUIRED

FIRST GIVEN NAME INITIAL SURNAME

23 REFERENCE DEBTOR/ TRANSFEROR BUSINESS NAME

25 OTHER CHANGE REASON/ DESCRIPTION

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

02/ 05 DEBTOR/ TRANSFEROR BUSINESS NAME ADDRESS

ONTARIO CORPORATION NO.

29 ASSIGNOR SECURED PARTY/ LIEN CLAIMANT/ ASSIGNEE

SUITE 3400

08 09 COLLATERAL CLASSIFICATION CONSUMPTIBLE GOODS

DATE OF MOTOR VEHICLE NO. FIXED  
Maturity of MAJORITY OF MATURITY DATE

10 YEAR MAKE MODEL V. I. N.

11 MOTOR VEHICLE GENERAL

13 COLLATERAL DESCRIPTION

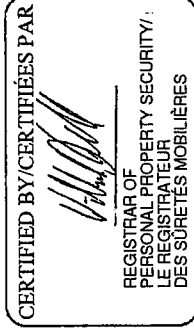
15 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS

ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED ...

10



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 10  
 ( 5277)

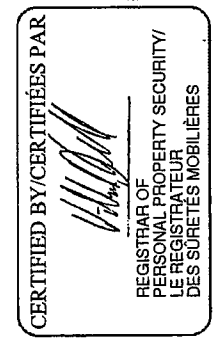
RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154649.32

TYPE OF SEARCH : BUSINESS DEPTOR  
 SEARCH CONDUCTED ON : HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
 FILE CURRENCY : 12OCT 2015

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
681697395	20120925 1705 1532 6454	20130925 1936 1531 3238	
678764502	20120530 1619 1862 0047	20150812 1344 1590 1375	

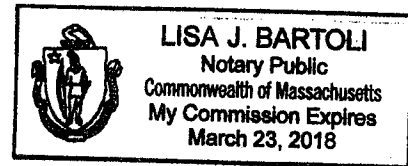
4 REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.





THIS IS **EXHIBIT "E"** REFERRED TO IN THE  
AFFIDAVIT OF **WAYNE H. DAVIS**  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

  
\_\_\_\_\_  
A NOTARY PUBLIC



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154622.39

REPORT : PSSR060  
PAGE : 1  
( 5251)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

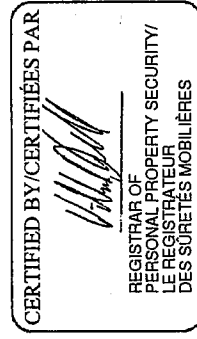
SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.

FILE CURRENCY : 12OCT 2015

ENQUIRY NUMBER 20151013154622.39 CONTAINS 17 PAGE(S), 4 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

CHAITONS LLP - LYNN LEE  
5000 YONGE STREET, 10TH FLOOR,  
TORONTO ON M2N 7E9



CONTINUED . . . 2



TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER : 683357864

CAUTION PAGE : 001  
 TOTAL NO. OF PAGES : 2  
 MOTOR VEHICLE REGISTRATION NUMBER : 20121205 1255 1902 4627  
 REGISTERED UNDER PERIOD : P PPSA 06

DATE OF BIRTH : [REDACTED]  
 INITIAL SURNAME : [REDACTED]

BUSINESS NAME : HARVEST POWER MUSTANG GENERATION LTD.  
 ADDRESS : 1087 GREEN VALLEY RD. MITCHELL

DATE OF BIRTH : [REDACTED]  
 INITIAL SURNAME : [REDACTED]

BUSINESS NAME : [REDACTED]  
 ADDRESS : [REDACTED]

SECURED PARTY / LIEN CLAIMANT : ROYNAT INC.  
 ADDRESS : SUITE 1500, 4710 KINGSWAY ST. BURNABY BC V5H 4M2

COLLATERAL CLASSIFICATION : CONSUMER  
 MOTOR VEHICLE AMOUNT : [REDACTED] NO. FIXED : [REDACTED]

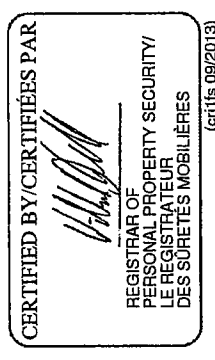
YEAR MAKE : 2009 PEREX  
 MODEL : [REDACTED] VIN : [REDACTED]

GENERAL COLLATERAL DESCRIPTION : WHEEL LOADER(S) TOGETHER WITH ALL ATTACHMENTS ACCESSORIES ACCESSIONS REPLACEMENTS SUBSTITUTIONS ADDITIONS AND IMPROVEMENTS THERETO AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY SALE

REGISTERING AGENT : AVS SYSTEMS INC.  
 ADDRESS : 201 - 1325 POLSON DR. VERNON BC V1T 8H2

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED ... 3



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
FILE CURRENCY : 12 OCT 2015

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 683352864

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
002 2 20121205 1255 1902 4627

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.

03 NAME BUSINESS NAME ADDRESS

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.

06 NAME BUSINESS NAME ADDRESS

07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT ADDRESS

09 ADDRESS

10 COMPLEATRAL CLASSIFICATION MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.L.N.

12 VEHICLE

13 GENERAL AND OR DEALINGS WITH THE COLLATERAL AND A RIGHT TO AN INSURANCE

14 COLLATERAL PAYMENT OR OTHER PAYMENT THAT INDENTIFIES OR COMPENSATES FOR LOSS OR

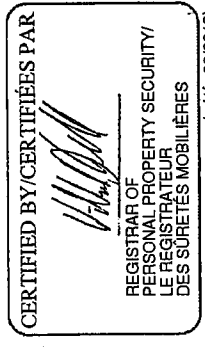
15 DESCRIPTION DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL

16 REGISTERING ADDRESS

17 AGENT ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED ...



TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 681697395

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION PERIOD  
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
 001 1 20120925 1705 1532 6454 P PPSA 5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP WALTHAM

04 ADDRESS 221 CRESCENT STREET SUITE 402

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS

08 SECURED PARTY / BANK OF MONTREAL/BANQUE DE MONTREAL

09 LIEN CLAIMANT ADDRESS 2ND FLOOR, 234 SIMCOE ST. TORONTO ON M5T 1T4

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
 X X X

11 MOTOR YEAR MAKE MOBI

12 VEHICLE

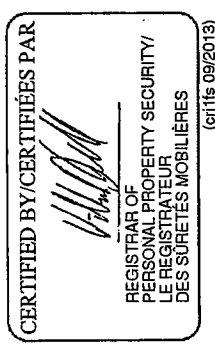
13 GENERAL PLEDGE OF INSTRUMENT AND ASSIGNMENT OF PROCEEDS.

14 COLLATERAL COLLATERAL DESCRIBED AS ?REDEEMABLE SHORT TERM INVESTMENT

15 DESCRIPTION CERTIFICATE 0348-9794-929? IN THE PRINCIPAL AMOUNT OF ?\$397,587.00?

16 REGISTERING CSRS

17 AGENT ADDRESS 4126 NORLAND AVE BURNABY BC V5G 3S8



CONTINUED . . . 5

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED UNDER  
 FILING NO. OF PAGES SCHEDULE NUMBER  
 01 004 20130925 1936 1531 3238  
 RECORD FILE NUMBER 681697395  
 REFERENCED PAGE AMENDED NO. SPECIFIC PAGE AMENDED CHANGE REQUIRED CORRECT PERIOD  
 01 004 X A AMENDMENT RENEWAL YEARS  
 21 004 X A AMENDMENT RENEWAL YEARS

BUSINESS NAME HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
 FIRST GIVEN NAME INITIAL SURNAME  
 BUSINESS NAME HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP  
 FIRST GIVEN NAME INITIAL SURNAME

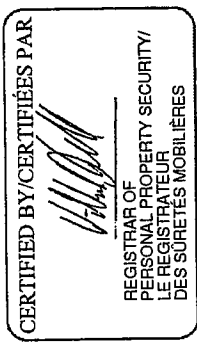
OTHER CHANGE AMEND DEBTOR'S NAME FROM HARVEST ONTARIO LIMITED PARTNERSHIP TO  
 REASON/ HARVEST POWER MUSTANG GENERATION LTD.  
 DESCRIPTION AMEND DEBTOR'S ADDRESS FROM 221 CRESCENT STREET, SUITE 402, WALTHAM,  
 DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
 DEBTOR/ BUSINESS NAME HARVEST POWER MUSTANG GENERATION LTD.  
 TRANSFEREE  
 ADDRESS 1300 - 777 DUNSMUIR STREET VANCOUVER  
 04/07

ASSIGNOR ONTARIO CORPORATION NO  
 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE BC V7Y 1K2

COLLATERAL CLASSIFICATION ADDRESS  
 CONSUMER MOTOR VEHICLE DATE OF NO. FIXED  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED AMOUNT Maturity OR MATURITY DATE  
 YEAR MAKE MODEL V.I.N.  
 10

MOTOR VEHICLE DELETE  
 GENERAL PLEDGE OF INSTRUMENT AND ASSIGNMENT OF PROCEEDS.  
 13 COLLATERAL COLLATERAL DESCRIBED AS ? REDEEMABLE SHORT TERM INVESTMENT  
 14 DESCRIPTION CANADIAN SECURITIES REGISTRATION SYSTEMS  
 15 REGISTERING AGENT OR 4126 NORLAND AVENUE BURNABY BC V5G 3S8  
 16 SECURED PARTY/ ADDRESS  
 17 LIEN CLAIMANT

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*  
 CONTINUED... 6



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 6  
 ( 5256)

RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

01	CAUTION	PAGE	TOTAL MOTOR VEHICLE	REGISTRATION	REGISTERED	
	BUILDING	NO. OF	SCHEDULE	NUMBER	UNDER	
		02		20130925 1936 1531	3238	
21	RECORD	FILE NUMBER				
	REFERENCED	681697395				
22		PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL	CORRECT
					YEARS	PERIOD
23	REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME				
25	OTHER CHANGE	WA	02453 TO 1300 - 777 DUNSMUIR STREET, VANCOUVER, BC V7Y 1K2			
26	REASON/ DESCRIPTION		DELETE AND ADD GENERAL COLLATERAL DESCRIPTION			
28		DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
02/						
05	DEBTOR/ TRANSFEREE	BUSINESS NAME				
03/		ADDRESS				
06						
04/07						
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
08		ADDRESS				
09						
10	COLLATERAL CLASSIFICATION	CONSUMER	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	MOTOR VEHICLE	DATE OF
					INCLUDED	AMOUNT
						MATURITY OR
						MATURITY DATE
11	MOTOR	YEAR	MAKE	MODEL	V.I.N.	
12	VEHICLE					
13	GENERAL					
14	COLLATERAL					
15	DESCRIPTION					
16	REGISTERING AGENT OR					
17	SECURED PARTY/ LIEN CLAIMANT	ADDRESS				

ONTARIO CORPORATION NO.

CERTIFIED BY CERTIFIÉES PAR  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRÉTÉS MOBILIÈRES  
 (cf/2s 09/2013)



CONTINUED...

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CERTIFICATE 0348-9794-929? IN THE PRINCIPAL AMOUNT OF ?\$397,587.00?

ADD PLEDGE OF INSTRUMENT AND ASSIGNMENT OF PROCEEDS

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 7  
 ( 5257)

RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF PAGES	TOTAL MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED INDEX
01	03	004	20130925 1936 1531 3238	
21	FILE NUMBER	681697395		
	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	CORRECT PERIOD
22		FIRST GIVEN NAME	INITIAL	SURNAME
23	REFERENCE	BUSINESS NAME	FIRST GIVEN NAME	INITIAL
24	DEBTOR/TRANSFEROR			SURNAME
25	OTHER CHANGE REASON/DESCRIPTION			
26		DATE OF BIRTH		
27		BUSINESS NAME		
28		ADDRESS		
02/05	DEBTOR/TRANSFEREE			
03/06				
04/07				

ONTARIO CORPORATION NO.

29 ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNEE  
 08 ADDRESS  
 09 ADDRESS

COLLATERAL CLASSIFICATION  
 CONSUMER  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED AMOUNT MATURED DATE OF MATURITY OR MAJORITY DUES

10 YEAR MAKE MODEL V.I.N.

11 MOTOR VEHICLES  
 12 COLLATERAL GENERAL  
 13 COLLATERAL GENERAL  
 14 COLLATERAL GENERAL  
 15 DESCRIPTION RENEWALS AND REPLACEMENTS THEREOF, SUBSTITUTIONS THEREFOR,  
 16 REGISTERING AGENT OF  
 17 SECURED PARTY/ LIEN CLAIMANT ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED ...

CERTIFIED BY/CERTIFIÉES PAR  
 REGISTRAR OF PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR DES SURETÉS MOBILIÈRES  
 (cf/2s 09/2013)





PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 8  
 ( 5258)

RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

POR 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
 KILLING NO. OF PAGES SCHEDULE NUMBER UNDER  
 04 004 20130925 1936 1531 3238

01 RECORD FILE NUMBER 681697395  
 21 REFERENCED PAGE AMENDED NO SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL CORRECT PERIOD  
 04 004 20130925 1936 1531 3238 YEARS  
 22 REFERENCE DEBTOR/ TRANSFEROR FIRST GIVEN NAME INITIAL SURNAME  
 23 BUSINESS NAME  
 24 BUSINESS NAME  
 25 OTHER CHANGE  
 26 REASON/ DESCRIPTION  
 27 DATE OF BIRTH  
 28 DEBTOR/ TRANSFEROR BUSINESS NAME INITIAL SURNAME  
 02/ 05 ADDRESS  
 03/ 06 BUSINESS NAME  
 04/07 ADDRESS

ONTARIO CORPORATION NO.

29 ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNOR ADDRESS

08 09 COLLATERAL CLASSIFICATION CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MOTOR VEHICLE DATE OF AMOUNT MATURETY OR NO FIXED MATURITY DATE

10 YEAR MAKE MODEL V.I.N.

11 MOTOR VEHICLE ACCRETIONS THERETO AND INTEREST, INCOME AND MONEY THEREFROM AND ALL  
 12 GENERAL PROCEEDS THEREOF AND THEREFROM INCLUDING ACCOUNTS.  
 13 COLLATERAL  
 14 DESCRIPTION  
 15 REGISTERING AGENT OR  
 16 SECURED PARTY/ ADDRESS  
 17 LIEN CLAIMANT

CERTIFIED BY/CERTIFIÉES PAR  
 [Signature]  
 REGISTRAR OF PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR DES SURETES MOBILIERES  
 (c)2s 09/2013

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*  
 CONTINUED ...



TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 678764511

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION PERIOD  
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
 001 002 20120530 1619 1862 0048 P PPSA 6

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
 03 NAME BUSINESS NAME HARVEST POWER MUSTANG GENERATION LTD.

04 ADDRESS P.O. BOX 10424, PACIFIC CENTRE, 1300 - 7 VANCOUVER  
 ONTARIO CORPORATION NO. V/Y 1K2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
 06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS FARM CREDIT CANADA

08 SECURED PARTY / LITEN CLAIMANT ADDRESS 200 - 1133 ST. GEORGE BOULEVARD MONCTON NB E1E 4E1

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF MATURITY OR MATURITY DATE  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED NO-FIXED

11 YEAR MAKE MODEL VZLN

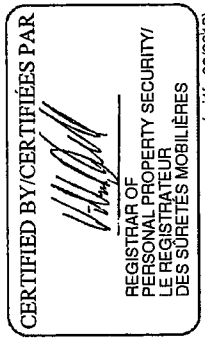
12 MOTOR VEHICLE

13 GENERAL COLLATERAL DESCRIPTION

14 REGISTERING AGENT ADDRESS HARRISON PENSA LLP (152463/TSR) LONDON ON N6A 5J6

15 \*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

16 CONTINUED ... 10



TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 678764511

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
 FILING NO. OF PAGES NO. OF PAGES NUMBER UNDER PERIOD  
 002 002 20120530 1619 1862 0048

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME ADDRESS

04 77 DUNSMUIR STREET ONTARIO CORPORATION NO.

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ADDRESS ONTARIO CORPORATION NO.

07 SECURED PARTY / LIEN CLAIMANT ADDRESS

08 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

09 YEAR MAKE MODEL VALUE

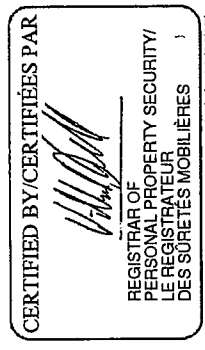
10 MOTOR VEHICLE

11 GENERAL COLLATERAL DESCRIPTION

12 REGISTERING AGENT ADDRESS

13 \*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

14 CONTINUED ...



RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154622.39

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 11  
( 5261 )


TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
FILE CURRENCY : 12OCT 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

01	CAUTION	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED		
	FILING	NO. OF	PAGES	SCHEDULE	NUMBER	UNDER		
		001	2		20150812 1343 1590 1374			
21	RECORD	FILE NUMBER	678764511					
	REFERENCED	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED				
				D ASSIGNMENT				
22		FIRST GIVEN NAME	INITIAL	SURNAME				
23	REFERENCE	BUSINESS NAME	HARVEST POWER MUSTANG GENERATION LTD.					
24	DEBTOR/ TRANSFEROR							
25	OTHER CHANGE							
26	REASON/ DESCRIPTION							
27								
28								
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME				
05								
03/	DEBTOR/ TRANSFEREE	BUSINESS NAME						
06		ADDRESS						
04/07							ONTARIO CORPORATION NO.	
29	ASSIGNOR	FARM CREDIT CANADA						
08	SECURED PARTY/BIEN-CLAIMANT/ASSIGNEE	247823-ONTARIO-LIMITED						
09	ADDRESS	333 BAY STREET, BAY ADELAIDE CENTRE,					TORONTO ON M5H 2S7	
10	COLLATERAL CLASSIFICATION							
	CONSUMER							
	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED						
	YEAR	MAKE	MODEL					
11	MOTOR							
12	VEHICLE							
13	GENERAL							
14	COLLATERAL							
15	DESCRIPTION							
16	REGISTERING AGENT OR	GOODMANS LLP (JL/MB)						
17	SECURED PARTY/ BIEN CLAIMANT	3400-333 BAY STREET, BAY ADELAIDE CENTRE					TORONTO ON M5H 2S7	

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED ... 12

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(cr/s 09/2013)



Ontario

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PCSR060  
 PAGE : 12  
 ( 5262)

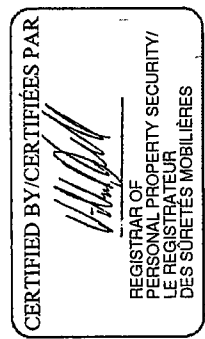
RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12OCT 2015

FORM 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF PAGES	TOTAL MOTOR VEHICLE SCHEDULES	REGISTRATION NUMBER	REGISTERED UNDER
01	002	2	20150812 1343 1590 1374	
21	FILE NUMBER	678764511		CORRECT PERIOD
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME
24	DEBTOR/TRANSFEROR	BUSINESS NAME	FIRST GIVEN NAME	INITIAL SURNAME
25	OTHER CHANGE			
26	REASON/DESCRIPTION			
27				
28				
02/	DATE OF BIRTH			
05	DEBTOR/TRANSFEREE	BUSINESS NAME		
03/				
06				
04/07	ADDRESS			
29	ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNEE	ADDRESS SUITE 3400		ONTARIO CORPORATION NO.
08				
09	COLLATERAL CLASSIFICATION			
	CONSUMER			
	GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER			
10	YEAR	MAKE	MODEL	V.I.N.
11	MOTOR VEHICLE			
12	GENERAL			
13	COLLATERAL			
14	REGISTERING AGENT OR SECURED PARTY/ ADDRESS			
15	DESCRIPTION			
16				
17	LIEN CLAIMANT			

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
FILE CURRENCY : 12OCT 2015

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
672584526

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES NO. OF PAGES NUMBER UNDER PERIOD  
001 002 20110831 0929 1862 7425 P PPSA 6

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
03 NAME BUSINESS NAME HARVEST POWER MUSTANG GENERATION LTD.  
04 ADDRESS PO BOX 10424, PACIFIC CENTRE, 1300-777 VANCOUVER  
ONTARIO CORPORATION NO. V7Y 1K2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
06 NAME BUSINESS NAME  
07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / FARM CREDIT CANADA NB E1E 4E1  
09 LIEN CLAIMANT ADDRESS 200 - 1133 ST. GEORGE BOULEVARD MONCTON

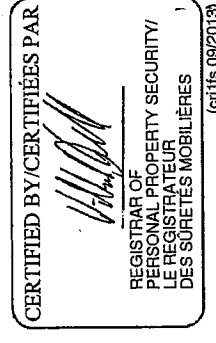
10 COMPLETION CLASSIFICATION MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
CONSUMER INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE X

11 MOTOR YEAR MAKE MODEL V.I.N.  
12 VEHICLE

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING HARRISON PENZA LLP (148403/TSR) ON N6A 5J6  
17 AGENT ADDRESS 450 TALBOT STREET

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*  
CONTINUED ... 14



TYPE OF SEARCH BUSINESS DEBTOR  
 SEARCH CONDUCTED ON HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY 12OCT 2015

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 672584526

01 CAPTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
 002 002 20110831 0929 1862 7425

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME ADDRESS DUNSMUIR STREET ONTARIO CORPORATION NO.

04 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.

05 SECURED PARTY DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.

06 LIEN CLAIMANT ADDRESS

07 COLLATERAL CLASSIFICATION

08 CONSUMER INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED DATE OF NO. FIXED

09 GOODS MATUREITY OR MATURITY DATE

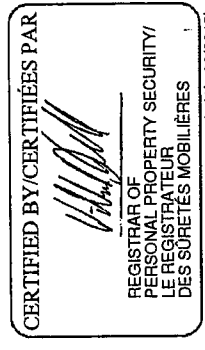
10 MOTOR YEAR MAKE MODEL VEHICLE

11 GENERAL COLLATERAL DESCRIPTION

12 REGISTERING AGENT ADDRESS

13 \*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

14 CONTINUED...



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 15  
 ( 5265)

RUN NUMBER : 286  
 RUN DATE : 2015/10/13  
 ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
 FILE CURRENCY : 12 OCT 2015

FORM 26 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER  
 001 2 20150812 1342 1590 1373  
 RECORD FILE NUMBER 672584526 CORRECT PERIOD  
 21 PAGE AMENDED NO. SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL YEARS  
 22 DEBTOR/ TRANSFEROR BUSINESS NAME FIRST GIVEN NAME INITIAL SURNAME NEGATIVE SURNAME

23 DEBTOR/ TRANSFEROR BUSINESS NAME HARVEST POWER MUSTANG GENERATION LTD.  
 24 OTHER CHANGE  
 25 REASON/ DESCRIPTION  
 26 DATE OF BIRTH  
 27 DEBTOR/ TRANSFEROR BUSINESS NAME  
 28 ADDRESS

29 ASSIGNOR FARM CREDIT CANADA  
 30 SECURED PARTY/ LIEN CLAIMANT/ ASSIGNOR 2478223-ONTARIO LIMITED ON M5H 2S7  
 31 ADDRESS 333 BAY STREET, BAY ADELAIDE CENTRE, TORONTO

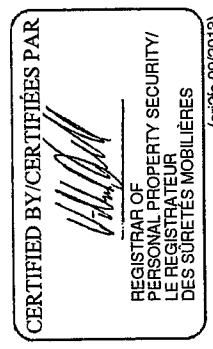
32 COLLATERAL CLASSIFICATION MOTOR VEHICLE NO. FIXED  
 33 CONSUMER INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED AMOUNT MAJORITY OR Maturity DATE  
 34 YEAR MAKE MODEL V.I.N.

35 MOTOR VEHICLE GENERAL DESCRIPTION  
 36 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT ADDRESS  
 37 GOODMANS LLP (JL/MB) 3400-333 BAY STREET, BAY ADELAIDE CENTRE TORONTO ON M5H 2S7

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

ONTARIO CORPORATION NO.

CONTINUED...





RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154622.39

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 16  
( 5266)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
FILE CURRENCY : 12OCT 2015

FORM 2/C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION: PACK TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER

01 002 2 20150812 1342 1590 1373

21 RECORD FILE NUMBER 672584526

RENEWAL YEARS CORRECT PERIOD

22 PAGE AMENDED NO SPECIFIC PAGE AMENDED CHANGE REQUIRED INITIAL SURNAME

23 REFERENCE DEBTOR/ TRANSFEROR BUSINESS NAME

FIRST GIVEN NAME

INITIAL SURNAME

25 OTHER CHANGE REASON/ DESCRIPTION

26 DATE OF BIRTH

FIRST GIVEN NAME

INITIAL

SURNAME

02/ 05 DEBTOR/ TRANSFEREE BUSINESS NAME

FIRST GIVEN NAME

INITIAL

SURNAME

03/ 06 ADDRESS

ONTARIO CORPORATION NO.

29 ASSIGNOR SECURED PARTY/ LIEN CLAIMANT/ ASSIGNOR

ADDRESS SUITE #3400

08 COLLATERAL CLASSIFICATION

CONSUMER

DATE OF

NO FIXED

MOTOR VEHICLE

INCLUDED

AMOUNT

MAATURITY

OR

MAATURITY DATE

10 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER

MODEL

V. I. N.

11 MOTOR YEAR MAKE

12 VEHICLE GENERAL

13 COLLATERAL DESCRIPTION

14 REGISTERING AGENT OR

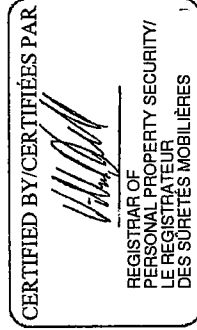
15 SECURED PARTY/ ADDRESS

16 LIEN CLAIMANT

ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...



(c)2s 09/2013



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 17  
( 5267)

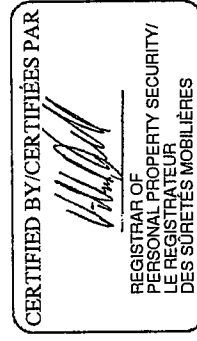
RUN NUMBER : 286  
RUN DATE : 2015/10/13  
ID : 20151013154622.39

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : HARVEST POWER MUSTANG GENERATION LTD.  
FILE CURRENCY : 12OCT 2015

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

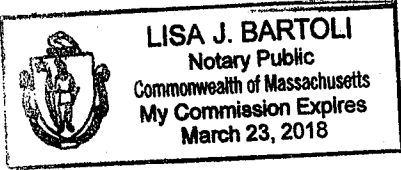
FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
683352864	20121205	1255	1902 4627
681697395	20120925	1705 1532	6454 20130925 1936 1531 3238
678764511	20120530	1619 1862	0048 20150812 1343 1590 1374
672584526	20110831	0929 1862	7425 20150812 1342 1590 1373

7 REGISTRATIONS(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

*Lisa J. Bartoli*  
\_\_\_\_\_  
A NOTARY PUBLIC





PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #33

PAGE 1 OF 2  
PREPARED FOR LynnLee1  
ON 2015/10/13 AT 16:46:58

08203-0194 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PART OF LOT 13, CONCESSION 3 DESIGNATED AS PART 1 ON 33R-17471; CITY OF LONDON

PROPERTY REMARKS: PLANNING ACT CONSENT IN DOCUMENT ER732633.

ESTATE/QUALIFIER: RECENTLY.  
FEE SIMPLE DIVISION FROM 08203-0180

LT CONVERSION QUALIFIED OWNERS' NAMES: CAPACITY SHARE  
HARVEST POWER MUSTANG GENERATION LTD. ROWN

FIN CREATION DATE:  
2010/10/15

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT,	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES: 1992/09/14 **					
195932	1964/04/03	BYLAW				C
33R17471	2009/04/01	PLAN REFERENCE				C
ER732633	2010/10/07	TRANSFER	\$825,000	DIVERSEY CANADA, INC.	HARVEST POWER MUSTANG GENERATION LTD.	C
REMARKS: PLANNING ACT STATEMENTS						
ER741168	2010/12/01	NOTICE			THE CORPORATION OF THE CITY OF LONDON	C
ER802713	2011/12/21	NOTICE	\$2	HARVEST POWER MUSTANG GENERATION LTD.	THE CORPORATION OF THE CITY OF LONDON	C
ER811453	2012/02/28	CHARGE	\$11,000,000	HARVEST POWER MUSTANG GENERATION LTD.	FARM CREDIT CANADA	C
ER826934	2012/06/05	NOTICE OF LEASE	\$2	HARVEST POWER MUSTANG GENERATION LTD.	HARVEST MUSTANG GP LTD. HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP	C
ER827004	2012/06/05	NO ASSG LESSOR INT		HARVEST POWER MUSTANG GENERATION LTD.	FARM CREDIT CANADA	C

REMARKS: ER826934.  
NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

08203-0194 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

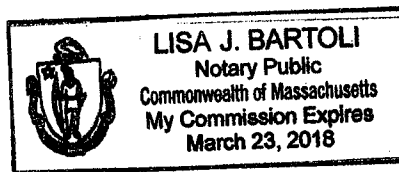
REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
ER852554	2012/11/05 REMARKS: ER741168	NOTICE	\$2	HARVEST POWER MUSTANG GENERATION LTD.	THE CORPORATION OF THE CITY OF LONDON	C
ER852555	2012/11/05 REMARKS: ER811453 TO ER852554	POSTPONEMENT		FARM CREDIT CANADA	THE CORPORATION OF THE CITY OF LONDON	C
ER991271	2015/07/02	CONSTRUCTION LIEN	\$239,191	BADGER DAYLIGHTING LIMITED PARTNERSHIP		C
ER997157	2015/08/05 REMARKS: ER991271	CERTIFICATE		BADGER DAYLIGHTING LIMITED PARTNERSHIP BADGER DAYLIGHTING LTD.		C
ER998608	2015/08/14 REMARKS: ER811453.	TRANSFER OF CHARGE		FARM CREDIT CANADA	2478223 ONTARIO LIMITED	C
ER999326	2015/08/18 REMARKS: ER826934.	NO ASSG LESSOR INT		HARVEST POWER MUSTANG GENERATION LTD.	2478223 ONTARIO LIMITED	C
ER1008453	2015/10/08	TRANSFER OF CHARGE		2478223 ONTARIO LIMITED	STORMFISHER ENVIRONMENTAL LTD.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

THIS IS EXHIBIT "G" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

*Lisa J. Bartoli*

A NOTARY PUBLIC



**ASSIGNMENT OF DEBT AND SECURITY INTEREST**

THIS ASSIGNMENT made as of the 7<sup>th</sup> day of August, 2015.

BETWEEN:

**FARM CREDIT CANADA**  
(the "Assignor")

-and-

**2478223 ONTARIO LIMITED**  
(the "Assignee")

WHEREAS Harvest Ontario Partners Limited Partnership is indebted to the Assignor in the amount of \$10,057,004.23 as set out in Schedule "A" hereto ("Debt");

AND WHEREAS Harvest Power Mustang Generation Ltd. guaranteed repayment of the Debt;

AND WHEREAS the Assignor has been granted and holds the security described in Schedule "B" hereto (the "Security");

AND WHEREAS the Assignee has offered to purchase all of the Assignor's right, title, and interest in or with respect to the Debt and the Security by paying the sum of [REDACTED]

AND WHEREAS the Assignee has requested and the Assignor has agreed to assign to the Assignee the Debt and the Security upon payment of the Purchase Price;

NOW THEREFORE FOR VALUE RECEIVED, the Assignor hereby sells, assigns and transfers absolutely and sets over to the Assignee and its successors and assigns, absolutely, WITHOUT RECOURSE, any and all of its rights, title and interest, if any, at law or in equity, if any, in and to the Debt and Security.

THE ASSIGNOR covenants with the Assignee and represents that:

- (a) the Debt is due and owing;
- (b) the Assignor has not released, postponed, discharged, or assigned the Security, in whole or in part; and
- (c) the Assignor is the owner of all legal and beneficial interest in the Debt and Security and has full authority to assign the Debt and Security to the Assignee.

THE ASSIGNEE hereby acknowledges and agrees that it is accepting this Assignment on an as is basis, without recourse against the Assignor in the event of any deficiency in the Debt, Security or the collateral assets charged thereby.

THE ASSIGNEE agrees to indemnify and save harmless the Assignor from any costs, claims, demands, actions and causes of action for injury, loss or damage, and indirect, incidental and consequential damage suffered by the Assignor in connection with this Assignment and the enforcement of the Debt and Security by the Assignee.

THE ASSIGNOR certifies and agrees that the Assignor has delivered to the Assignee copies of the Security, and the Assignor will from time to time and at any time after this assignment takes effect, at the cost of the Assignee, execute all such further assurances as may be reasonably necessary to assign the Debt and Security to the Assignee as the Assignee may reasonably require.

THE ASSIGNEE agrees that all steps to be taken, proceedings to be initiated or continued, whether judicial or extrajudicial, contractual or statutory, in relation to the Debt and/or Security shall be in the name of the Assignee and shall not be in the name of the Assignor, subject to the right of the Assignee to refer to the assignment of the Debt and Security herein.

THIS ASSIGNMENT constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and there are no representations, warranties, terms or conditions between the parties other than as expressly set forth in this Assignment.

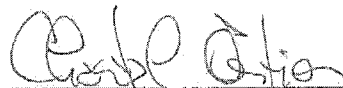
THIS ASSIGNMENT may be executed in counterparts and transmission of a signed copy by facsimile or e-mail in pdf format shall be deemed to be an original and the counterparts taken together shall be deemed to constitute one and the same assignment.



THIS ASSIGNMENT shall be binding upon the parties hereto and their respective successors and assigns.

FARM CREDIT CANADA

Per:



Name: CHANTAL FORTIER  
Title: MANAGER, SPECIAL CREDIT  
I have authority to bind the Corporation

2478223 ONTARIO LIMITED

Per:

---

Name:  
Title:  
I have authority to bind the Corporation



SCHEDULE "A"

Statement of Balances

Farm Credit Canada

Customer: Harvest Ontario Partners Limited Partnership (0200636727)

Balances as of: 07-Aug-2015 Status: All

Credit Facility	0000445005000
Loan Product	Construction Loan
Balance for	0000445005001
Original Loan Amount	\$11,000,000.00
Interest Rate	6.700%
Principal Not Due	\$9,818,727.36
Accrued Interest	\$41,453.86
Fee Balance	\$0.00
Insurance balance	\$0.00
Interest On Arrears	\$1,480.40
Principal Past Due	\$0.00
Interest Past Due	\$135,140.97
Fees Past Due	\$60,201.64
Insurance Past Due	\$0.00
Early Pay	\$0.00
Unearned Insurance Premium	\$0.00
Suspense	\$0.00
Total	\$10,057,004.23
Applied YTD Amounts	
Principal Paid	\$0.00
Interest Paid	\$0.00
Other Fees Paid	\$0.00
Insurance Paid	\$0.00
Applied YTD Total	\$0.00
Amount remaining to disburse	\$1,100,000.00

Disclaimer:

-The above is based on information known as of 07-Aug-2015 and does not include any applicable fees, upcoming payments or potential interest rate changes on variable product loans. E. & O.E.- For informational purposes only.

SCHEDULE "B"

SECURITY

Harvest Ontario Partners Limited Partnership

- 1. Security Agreement dated June 5, 2012
- 2. General Assignment of Material Contracts dated June 5, 2012
- 3. Guarantee of Harvest Power Canada Ltd. dated June 5, 2012

Harvest Power Mustang Generation Ltd.

- 4. Guarantee dated June 5, 2012
- 5. Security Agreement dated February 28, 2012
- 6. Charge/Mortgage receipted as ER811453 on February 28, 2012 against:
  - Part Lot 13, Concession 3, Geographic Township of Westminster, City of London, County of Middlesex being Part 1, Plan 33R-17471 and being all of PIN 08203-0194.
- 7. Assignment of Specific Lease or Leases dated June 5, 2012

THIS ASSIGNMENT shall be binding upon the parties hereto and their respective successors and assigns.

FARM CREDIT CANADA

Per:

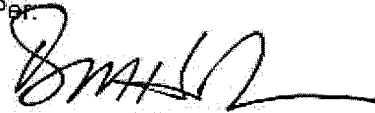
\_\_\_\_\_  
Name:

Title:

I have authority to bind the Corporation

2478223 ONTARIO LIMITED

Per:



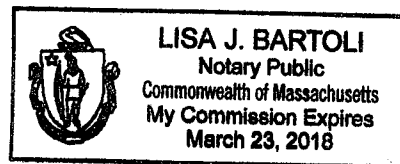
\_\_\_\_\_  
Name: David Hitchcock

Title: President and CEO

I have authority to bind the Corporation

THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

*Lisa J. Bartoli*  
\_\_\_\_\_  
A NOTARY PUBLIC



Consolidated Cash flow forecast

Harvest Mustang GP Ltd., Harvest Ontario Partners Limited Partnership, and Harvest Power Mustang Generation Ltd.

Prepared on September 25, 2015

Week ending:	9/25	10/2	10/9	10/16	10/23	10/30	11/6	11/13	11/20	11/27	12/4	12/11	12/18	12/25	Total
<b>Beginning Cash</b>	127,900	164,900	(88,200)	(192,500)	(272,800)	(413,200)	(385,800)	(477,000)	(533,100)	(631,700)	(644,800)	(732,500)	(778,500)	(865,800)	
<b>Receipts</b>															
London Hydro Electricity Generation	131,200	-	-	-	-	115,000	-	-	-	145,000	-	-	-	145,000	536,200
Tip Fees on Inbound Material	22,100	12,600	15,000	13,100	16,600	11,800	14,600	14,600	14,600	14,600	14,600	14,600	14,600	14,600	208,000
Outbound Fertilizer Sales	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Receipts</b>	153,300	12,600	15,000	13,100	16,600	126,800	14,600	14,600	14,600	159,600	14,600	14,600	14,600	159,600	744,200
<b>Disbursements</b>															
Payroll	(22,400)	(13,300)	(22,400)	-	(22,400)	-	(22,400)	-	(22,400)	-	(22,400)	-	(22,400)	-	(156,800)
Insurance	-	(48,400)	(22,600)	(28,700)	(27,300)	(36,100)	(13,300)	(30,000)	(26,000)	(34,500)	(20,700)	(21,300)	(20,000)	(27,200)	(39,900)
Materials and Equipment	(94,800)	(74,300)	(45,200)	(46,700)	(52,600)	(45,300)	(30,700)	(22,700)	(25,100)	(25,200)	(16,800)	(21,300)	(19,800)	(17,100)	(387,900)
Services and Maintenance	(52,100)	(21,700)	(11,100)	-	(21,700)	-	(11,100)	-	(21,700)	-	(11,100)	-	(21,700)	-	(494,900)
Utilities	-	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(72,000)
Other Expenses	(7,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(13,000)	(169,000)
Expense Contingency	-	(118,300)	(175,700)	(93,400)	(142,000)	(99,400)	(105,800)	(70,700)	(113,200)	(77,700)	(102,300)	(60,600)	(101,900)	(62,300)	(1,440,600)
Disbursements for Operations	(118,300)	(175,700)	(119,300)	(93,400)	(142,000)	(99,400)	(105,800)	(70,700)	(113,200)	(77,700)	(102,300)	(60,600)	(101,900)	(62,300)	(200,000)
Filing Expenses	-	(90,000)	-	-	(15,000)	-	-	-	-	(95,000)	-	-	-	-	(200,000)
<b>Total Disbursements</b>	(116,300)	(265,700)	(119,300)	(93,400)	(157,000)	(99,400)	(105,800)	(70,700)	(113,200)	(172,700)	(102,300)	(60,600)	(101,900)	(62,300)	(1,640,600)
<b>Ending Cash</b>	164,900	(88,200)	(192,500)	(272,800)	(413,200)	(385,800)	(477,000)	(533,100)	(631,700)	(644,800)	(732,500)	(778,500)	(865,800)	(968,500)	(768,500)

Notes and Assumptions:

All amounts in Canadian Dollars

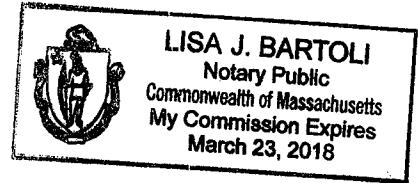
Payments are received from London Hydro for the net of the value of electricity generated by the plant and the costs of power consumption on site. Payments are made at the end of the month, one month in arrears (e.g. the receipt in week ending 9/25 is payment for generation during the month of August). Future months are based on expected plant performance

Tip Fees on Inbound Material are the fees collected from customers who deliver materials to the plant. Payments for the next 6 weeks are estimated based on actual customer activity and an average receivables aging. Average performance is used in subsequent weeks

Disbursements for Operations includes go-forward expenses chemicals and consumables (e.g. polymer), required maintenance activities, equipment rental, utility payments (heat, water, and power), and other expenses. All expenses are assumed to be paid cash on delivery

THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

*Lisa J. Bartoli*  
\_\_\_\_\_  
A NOTARY PUBLIC



**INTERIM FINANCING TERM SHEET**

**Dated as of October , 2015**

**WHEREAS** the Borrowers (as defined below) have requested that the DIP Lender (as defined below) provide financing to fund certain of the Borrowers’ obligations during the pendency of the Borrowers’ proceedings (the “**BIA Proceedings**”) under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) commenced before the Ontario Superior Court of Justice, in Bankruptcy (the “**Court**”), and in accordance with the terms and conditions set out herein;

**AND WHEREAS** the DIP Lender has agreed to provide financing in order to fund certain obligations of the Borrowers in the context of their BIA Proceedings in accordance with the terms set out herein;

**NOW THEREFORE** the parties, in consideration of the foregoing and the mutual agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

- 1. **BORROWERS:** Harvest Ontario Partners LP, Harvest Mustang GP Ltd. and Harvest Power Mustang Generation Ltd. (collectively the “**Borrowers**”).
- 2. **DIP LENDER:** StormFisher Environmental Ltd. (in its capacity as lender under the Interim Financing Term Sheet, the “**DIP Lender**”).
- 3. **DEFINED TERMS:** Capitalized terms used in this Interim Financing Term Sheet have the meanings given thereto in Schedule A
- 4. **PURPOSE:** To provide for the short-term liquidity needs of the Borrowers pursuant to the Cash Flow while under BIA protection and as more fully set forth herein.
- 5. **ADVANCES AND MAXIMUM AMOUNT:** A super priority (debtor-in-possession), non-revolving credit facility (the “**DIP Facility**”) in an amount not exceeding the principal amount of \$1,000,000 (the “**Maximum Amount**”). All advances shall be deposited to the Deposit Account in accordance with Section 14 hereof, and utilized by the Borrowers in accordance with the terms hereof.
- 6. **STATUS OF FACILITIES EXISTING CREDIT:** The DIP Lender and the Borrowers acknowledge and agree that, as at the Filing Date, the Borrowers are indebted to StormFisher Environmental Ltd. (“**SFE**”) in the amount of approximately \$10,000,000 inclusive of interest and costs, and secured by a charge on all of the assets of Harvest Ontario Partners LP and Harvest



Power Mustang Generation Ltd.

7. **CONDITIONS PRECEDENT TO ADVANCES UNDER THE DIP FACILITY**

The DIP Lender's agreement to make advances to the Borrower is subject to the satisfaction of the following conditions:

1. The Court shall have issued the Interim Financing Approval Order on or before October 20, 2015, substantially in the form approved by the DIP Lender, approving this Interim Financing Term Sheet and the DIP Facility and granting the DIP Lender a charge (the "**DIP Lender's Charge**") on all of the Collateral and securing all obligations owing by the Borrowers to the DIP Lender hereunder including, without limitation, all principal, interest, fees and expenses and Interim Financing Fees and Expenses (collectively, the "**Interim Financing Obligations**"), which shall have priority over Liens with the exception of Permitted Charges, and such Interim Financing Approval Order shall not have been stayed, vacated or otherwise caused to be ineffective or amended, restated or modified in a way that adversely impacts the rights and interests of the DIP Lender in a material manner, without the consent of the DIP Lender.
2. The DIP Lender shall have received from the Borrowers a detailed budget which is satisfactory to and has been approved by the DIP Lender in its sole and absolute discretion (as approved by the DIP Lender, the "**Cash Flow**"). Without limiting the DIP Lender's unfettered discretion to approve the detailed budget, the DIP Lender shall have no obligation whatsoever to approve such budget if it forecasts advances to the Borrowers under the DIP Facility exceeding the Maximum Amount at any time;
3. Each advance shall not, if advanced to the Borrowers, cause the aggregate amount of all outstanding advances under the DIP Facility to exceed the Maximum Amount and shall not cause the cumulative borrowings outstanding under the DIP Facility to materially exceed the forecasted cumulative borrowings outstanding as shown on the Cash Flow for the week in which

- 3 -

such advance is made;

4. All Interim Financing Fees and Expenses for which invoices have been provided to the Borrowers shall have been paid, or will be paid from the proceeds of the requested advance within such period of time as is acceptable to the DIP Lender in its discretion;
5. No Default or Event of Default has occurred or will occur as a result of the requested advance;
6. The Borrowers' motion materials in connection with its motion for both the Interim Financing Approval Order and the Sales Process Order shall be satisfactory to the DIP Lender and such applications shall be brought before the Court on or before October 20, 2015, on notice to all parties on the service list in connection with the BIA Proceedings and to such other parties as maybe required by the DIP Lender;
7. The Court shall have issued:
  - (a) an order (the "**Interim Financing Approval Order**"), in form and substance acceptable to the DIP Lender, providing that the DIP Lender's Charge shall have priority over all Liens, other than:
    - (i) an administration charge on the Collateral in an aggregate amount not to exceed \$150,000 (the "**Administration Charge**"); and
    - (ii) a charge on the Collateral in an amount not to exceed \$2 million to partially secure the indemnity granted to the Borrowers' directors and officers under the Interim Financing Approval Order with respect to uninsured liability incurred by the Borrowers' directors and officers as a result of failure of the Lender to comply with the terms of this Agreement (the "**Directors' Charge**");
  - (b) an order (the "**Sales Process Order**"), in

- 4 -

form and substance acceptable to the DIP Lender, providing for the Borrowers with the assistance of the Trustee to run the Sales Process and approving the Stalking Horse Bid as a stalking horse in the Sales Process.

8. Neither the Interim Financing Approval Order nor the Sales Process Order shall have been stayed, vacated or otherwise caused to be ineffective or amended, restated or modified in a manner that adversely impacts the rights and interests of the DIP Lender in a material manner, without the consent of the DIP Lender; and
9. There are no Liens ranking in priority to the DIP Lender's Charge, other than the Priority Charges.
10. For greater certainty, the DIP Lender shall not be obligated to advance or otherwise make available any funds pursuant to this Interim Financing Term Sheet unless and until all of the foregoing conditions have been satisfied and all of the foregoing documentation and confirmations have been obtained, each in form and content satisfactory to the DIP Lender.

**8. COSTS AND EXPENSES:**

The Borrowers shall pay all of the DIP Lender's reasonable legal fees and out-of-pocket disbursements and any costs of realization or enforcement, in each case in connection with or otherwise related to the DIP Facility, the DIP Lender's Charge or the BIA Proceedings (collectively, the "**Interim Financing Fees and Expenses**").

**9. DIP LENDER'S CHARGE:**

The Interim Financing Obligations shall be secured by the DIP Lender's Charge.

Following the issuance of the Interim Financing Approval Order, the DIP Lender's Charge shall constitute a Lien, subordinate only to the Priority Charges. Notwithstanding the foregoing, and subject to the concluding sentence of this paragraph, no proceeds of any advance may be used to (a) investigate, object to or challenge in any way any claims of the DIP Lender against any of the Borrowers in respect of the DIP Facility or of FCC, 247 or SFE under the Pre-Filing Secured Credit Agreements, or (b) investigate, object to

or challenge in any way the validity or enforceability of the Interim Financing Approval Order. Nothing in this paragraph shall restrict the Borrowers or the Trustee, including the engagement by the Trustee of independent legal counsel, from assessing the validity and enforceability of the Existing Liens in respect of advances under the Pre-Filing Secured Credit Agreements and paying the fees, costs and expenses thereof, as applicable

**10. CASH MANAGEMENT SYSTEM:**

Subject to the Cash Flow and other limitations set forth herein, the Borrowers may only request and apply advances under the DIP Facility through the Borrowers' existing cash management system or otherwise as agreed to with the DIP Lender. Except as set out in the Cash Flow, the Borrowers shall not effect, and shall not permit to occur, any distribution of funds (whether from proceeds of the DIP Facility advances or otherwise) from the Borrowers to any subsidiary or affiliate that is not a Borrower.

**11. TRUSTEE:**

The trustee in the BIA Proceedings is Deloitte or such other trustee as may be consented to by the DIP Lender (the "**Trustee**"). The Trustee shall be authorized to have direct discussions with the DIP Lender, and the DIP Lender shall be entitled to receive information from the Trustee as may be reasonably requested by the DIP Lender from time to time.

**12. REPAYMENT:**

The advances under the DIP Facility shall be repayable in full on the earlier of: (i) the occurrence of an Event of Default; (ii) the implementation of a proposal to creditors within the BIA Proceedings (a "**Proposal**") which has been approved by the requisite majorities of the Borrowers' creditors and by order entered by the Court; (iii) conversion of the BIA Proceedings into a bankruptcy under the BIA; (iv) the sale of all or substantially all of the Collateral; and (v) six months from the Filing Date (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrowers and with the prior written consent of the DIP Lender for such period and on such terms and conditions as the Borrowers and the DIP Lender may agree.

The commitment in respect of the DIP Facility advances shall expire on the Maturity Date (as may be extended pursuant to the terms hereof) and all amounts

outstanding under the DIP Facility shall be repaid in full no later than the Maturity Date (as may be extended pursuant to the terms hereof), without the DIP Lender being required to make demand upon the Borrowers or to give notice that the DIP Facility has expired and the obligations are due and payable. The order of the Court sanctioning any Proposal shall not discharge or otherwise affect in any way any of the obligations of the Borrowers to the DIP Lender under the Interim Financing Term Sheet or the DIP Facility, other than after the permanent and indefeasible payment in cash to the DIP Lender of all obligations under the DIP Facility on or before the date such Proposal is implemented.

**13. CASH FLOW:**

Following issuance of the Interim Financing Approval Order, on a weekly basis, on or before 12:00 p.m. EST each Wednesday, the Borrower will provide the DIP Lender with (i) an updated weekly Cash Flow, in reasonably similar form to and, unless otherwise agreed by the Borrowers and the DIP Lender, for a period of time equivalent to that referenced in the Cash Flow (as updated, the “**Updated Cash Flow**”) describing the Borrowers’ updated cash flow requirements, which must be prepared by the Borrowers in good faith and reviewed by the Trustee; and (ii) for the two-week period ending the immediately preceding Friday, a report comparing actual cash flow to the most recent Cash Flow (as defined below). If the DIP Lender determines that an Updated Cash Flow has resulted in the occurrence of an Event of Default, the DIP Lender shall provide written notice to the Borrowers and the Trustee stating that the Updated Cash Flow has resulted in the occurrence of an Event of Default by the close of business on the first Business Day following receipt of such Updated Cash Flow, failing which such Updated Cash Flow shall be deemed not to have resulted in the occurrence of an Event of Default. The initial Cash Flow and thereafter the latest Updated Cash Flow for which no notice of an Event of Default has been given by the DIP Lender in accordance with this Section 13 shall be the “**Cash Flow**” for the purpose of this Interim Financing Term Sheet.

**14. AVAILABILITY UNDER THE DIP FACILITY:**

All advances will be in multiples of \$50,000. All advances shall be deposited into the Deposit Account. The Deposit Account shall be subject to the DIP Lender’s Charge.

Notwithstanding the foregoing, to the extent that an emergency cash need arises in respect of any Borrower that is not contemplated in the Cash Flow, the Borrowers may request an advance from the DIP Lender by providing written particulars relating to such emergency cash need, which advance shall only be permitted with the prior written consent of the DIP Lender, in its sole and absolute discretion. If such requested emergency advance is so consented to by the DIP Lender, such advance shall be made from the DIP Facility and deposited into the Deposit Account.

**15. USE OF DIP FACILITY:**

The Borrower is authorized to use DIP Facility advances: (i) to provide working capital and for other general corporate purposes of the Borrower as provided in the approved cash flow budgets; (ii) to make payments in compliance with the Interim Financing Approval Order; and (iii) to pay the fees and expenses of the Borrowers' legal counsel, the Trustee, the Trustee's legal counsel, the DIP Lender's legal counsel, and such other agents, advisors and consultants of the Borrowers as provided for in the Cash Flow, in each case of the foregoing paragraphs (i) to (iii), consistent with the Cash Flow in all material respects to the extent reasonably practicable in the circumstances; provided that no DIP Facility advances or the Collateral shall be used other than in accordance with this Interim Financing Term Sheet unless otherwise agreed in writing by the DIP Lender.

**16. EVIDENCE OF INDEBTEDNESS:**

The DIP Lender's accounts and records constitute, in the absence of manifest error, prima facie evidence of the indebtedness of the Borrowers to the DIP Lender pursuant to the DIP Facility.

**17. FEES & INTEREST RATE:**

Advances under the DIP Facility shall bear interest at **10%** per annum. Interest on advances made under the DIP Facility shall accrue monthly in arrears and be paid to the DIP Lender on the last day of each month.

The Borrowers shall pay the DIP Lender a fee equal to **2%** of the Maximum Amount, which fee shall be earned by the DIP Lender upon acceptance of this Interim Financing Term Sheet by the Borrowers and issuance by the Court of the Interim Financing Approval Order and payable by the Borrowers from the initial advance.

**18. MANDATORY**

Unless otherwise consented to in writing by the DIP

**REPAYMENTS:**

Lender, advances to the Borrowers shall be forthwith repaid and the Maximum Amount shall be permanently reduced: (i) upon a sale of any of the Collateral out of the ordinary course of business, in an amount equal to the cash proceeds of such sale, net of reasonable costs and closing adjustments; (ii) upon receipt by any of the Borrowers of insurance proceeds with respect to the Collateral; and (iii) upon receipt by any of the Borrowers of a refund or payment on account of Taxes from any Governmental Entity.

**19. REPRESENTATIONS AND WARRANTIES:**

Each of the Borrowers represents and warrants to the DIP Lender, upon which the DIP Lender relies in entering into this Interim Financing Term Sheet and the Interim Financing Security, as follows:

- (a) Subject to obtaining the Interim Financing Approval Order, the transactions contemplated by this Interim Financing Term Sheet:
  - (i) are within the powers of each of the Borrowers;
  - (ii) have been duly authorized by all necessary corporate approval of each of the Borrowers;
  - (iii) have been duly executed and delivered by or on behalf of each of the Borrowers;
  - (iv) constitute legal, valid and binding obligations of each of the Borrowers; and
  - (v) do not require the consent or approval of, registration or filing with, or any other action by, any governmental authority, other than filings which may be made to register or otherwise record the DIP Lender's Charge or the Interim Financing Security.
  
- (b) The Borrower's indebtedness and obligations under the Pre-Filing Credit Agreements is due and owing in accordance with its terms, subject to the stay created by the commencement of the BIA Proceedings, and the Borrowers have no defences, counterclaims or rights of set-off or reduction to the amount claimed by SFE

- 9 -

thereunder. The Existing Liens are valid, binding and enforceable in accordance with their terms and the Borrowers have no defences, counterclaims or rights of set-off or reduction to the amount claimed by SFE thereunder.

The DIP Lender represents and warrants to the Borrowers, upon which the Borrowers rely in entering into this Interim Financing Term Sheet and the Interim Financing Security, that the performance of the DIP Lender's obligations hereunder are within the DIP Lender's corporate powers and have been duly authorized by all necessary corporate action, as applicable.

**20. AFFIRMATIVE  
COVENANTS:**

In addition to all of the other covenants and obligations contained herein, the Borrowers covenant and agree to perform and do each of the following until the advances under the DIP Facility is permanently and indefeasibly repaid in full and terminated:

1. Allow the DIP Lender or its agents and advisors, at any time, to enter on and inspect each of the Borrowers' assets and properties, and provide the DIP Lender and its agents or advisors, on reasonable notice and during normal business hours, full access to the books and records of the Borrowers' and cause management thereof to fully cooperate with the DIP Lender, its agents and advisors.
2. Deliver to the DIP Lender the Updated Cash Flow as and when set out herein, and such other reporting and other information from time to time reasonably requested by the DIP Lender. Without limiting the foregoing, the Borrowers shall use commercially reasonable efforts to deliver to the DIP Lender copies of any financial reporting provided to the Trustee in a timely manner and forthwith provide to the DIP Lender any reports or commentary received from the Trustee regarding the financial position of the Borrowers.
3. Use advances under the DIP Facility only for the purposes described in Section 15, and in a manner consistent with the restrictions set out



herein.

- 4. Comply with the provisions of the court orders made in the BIA Proceedings applicable to the Borrowers (collectively, the “**Restructuring Court Orders**” and each a “**Restructuring Court Order**”); provided that if any such Restructuring Court Order contravenes this Interim Financing Term Sheet or any of the Interim Financing Security so as to adversely impact the rights or interests of the DIP Lender in a material manner, the same shall be an Event of Default hereunder.
- 5. Use commercially reasonable efforts consistent with the Cash Flow to (i) maintain the insurance, in existence as at the date hereof, with respect to the Collateral subject to the DIP Lender’s Charge, or (ii) where such insurance has expired, replace it with insurance on customary, commercially reasonable terms.
- 6. Conduct all activities in a manner consistent with the Cash Flow.
- 7. Forthwith notify the DIP Lender of the occurrence of any Default or Event of Default.
- 8. Assist the Trustee in carrying out the Sales Process pursuant to the Sales Process Order;
- 9. Unless such payments are first approved by the DIP Lender, the Borrowers shall not:
  - (a) pay any termination or severance payments to any employees or former employees of the Borrowers, provided that, for greater certainty, the DIP Lender agrees that the Borrowers shall be permitted to pay all unpaid wages, salary, employee compensation and accrued vacation pay to employees of the Borrowers who are terminated during the BIA Proceedings;
  - (b) make any payments by way of a “key employee retention plan”, grant or seek approval of any other priority charge in

- 11 -

favour of their employees; or

10. increase compensation or other benefits or pay any bonuses, to any employees or former employees.

**21. NEGATIVE COVENANTS:**

The Borrowers covenant and agree not to do the following, other than with the prior written consent of the DIP Lender:

1. Transfer, lease or otherwise dispose of all or any part of its Collateral out of the ordinary course of business without the prior written consent of the DIP Lender or the Court. For greater certainty, in the case of any transfer, lease, sale or other disposition of any property, assets or undertaking of the Borrowers, or any affiliates or subsidiaries thereof, all proceeds of such transfer, lease, sale or other disposition shall be subject to the provisions herein under Section 18.
  - (a) Make any payment of principal or interest in respect of any pre-filing debt or obligation other than as may be permitted by a Restructuring Court Order that does not result in an Event of Default, and is provided for in the Cash Flow.
  - (b) Create or permit to exist indebtedness for borrowed money other than pre-filing debt, debt contemplated by this Interim Financing Term Sheet and post-filing trade payables.
  - (c) Make any payments not reasonably consistent with the Cash Flow.
  - (d) Create, permit to exist or seek or support a motion by another party to provide to any third party a Lien on the Collateral which is senior to or *pari passu* with the DIP Lender's Charge, other than the Permitted Priority Liens.
  - (e) Change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity.
  - (f) Initiate communications with the OPA, MoE and all other regulatory bodies regarding the business of the Borrowers without first obtaining the

- 12 -

written consent of the DIP Lender, which consent shall not be unreasonably withheld. For greater certainty, nothing herein shall prevent the Borrowers from responding to enquiries from OPA or MoE, nor from complying with any positive reporting or other communications obligations which the Borrowers may have to OPA or MoE under the RESOP contract, the MoE permits or approvals or applicable law.

- (g) Materially change the manner in which the business of the Borrowers is carried on, including any change in material suppliers.

## 22. EVENTS OF DEFAULT:

The occurrence of any one or more of the following events shall constitute an event of default (“**Event of Default**”) under this Interim Financing Term Sheet:

1. except as consented to by the DIP Lender, the issuance of an order of the Court (including any Restructuring Court Order) or any other court of competent jurisdiction:
  - (i) dismissing the BIA Proceedings or lifting the stay in the BIA Proceedings to permit (A) the enforcement of any Lien against the Borrowers or any of the other Borrowers, or a material portion of their property, assets or undertaking, or (B) the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrowers;
  - (ii) granting any Lien which is senior to or *pari passu* with the DIP Lender’s Charge, other than the Priority Charges;
  - (iii) staying, reversing, vacating or otherwise modifying the Interim Financing Approval Order or any Restructuring Court Order in a manner adverse to the interests of the DIP Lender;
  - (iv) adversely impacting the rights and interests of the DIP Lender in a material manner, without the prior written consent of the DIP Lender; or
  - (v) directing the Borrowers to pay any

postemployment benefits, amortization payments, special payment, solvency deficiencies or wind-up shortfalls in relation to any pension plan;

- 2. the filing of any pleading by any Borrower seeking any of the matters set forth in clause 1 above or failure of the Borrowers to diligently oppose any party that brings an application or motion for the relief set out in paragraph 1 above and/or fails to secure the dismissal of such motion or application within 60 days from the date such application or motion is brought, except in each case as consented to by the DIP Lender;
- (b) if, on or before October 20, 2015, a Cash Flow has not been approved by the DIP Lender or the Interim Financing Approval Order has not been issued by the Court;
- (c) failure of any of the Borrowers to comply with any negative covenants in this Interim Financing Term Sheet;
- (d) a Restructuring Court Order is made, a liability that is not stayed arises or an event occurs, including any change in the business, assets, or conditions (financial or otherwise), of any of the Borrowers, that will in the DIP Lender’s judgment, acting reasonably, materially further impair the Borrowers’ financial condition or ability to comply with its obligations under this Interim Financing Term Sheet or any Restructuring Court Order or carry out a Proposal or Restructuring Option reasonably acceptable to the DIP Lender (a “**Material Adverse Change**”);
- (e) any representation or warranty by the Borrowers herein shall be incorrect or misleading in any material respect when made;
- (f) principal borrowings under the DIP Facility exceed the Maximum Amount at any time without the prior consent of the DIP Lender;
- (g) any material violation or breach of any Restructuring Court Order by the Borrowers;
- (h) any proceeding, motion or application is

commenced or filed by any of the Borrowers, or if commenced by another party, supported or otherwise consented to by any Borrower, seeking the invalidation, subordination or otherwise challenging of the terms of the DIP Facility, the DIP Lender's Charge or this Interim Financing Term Sheet, or, unless the Proposal or Restructuring Option provides for repayment in full of the Interim Financing Obligations, the approval of any Proposal or Restructuring Option which does not have the prior written consent of the DIP Lender;

- (i) any Proposal is sanctioned or any Restructuring Option is consummated by any of the Borrowers that is not consistent with or contravenes any provision of this Interim Financing Term Sheet in a manner that is adverse to the interests of the DIP Lender or would reasonably be expected to adversely affect the interests of the DIP Lender, unless the DIP Lender has consented thereto;
- (j) except as set out in the Cash Flow, or as otherwise agreed to in writing by the DIP Lender, any of the Borrowers are required by any Governmental Entity to make any material expenditures or pay any material damages, fines, claims, costs or expenses to remediate, or in respect of, any Environmental Liabilities, and such requirement is not stayed by a Restructuring Court Order;
- (k) if the Borrowers pay or agree to pay any of the legal, consulting or other professional fees and/or disbursements incurred by any other party in the BIA Proceedings without the prior consent of the DIP Lender, other than the Interim Financing Fees and Expenses and the professional fees and disbursements of the Borrowers' counsel the Trustee and the Trustee's legal counsel; and
- (l) failure of any Borrowers to perform or comply with any other term or covenant under this Interim Financing Term Sheet.

### 23. REMEDIES:

Upon the occurrence of an Event of Default, and subject to the Restructuring Court Orders, the DIP Lender may, in its sole discretion, elect to terminate the DIP Lender's commitments to make advances under the DIP Facility

to the Borrowers hereunder and declare the Interim Financing Obligations to be immediately due and payable and cease making any further advances under the DIP Facility. Without limiting the foregoing remedies, upon the occurrence of an Event of Default, the DIP Lender may, in its sole discretion, elect to permanently reduce the Maximum Amount. In addition, upon the occurrence of an Event of Default, the DIP Lender may, in its sole discretion, subject to any Restructuring Court Order:

- (a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral, or for the appointment of a trustee in bankruptcy of the Borrowers;
- (b) set-off or combine any amounts then owing by the DIP Lender to the Borrowers against the obligations of any of the Borrowers to the DIP Lender hereunder;
- (c) apply to the Court for an order, on terms satisfactory to the Trustee and the DIP Lender, providing the Trustee with the power, in the name of and on behalf of the Borrowers, to take all necessary steps in the BIA Proceedings;
- (d) subject to obtaining prior approval from the Court, exercise the powers and rights of a secured party under the *Personal Property Security Act* (Ontario) or any legislation of similar effect; and
- (e) subject to obtaining prior approval from the Court, exercise all such other rights and remedies under the Restructuring Court Orders and applicable law.

**24. DIP LENDER'S APPROVALS:**

Any consent, approval, instruction or other expression of the DIP Lender to be delivered in writing may be delivered by any written instrument, including by way of electronic mail, by the DIP Lender, or its counsel, pursuant to the terms hereof.

**25. TERMINATION BY BORROWERS:**

At any time following the indefeasible payment in full in immediately available funds of all of the outstanding Interim Financing Obligations, the Borrowers shall be

- 16 -

entitled to terminate this Interim Financing Term Sheet upon notice to the DIP Lender. Effective immediately upon such termination, all obligations of the Borrowers and the DIP Lender under this Interim Financing Term Sheet shall cease.

**26. TAXES:**

All payments by the Borrowers under this Interim Financing Term Sheet to the DIP Lender, including any payments required to be made from and after the exercise of any remedies available to the DIP Lender upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes are required by applicable law to be withheld ("**Withholding Taxes**") from any amount payable to the DIP Lender hereunder, the amount so payable to the DIP Lender shall be increased to the extent necessary to yield to the DIP Lender on a net basis after payment of all Withholding Taxes, the amount payable hereunder at the rate or in the amount specified hereunder and the Borrowers shall provide evidence satisfactory to the DIP Lender that the Taxes have been so withheld and remitted.

**27. FURTHER ASSURANCES:**

The Borrowers shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates and declarations) and things as the DIP Lender may reasonably request for the purpose of giving effect to this Interim Financing Term Sheet.

**28. ENTIRE AGREEMENT;  
CONFLICT:**

This Interim Financing Term Sheet, including the schedules hereto, constitute the entire agreement between the parties relating to the subject matter hereof.

**29. AMENDMENTS, WAIVERS,  
ETC.:**

No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder or under the Interim Financing Charge will operate as a waiver hereof or thereof unless made in writing by the DIP Lender and delivered in accordance with the terms of

this Interim Financing Term Sheet, and then such waiver shall be effective only in the specific instance and for the specific purpose given.

**30. ASSIGNMENT:**

The DIP Lender may assign this Interim Financing Term Sheet and its rights and obligations hereunder, in whole or in part, or grant a participation in its rights and obligations hereunder upon first obtaining the written consent of the Borrowers or Court approval. Neither this Interim Financing Term Sheet nor any right or obligation hereunder may be assigned by any Borrower.

**31. SEVERABILITY:**

Any provision in this Interim Financing Term Sheet which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**32. NO THIRD PARTY BENEFICIARY:**

No person, other than the Borrowers and the DIP Lender, is entitled to rely upon this Interim Financing Term Sheet and the parties expressly agree that this Interim Financing Term Sheet does not confer rights upon any party not a signatory hereto.

**33. COUNTERPARTS AND FACSIMILE SIGNATURES:**

This Interim Financing Term Sheet may be executed in any number of counterparts and by facsimile or other electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

**34. NOTICES:**

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by fax or electronic mail to the attention of the person as set forth below:

In the case of the DIP Lender, to  
StormFisher Environmental Ltd.  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

**Attention:** Chris Guillon  
**Email:** cguillon@stormfisher.com



With a copy to:

Siskinds LLP  
Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

**Attention:** Barry Cleaver  
Fax: 1.519.660.7808  
Email: [barry.cleaver@siskinds.com](mailto:barry.cleaver@siskinds.com)

In the case of the Borrowers to:

Harvest Ontario Partners LP  
1087 Green Valley Road  
London, Ontario N6N 1E4

**Attention:** Wayne H. Davis  
Email: [wdavis@harvestpower.com](mailto:wdavis@harvestpower.com)

With a copy to:

Chaitons LLP  
Barristers & Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Attention:** Harvey Chaiton  
Fax: (416) 218-1849  
Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)

In either case, with a copy to the Trustee:

Deloitte Restructuring Inc.  
1005 Skyview Drive, Suite 200  
Burlington, Ontario  
L7P 5B1

**Attention:** Rob Biehler  
Fax: (905) 315-6700  
Email: [rbiehler@deloitte.ca](mailto:rbiehler@deloitte.ca)

And a copy to:

Brown Beattie O'Donovan LLP  
380 Wellington Street, 16th Floor,  
London, ON N6A 5B5

**Attention:** James Fisher  
Fax: (519) 679-6350

- 19 -

Email: jfisher@bbo.on.ca

Any such notice shall be deemed to be given and received when received, unless received after 5:00 Eastern Time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

**35. GOVERNING LAW AND JURISDICTION:**

This Interim Financing Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. Without prejudice to the ability of the DIP Lender to enforce this Interim Financing Term Sheet in any other proper jurisdiction, the Borrowers irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of Ontario, and further acknowledge and agree that any disputes arising hereunder shall be heard by the Court.

**36. JOINT & SEVERAL**

The obligations of the Borrowers hereunder are joint and several.

**[signature pages follow on separate pages]**

**IN WITNESS HEREOF**, the parties hereby execute this Interim Financing Term Sheet as at the date first above mentioned.

DIP Lender:

**STORMFISHER ENVIRONMENTAL LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

We have the authority to bind the DIP Lender.

Borrower:

**HARVEST ONTARIO PARTNERS LP**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation.

Borrower:

**HARVEST MUSTANG GP LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation.

Borrower:

**HARVEST POWER MUSTANG  
GENERATION LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation.

**SCHEDULE A  
DEFINED TERMS**

“**247**” means 2478223 Ontario Limited.

“**Administration Charge**” has the meaning given thereto in Section 7.7(a)(i).

“**BIA**” has the meaning given thereto in the Recitals.

“**BIA Proceedings**” has the meaning given thereto in the Recitals.

“**Borrowers**” has the meaning given thereto in Section 1.

“**Business Day**” means any day other than a Saturday, Sunday or any other day in which banks in Toronto, Ontario are not open for business.

“**Cash Flow**” has the meaning given thereto in Section 7.2 or Section 13, as the case may be.

“**Collateral**” means all now owned or hereafter acquired assets and property of each of the Borrowers, real and personal, tangible or intangible.

“**Court**” has the meaning given thereto in the Recitals.

“**Default**” means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

“**Deloitte**” means Deloitte Restructuring Inc.

“**Deposit Account**” means the account in the name of the Borrowers with Bank of Montreal, or such other account with a financial institution acceptable to the DIP Lender as may be approved in writing by the DIP Lender.

“**DIP Facility**” has the meaning given thereto in Section 5

“**DIP Lender**” has the meaning given thereto in Section 2.

“**DIP Lender’s Charge**” has the meaning given thereto in Section 7.1.

“**Directors’ Charge**” has the meaning given thereto in Section 7.7(a)(ii)

“**Environmental Liabilities**” means all liabilities, obligations, responses, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs and other costs and expenses, including fines, penalties, sanctions and interest incurred as a result of or related to any claim, investigation, proceeding or demand of any Governmental Entity against any of the Borrowers including, without limitation, arising under or related to any law relating to the environment or in connection with any substance which is or is deemed under any applicable law to be, alone or in combination, hazardous, hazardous waste, toxic, a pollutant, a contaminant or source of pollution or contamination whether on, at, in, under, from or about or in the vicinity of any real or personal property owned by any of the Borrowers.

“**Event of Default**” has the meaning given thereto in Section 22.

“**Existing Liens**” means the Liens granted by the Borrowers and held by SFE and to secure obligations under the Pre-Filing Secured Credit Agreements.

“**FCC**” means Farm Credit Canada.

“**Filing Date**” means September 29, 2015, being the date of filing of the Borrowers’ Notices of Intent to Make a Proposal.

“**Governmental Entity**” means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

“**Interim Financing Approval Order**” has the meaning given thereto in Section 7.7(a).

“**Interim Financing Fees and Expenses**” has the meaning given thereto in Section 8.

“**Interim Financing Obligations**” has the meaning given thereto in Section 7.1.

“**Liens**” means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever granted by the Borrowers or against the Collateral.

“**Material Adverse Change**” has the meaning given thereto in Section 22.2(c).

“**Maturity Date**” has the meaning given thereto in Section 12.

“**Maximum Amount**” has the meaning given thereto in Section 5.

“**MoE**” means the Ministry of Environment of Ontario.

“**OPA**” means Ontario Power Authority.

“**Pre-Filing Secured Credit Agreements**” has the meaning given thereto in Schedule “C”

“**Principal Amount**” the meaning given thereto in Section 5.

“**Priority Charges**” means the Administration Charge and the Directors’ Charge.

“**Proposal**” has the meaning given thereto in Section 12.

“**RESOP**” means Ontario Renewable Energy Standard Offer Program.

“**Restructuring Court Order**” and “**Restructuring Court Orders**” have the meanings given thereto in Section 20.4.

“**Restructuring Option**” means any transaction involving the refinancing of the Borrowers, the sale of all or substantially all of the assets of the Borrowers or any other restructuring of the

Borrowers' businesses and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of any of the Borrowers.

**"Sales Process Order"** has the meaning given thereto in Section 7.7(b).

**"Sales Process"** means the process for the marketing and sale of the Borrowers business and assets approved by the Court pursuant to the terms of the Sale Process Order.

**"SFE"** has the meaning given thereto in Section 6

**"Stalking Horse Bid"** means the Agreement of Purchase and Sale between StormFisher Environmental Ltd. and the Borrowers for the purchase of substantially all of the Borrowers' property in the Sale Process.

**"Taxes"** has the meaning given thereto in Section 26.

**"Trustee"** has the meaning given thereto in Section 11.

**"Updated Cash Flow"** has the meaning given thereto in Section 13.

**"Withholding Taxes"** has the meaning given thereto in Section 26.

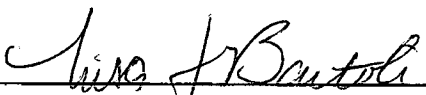
**SCHEDULE B**Harvest Ontario Partners Limited Partnership

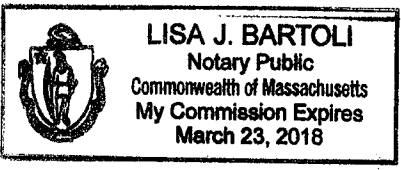
1. Security Agreement dated June 5, 2012
2. General Assignment of Material Contracts dated June 5, 2012

Harvest Power Mustang Generation Ltd.

3. Guarantee dated June 5, 2012
4. Security Agreement dated February 28, 2012
5. Charge/Mortgage receipted as ER811453 on February 28, 2012 against:  
Part Lot 13, Concession 3, Geographic Township of Westminster,  
City of London, County of Middlesex being Part 1,  
Plan 33R-17471 and being all of PIN 08203-0194.
6. Assignment of Specific Lease or Leases dated June 5, 2012

THIS IS EXHIBIT "J" REFERRED TO IN THE  
AFFIDAVIT OF WAYNE H. DAVIS  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

  
\_\_\_\_\_  
A NOTARY PUBLIC





**POLICYHOLDER NOTICE**

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at [www.aig.com/producercompensation](http://www.aig.com/producercompensation) or by calling 1-800-706-3102.

August 1, 2015

96

Dear Insured:

Congratulations on purchasing your employment practices liability insurance from AIG, one of the premier writers of commercial insurance. Your policy offers many outstanding features, including coverage for claims arising from violations of Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act (ADA); the Age Discrimination in Employment Act (ADEA); the Equal Pay Act of 1963 (EPA); and the Rehabilitation Act of 1973 (REHAB ACT).

As an AIG policyholder, you have the confidence of knowing that your claims will be handled by experienced claims professionals. In addition, our panel counsel is comprised of leaders in employment practices law throughout the country. The services of these law firms are available to you at preferred AIG rates.

Additionally, our package includes loss-control services included automatically for all eligible insureds through **EPL Pak® Premier**. This insurance offering features access to our online EPL Risk Manager located at [www.EPLriskmanager.com](http://www.EPLriskmanager.com), designed exclusively for AIG EPL insureds by the attorneys at Littler Mendelson, the nation's largest labor and employment law firm. This web link is exclusive to AIG EPL insurance policyholders and is available at no additional cost. To register, you can log into the site with your policy number. The site offers tools and resources including:

- Human Resources Form Library
- Sample Employee Handbooks
- Employment Law Email Alerts
- Employment Law Policies
- Hire & Fire Manual
- Employment Law Reference Manuals (5000 + pages)
- 50 State Analysis of Key Employment Laws
- Preventing Unlawful Harassment Guide
- Preventing Employment Class Actions Manual
- Discounts on Employment Law Training

All forms and materials may be downloaded and customized. To view a short video tour of the risk management products and services available, please visit: [http://eplriskmanager.com/take\\_tour.php](http://eplriskmanager.com/take_tour.php). As an AIG policyholder, you also receive ten free seats to Littler Mendelson's monthly webinar series on preventing harassment in the workplace and discounts on over 40 employment law training courses. For additional information on these services you may contact Brian McMillan at Littler Mendelson at [bmcmillan@littler.com](mailto:bmcmillan@littler.com) or visit [www.littler.com](http://www.littler.com).

To complement these offerings, we continue to offer our risk management solutions provided by Jackson Lewis, LLP, a premier employment law firm with offices throughout the United States, including:

- Unlimited Access to the Jackson Lewis Toll Free Risk Management Hotline: (866) 614-0744
- One hour legal consultation with a Jackson Lewis attorney on any topic
- Seminars on topical issues of employment law, recent litigation development, and training
- Email subscription to The Jackson Lewis Newsletter, which highlights employment practices developments and trends
- Email updates regarding significant legislative actions, judicial decisions, and other changes which may impact your business
- Access to a self-audit checklist and a pre-termination checklist, which will assist companies in identifying potential vulnerability to employment claims
- Attendance at CAAB 1825 sexual harassment training in California

To learn more, please contact Paul Siegel at [siegelp@jacksonlewis.com](mailto:siegelp@jacksonlewis.com), Wendy Mellk at [mellkw@jacksonlewis.com](mailto:mellkw@jacksonlewis.com) or view a free demonstration of training at [www.jacksonlewis.com](http://www.jacksonlewis.com), or under the online training section or at [www.workplaceanswers.com](http://www.workplaceanswers.com).

Your decision to purchase coverage through AIG has provided your organization with powerful advantages in managing your business. We thank you for choosing AIG and look forward to a continuing successful relationship. If you have any questions or would like additional information, please contact your broker, an AIG representative or email us at [FinancialLines@aig.com](mailto:FinancialLines@aig.com).

AIG is the marketing name for the worldwide property-casualty and general insurance operations of AIG Property Casualty Inc. For additional information, please visit our website at [www.aig.com](http://www.aig.com). All products are written by insurance company subsidiaries or affiliates of AIG Property Casualty Inc. Coverage may not be available in all jurisdictions and is subject to actual policy language. Non-insurance products and services may be provided by independent third parties. Certain coverage may be provided by a surplus lines insurer. Surplus lines insurers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.



## EPL Pak<sup>®</sup> Premier

### Employment Practices Training, Loss Prevention and Risk Management

Controlling employment practices liability exposures while keeping pace with employment litigation trends and regulatory changes is a major challenge for all employers. AIG gives its employment practices liability (EPL) policyholders a unique advantage with EPL Pak<sup>®</sup> Premier, industry-leading loss prevention offerings. The suite is a combination of training, loss control and risk management tools designed to help our clients manage employment practices risks. EPL Pak Premier's resources are exclusive to AIG, and provide our EPL policyholders with access to expertise and materials from two of the nation's foremost employment and labor law firms, Littler Mendelson, P.C. and Jackson Lewis LLP.

#### Putting Experts By Your Side

EPL Pak Premier now includes instant access to [www.eplriskmanager.com](http://www.eplriskmanager.com), which provides first-in-class risk management tools and resources from Littler Mendelson, a leading employment and labor law firm. Materials available include essentials to manage your workforce and reduce exposure to employment related liability including:

- **Handbooks and Policies:** Sample employee handbook and policies to help implement best employment practices, including supplemental information for all 50 states
- **Forms Library:** A library of commonly used human resource forms, which can be customized, to ease your administrative burden
- **Workforce Guides:** A hiring and firing guide to help employers mitigate the risks of these critical phases of the employment relationship and step-by-step guides to prevent harassment, including information to help address and resolve incidents and lessen potential liability
- **Legal Reference Materials:** Over 3,000 pages of employment law reference manuals providing insights on timely topics ranging from layoffs, downsizing, and furloughs, to workplace violence, discrimination, and employment class actions. Includes a state-by-state assessment of employment laws and regulations

EPL Pak Premier gives you access to expertise and resources from two of the nation's foremost employment and labor law firms, Littler Mendelson, P.C. and Jackson Lewis LLP.



## EPL Pak® Premier

### State of the Art Enhancements

These state-of-the-art enhancements complement EPL Pak Premier's original package of risk management solutions from Jackson Lewis, LLP, which include:

- **Legal Consultation:** A one-hour legal consultation on human resources and employment law issues, such as how specific laws impact personnel decisions and potential exposure to liability
- **Liability Updates:** Access to the Jackson Lewis e-Newsletter and e-updates spotlighting important workplace law news and trends. Alerts on significant legislative actions, judicial decisions and other changes with potential impact on our insured's business
- **Checklists:** Self-audit and pre-termination checklists to help insureds identify vulnerabilities and safely navigate risky terrain
- **Special California State Training:** CA AB 1825 training, enabling companies with 50 or more employees in California to fulfill their mandate of providing sexual harassment training for supervisors every two years

EPL Pak Premier also includes Alternative Employment Dispute Resolution Programs from EDR Systems at preferred rates. EDR Systems will assist to resolve employee disputes internally and prevent time and money in litigation. The professionals at EDR Systems have more than 50 years of combined experience in human resource management, strategic planning, change management, and employee relations. They support a wide variety of businesses of all sizes, from national, multi-unit retail operations, to single-facility manufacturers, to professional firms.

---

To learn more about EPL Pak Premier services:

E-mail:  
FinancialLines@aig.com

Visit:  
www.aig.com

Contact:  
Your insurance broker



## Bring on tomorrow

American International Group, Inc. (AIG) is a leading international insurance organization serving customers in more than 130 countries. AIG companies serve commercial, institutional, and individual customers through one of the most extensive worldwide property-casualty networks of any insurer. In addition, AIG companies are leading providers of life insurance and retirement services in the United States. AIG common stock is listed on the New York Stock Exchange and the Tokyo Stock Exchange.

Additional information about AIG can be found at [www.aig.com](http://www.aig.com) | YouTube: [www.youtube.com/aig](http://www.youtube.com/aig) | Twitter: @AIG\_LatestNews | LinkedIn: [www.linkedin.com/company/aig](http://www.linkedin.com/company/aig)

AIG is the marketing name for the worldwide property-casualty, life and retirement, and general insurance operations of American International Group, Inc. For additional information, please visit our website at [www.aig.com](http://www.aig.com). All products and services are written or provided by subsidiaries or affiliates of American International Group, Inc. Products or services may not be available in all countries, and coverage is subject to actual policy language. Non-insurance products and services may be provided by independent third parties. Certain property-casualty coverages may be provided by a surplus lines insurer. Surplus lines insurers do not generally participate in state guaranty funds, and insureds are therefore not protected by such funds.

**NOTICE TO MASSACHUSETTS INSUREDS**

**MASSACHUSETTS DISCLAIMER  
Large Commercial Policyholders  
Massachusetts General Law - 175:224-25**

The following notice is being provided in compliance with Massachusetts Law:

**THE RATES, RATING PLANS, RESULTING PREMIUMS, AND POLICY FORMS FOR THIS POLICY ARE NOT SUBJECT TO ALL OF THE INSURANCE LAWS OF THIS STATE, AND MAY CONTAIN SIGNIFICANT DIFFERENCES FROM A POLICY THAT IS SUBJECT TO ALL PROVISIONS OF THE INSURANCE LAW.**

**THESE DIFFERENCES MAY INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING: CLAIMS-MADE VERSUS OCCURRENCE TRIGGERS, PERILS, EXCLUSIONS, LOCATION AND/OR TERRITORY LIMITATIONS, AND DEFENSE WITHIN OR OUTSIDE OF POLICY LIMITS.**

**PLEASE REFER TO ANY ADDITIONAL DISCLAIMERS ON THE DECLARATIONS PAGE AND DISCUSS THE ABOVE WITH YOUR INSURANCE AGENT, BROKER OR RISK MANAGER TO DETERMINE YOUR RIGHTS, DUTIES AND WHAT IS AND WHAT IS NOT COVERED.**



**National Union Fire Insurance Company of Pittsburgh, PA**

(the "Insurer")  
A capital stock company

**PortfolioSelect<sup>SM</sup> for Private Companies**

POLICY NUMBER: 16016710

REPLACEMENT OF POLICY NUMBER: N/A

**DECLARATIONS**

**NOTICE**

CERTAIN COVERAGE SECTIONS OF THIS POLICY ARE LIMITED TO LIABILITY FOR CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER AS REQUIRED BY THE TERMS OF THE POLICY. COVERED DEFENSE COSTS SHALL REDUCE THE APPLICABLE LIMITS OF LIABILITY AND SUBLIMITS OF LIABILITY AND ARE SUBJECT TO APPLICABLE RETENTIONS. THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND UNLESS SUCH COVERAGE IS EXPRESSLY PROVIDED WITHIN A COVERAGE SECTION.

PLEASE READ THIS POLICY CAREFULLY AND REVIEW IT WITH YOUR INSURANCE AGENT OR BROKER.

ITEMS			
1.	NAMED ENTITY:	Named Entity:	HARVEST POWER, INC.
		Named Entity Address:	221 CRESCENT ST STE 402 WALTHAM, MA, 024533 425
		State of Formation:	Massachusetts
2.	POLICY PERIOD:	Inception Date:	August 1, 2015
		Expiration Date:	August 1, 2016
12:01 A.M. at the address stated in Item 1			
3.	PREMIUM:		\$68,493
4.	INSURER:		
	(a) Insurer Address:	175 WATER STREET, NEW YORK, NY, 10038	
	This Policy is issued only by the insurance company indicated above.		
	(b) Claims Address:	AIG Property Casualty Financial Lines Claims, P.O. Box 25947 Shawnee Mission, KS 66225	
(c)	By E-Mail:	c-claim@aig.com	
	Reference the Policy Number and any applicable Coverage Section.		
5.	POLICY AGGREGATE:	\$20,000,000	

6. COVERAGE SUMMARY

101

Private Company Directors & Officers Liability			
Limit of Liability:	Separate Limit of Liability:	\$10,000,000	Shared Limit of Liability: <i>Not Applicable</i>
	Shared Limit of Liability, if any, is shared with: <i>Not Applicable</i>		
	Excess Limit for Executives:		\$500,000
Retention:	(i) Securities Retention:	\$25,000	
	(ii) All other Loss to which a Retention applies:	\$25,000	
Continuity Date:	Outside Entity Executive Coverage: Date on which the Executive first served as an Outside Entity Executive for such Outside Entity.		
	All other Private Company D&O Coverage:		08/01/2015
<input type="checkbox"/> Auto-Acquisition Subsidiary Coverage		<input type="checkbox"/> Threshold Acquisition Subsidiary Coverage	
Coverage Section Premium:			\$38,818

Employment Edge® Employment Practices Liability			
Limit of Liability:	Separate Limit of Liability:	\$5,000,000	Shared Limit of Liability: <i>Not Applicable</i>
	Shared Limit of Liability, if any, is shared with: <i>Not Applicable</i>		
	Retention	(i) Class Action Retention:	\$50,000
(ii) Third Party Retention:		\$50,000	
(iii) All other Loss to which a Retention applies:		\$50,000	
Continuity Date:	Outside Entity Executive Coverage: Date on which the Executive first served as an Outside Entity Executive for such Outside Entity.		
	All other EPL Coverage:		08/01/2015
Coverage Section Premium:			\$21,431

Fiduciary Liability Insurance Edge® Employee Benefit Plan Fiduciary Liability				
Limit of Liability:	Separate Limit of Liability:	\$5,000,000	Shared Limit of Liability:	Not Applicable
	Shared Limit of Liability, if any, is shared with: <i>Not Applicable</i>			
Retention	(i) Securities Retention:		\$250,000	
	(ii) All other Loss to which a Retention applies:		\$0	
Continuity Date:			08/01/2015	
Coverage Section Premium:			\$6,281	

CrimeGuard Choice® Fidelity & Crime Insurance	
Limit of Liability:	Separate Limit of Liability: \$1,000,000 Per Occurrence
Deductible:	\$25,000
Retroactive Date:	08/01/2015
Coverage Section Premium:	\$1,963

7. **PASSPORT:** This policy does not serve as a master Passport policy.

8. **TRIA PREMIUM, TAXES AND SURCHARGES**

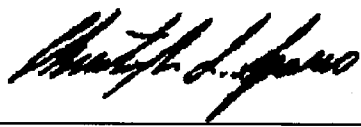
(a) TRIA Premium \$330

PRODUCER: *CAPSTONE INSURANCE LLC*  
 ADDRESS: *300 WASHINGTON STREET,  
 SUITE 551,  
 NEWTON, MA, 02458 , United States of America*

**IN WITNESS WHEREOF**, the Insurer has caused this Policy to be signed by its President, Secretary and Authorized Representative. This Policy shall not be valid unless signed below at the time of issuance by an authorized representative of the insurer.

  
 \_\_\_\_\_  
 PRESIDENT

  
 \_\_\_\_\_  
 SECRETARY

  
 \_\_\_\_\_  
 AUTHORIZED REPRESENTATIVE



\_\_\_\_\_  
COUNTERSIGNATURE  
(Where Required)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
COUNTERSIGNED AT



**National Union Fire Insurance Company of Pittsburgh, PA**  
A capital stock company

**GENERAL TERMS AND CONDITIONS**  
**("General Terms and Conditions")**

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

**1. TERMS AND CONDITIONS**

These **General Terms and Conditions** shall apply to all **Coverage Sections**, unless any **Coverage Section** states specifically that all or part of these **General Terms and Conditions** shall not apply to such **Coverage Section**. The definitions, terms, conditions and limitations set forth in each **Coverage Section** shall apply only to that particular **Coverage Section**.

**2. RETENTION**

The **Insurer** shall be liable only for the amount of **Loss** arising from each **Claim** or group of **Related Claims** that exceeds the Retention amount stated in Item 6 of the Declarations as applicable to the **Coverage Section** affording coverage to such **Claim** or group of **Related Claims**. Amounts within such Retention shall remain uninsured.

A single Retention amount shall apply to each **Claim** or group of **Related Claims**. If a **Claim** or a group of **Related Claims** triggers more than one **Coverage Section** all of which are subject to a **Shared Limit of Liability**, the highest applicable Retention amount shall apply to such **Claim** or group of **Related Claims**.

If a **Claim** or a group of **Related Claims** triggers more than one **Coverage Section** at least one of which is subject to a **Separate Limit of Liability**, the Retention applicable to **Loss** in connection with such **Claim** or group of **Related Claims** under any such **Coverage Section** subject to a **Separate Limit of Liability** shall apply separately to such **Loss**, and the applicable Retention for such **Coverage Section** shall not be satisfied by payments of **Loss** made towards the Retention required under any other **Coverage Section**.

**3. LIMITS OF LIABILITY**

The **Policy Aggregate** is the **Insurer's** maximum liability for all **Loss** under all **Coverage Sections** combined. Under no circumstances shall the **Insurer** be responsible to pay any **Loss** in excess of the **Policy Aggregate**. The term "**Limits of Liability**" refers to the several types of limits provided under this policy, including the **Policy Aggregate**, any **Separate Limits of Liability**, any **Shared Limits of Liability**, and any sublimits of liability set forth in any applicable **Coverage Sections**.

If **Separate Limits of Liability** are stated in Item 6 of the Declarations, then each such **Separate Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to the applicable **Coverage Section** as stated on the Declarations. Each **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate** for all **Loss** under this policy and shall in no way serve to increase the **Policy Aggregate** as therein stated.

If **Shared Limits of Liability** are stated in Item 6 of the Declarations, then each such **Shared Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss**

arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to all **Coverage Sections** for which such **Shared Limit of Liability** is applicable, as indicated on the Declarations. In the event that the amount stated as a **Shared Limit of Liability** in Item 6 of the Declarations for a **Coverage Section** is less than the amount(s) stated for the other **Coverage Section(s)** with which it shares such **Shared Limit of Liability**, such lesser amount stated in Item 6 shall serve as the limit of liability for all **Loss** in the aggregate under such **Coverage Section**, subject to reduction through any prior payments of **Loss** under such **Shared Limit of Liability**. Each **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate** for all **Loss** under this policy and shall in no way serve to increase the **Policy Aggregate** as therein stated.

Each sublimit of liability set forth in any **Coverage Section** is the maximum limit of the **Insurer's** liability for all **Loss** in the aggregate under this policy that is subject to that sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Policy Aggregate** and any applicable **Separate Limit of Liability** or **Shared Limit of Liability**.

All **Related Claims** that pursuant to the applicable *Notice and Reporting Clause* are considered made or received during the **Policy Period** or **Discovery Period** (if applicable), shall also be subject to the applicable **Limits of Liability** set forth in this policy. Each of the **Limits of Liability** for the **Discovery Period** (if applicable) shall be part of, and not in addition to, each of the corresponding **Limits of Liability** for the **Policy Period**.

**Defense Costs** are not payable by the **Insurer** in addition to the **Limits of Liability**. **Defense Costs** are part of **Loss** and as such are subject to the **Limits of Liability** for **Loss**.

#### 4. DISCOVERY

Except as indicated below, if the **Named Entity** shall cancel or the **Named Entity** or the **Insurer** shall refuse to renew this policy, the **Named Entity** shall have the right to a period of up to six (6) years following the effective date of such cancellation or nonrenewal ("**Discovery Period**"), upon payment of an **Additional Premium Amount** described in each **Coverage Section**, in which to give written notice to the **Insurer** of: (i) **Claims** first made against an **Insured**; (ii) if provided by a purchased **Coverage Section**, **Pre-Claim Inquiries** first received by an **Insured Person**; and (iii) circumstances of which an **Organization** or an **Insured** shall become aware, in any such case, during the **Discovery Period** and solely with respect to any covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts**, **Privacy Events** and **Security Failures**) occurring prior to the end of the **Policy Period** and otherwise covered by this policy.

In the event of a **Transaction**, the **Named Entity** shall have the right to request an offer from the **Insurer** of a **Discovery Period** with respect to covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts**, **Privacy Events** and **Security Failures**) occurring prior to the effective time of the **Transaction** and otherwise covered by this policy. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions, exclusions and additional premium as the **Insurer** may reasonably decide. In the event of a **Transaction**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

If the **Named Entity** exercises its right to purchase a **Discovery Period**, that period incept at the end of the **Policy Period** or, if purchased in the event of a **Transaction**, as of the effective time of such **Transaction**.

The right to purchase a **Discovery Period** shall terminate unless written notice of election, together with any additional premium due, is received by the **Insurer** no later than thirty (30) days after the effective date of the cancellation, nonrenewal or **Transaction**.

Any **Discovery Period** is not cancelable and the additional premium charged is non-refundable in whole or in part. This *Discovery Clause* shall not apply to any cancellation resulting from non-payment of premium.

## 5. TRANSACTIONS

In the event of a **Transaction**, this policy shall continue in full force and effect only as to those covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts, Privacy Events** and **Security Failures**) occurring prior to the effective time of the **Transaction** and otherwise covered by this policy, and no portion of the premium paid for this policy shall be refundable. The **Named Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 4 above.

This policy may not be canceled after the effective time of the **Transaction**.

Notwithstanding the foregoing, this policy may continue in full force and effect as to those covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts, Privacy Events** and **Security Failures**) occurring subsequent to the effective time of the **Transaction** and otherwise covered by this policy, if:

- (a) within thirty (30) days subsequent to the effective time of such **Transaction** the **Insurer** has been provided with full particulars of the **Transaction**, the related entity(ies) and any other information requested by the **Insurer**; and
- (b) the **Insurer** waives the restrictions set forth above with respect to such **Transaction** by written endorsement to this policy and the **Named Entity** or its successor has paid any additional premium and accepted any amendments to this policy required by the **Insurer**.

## 6. EXTENSIONS

### (a) *Worldwide Territory*

The coverage afforded by this policy shall apply anywhere in the world.

### (b) *Passport*

If a **Coverage Section** is listed in Item 7 of the Declarations, then such **Coverage Section** and the applicable provisions of these **General Terms and Conditions** shall act as a master policy solely with respect to the coverage provided by such **Coverage Section**. The coverage afforded by such **Coverage Section** shall be provided in conjunction with the Passport foreign underlyer policy issued in each jurisdiction selected by the **Named Entity**. The specific structure of the coverage provided by such **Coverage Section** in conjunction with each Passport foreign underlyer policy is set forth in the Passport Structure Appendix for such **Coverage Section** that is attached to this policy.

### (c) *Spousal, Domestic Partner and Legal Representative Extension*

If a **Claim** against an **Insured Person** includes a **Claim** against: (1) the lawful spouse or legally recognized domestic partner of such **Insured Person**; or (2) a property interest of such spouse or domestic partner; and in either such case, such **Claim** arises from any actual or alleged **Wrongful Acts** of such **Insured Person**, this policy shall pay covered **Loss** arising from the **Claim** made against such spouse or domestic partner or the property of such spouse or domestic partner to the extent that such **Loss** does not arise from a **Claim** for any actual or alleged act, error or omission of such spouse or domestic partner. This policy shall pay covered **Loss** arising from a **Claim** made against the estates, heirs, or legal representatives of any deceased **Insured Person**, and the legal representatives of any **Insured Person** in the event of incompetence, insolvency or bankruptcy, who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claim** is based were alleged to have been committed.

## 7. CANCELLATION

- (a) *By Named Entity*: This policy may be canceled by the **Named Entity** at any time only by mailing written prior notice to the **Insurer** or by surrender of this policy to the **Insurer's** authorized agent or to the **Insurer**.
- (b) *By the Insurer*: This policy may be canceled by the **Insurer** only in the event of non-payment of premium by delivering to the **Named Entity** by registered, certified or other first class mail, at the **Named Entity Address**, written notice stating when, not less than fifteen (15) days, the cancellation shall be effective. Proof of mailing or delivery of such notice as aforesaid shall be sufficient proof of notice and this policy shall be deemed canceled as to all **Insureds** at the date and hour specified in such notice.
- (c) *Return of Premium*: If this policy shall be canceled, the **Insurer** shall retain the pro rata proportion of the premium hereon.

## 8. RECOVERY OF LIMITS

In the event the **Insurer** recovers amounts it paid under this policy, the **Insurer** shall reinstate the **Limits of Liability** of this policy to the extent of such recovery, less its costs incurred in administering and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this policy.

## 9. NOTICE AND AUTHORITY

Except for the giving of a notice of **Claim**, which shall be governed by the *Notice and Reporting Clause* of the applicable **Coverage Section**, all notices required under this policy to be given by an **Insured** to the **Insurer** shall be given in writing to the **Insurer** at the **Insurer Address**. It is agreed that the **Named Entity** shall act on behalf of all **Insureds** with respect to the giving of notice of a **Claim**, **Pre-Claim Inquiry**, **Crisis** or circumstances, the giving and receiving of notice of conditional renewal, premium increase, nonrenewal and cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defense of a **Claim**, **Crisis** or circumstance to the **Insurer**, and the exercising or declining to exercise any right to a **Discovery Period**.

## 10. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.

## 11. ACTION AGAINST INSURER

Except as provided in any *Alternative Dispute Resolution Clause* of a **Coverage Section**, no action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of an **Insured's** obligation to pay shall have been finally determined either by judgment against such **Insured** after actual trial or by written agreement of such **Insured**, the claimant and the **Insurer**.

Any **Insured** or the legal representative thereof who has secured such judgment or written agreement shall be entitled thereafter to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the **Insurer** as a party to any action against an **Insured** or the **Named Entity** to determine an **Insured's** liability, nor shall the **Insurer** be impleaded by any **Insured** or by any spouse, domestic partner or legal representative thereof.

## 12. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of their estates shall not relieve the **Insurer** of any of its obligations under this policy.

In such event, the **Insurer** and each **Insured** agree to cooperate in any efforts by the **Insurer** or any **Insured** to obtain relief for the benefit of the **Insured Persons** from any stay or injunction applicable to the distribution of the policy proceeds.

## 13. CONFORMANCE TO LAW

In the event that there is an inconsistency between: (i) any period of limitation in this policy relating to the giving of notice of cancellation or discovery/extended reporting election, and (ii) the minimum or maximum period required by applicable law, where such law allows, the **Insurer** will resolve the inconsistency by applying the notice period that is more favorable to the **Insureds**. Otherwise, the notice period is hereby amended to the extent necessary to conform to applicable law.

Coverage under this policy shall not be provided to the extent prohibited by any law.

## 14. CURRENCY

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** due under this policy (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Entity**) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the **Insurer's** obligation to pay such **Loss** is established (or if not published on such date the next publication date of The Wall Street Journal).

## 15. HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

## 16. DEFINITIONS

(a) *Terms Appearing in **Bold** in Each Coverage Section*

Terms appearing in **bold** in a **Coverage Section** shall have the meaning and/or value ascribed to them in the *Definitions Clause* of that **Coverage Section**. If a term appearing in **bold** in a **Coverage Section** is not defined in the *Definitions Clause* of that **Coverage Section**, then the meaning and/or value ascribed to such term in the Declarations or below in Clause 16(c) *Definitions of General Applicability* shall apply for purposes of coverage provided under that particular **Coverage Section**.

Certain terms, including without limitation the following, appear in **bold** and are defined in more than one **Coverage Section**: (1) **Claim**; (2) **Crisis**; (3) **Defense Costs**; (4) **Insured**; (5) **Insured Person**; (6) **Loss**; (7) **Pre-Claim Inquiry**; (8) **Privacy Event**; (9) **Related Claim**; (10) **Security Failure**; (11) **Wrongful Act**. Each of these terms shall have the meaning ascribed to the term in a **Coverage Section** in which the term appears, but that meaning shall apply solely for purposes of coverage provided under that particular **Coverage Section**.

(b) *Terms Appearing in Bold in These General Terms and Conditions*

Terms appearing in **bold** in these **General Terms and Conditions** and not defined below in Clause 16(c) *Definitions of General Applicability* shall have the meaning and/or value ascribed to them in the Declarations or in a particular **Coverage Section** for purposes of coverage provided under that particular **Coverage Section**.

(c) *Definitions of General Applicability*

<b>Continuity Date</b>	means the date set forth in Item 6 of the Declarations with respect to each <b>Coverage Section</b> .
<b>Coverage Section</b>	means each <b>Coverage Section</b> that is purchased by the <b>Named Entity</b> as reflected in Item 6 of the Declarations.
<b>E-Consultant Firm</b>	means a pre-approved e-discovery consulting firm. A list of pre-approved <b>E-Consultant Firms</b> is accessible through the online directory at <a href="http://www.aig.com/us/panelcounseldirectory">http://www.aig.com/us/panelcounseldirectory</a> under the "e-Consultant Panel Members" link.
<b>E-Discovery</b>	means the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information.
<b>E-Discovery Consultant Services</b>	means solely the following services performed by an <b>E-Consultant Firm</b> : (1) assisting the <b>Insured</b> with managing and minimizing the internal and external costs associated with <b>E-Discovery</b> ; (2) assisting the <b>Insured</b> in developing or formulating an <b>E-Discovery</b> strategy which shall include interviewing qualified and cost effective <b>E-Discovery</b> vendors; (3) serving as project manager, advisor and/or consultant to the <b>Insured</b> , defense counsel and the <b>Insurer</b> in executing and monitoring the <b>E-Discovery</b> strategy; and (4) such other services provided by the <b>E-Discovery Consultant Firm</b> that the <b>Insured</b> , <b>Insurer</b> and <b>E-Discovery Consultant Firm</b> agree are reasonable and necessary given the circumstances of the <b>Claim</b> .

- Enforcement Body** means: (1) any federal, state, local or foreign law enforcement authority or other governmental investigative authority (including, but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general), or (2) the enforcement unit of any securities or commodities exchange or other self-regulatory organization.
  
- Foreign Jurisdiction** means any jurisdiction, other than the United States of America or any of its territories or possessions.
  
- Organization** means:
  - (1) the **Named Entity**;
  - (2) each **Subsidiary**; and
  - (3) in the event a bankruptcy proceeding shall be instituted by or against any of the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.
  
- Policy Period** means the period of time from the **Inception Date** to the earlier of the **Expiration Date** or the effective date of cancellation of this policy. The **Policy Period** incepts and expires as of 12:01 A.M. on such dates at the **Named Entity Address**.
  
- Retroactive Date** means the date set forth in Item 6 of the Declarations as such for each **Coverage Section**.
  
- Separate Limit of Liability** means the applicable **Separate Limit of Liability**, if any, stated in Item 6 of the Declarations.
  
- Shared Limit of Liability** means the applicable **Shared Limit of Liability**, if any, stated in Item 6 of the Declarations, which limit of liability shall be shared between all of the **Coverage Sections** which are listed as being subject to such **Shared Limit of Liability** in the Declarations.
  
- Transaction** means:
  - (1) the **Named Entity** consolidating with or merging into another entity such that the **Named Entity** is not the surviving entity, or selling all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
  - (2) any person or entity or group of persons or entities acting in concert acquiring **Management Control** of the **Named Entity**; or
  - (3) any additional meaning ascribed to the term **Transaction** in any **Coverage Section**, but such additional meaning shall apply solely to the coverage provided by such **Coverage Section**.

[The balance of this page is intentionally left blank.]





**National Union Fire Insurance Company of Pittsburgh, PA**

A capital stock company

**EMPLOYMENT EDGE<sup>®</sup> EMPLOYMENT PRACTICES LIABILITY**

**("EPL Coverage Section")**

**Notice:** Pursuant to Clause 1 of the **General Terms and Conditions**, the **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **EPL Coverage Section**, unless otherwise explicitly stated to the contrary in this **EPL Coverage Section**.

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

**1. INSURING AGREEMENTS**

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to **Claims** first made against an **Insured** during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**, except to the extent coverage is extended pursuant to the *Claims Savings Clause* of this **Coverage Section** to a **Claim** first made prior to the **Policy Period**. Subject to the foregoing and the other terms, conditions and limitations of this policy, this **Coverage Section** affords the following coverage:

*A. Employment Practices Liability Coverage*

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** made against such **Insured** for any **Employment Practices Violation**.

*B. Third Party Violation Coverage*

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** made against such **Insured** for any **Third Party Violation**.

*C. Wrongful Internet Activity Coverage*

This policy shall pay the **Loss** of an **Organization** arising from any **Claim** made against such **Organization** for its actual or alleged liability for any **Wrongful Internet Activity** of an **Employee**.

**2. EXTENSIONS**

*A. First Dollar E-Discovery Consultant Services*

For any **Class Action Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

*B. Global Liberalization*

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization Clause* shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

### 3. EXCLUSIONS

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

- (1) *Conduct* arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act by the **Insured** if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy; provided, however, the **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of this exclusion;
- (2) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) **EEOC** proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or proceeding or investigation;
- (3) *Prior Notice* alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Act** alleged or contained in any claim which has been reported, or in any circumstances of which notice has been given, under any policy providing coverage in whole or in part for **Wrongful Acts** which was in force prior to the **Inception Date** of this policy;
- (4) *Bodily Injury & Property Damage* for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (5) *ERISA* for any violation of responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar provisions of any state, local or foreign statutory or common law;
- (6) *Compensation & Labour Liability*
- (a) for any violation of responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act) (FLSA), the National Labor Relations Act (NLRA), the Worker Adjustment and Retraining Notification (WARN) Act, the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign law or amendment to a law; or
- (b) alleging, arising out of, based upon or attributable to any of the circumstances described in any of the following:

- (i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);
- (ii) improper deductions from pay taken by any **Insured** from any **Employee** or purported **Employee**; or
- (iii) failure to provide or enforce legally required meal or rest break periods;

provided, however, the foregoing Exclusions 6(a) and 6(b) shall not apply to the extent that a **Claim** is for **Retaliation**;

**(7) Benefits**

for any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to the extent that a **Claim** is for **Retaliation**;

**(8) Contract**

alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to:

- (i) liability which would have attached in the absence of such express contract or agreement; or
- (ii) **Loss** constituting **Defense Costs**; or

**(9) Securities Claim**

alleging, arising out of, based upon or attributable to any **Claim** brought by any holder of securities representing the debt or equity of the **Organization** or an **Outside Entity**, in their capacity as such, whether directly, derivatively on behalf of the **Organization** or **Outside Entity**.

#### 4. RETENTION

In addition to the provisions in Clause 2. RETENTION of the General Terms and Conditions, in no event shall a Retention be applied to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

If an **Organization** is unable to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention amount due to **Financial Insolvency**, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either: (i) an **Organization** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from the **Organization** pursuant to the subrogation provisions of this **Coverage Section**.

## 5. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

(a) *Reporting a Claim*

An **Organization** or an **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Claim** made against an **Insured** as soon as practicable after the **Named Entity's** Human Resources Manager, Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim**. In all events, notification must be provided no later than sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

(b) *Relation Back to the First Reported Claim*

Solely for the purpose of establishing whether any subsequent **Related Claim** was first made during the **Policy Period** or **Discovery Period** (if applicable), if during any such period a **Claim** was first made and reported in accordance with Clause 5(a) above, then any **Related Claim** that is subsequently made against an **Insured** and that is reported in accordance with Clause 5(a) above shall be deemed to have been first made at the time that such previously reported **Claim** was first made.

With respect to any subsequent **Related Claim**, this policy shall not cover **Loss** incurred before such subsequent **Related Claim** is actually made against an **Insured** and reported to the **Insurer**.

(c) *Claims Savings Clause*

1. Notwithstanding Clause 5(b), with respect to any **Claim** which (i) first becomes a **Litigated Matter** during the **Policy Period** or **Discovery Period** (if applicable); and (ii) is a **Related Claim** with respect to an **Administrative Claim** which was first made against an **Insured** prior to the **Policy Period**, the **Insurer** shall not deny coverage for such **Claim** based upon late notice of such **Claim** or based upon such **Claim** first being made prior to the **Policy Period**, provided that:

- (a) the **Claim** was first made against the **Insured** at a time during which the **Named Entity** was insured under a **Prior AIG Policy**;
- (b) upon the **Claim** first becoming a **Litigated Matter**, the **Claim** was reported in accordance with Clause 5(a) above; and
- (c) no **Insured** has made a monetary settlement offer to a claimant or responded to a monetary demand from or on behalf of a claimant with respect to such **Claim**.

2. Coverage under this **Coverage Section** for any **Claim** afforded coverage pursuant to this Clause 5(c) shall be the lesser of:

- (a) the coverage which would have been provided under this **Coverage Section** for such **Claim** had the **Claim** been made during the **Policy Period** and reported to the **Insurer** as required by this **Coverage Section**; or
- (b) the coverage, if any, which would have been provided under the **Prior AIG Policy** for such **Claim** if the **Insured** had properly provided notice of such **Claim** in accordance with the provisions of the **Prior AIG Policy**,

taking into account all provisions of each policy, including, without limitation, applicable limits of liability (as reduced by payments made under such policy), retentions, exclusions and other restrictions contained in each policy.

Notwithstanding the foregoing, nothing in this Clause 5(c) shall be construed to increase the **Limits of Liability** of this policy or to provide coverage under the **Prior AIG Policy**, nor shall this Clause 5(c) ever result in providing coverage under this policy for **Loss** for which coverage is in fact provided (or would be provided but for the exhaustion of the limit of liability) under the **Prior AIG Policy**.

3. This Clause 5(c) shall not apply to any **Claim** which:

- (a) prior to the **Policy Period** was a **Litigated Matter**; or
- (b) is a **Related Claim** with respect to a **Claim** which prior to the **Policy Period** was a **Litigated Matter**.

(d) *Relation Back to Reported Circumstances Which May Give Rise to a Claim*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Organization** or an **Insured Person** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 5(a) above shall be deemed to have been first made at the time of the notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured** and reported to the **Insurer**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the alleged **Wrongful Act** anticipated and reasons for anticipating such **Claim**, with full particulars as to dates, persons and entities involved.

**6. DISCOVERY PREMIUM**

In the event the **Named Entity** or the **Insurer** shall cancel or refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

**7. DEFENSE AND SETTLEMENT**

*A. For Claims*

*(1) No Duty to Defend*

The **Insureds** shall defend and contest any **Claim** made against them. The **Insurer** does not assume any duty to defend.

*(2) Right to Tender Defense*

Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of any **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Entity** on behalf of all **Insureds**. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against the **Insureds** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation thereof sent by the **Insurer** to the **Named Entity**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**. However, the **Insurer** shall not be obligated to defend such **Claim** after the **Policy Aggregate** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted, or after an **Insured's** rejection (or failure or refusal to accept within the time prescribed in the "Settlement Opportunity" paragraph of this Clause 7) of a **Settlement Opportunity**.

*(3) Advancement*

When the **Insurer** has not assumed the defense of a **Claim** pursuant to subparagraph (2) of this Clause 7, it shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every

**Insured Person or Organization**, severally according to their respective interests, in the event and to the extent that any such **Insured Person or Organization** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

(4) *Claims Participation and Cooperation*

When the **Insurer** has not assumed the defense of a **Claim** pursuant to subparagraph (2) of this Clause 7, the **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Insured** in the defense and prosecution of any **Claim** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The failure of any **Insured Person** to give the **Insurer** cooperation and information as required in the preceding paragraph shall not impair the rights of any other **Insured Person** under this **Coverage Section**.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs**, without the prior written consent of the **Insurer**. Such consent shall not be unreasonably withheld.

(5) *Full Settlement Within Retention/Consent Waived*

If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

(6) *Settlement Opportunity*

In the event the **Insureds** do not consent to the first **Settlement Opportunity** within thirty (30) days of the date the **Insureds** are first made aware of the **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made), then the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (a) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (b) 70% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 30% of such **Loss** excess of the **Settlement Opportunity Amount** shall be carried by the **Organization** and the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply unless the **Settlement Opportunity Amount** exceeds the remaining applicable Retention amount.

*B. Pre-Authorized Defense Attorneys For Designated Employment Practices Claims*

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "Public and Private Companies (Employment Practices Liability)" link. The list provides a choice of law firms from which a selection of legal counsel shall be made by the **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 7.A(2) of this **Coverage Section**, the **Insurer**) to conduct the defense of any **Designated Employment Practices Claim** made against the **Insureds**.

With the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable. The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Designated Employment Practices Claim** made against such **Insureds** during the **Policy Period**.

The **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 7.A of this **Coverage Section**, the **Insurer**) shall select a **Panel Counsel** to defend the **Designated Employment Practices Claim** made against the **Insureds** in the jurisdiction in which the **Designated Employment Practices Claim** is brought. In the event the **Claim** is brought in a jurisdiction not included on the list, **Panel Counsel** shall be selected in the listed jurisdiction which is the nearest geographic jurisdiction to either where the **Designated Employment Practices Claim** is brought or where the corporate headquarters of the **Named Entity** is located. In such instance the **Insureds** also may, with the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld, select a non-**Panel Counsel** in the jurisdiction in which the **Designated Employment Practices Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel** which will function as "lead counsel" in conducting the defense of the **Designated Employment Practices Claim**.

*C. Pre-Approved E-Consultant Firms*

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link. The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

**8. SUBSIDIARY COVERAGE**

*A. Subsidiary Additions*

In addition to the definition of "**Subsidiary**" set forth in Clause 12. DEFINITIONS of this **Coverage Section**, **Subsidiary** also means any for-profit entity: (1) of which the **Named Entity** first had **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**; and (2) whose:

- (a) total number of **Employees** is less than the lesser of: (i) 20% of the total **Employees** of each and every **Organization** as of the **Inception Date** of this policy; or (ii) five hundred (500); or
- (b) total number of **Employees** does not satisfy the criteria set forth in subparagraph (a),



above, but such entity shall be a "**Subsidiary**" only: (i) for a period of sixty (60) days from the date the **Named Entity** first had **Management Control** of such entity; or (ii) until the end of the **Policy Period**, whichever expires or ends first (the "**Auto-Subsidiary Period**");

provided that, with respect only to entities described in subparagraph (b) above, the **Named Entity** or any other **Insured** shall report such **Subsidiary** to the **Insurer**, in writing, prior to the end of the **Policy Period**.

The **Insurer** shall extend coverage for any **Subsidiary** described in subparagraph (b) above, and any **Insured Person** thereof, beyond its respective **Auto-Subsidiary Period** if during such **Auto-Subsidiary Period**, the **Named Entity** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium and amendment of the provisions of this policy required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Insured Person** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

#### *B. Former Subsidiaries*

In the event the **Named Entity** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this policy but only with respect to **Claims** for **Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Entity** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

#### *C. Scope Of Subsidiary Coverage*

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

### **9. APPLICATION AND UNDERWRITING**

#### *A. Application And Reliance*

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

#### *B. Severability Of The Application*

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, *ab initio*, with respect to:

- (1) **Loss** of any **Insured Person** who knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed; and

- (2) **Loss** of an **Organization**, if any **Insured Person** who is or was a chief executive officer, general counsel, director of human resources or risk manager (or equivalent position) of the **Named Entity** knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

## 10. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

### A. *Other Insurance And Indemnification*

Unless expressly written to be excess over other applicable insurance, it is intended that the insurance provided by this **Coverage Section** shall be primary.

In the event a **Claim** is made against an **Outside Entity Executive**, or a **Claim** is made against an **Insured** for the **Insured's** liability with respect to a leased **Employee** or independent contractor **Employee** as described in the definition of "**Employee**", coverage as is afforded by this **Coverage Section** shall be specifically excess of any: (a) indemnification provided by such **Outside Entity** or leasing company; and (b) any other insurance provided to such **Outside Entity**, leasing company or independent contractor.

### B. *Subrogation*

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In the event that the **Insurer** shall for any reason pay **Loss** on behalf of an **Insured Person**, the **Insurer's** subrogation rights shall include, but not be limited to, the assertion of indemnification or contribution rights with respect to any such payments it makes or advances. Additionally, upon the **Insurer** making any payment of **Loss** within the Retention on behalf of any **Insured**, the **Insurer** shall have a direct contractual right under this policy to recover from the **Organization**, or in the event of the bankruptcy of the **Organization**, from the debtor-in-possession (or equivalent status outside the United States) such **Loss** which was paid within the Retention. Such direct contractual right of recovery against the **Organization** shall be in addition to and independent of the **Insurer's** subrogation right pursuant to this Clause 10.B and any other rights the **Insurer** may have under applicable law.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**; provided, however, this sentence shall not apply to subrogation against the **Organization** as described in the second paragraph of this Clause 10.B.

## 11. ALTERNATIVE DISPUTE RESOLUTION

### *ADR Options*

All disputes or differences which may arise under or in connection with this **Coverage Section**, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to an alternative dispute resolution (ADR) process as provided in this Clause.

The **Named Entity** may elect the type of ADR process discussed below; provided, however, that absent a timely election, the **Insurer** may elect the type of ADR. In that case, the **Named Entity** shall have the right to reject the **Insurer's** choice of the type of ADR process at any time prior to its commencement, after which, the **Insured's** choice of ADR shall control.

*Mediation*

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least ninety (90) days shall have elapsed from the date of the termination of the mediation.

*Arbitration*

In the event of arbitration, the decision of the arbitrator(s) shall be final, binding and provided to both parties, and the arbitration award shall not include attorney's fees or other costs.

*ADR Process*

*Selection of Arbitrator(s) or Mediator:* The **Insurer** and the **Named Entity** shall mutually consent to: (i) in the case of arbitration, an odd number of arbitrators which shall constitute the arbitration panel, or (ii) in the case of mediation, a single mediator. The arbitrator, arbitration panel members or mediator must be disinterested and have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the absence of agreement, the **Insurer** and the **Named Entity** each shall select one arbitrator, the two arbitrators shall select a third arbitrator, and the panel shall then determine applicable procedural rules.

*ADR Rules:* In considering the construction or interpretation of the provisions of this policy, the mediator or arbitrator(s) must give due consideration to the general principles of the law of the **State of Formation** of the **Named Entity**. Each party shall share equally the expenses of the process elected. At the election of the **Named Entity**, either choice of ADR process shall be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state reflected in the **Named Entity Address**. The **Named Entity** shall act on behalf of each and every **Insured** under this *Alternative Dispute Resolution Clause*. In all other respects, the **Insurer** and the **Named Entity** shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.

**12. DEFINITIONS**

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

**Administrative Claim**

means an administrative or regulatory investigation:

- (1) by the **EEOC**; or
- (2) of a violation of the Uniformed Services Employment and Reemployment Rights Act, when such investigation is conducted by the United States Department of Labor, Veterans Employment and Training Service, Justice Department or Office of Special Counsel;

which, in either case, is commenced by the filing of a notice of charges or similar document of which notice has been given to an **Insured**.

The term "**Administrative Claim**" shall not mean or include any **Litigated Matter**.

**Application**

means:

- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy; and
- (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other employment practices (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time.

**Claim**

means:

- (1) a written demand for monetary, non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process, or any request to toll or waive the statute of any limitations;
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (a) service of a complaint or similar pleading; (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or (c) receipt or filing of a notice of charges;
- (3) an administrative or regulatory investigation by the **EEOC**, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to an **Insured**; or
- (4) an administrative or regulatory investigation of violations of the Uniformed Services Employment and Reemployment Rights Act when such investigation is conducted by the United States Department of Labor, Veterans Employment and Training Service, Justice Department or Office of Special Counsel and is commenced by the filing of a notice

of charges, service of a complaint or similar document of which notice has been given to an **Insured**.

However, in no event, shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

**Class Action Claim**

means any **Claim** brought: (1) by or on behalf of an actual or alleged class (whether or not certified as such); or (2) by the **EEOC** on behalf of any group of three or more complainants, plaintiffs or potentially aggrieved parties.

**Class Action Retention**

means the Retention applicable to **Loss** that arises out of a **Class Action Claim**.

**Defense Costs**

means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**. **Defense Costs** shall not include the compensation of any **Insured Person**.

**Designated Employment Practices Claim EEOC**

means a **Claim**: (1) alleging discrimination or **Retaliation**; or (2) that is a **Class Action Claim**.

means the Equal Employment Opportunity Commission, or any similar state, local or foreign agency.

**Employee**

means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee, in his or her capacity as such. An individual who is leased to the **Organization** or is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization**, shall also be an **Employee**.

**Employment Practices Violation**

means any actual or alleged:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (2) harassment (including workplace bullying, sexual harassment whether "quid pro quo", hostile work environment or otherwise, including "same-sex" sexual harassment);
- (3) discrimination (including, but not limited to, discrimination based upon age, gender, gender identity or expression, race, color, national origin, religion, sexual orientation or preference, genetic information, pregnancy, military status, employment status or disability);
- (4) **Retaliation**;

- (5) employment-related misrepresentation(s) to an **Employee** of any **Organization**;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (7) false arrest or false imprisonment;
- (8) wrongful failure to employ or promote;
- (9) wrongful deprivation of career opportunity, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (10) wrongful discipline;
- (11) failure to grant tenure; or
- (12) with respect to any of the foregoing items (1) through (11) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

but only if the **Employment Practices Violation** relates to an **Employee** of or an applicant for employment with an **Organization** or an **Outside Entity**, whether committed directly, indirectly, intentionally or unintentionally.

#### **Executive**

means any:

- (1) past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture or member of the management board of a limited liability company (or equivalent position), in his or her capacity as such; and
- (2) past, present and future person in a duly elected or appointed position in an entity organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited to, a supervisory board), in his or her capacity as such.

#### **Financial Insolvency**

means: (1) the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent **Organization**; (2) the filing of a petition under the bankruptcy laws of the United States of America; or (3), as to both (1) or (2), any equivalent events outside the United States of America.

#### **Foreign Policy**

means the standard employment practices liability policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign**

**Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **Coverage Section**. If more than one such policy exists, then "**Foreign Policy**" means the standard basic policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**.

**Insured**

means any:

- (1) **Insured Person**; or
- (2) **Organization**.

**Insured Person**

means any:

- (1) **Executive of an Organization**;
- (2) **Employee of an Organization**; provided, however, an individual who is leased to the **Organization** or is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization**, shall be an **Insured Person** only if the **Organization** provides indemnification to such individual in the same manner as is provided to the **Organization's** employees; or
- (3) **Outside Entity Executive**.

**Litigated Matter**

means any civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (1) service of a complaint or similar pleading; or (2) return of an indictment, information or similar document (in the case of a criminal proceeding).

**Loss**

means damages, settlements, judgments (including back pay and front pay, pre/post-judgment interest on a covered judgment), and **Defense Costs**; however, "**Loss**" shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; (4) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (5) any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person; or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to a **Claim** alleging discrimination or other **Wrongful Act**; and (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed. **Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (1) through (6) above of this Definition, subject to the other terms, conditions and exclusions of this policy.

**Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to

the Conduct Exclusion), punitive, exemplary and multiple damages (including the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act). Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiple damages.

**Loss** shall also include any attorney fees awarded to a prevailing plaintiff's counsel pursuant to a covered judgment against an **Insured** or which the **Insurer** has agreed to pay as part of a covered settlement of a **Claim** against an **Insured**.

**Management Control**

means:

- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

**Outside Entity**

means any: (1) not-for-profit entity; or (2) other entity listed as an "**Outside Entity**" in an endorsement attached to this **Coverage Section**.

**Outside Entity Executive**

means any: (1) **Executive** or **Employee** of an **Organization** who is or was acting at the specific request or direction of an **Organization** as an **Executive** of an **Outside Entity**, in his or her capacity as such; or (2) any other person listed as an **Outside Entity Executive** in an endorsement attached to this **Coverage Section**, in his or her capacity as such.

In the event of a disagreement between the **Organization** and an **Outside Entity Executive** as to whether such **Insured** was acting "at the specific request or direction of the **Organization**," this **Coverage Section** shall abide by the determination of the **Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** against such **Outside Entity Executive** is made. In the event no notice of any such determination is given to the **Insurer** within such period, this **Coverage Section** shall apply as if the **Organization** determined that such **Outside Entity Executive** was not acting at the **Organization's** specific request or direction.

**Prior AIG Policy**

means a valid and collectible employment practices liability policy providing substantially the same or similar coverage as



is provided by this **Coverage Section**, issued to the **Name Entity** by the **Insurer** (or any other insurance company affiliate thereof), of which this **Coverage Section** is a continuous renewal.

**Related Claim** means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were alleged in another **Claim** made against an **Insured**.

**Retaliation** means a retaliatory act of an **Insured** alleged to be in response to the actual or attempted exercise by an **Employee** of the **Organization** or an **Outside Entity** of any right that such **Employee** has under law, including, without limitation, any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** of the **Organization** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the exercise of rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) strikes of an **Employee** of the **Organization** or an **Outside Entity**.

**Settlement Opportunity** means an **Insurer** recommended settlement that is within the **Policy Aggregate** and the applicable **Separate Limit of Liability** or **Shared Limit of Liability**, and that is acceptable to the claimant.

**Subsidiary** means:

- (1) any for-profit entity of which the **Named Entity** has or had **Management Control** on or before the **Inception Date** of the policy either directly or indirectly through one or more of its other **Subsidiaries**; and
- (2) any not-for-profit entity sponsored exclusively by an **Organization**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Entity** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by an **Organization**.

**Third-Party Violation** means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs (2) and (3) of the definition of **Employment Practices Violation**, or the violation of the civil rights of an individual relating to such harassment or discrimination, when such acts are alleged to be committed against any individual other than an **Insured Person** or applicant

for employment with the **Organization** or with an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.

**Third Party Retention**

means the Retention applicable to **Loss** that arises out of any **Third-Party Violation** alleging a **Third-Party Violation**.

**Wrongful Act**

means any **Employment Practices Violation**, **Third-Party Violation** or **Wrongful Internet Activity**.

**Wrongful Internet Activity**

means any actual or alleged:  
(1) **Employment Practices Violation** alleged by an **Employee**; or  
(2) **Third Party Violation**,  
when committed by an **Employee** by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises. For purposes of the application of this definition, an individual shall be deemed to be an **Employee** regardless of whether such individual was acting in his or her capacity as an **Employee**.

**National Union Fire Insurance Company of Pittsburgh, PA**

A capital stock company

**FIDUCIARY LIABILITY INSURANCE EDGE<sup>®</sup> EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY  
("FLI Coverage Section")**

**Notice:** Pursuant to Clause 1 of the **General Terms and Conditions**, the **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **FLI Coverage Section**, unless otherwise explicitly stated to the contrary in this **FLI Coverage Section**.

In consideration of the payment of the premium and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

**1. INSURING AGREEMENTS**

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to: (i) **Claims** first made against an **Insured**; and (ii) **Voluntary Compliance Losses** first ascertained by or assessed against an **Insured**, in each such event, during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**. **Claims** that are fact-finding investigations which do not allege a **Wrongful Act** and **Claims** that are **Internal Appeals** shall each be deemed first made when they are reported. Subject to the foregoing and the other terms, conditions, and limitations of this policy, this **Coverage Section** affords the following coverage:

*A. Insured Person Coverage*

This policy shall pay the **Loss** of any **Insured Person** that no **Organization** or **Plan** has indemnified or paid, and that arises from any **Claim**:

- (1) made against such **Insured Person** for any **Wrongful Act** of such **Insured Person**; or
- (2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice.

*B. Indemnification of Insured Person Coverage*

This policy shall pay the **Loss** of an **Organization** or **Plan** that arises from any **Claim**:

- (1) made against any **Insured Person** for any **Wrongful Act** of such **Insured Person**; or
- (2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice;

but only to the extent that such **Organization** or **Plan** has indemnified such **Loss** of, or paid such **Loss** on behalf of, the **Insured Person**.

*C. Organization And Plan Coverage*

This policy shall pay the **Loss** of any **Organization** or **Plan** arising from any **Claim**:

- (1) made against such **Organization** or **Plan** for any **Wrongful Act** of such **Organization** or **Plan** (or of any employee for whom such **Organization** is legally responsible); or
- (2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice.

*D. Voluntary Compliance Loss Coverage*

This policy shall pay any **Voluntary Compliance Loss** first ascertained by or assessed against an **Insured**, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section**.

The payment of any **Voluntary Compliance Loss** under this policy shall not waive any of the **Insurer's** rights under this policy or at law, including in the event that circumstances giving rise to such **Voluntary Compliance Loss** result in a **Claim**.

## 2. EXTENSIONS

### A. *Settlor Capacity*

**Wrongful Act** shall include any actual or alleged act, error or omission by an **Insured** in a settlor capacity as respects a **Plan**.

### B. *Disproven Allegation Protection*

In the event that an allegation which triggers potential coverage under this **Coverage Section** is disproven, so that a **Claim** is outside the scope of coverage under this **Coverage Section**, the **Insurer** shall not seek recovery of amounts that it has previously paid. Situations that would trigger this protection include, but are not limited to when it is proven that:

- (1) an **Executive** or employee of the **Organization** who was alleged to be a **Plan** fiduciary was not in fact a **Plan** fiduciary;
- (2) an alleged **Plan** was not a plan or was not a covered **Plan**; or
- (3) an **Organization** alleged to be the sponsor of a **Plan** was not in fact the sponsor of such plan.

### C. *Independent Fiduciary Fees*

**Loss** shall include reasonable and necessary fees and expenses of an independent fiduciary if such fiduciary is retained to review a proposed settlement of a covered **Claim**. **Loss** shall also include reasonable and necessary fees and expenses of any law firm hired by such independent fiduciary to facilitate a review of such proposed settlement.

### D. *Managed Care Coverage*

This policy shall pay the **Loss** of an **Insured** arising from a **Claim** made against such **Insured** alleging improper or negligent selection of a **Managed Care Services** provider or denial or delay of any benefit under a health care, pharmaceutical, vision, or dental **Plan** of an **Insured**.

### E. *LMRA Coverage*

If, and during the time that, coverage is provided under this **Coverage Section**, then this policy shall also pay the **Loss** of an **Insured** arising from an allegation that such **Insured** violated Section 301 of the Labor Management Relations Act ("LMRA") relating to alleged violations of collectively bargained contracts in connection with a **Plan**.

### F. *First Dollar E-Discovery Consultant Services*

For any **Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

### G. *Global Liberalization*

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign**

**Jurisdiction.** This *Global Liberalization Clause* shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside the limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

**3. INDEMNIFICATION PROTECTIONS**

**A. Advancement**

If for any reason (including, but not limited to insolvency) an **Organization** and the relevant **Plan** fail or refuse to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention, if any, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either (i) an **Organization** or **Plan** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** or any relevant **Plan** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

Advancement, payment or indemnification of an **Insured Person** by the **Organization** or **Plan** is deemed "failed" if it has been requested by an **Insured Person** in writing and has not: been provided by; agreed to be provided by; or acknowledged as an obligation by an **Organization** or **Plan** within sixty (60) days of such request; and advancement, payment or indemnification by the **Organization** or **Plan** is deemed "refused" if such **Organization** or **Plan** gives a written notice of the refusal to the **Insured Person**. Advancement, payment or indemnification of an **Insured Person** by the **Organization** or **Plan** shall only be deemed "failed" or "refused" to the extent such advancement, payment or indemnification is not: provided; agreed to be provided; or acknowledged by and collectible from any **Organization** or **Plan**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply toward the exhaustion of the **Limits of Liability**.

**B. Order Of Payments**

In the event of a **Loss** arising from a covered **Claim** for which payment is due under the provisions of this **Coverage Section**, the **Insurer** shall in all events:

- (1) First, pay all **Loss** covered under Insuring Agreement A. *Insured Person Coverage*;
- (2) Second, only after payment of **Loss** has been made pursuant to subparagraph (1) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement B. *Indemnification Of Insured Person Coverage*; and
- (3) Lastly, only after payment of **Loss** has been made pursuant to subparagraphs (1) and (2) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement C. *Organization and Plan Coverage* and Insuring Agreement D. *Voluntary Compliance Loss Coverage*.

In the event the **Insurer** withholds payment pursuant to subparagraphs (2) and/or (3) above, then the **Insurer** shall, at such time and in such manner as shall be set forth in instructions of the chief executive officer of the **Named Entity**, remit such payment to an **Organization** or directly to or on behalf of an **Insured**.

#### 4. DEFENSE AGREEMENTS

##### A. *Insurer's Duty to Defend*

Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent.

The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to negotiating a settlement, subject to the provisions of this Clause 4. The **Insurer** shall not, however, be obligated to defend any **Claim** after the **Policy Aggregate** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted.

##### B. *Insured's Option to Assume Defense*

Notwithstanding the above, the **Insureds** shall have the right to assume the defense of any **Claim** made against them. This right shall be exercised in writing by the **Named Entity** on behalf of all **Insureds** within sixty (60) days of the reporting of the **Claim** to the **Insurer**. Upon receipt of such written request, the **Insurer** shall tender the defense of the **Claim** to the **Insureds**. Once the defense has been so tendered, the **Insurer** cannot re-assume the defense of the **Claim**. The **Insurer** shall have the right, but not the obligation, to effectively associate with the **Insureds** in the defense of any **Claim** that involves or appears reasonably likely to involve the **Insurer**, including, but not limited to negotiating a settlement. Provided that the **Insurer** shall be permitted to effectively associate with the **Insureds** in the defense of any **Claim**, the **Insurer's** consent to settlements, stipulated judgments and **Defense Costs** shall not be unreasonably withheld.

##### C. *Advancement of Defense Costs*

If the **Insureds** against whom a **Claim** is made exercise their right to assume the defense of such **Claim**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs**, on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

##### D. *Claims Participation and Cooperation*

The **Insureds** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The failure of any **Insured** to give the **Insurer** cooperation and information as it may reasonably require shall not impair the rights of any **Insured Person** under this **Coverage Section**.

The **Insureds** shall contest any **Claim** made against them and shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs**, without the prior written consent of the **Insurer**.

##### E. *Full Settlement Within Retention/ Consent Waived*

If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

#### 5. EXCLUSIONS

##### A. *Full Severability Of Exclusions*

In determining whether any of the exclusions set forth in Clause 5.B below apply, the **Wrongful Acts** of any **Insured** shall not be imputed to any other **Insured**.

#### B. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

- (1) *Conduct* arising out of, based upon or attributable to any:
- (a) profit or advantage to which the **Insured** was not legally entitled; or
  - (b) deliberate criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law**, by the **Insured**;
- if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy;
- (2) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (3) *Discrimination* for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **Employee Benefit Law**;
- (4) *Bodily Injury & Property Damage* for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to: (a) **Defense Costs** incurred in the defense of a **Claim** for a violation of **ERISA** by an **Insured**; or (b) the coverage afforded under Extension 2.D. Managed Care Coverage; or
- (5) *Prior Notice* alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Act** alleged or contained, in any claim which has been reported, or in any circumstances of which notice has been given under any employee benefit plan fiduciary liability insurance policy in force prior to the **Inception Date** of this policy.

#### 6. RETENTION

In addition to the provisions of Clause 2. RETENTION of the **General Terms and Conditions**, in no event shall a Retention be applied to the following: (i) **Non-Indemnifiable Loss**; (ii) **Voluntary Compliance Loss**; (iii) **Section 502(c) Penalties**; (iv) **Pension Protection Act Penalties**; (v) **HIPAA Penalties**; (vi) **Health Care Reform Penalties**; (vii) **Section 4975 Penalties**, or (viii) the first \$25,000 in **Defense Costs** incurred for **E-Discovery Consultant Services**.

#### 7. LIMITS OF LIABILITY

In addition to the provisions of Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, the following sublimits shall apply to the coverage provided by this

**Coverage Section:**

<b>(a) Voluntary Compliance Loss:</b>	<b><i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i></b>
<b>(b) Section 502(c) Penalties:</b>	<b><i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i></b>
<b>(c) Pension Protection Act Penalties:</b>	<b><i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i></b>
<b>(d) HIPAA Penalties:</b>	<b><i>\$1.5 million or the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i></b>
<b>(e) Health Care Reform Penalties:</b>	<b><i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i></b>
<b>(f) Section 4975 Penalties:</b>	<b><i>\$250,000</i></b>

As stated in Clause 3 of the **General Terms and Conditions**, each sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Loss** in the aggregate under this policy that is subject to that sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Policy Aggregate** and this **Coverage Section's** applicable **Separate Limit of Liability** or **Shared Limit of Liability**.

**8. NOTICE AND REPORTING**

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

**A. Reporting a Claim**

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Claim** made against an **Insured** as soon as practicable after the **Named Sponsor's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim**. In all such events, notification must be provided no later than:

- (i) sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable) if this **Coverage Section** is not renewed with the **Insurer**; or
- (ii) two hundred and seventy (270) days after the end of the **Policy Period** or **Discovery Period** (if applicable) if the expiring **Coverage Section** is renewed with the **Insurer**.

As exceptions to the foregoing notice provision the **Insureds** shall have no obligation to give notice of:



- (1) a fact-finding investigation before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) a **Wrongful Act** is alleged in writing; or (iii) any **Insured** has incurred defense costs for which coverage is being sought; or
- (2) an **Internal Appeal** before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) any investment loss within a **Plan** is alleged; or (iii) any **Insured** has incurred defense costs for which coverage is being sought.

*B. Reporting Voluntary Compliance Loss and Covered Penalties*

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Voluntary Compliance Loss** or of **Covered Penalties** as soon as practicable after such **Voluntary Compliance Loss** is first ascertained by or assessed against an **Insured**, or such **Covered Penalties** are first imposed, respectively, but in all such events no later than sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

*C. Relation Back to the First Reported Claim*

Solely for the purpose of establishing whether any subsequent **Related Claim** was first made during the **Policy Period** or **Discovery Period** (if applicable), if during any such period a **Claim** was first made and reported in accordance with Clause 8.A. above, then any **Related Claim** which is subsequently made against an **Insured** and that is reported to the **Insurer** shall be deemed to have been first made at the time that such previously reported **Claim** was first made.

With respect to any subsequent **Related Claim**, this policy shall only cover **Loss** incurred after such subsequent **Related Claim** is actually made against an **Insured**.

*D. Relation Back to Reported Circumstances Which May Give Rise to a Claim*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Insured** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 8.A. above shall be deemed to have been first made at the time of the notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the anticipated alleged **Wrongful Act** and reasons for anticipating such **Claim**, with dates, persons and entities potentially involved; however, notification that includes a copy of an agreement to toll a statute of limitations shall be presumed sufficiently specific as to the potential **Claims** described within that agreement.

**9. DISCOVERY PREMIUM**

In the event the **Named Entity** shall cancel or the **Named Entity** or the **Insurer** shall refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

**10. PANEL COUNSEL AND E-CONSULTANT FIRMS**

*A. Pre-Authorized Defense Attorneys*

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "Fiduciary Liability (ERISA & Non-ERISA)" link. The list provides **Insureds** with a choice of law firms from which a selection of legal counsel shall be made to conduct the defense of any: (1) **Claim** brought by any government entity, or (2) **Claim** brought in the form of a class or representative action (collectively "**Designated Claim**").

In the event the **Insurer** is operating under a duty to defend pursuant to Clause 4.A. of this **Coverage Section**, then the **Insurer** shall select a **Panel Counsel** to defend the **Insureds** in a **Designated Claim**. Upon the written request of the **Named Entity**, the **Insurer** may consent to a different **Panel Counsel** selected by the **Named Entity** to defend the **Insureds**, which consent shall not be unreasonably withheld.

In the event the **Insureds** have assumed the defense of the **Claim** pursuant to Clause 4.B. of this **Coverage Section**, then the **Insureds** shall select a **Panel Counsel** to defend the **Insured** in a **Designated Claim**. In addition, with the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The selection of a **Panel Counsel** to defend a **Designated Claim** shall not be restricted to the jurisdiction in which the **Designated Claim** is brought.

The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Designated Claim** made against such **Insureds** during the **Policy Period**.

*B. Pre-Approved E-Consultant Firms*

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link. The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

**11.SUBSIDIARY AND PLAN COVERAGE**

*A. Former Subsidiaries*

In the event the **Named Sponsor** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this policy, but only with respect to **Claims** for **Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Sponsor** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

*B. Scope Of Subsidiary Coverage*

Coverage as is afforded under this policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

### C. *Scope Of Plan Coverage*

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Plan** shall only apply for **Wrongful Acts** that occurred or that are alleged to have occurred prior to the date any such **Plan** was sold, spun-off, transferred or terminated or prior to the date that the **Sponsor Organization** or **Insured Person** ceases to be a fiduciary or ceases his, her or its **Administration** of a sold, spun-off or transferred **Plan**, or in the case of a terminated **Plan**, prior to the final date of asset distribution of such **Plan**.

## 12. APPLICATION AND UNDERWRITING

### A. *Application And Reliance*

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

### B. *Insured Person Coverage Non-Rescindable*

Under no circumstances shall the coverage provided by this **Coverage Section** for **Loss** under Insuring Agreement A. *Insured Person Coverage* be deemed void, whether by rescission or otherwise, once the premium has been paid.

### C. *Severability Of The Application*

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, *ab initio*, with respect to:

(1) **Loss** under Insuring Agreement B. *Indemnification Of Insured Person Coverage* for the indemnification of any **Insured Person** who knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed; and

(2) **Loss** under Insuring Agreement C. *Organization and Plan Coverage* if:

- (i) the person who executed the **Application**; or
- (ii) any past or present chief executive officer or chief financial officer of the **Named Entity**,

knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

## 13. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

### A. *Indemnification By Organizations*

The **Organizations** agree to indemnify the **Insured Persons** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this **Coverage**

**Section** any indemnification or advancement owed to any **Insured Person** by any **Organization** within an applicable Retention, then that **Organization** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to indemnify the **Insured Persons** and/or advance **Defense Costs** under this **Coverage Section** shall not impair the rights of any **Insured Person** under this **Coverage Section**.

*B. Other Insurance And Indemnification*

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is specifically written as excess insurance over the applicable **Separate Limit of Liability** or **Shared Limit of Liability** provided by this **Coverage Section**. This **Coverage Section** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this **Coverage Section** may be obligated to pay **Loss**. Such insurance as is provided by this **Coverage Section** shall apply as primary to any personal "umbrella" excess liability insurance purchased by an **Insured Person**.

*C. Subrogation and Waiver of Recourse*

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**.

In the event that this **Coverage Section** has been purchased by an **Insured** other than a **Plan**, it is agreed that the **Insurer** waives its right of recourse against the **Insured** under Section 410(b)(1) of ERISA as amended.

## 14. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

**Administration** means, with respect to a **Plan**, counseling employees, participants, and beneficiaries; providing interpretations; handling of records; determining and calculating benefits; preparing, distributing or filing required notices or documents; or activities affecting enrollment, termination or cancellation of employees, participants, and beneficiaries under the **Plan**.

**Application** means:

- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy;

- (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other employee benefit plan fiduciary liability policy (or equivalent) issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time; and
- (3) each and every public filing by or on behalf of an **Organization** made with any federal, state, local or foreign regulatory agency (including, but not limited to the U.S. Securities and Exchange Commission and the U.S. Department of Labor ("DOL"), CPA-audited financial statements for all **Plans**, with investment portfolios, Form 5500's and any attachments thereto for all **Plans**, any financial information in such filings, and any certifications relating to the accuracy of the foregoing), provided that such public filing was filed during the twelve (12) month period immediately preceding the inception of the **Policy Period**.

**Benefits** means any obligation under a **Plan** to a **Plan** participant or beneficiary that is a payment of money or property; or any privilege, right, option or perquisite.

**Claim** means:

- (1) a written demand for monetary, non-monetary or injunctive relief, other than an initial application for benefits;
- (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (i) service of a complaint or similar pleading (in the case of a civil proceeding);
  - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (iii) receipt or filing of a notice of charges; or
- (3) a formal agency or regulatory adjudicative proceeding to which an **Insured** is subject;
- (4) any fact-finding investigation, whether or not a **Wrongful Act** is alleged, by the DOL or the Pension Benefit Guaranty Corporation ("PBGC") or any similar governmental authority located outside the United States, including, but not limited to the United Kingdom's Pensions Ombudsman or Pensions Regulator;
- (5) any written request to toll a statute of limitations which may be applicable to any Claim that may be made for any **Wrongful Act** of any **Insured**; or
- (6) any **Internal Appeal**.

"**Claim**" shall include any **Securities Claim**.

**Corporate Trustee Company** means any corporation formed and operating outside of the United States of America established by the **Organization** and duly appointed to act as a trustee of a **Plan**.

- Covered Penalties** means solely in connection with a **Plan**:
- (i) *Section 502(i)* the 5% or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
  - (ii) *Section 502(l)* the 20% or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to a covered settlement or judgment;
  - (iii) *United Kingdom* the civil fines and penalties assessed against an **Insured** by either the United Kingdom's Pensions Ombudsman or the Pensions Regulator or any successor body thereto;
  - (iv) *Voluntary Compliance Loss* **Voluntary Compliance Loss** subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section**;
  - (v) *Section 502(c)* the civil penalties under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Section 502(c) Penalties**");
  - (vi) *Pension Protection Act* the civil penalties under the Pension Protection Act of 2006, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Pension Protection Act Penalties**");
  - (vii) *HIPAA* the civil penalties for violations of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**HIPAA Penalties**");
  - (viii) *Health Care Reform* the civil penalties imposed under rules and regulations (including interim final rules and regulations) provided by governmental agencies (including the U.S. Department of Health and Human Services, the U.S. Department of the Treasury, the U.S. Internal Revenue Service ("**IRS**"), and the DOL, the Office of Consumer Information and Insurance Oversight, and the Employee Benefits Security Administration), for inadvertent violations by an **Insured** of **Health Care Reform Law**, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Health Care Reform Penalties**"); and
  - (ix) *Section 4975* the 15% or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986, with respect to covered judgments, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** ("**Section 4975 Penalties**").

**Defense Costs**

means reasonable and necessary fees, costs, and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**.

**Defense Costs** shall not include the compensation of any **Insured Person** or any employee of an **Insured**.

**Employee Benefit Law**

means:

- (1) **ERISA** and any similar common or statutory law anywhere in the world (including, but not limited to the United Kingdom's Pensions Act 2004, Pensions Act 1995, and Pension Schemes Act 1993; and the Pension Benefit Standards Act, 1985 of Canada), as amended, and any rules and regulations promulgated thereunder to which a **Plan** is subject; and
- (2) the privacy regulations under HIPAA; and solely with respect to subparagraph (2) of the definition of **Wrongful Act**, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

In no event shall **Employee Benefit Law**, other than as set forth in subparagraph (2) above, include any law other than **ERISA** which concerns workers' compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

**ERISA**

means the Employee Retirement Income Security Act of 1974, as amended, including, but not limited to amendments pursuant to:

- (1) COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985);
- (2) HIPAA;
- (3) the Newborns' and Mothers' Health Protection Act of 1996;
- (4) the Mental Health Parity Act of 1996;
- (5) the Women's Health and Cancer Rights Act of 1998;
- (6) the Pension Protection Act of 2006; and
- (7) **Health Care Reform Law** ;

and including any amendments thereto and regulations thereunder.

**Executive**

means any past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position).

**Foreign Policy**

means the standard employee benefit plan fiduciary liability insurance policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **Coverage Section**. If more than one such policy exists, then "**Foreign Policy**"

<b>Health Care Reform Law</b>	means the standard basic policy form most recently offered for sale for comparable risks by the <b>Insurer</b> or any of its affiliates in that <b>Foreign Jurisdiction</b> . The term " <b>Foreign Policy</b> " shall not include any directors and officers, executive or partnership managerial, or professional liability insurance coverage.
<b>Insured</b>	means any: <ol style="list-style-type: none"> <li>(1) <b>Insured Person</b>;</li> <li>(2) <b>Plan</b>;</li> <li>(3) <b>Organization</b>;</li> <li>(4) <b>Plan Committee</b> of an <b>Organization</b>, in its capacity as a fiduciary, trustee or settlor of a <b>Plan</b>, or in its <b>Administration</b> of a <b>Plan</b>; or</li> <li>(5) <b>Corporate Trustee Company</b>.</li> </ol>
<b>Insured Person</b>	means, solely with respect to a <b>Plan</b> , any past, present or future: <ol style="list-style-type: none"> <li>(1) <b>Executive</b> or employee of an <b>Organization</b> or of a <b>Plan</b> in his or her <b>Administration</b> of a <b>Plan</b> or in his or her capacity as a fiduciary or trustee of a <b>Plan</b>;</li> <li>(2) member of a pension committee of an <b>Organization</b> in his, her, or its capacity as a fiduciary or in his, her, or its <b>Administration</b> of a <b>Plan</b>;</li> <li>(3) natural person in a position equivalent to a position listed in subparagraph (1) or (2) above in the event that the <b>Organization</b> is operating in a <b>Foreign Jurisdiction</b>; or</li> <li>(4) former <b>Executive</b> or employee currently serving in a consulting or advisory capacity to a <b>Plan</b> if the <b>Organization</b> provides indemnification to such individual in the same manner as is provided to other <b>Insured Persons</b>.</li> </ol> <p>"<b>Insured Person</b>" also means, solely with respect to a <b>Plan</b>, any past, present or future <b>Executive</b> or employee of an <b>Organization</b> in his or her settlor capacity as respects a <b>Plan</b>.</p> <p>"<b>Insured Person</b>" shall not include any individual in his or her capacity as an employee of any third party, including a service provider, other than a <b>Corporate Trustee Company</b>.</p>
<b>Internal Appeal</b>	means an appeal of an adverse benefits determination by an <b>Insured</b> pursuant to the DOL's claim procedure regulation at 29 C.F.R. Section 2560.503-1(h) or similar claim procedures pursuant to applicable law.
<b>Litigated Matter</b>	means any civil, criminal, or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (1) service of a complaint or similar pleading



(in the case of a civil proceeding); or (2) return of an indictment, information or similar document (in the case of a criminal proceeding).

**Loss**

means damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), **Defense Costs, Voluntary Compliance Loss and Covered Penalties**; however, "**Loss**" shall not include:

- (1) civil or criminal fines or penalties other than **Covered Penalties**;
- (2) taxes or tax penalties other than **Covered Penalties**;
- (3) cleanup costs relating to hazardous materials, pollution or product defects;
- (4) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
- (5) wages, tips, and commissions;
- (6) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**; provided, however, that **Loss** shall include a monetary award, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to the securities of the **Organization**, regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as "benefits" or held by a court to be "benefits"; and
- (7) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Where permitted by law, **Loss** shall include punitive, exemplary and multiplied damages imposed upon any **Insured** (subject to this policy's other terms, conditions, and limitations, including, but not limited to the Conduct Exclusion). Enforceability of this paragraph shall be governed by the applicable law that most favors coverage for such penalties and punitive, exemplary, and multiplied damages.

**Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (1) - (7) above, subject to the other terms, conditions, and exclusions of this policy.

**Managed Care Services**

means the administration or management of a health care, pharmaceutical, vision or dental **Plan** utilizing cost control mechanisms, including, but not limited to utilization review, case management, disease management, pharmacy management, the use of a preferred provider medical, vision or dental network, or a health maintenance organization.

- Management Control** means:
- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company; or
  - (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Sponsor Organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.
- Multiemployer Plan** means any multiemployer plan, as defined by **ERISA**, which is operated jointly by the **Organization**, a labor organization, and one or more other employers for the benefit of the employees of the **Organization** among others.
- Non-Indemnifiable Loss** means **Loss** that has not been indemnified by either an **Organization** or a **Plan**, and for which an **Organization** is not permitted or required to indemnify an **Insured Person** pursuant to law or contract or the charter, by-laws, operating agreement or similar documents of an **Organization**.
- Organization** has the meaning set forth in the **General Terms and Conditions**.
- Additionally, solely for purposes of this **Coverage Section**, "**Organization**" also means a **Corporate Trustee Company** in any **Foreign Jurisdiction**.
- Plan** means any:
- (1) qualified or non-qualified plan, fund, trust or program, including, but not limited to any pension plan, welfare plan, health savings account plan, IRA-based plan, stock option plan, stock purchase plan, deferred compensation program, supplemental executive retirement program, top-hat plan, excess benefit plan, cafeteria plan, dependent care assistance program, fringe benefit plan or voluntary employees' beneficiary association as defined in the Internal Revenue Code of 1986, as amended ("VEBA") established anywhere in the world, which is sponsored solely by an **Organization**, and with respect to a collectively bargained **Plan**, operated jointly by an **Organization** and a labor organization, in each case solely for the benefit of such **Organization's** current or former employees or **Executives**, and which was in existence on or before the **Inception Date** of this policy.
  - (2) plan described in subparagraph (1) above acquired during the **Policy Period**. However, if such plan is a pension plan:

- (a) acquired as a result of the **Organization's** acquisition of a **Subsidiary** whose assets total more than 25% of the total consolidated assets of the **Organization** as of the **Inception Date** of this policy; or
- (b) with assets that total more than 25% of the total consolidated assets of all covered pension plans as of the **Inception Date** of this policy;

then this policy shall apply to such plan (solely with respect to a **Wrongful Act(s)** occurring after the date of such acquisition), but only upon the condition that within ninety (90) days of its acquisition, the **Named Entity** shall have provided the **Insurer** with information and agreed to any additional premium or amendment of the provisions of the policy required by the **Insurer** relating to such new **Plan**. The ninety (90) day reporting condition shall not apply if such new plan is not one of the five largest pension plans (by asset size) of the **Organization**, if the failure to report such **Plan** within the ninety (90) day reporting period was due to inadvertent omission by the **Named Entity**, and if upon discovery of such omission the **Named Entity** notifies the **Insurer** as soon as practicable and provides any information and pays any premium required by the **Insurer** relating to such **Plan**.

(3) plan or program described in subparagraph (1) above that was created, considered, developed or proposed during the **Policy Period**.

The definition of **Plan** shall also include the following government-mandated programs: unemployment insurance, Social Security, or disability payments, but solely with respect to a **Wrongful Act** defined in subparagraph (2) of the definition of **Wrongful Act** in this **Coverage Section**.

Coverage under this **Coverage Section** shall not extend to a **Multiemployer Plan** itself, its contributing employer(s) or, except as set forth in subparagraph (4) of the definition of **Wrongful Act**, any fiduciary or administrator of a **Multiemployer Plan**.

**Plan Committee** means any employee benefit committee, including, but not limited to any plan investment or administration committee, that is established by an **Organization** and that is comprised entirely of **Insured Persons**.

**Related Claim** means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were alleged in another **Claim** made against an **Insured**.

**Securities Claim** means any **Claim** in which a plaintiff alleges a loss or seeks damages of more than the **Securities Retention** amount or \$1,000,000, whichever is less, based upon a change in or challenge to the price or valuation of securities of or issued by: (i) the **Organization**, (ii) the parent of the **Organization**, (iii) any

company that is acquired in whole or in part by the **Organization**, or (iv) any former parent of any company that is acquired in whole or in part by the **Organization** (hereinafter (i) through (iv) collectively referred to as "Employer Securities"), even if such **Claim** also contains unrelated allegations.

The definition of **Securities Claim** shall not be triggered by any **Claim** in which plaintiffs allege a loss or seek damages as a result of a **Plan's** allegedly excessive fees or excessive cash holdings within an investment fund designed to hold Employer Securities as long as there is no allegation based upon a drop in the price or decrease in the valuation of the Employer Securities.

**Securities Retention**

means the Retention applicable to **Loss** that arises out of a **Securities Claim**.

**Subsidiary**

means any past, present or future:

- (1) for-profit entity of which the **Named Sponsor** has or had **Management Control** either directly or indirectly through one or more of its other **Subsidiaries**; and
- (2) not-for-profit entity sponsored exclusively by a **Sponsor Organization**.

The term **Subsidiary** shall automatically apply to any new **Subsidiary** acquired or created during the **Policy Period**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Sponsor** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by a **Sponsor Organization**.

**Voluntary Compliance Loss**

means fines, penalties, sanctions, and reasonable and necessary fees, costs or expenses related to the assessment of or correction of a **Plan's** non-compliance in accordance with any **Voluntary Compliance Program** and which are incurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this **Coverage Section** is a continuous renewal).

"**Voluntary Compliance Loss**" shall not include any compensation of any **Insured Persons** or any employee of an **Insured**.

**Voluntary Compliance Program**

means any voluntary compliance resolution program or similar voluntary settlement program administered by the DOL, IRS, PBGC or other similar governmental authority or any similar program administered by any governmental authority located outside the United States of America, to correct any inadvertent non-compliance by a **Plan**, including, but not limited to:

- (1) Employee Plans Compliance Resolution System;
- (2) Delinquent Filer Voluntary Compliance Program;
- (3) Voluntary Fiduciary Correction Program;
- (4) Premium Compliance Evaluation Program; and
- (5) Participant Notice Voluntary Correction Program.

**Wrongful Act**

means:

- (1) any actual or alleged violation by an **Insured** of any of the responsibilities, obligations or duties imposed upon fiduciaries by **Employee Benefit Law** with respect to a **Plan**, including, but not limited to the actual or alleged improper selection of or inadequate monitoring of third-party service providers; or any allegation made against an **Insured** solely by reason of his, her or its actual or alleged status as a fiduciary, but only with respect to a **Plan**;
- (2) any actual or alleged act, error or omission by an **Insured** in the **Administration** of any **Plan**, including, but not limited to the actual or alleged failure to properly and timely provide COBRA notices or other required notices, the alleged failure to make timely determinations of eligibility for benefits; or any allegation made against an **Insured** solely by reason of his, her or its actual or alleged **Administration** of a **Plan**;
- (3) any negligent act, error or omission by an **Organization**, its **Executives** or employees in facilitating the administration of a **Multiemployer Plan**; and
- (4) if a plan identified as a **Multiemployer Plan** is referenced by specific written endorsement attached to this policy and any required premium is paid, any matter arising out of an **Insured Person's** actual or alleged service as a fiduciary of, or actual or alleged **Administration** of, such **Multiemployer Plan** when such service or **Administration** is at the specific written request or direction of the **Organization**.

[The balance of this page is intentionally left blank.]



**National Union Fire Insurance Company of Pittsburgh, PA**

A capital stock company

**PRIVATE COMPANY DIRECTORS & OFFICERS LIABILITY**

**("Private D&O Coverage Section")**

**Notice:** Pursuant to Clause 1 of the **General Terms and Conditions**, the **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **Private D&O Coverage Section**, unless otherwise explicitly stated to the contrary in this **Private D&O Coverage Section**.

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

**1. INSURING AGREEMENTS**

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to (i) **Claims** first made against an **Insured**, and (ii) **Pre-Claim Inquiries** first received by an **Insured Person**, in each such event, during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**. Subject to the foregoing and the other terms, conditions and limitations of this policy, this **Coverage Section** affords the following coverage:

*A. Insured Person Coverage*

This policy shall pay the **Loss** of any **Insured Person** that no **Organization** has indemnified or paid, and that arises from any:

- (1) **Claim** (including any **Insured Person Investigation**) made against such **Insured Person** (including any **Outside Entity Executive**) for any **Wrongful Act** of such **Insured Person**; or
- (2) **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**.

*B. Indemnification Of Insured Person Coverage*

This policy shall pay the **Loss** of an **Organization** that arises from any:

- (1) **Claim** (including any **Insured Person Investigation**) made against any **Insured Person** (including any **Outside Entity Executive**) for any **Wrongful Act** of such **Insured Person**; or
- (2) **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**;  
but only to the extent that such **Organization** has indemnified such **Loss** of, or paid such **Loss** on behalf of, the **Insured Person**.

*C. Organization Coverage*

This policy shall pay the **Loss** of any **Organization**:

- (1) arising from any **Claim** made against such **Organization** for any **Wrongful Act** of such **Organization**;

- (2) incurred as **Derivative Investigation Costs**, subject to a \$250,000 aggregate sublimit of liability; or
- (3) incurred by an **Organization** or on its behalf by any **Executives** of the **Organization** (including through any special committee) as **Defense Costs** in seeking the dismissal of any **Derivative Suit** against an **Insured**.

## 2. EXTENSIONS

### A. *Executive Protection Suite*

**Loss** shall also mean the following items, provided that they arise out of a **Claim**:

- (1) **SOX 304 Costs**;
- (2) **Extradition Costs**;
- (3) **UK Corporate Manslaughter Act Defense Costs**;
- (4) **Personal Reputation Expenses**, subject to a \$100,000 per **Executive** and a \$500,000 aggregate sublimit of liability; and
- (5) **Asset Protection Costs**, subject to a \$50,000 per **Executive** and a \$250,000 aggregate sublimit of liability.

### B. *First Dollar E-Discovery Consultant Services*

For any **Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

### C. *Excess Limit of Liability for Executives*

If an **Excess Limit for Executives** is set forth in the Declarations for this **Coverage Section**, then solely with respect to Insuring Agreement A. Insured Person Coverage, **Executives** shall also have access to the **Excess Limit for Executives**, as more fully described in Clause 6. LIMITS OF LIABILITY of this **Coverage Section**.

### D. *Global Liberalization*

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This Global Liberalization Clause shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

## 3. INDEMNIFICATION PROTECTIONS

### A. *Advancement*

If for any reason (including but not limited to insolvency) an **Organization** fails or refuses to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention, if any, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either (i) an **Organization** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

Advancement, payment or indemnification of an **Insured Person** by an **Organization** is deemed "failed" if it has been requested by an **Insured Person** in writing and has not been provided by, agreed to be provided by or acknowledged as an obligation by an **Organization** within sixty (60) days of such request; and advancement, payment or indemnification by an **Organization** is deemed "refused" if an **Organization** gives a written notice of the refusal to the **Insured Person**. Advancement, payment or indemnification of an **Insured Person** by an **Organization** shall only be deemed "failed" or "refused" to the extent such advancement, payment or indemnification is not provided, or agreed to be provided, or acknowledged by and collectible from an **Organization**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply towards the exhaustion of the **Limits of Liability**.

#### *B. Order Of Payments*

In the event of **Loss** arising from a covered **Claim(s)** and/or **Pre-Claim Inquiry(ies)** for which payment is due under the provisions of this **Coverage Section**, the **Insurer** shall in all events:

- (1) First, pay all **Loss** covered under Insuring Agreement A. *Insured Person Coverage*;
- (2) Second, only after payment of **Loss** has been made pursuant to subparagraph (1) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement B. *Indemnification Of Insured Person Coverage*; and
- (3) Lastly, only after payment of **Loss** has been made pursuant to subparagraphs (1) and (2) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement C. *Organization Coverage*.

In the event the **Insurer** withholds payment pursuant to subparagraphs (2) and/or (3) above, then the **Insurer** shall, at such time and in such manner as shall be set forth in instructions of the chief executive officer of the **Named Entity**, remit such payment to an **Organization** or directly to or on behalf of an **Insured Person**.

#### 4. EXCLUSIONS

##### *A. Full Severability Of Exclusions For Insured Persons*



In determining whether any of the following Exclusions apply, the **Wrongful Acts** of any **Insured Person** shall not be imputed to any other **Insured**. For Insuring Agreement C. Organization Coverage, only the **Wrongful Acts** of any chief executive officer or chief financial officer (or equivalent position) of an **Organization** shall be imputed to such **Organization**.

**B. Exclusions**

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

- arising out of, based upon or attributable to any:
  - (1) *Conduct*
    - (a) profit or other advantage to which the **Insured** was not legally entitled;
    - (b) deliberate criminal or deliberate fraudulent act by the **Insured**;
    - (c) purchase or sale by an **Insured** of securities of the **Organization** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law; or
    - (d) payment to any **Insured** of any remuneration without the previous approval of the stockholders of the Organization;

if established by any final, non-appealable adjudication in any underlying action;

provided, however:

- (i) Conduct Exclusion (a), above, shall not apply in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations; and
- (ii) with respect to Conduct Exclusion (b), for acts or omissions which are treated as a criminal violation in a **Foreign Jurisdiction** that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such **Foreign Jurisdiction** will not, by itself, be conclusive proof that a deliberate criminal or deliberate fraudulent act occurred;

- (2) *Prior Notice* or with any **Pre-Claim Inquiry** received by an **Insured Person**, alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Acts** alleged or contained, in any Claim or investigated in any **Pre-Claim Inquiry** that has been reported, or in any circumstances of which notice has been given, under any directors and officers liability insurance policy in force prior to the **Inception Date** of this policy;

- (3) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (4) *Personal Injury* for emotional distress or mental anguish of any person, or for injury from libel, slander, defamation or disparagement, or a violation of a person's right of privacy; provided, however, this exclusion shall not apply to any **Securities Claim**;
- (5) *Bodily Injury & Property Damage* for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to **UK Corporate Manslaughter Act Defense Costs** or a **Securities Claim**;
- (6) *Entity or Individual v. Insured* that is brought by or on behalf of: (a) any **Insured**; or (b) any **Outside Entity**, or any **Executive** thereof, for the **Wrongful Act(s)** of any **Outside Entity Executive**; provided, however, this exclusion shall not apply:
- (a) to any **Defense Costs** which constitute **Non-Indemnifiable Loss** incurred by an **Insured Person** in defending any **Claim** against that **Insured Person**;
  - (b) to any **Derivative Suit** not brought, controlled or materially assisted by any **Organization**, any **Outside Entity** or any **Executive** of the foregoing;
  - (c) if the **Organization** or **Outside Entity** is the subject of a bankruptcy case (or the equivalent in a **Foreign Jurisdiction**), unless the **Claim** is brought, controlled or materially assisted by any **Organization** or **Outside Entity**, the resulting debtor-in-possession (or foreign equivalent) of the debtor **Organization** or **Outside Entity** or any **Executive** of the foregoing;
  - (d) to any **Claim** brought by or on behalf of any **Executive** who has not served, in the two (2) years prior to such **Claim** being first made, as an **Executive** of, or a consultant for:
    - (i) an **Organization** (but only with respect to a **Claim** brought by or on behalf of such **Executive**); or
    - (ii) **Outside Entity** (but only with respect to a **Claim** brought by any **Outside Entity** or any **Executive** thereof); or

(e) to any **Claim** brought by or on behalf of an **Executive** of an **Organization** or **Outside Entity Executive** of an **Outside Entity** if such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);

(7) *ERISA*

for any violation of responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar provisions of any state, local or foreign statutory or common law;

(8) *Compensation & Labor Liability*

(a) for any violation of responsibilities, obligations or duties imposed by the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification (WARN) Act, the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign law or amendment to a law; or

(b) alleging, arising out of, based upon or attributable to any of the circumstances described in any of the following:

(i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);

(ii) improper deductions from pay taken by any **Insured** from any **Employee** or purported **Employee**; or

(iii) failure to provide or enforce legally required meal or rest break periods;

(9) *Public Offering*

alleging, arising out of, based upon or attributable to any public offering of securities by an Organization, an Outside Entity or an Affiliate or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, this exclusion shall not apply to:

(a) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; provided, however, the Named Entity shall give the Insurer written notice of any public offering exempted pursuant to Section

3(b), together with full particulars and as soon as practicable, but not later than thirty (30) days after the effective date of the public offering;

(b) any public offering of securities (other than a public offering described in subparagraph (a) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within thirty (30) days prior to the effective time of such public offering: (i) the **Named Entity** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto; and (ii) the **Named Entity** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Named Entity** paying when due any such additional premium. In the event the **Organization** gives written notice with full particulars and underwriting information pursuant to subparagraph (b)(i) above, then the **Insurer** must offer a quote for coverage under this subparagraph; or

(c) any **Claim for Loss** alleging a **Wrongful Act** which occurred during the **Insured's** preparations to commence an initial public offering ("**IPO**") and which occurred at any time prior to 12:01 a.m. on the date the initial public offering commences ("**IPO Effective Time**"), including any **Claim for Loss** alleging a **Wrongful Act** which occurred during the road show; provided, however that the coverage otherwise afforded under this subparagraph (c) shall be deemed to be void ab initio effective the **IPO Effective Time**; provided further, however, that coverage shall not be deemed void ab initio if (i) the **Claim** is first made and reported pursuant to Clause 7(a) of this **Coverage Section** prior to the **IPO Effective Time**, and (ii) a public company directors' and officers' and management liability policy is not applicable to such **Claim**;

(10) *Acquisition of Publicly Traded Entity*

alleging, arising out of, based upon or attributable to the purchase by an **Organization** of securities of a "**Publicly Traded Entity**" in a transaction which resulted, or would result, in such entity becoming an **Affiliate** or a **Subsidiary** of an **Organization**; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming an **Affiliate** or **Subsidiary**, the **Named Entity** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this **Coverage Section** required by the **Insurer** relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to

the transaction. As used herein, "**Publicly Traded Entity**" means any entity the securities of which have previously been subject to a public offering;

(11) *Pollution*

for: (a) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply to:

(i) **Non-Indemnifiable Loss**; or

(ii) **Loss** in connection with a **Securities Claim**;

in all events, other than **Loss** constituting **Clean-up Costs**;

(12) *Captive Insurance Entity*

alleging, arising out of, based upon or attributable to the ownership, management, maintenance or control by the **Organization** of any captive insurance company or entity, including, but not limited, to any **Claim** alleging the insolvency or bankruptcy of the **Named Entity** as a result of such ownership, operation, management or control;

(13) *Employment Practices & Third-Party Violations*

alleging, arising out of, based upon, or attributable to the (a) employment of any individual or any employment practice, including, but not limited to, wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim; or (b) the harassment or unlawful discrimination, or the violation of the civil rights of a person relating to such harassment or discrimination; in all cases, whether alleged to be committed against an **Insured Person** or anyone other than an **Insured Person** or applicant for employment with an **Organization** or an **Outside Entity**, including any students, patients, members, customers, vendors and suppliers;

(14) *Commission, Gratuities, Benefits*

alleging, arising out of, based upon, or attributable to:

(a) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;

(b) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as that term is defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or

employees) of any customers of the **Organization** or any members of their family or any entity with which they are affiliated; or

(c) political contributions, whether domestic or foreign;

(15) *Professional Liability*

alleging, arising out of, based upon or attributable to, directly or indirectly, any **Insured's** performance of or failure to perform professional services for others, or any act(s), error(s) or omission(s) relating thereto; or

(16) *Entity Only Exclusions*

with respect to Coverage C only:

(a) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade secret or any other intellectual property rights;

(b) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;

(c) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the **Organization** or any other **Insured** under any express contract or agreement; provided, however, this exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement; or

(d) seeking fines or penalties or non-monetary relief against the **Organization**; provided, however, that this exclusion shall not apply to any **Securities Claim**.

## 5. RETENTION

In addition to the provisions of Clause 2. RETENTION of the **General Terms and Conditions**, in no event shall a Retention be applied to the following: (i) **Non-Indemnifiable Loss**; (ii) **Derivative Investigation Costs**; or (iii) the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

## 6. LIMITS OF LIABILITY

In addition to the provisions of Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, each per **Executive** sublimit of liability stated in this **Coverage Section** is the maximum limit of the **Insurer's** liability for all **Loss** of each **Executive** under this **Coverage Section** that is subject to that per **Executive** sublimit of liability. All sublimits

of liability shall be part of, and not in addition to, the **Policy Aggregate** and any applicable **Separate Limit of Liability, Shared Limit of Liability** or **Excess Limit for Executives**. Each per **Executive** sublimit of liability shall be part of, and not in addition to, its corresponding aggregate sublimit of liability.

Notwithstanding anything to the contrary stated above or in Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, if an **Excess Limit for Executives** is set forth in the Declarations for this **Coverage Section**, a separate aggregate limit of liability shall be available to **Executives** for all **Non-Indemnifiable Loss** under Insuring Agreement A. *Insured Person Coverage* arising out of all **Claims** first made against any and all **Executives** during the **Policy Period** or the **Discovery Period** (if applicable). The **Excess Limit for Executives** shall not apply to any other **Coverage Section**, even if a **Shared Limit of Liability** applies to this **Coverage Section**. One **Excess Limit for Executives** shall apply for all **Executives**, no matter how many **Executives** or **Claims** are involved. The **Excess Limit for Executives** is excess of, and shall only apply after the payment in full of: (i) any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section**; and (ii) any other valid and collectible insurance available to the **Executives**, including, without limitation, any insurance which is specifically written as excess over any other limits of liability. The **Excess Limit for Executives** shall continue in force as primary insurance only upon the exhaustion of the limits of liability described in (i) and (ii), above. The term "**Limits of Liability**" shall also refer to the **Excess Limit for Executives**.

7. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

(a) *Reporting a Claim or Pre-Claim Inquiry*

An **Organization** or an **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**:

- (1) notify the **Insurer** in writing of a **Claim** made against an **Insured**; or
- (2) if an **Insured** elects to seek coverage for **Pre-Claim Inquiry Costs** in connection with any **Pre-Claim Inquiry**, notify the **Insurer** in writing of that **Pre-Claim Inquiry**;

as soon as practicable after the **Named Entity's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim** or **Pre-Claim Inquiry**. In all such events, notification must be provided no later than ninety (90) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

(b) *Relation Back to the First Reported Claim or Pre-Claim Inquiry*

Solely for the purpose of establishing whether any subsequent **Related Claim** was first made or a **Related Pre-Claim Inquiry** was first received during the **Policy Period** or **Discovery Period** (if applicable), if during any such period:

- (1) a **Claim** was first made and reported in accordance with Clause 7(a) above, then any **Related Claim** that is subsequently made against an **Insured** and that is reported in accordance with Clause 7(a) above shall be deemed to have been first made at the time that such previously reported **Claim** was first made; and
- (2) a **Pre-Claim Inquiry** was actually first received by an **Insured Person** and reported in accordance with Clause 7(a) above, then:
- (i) any **Related Pre-Claim Inquiry** that is reported in accordance with Clause 7(a) above shall be deemed to be a **Pre-Claim Inquiry** first received at the time that such previously reported **Pre-Claim Inquiry** was first received by an **Insured Person**; and
  - (ii) any subsequent **Related Claim** that is reported in accordance with Clause 7(a) above shall be deemed to be a **Claim** first made at the time that such previously reported **Pre-Claim Inquiry** was first received by an **Insured Person**.

With respect to any subsequent **Related Pre-Claim Inquiry**, this policy shall not cover **Loss** incurred before such subsequent **Related Pre-Claim Inquiry** is actually received by an **Insured Person**, and with respect to any subsequent **Related Claim**, this policy shall not cover **Loss** incurred before such subsequent **Related Claim** is actually made against an **Insured**.

(c) *Relation Back to Reported Circumstances Which May Give Rise to a Claim*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Organization** or an **Insured Person** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 7(a) above shall be deemed to have been first made at the time of the notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the alleged **Wrongful Act** anticipated and reasons for anticipating such **Claim**, with full particulars as to dates, persons and entities involved; however, notification that includes a copy of an agreement to toll a statute of limitations shall be presumed sufficiently specific as to the potential **Claims** described within that agreement.



## 8. DISCOVERY PREMIUM

In the event the **Named Entity** or the **Insurer** shall cancel or refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

## 9. DEFENSE AND SETTLEMENT

### A. For Claims And Pre-Claim Inquiries

(1) *No Duty to Defend or Investigate*      The **Insureds** shall defend and contest any **Claim** made against them. The **Insurer** does not assume any duty to defend or investigate.

(2) *Right to Tender Defense*      Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of any **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Entity** on behalf of all **Insureds**. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against the **Insureds** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation thereof sent by the **Insurer** to the **Named Entity**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**. However, the **Insurer** shall not be obligated to defend such **Claim** after the **Policy Aggregate** or any applicable **Separate Limit of Liability, Shared Limit of Liability** or **Excess Limit for Executives** has been exhausted.

(3) *Advancement*      When the **Insurer** has not assumed the defense of a **Claim** pursuant to subparagraph (2) above of this Clause 9, it shall advance, excess of any applicable Retention, covered **Defense Costs** or **Pre-Claim Inquiry Costs**, respectively, on a current basis, but no later than ninety (90) days after the

**Insurer** has received itemized bills for those **Defense Costs** or **Pre-Claim Inquiry Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured Person** or **Organization**, severally according to their respective interests, in the event and to the extent that any such **Insured Person** or **Organization** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

(4) *Claims Participation and Cooperation*

The **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Organization** and **Insured Person** in the defense and prosecution of any **Claim** or **Pre-Claim Inquiry** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Organization** and **Insured Person** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The failure of any **Insured Person** to give the **Insurer** cooperation and information as required in the preceding paragraph shall not impair the rights of any other **Insured Person** under this **Coverage Section**.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs** or **Pre-Claim Inquiry Costs**, without the prior written consent of the **Insurer**. Such consent shall not be unreasonably withheld.

(5) Full Settlement Within Retention/ Consent Waived

If all **Insured** defendants are able to dispose of all **Claims** and/or **Pre-Claim Inquiries** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

(6) *Applicability*

This *Defense and Settlement Clause* is not applicable to **Personal Reputation Expenses**. Nevertheless the **Insurer** does not, under this **Coverage Section**, assume any duty to defend.

**B. Pre-Authorized Securities Defense Attorneys**

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at [http://www.aig.com/us/panelcounseldirector\\_y](http://www.aig.com/us/panelcounseldirector_y) under the "Directors & Officers (Securities Claims)" link. The list provides the **Insureds** with a choice of law firms from which a selection of legal counsel shall be made by the **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 9.A.(2) of this **Coverage Section**, the **Insurer**) to conduct the defense of any **Securities Claim** made against such **Insureds**. With the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is

otherwise reasonably justifiable. The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Securities Claim** made against such **Insureds** during the **Policy Period**.

The **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 9.A(2) of this **Coverage Section**, the **Insurer**) shall select a **Panel Counsel** to defend the **Securities Claim** made against the **Insureds** in the jurisdiction in which the **Securities Claim** is brought. In the event the **Claim** is brought in a jurisdiction not included on the list, **Panel Counsel** shall be selected in the listed jurisdiction which is the nearest geographic jurisdiction to either where the **Securities Claim** is brought or where the corporate headquarters of the **Named Entity** is located. In such instance the **Insureds** also may, with the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld, select a non-**Panel Counsel** in the jurisdiction in which the **Securities Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel** which will function as "lead counsel" in conducting the defense of the **Securities Claim**. This Pre-Authorized Securities Defense Attorneys Clause does not apply to **Defense Costs** solely relating to **Extradition** even if the underlying **Wrongful Acts** relate to a **Securities Claim**.

#### C. *Pre-Approved E-Consultant Firms*

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link. The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

#### D. *Allocation*

If both **Loss** covered by this **Coverage Section** and **Loss** not covered by this **Coverage Section** are incurred, either because a **Claim** is made against both **Insureds** and others or because a **Claim** includes both covered and uncovered matters, the **Insureds** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered **Loss**. In the event that a determination as to the amount of **Defense Costs** to be advanced under this **Coverage Section** cannot be agreed to, then the **Insurer** shall advance **Defense Costs** excess of any applicable Retention amount which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

### 10. SUBSIDIARY COVERAGE

#### A. *Subsidiary Additions*

- (1) If "Auto-Acquisition Subsidiary Coverage" is selected on the Declarations for this **Coverage Section**, then in addition to the definition of "**Subsidiary**" set forth in Clause 14. DEFINITIONS of this **Coverage Section**, **Subsidiary** also means any for-profit entity whose securities are not publicly traded of which the **Named Entity**

acquires **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**.

(2) If "Threshold Acquisition Subsidiary Coverage" is selected on the Declarations for this **Coverage Section**, then in addition to the definition of "**Subsidiary**" set forth in Clause 14. DEFINITIONS of this **Coverage Section**, **Subsidiary** also means any for-profit entity whose securities are not publicly traded: (i) of which the **Named Entity** first had **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**, and (ii) whose assets amount to:

(a) less than 25% of the total consolidated assets of each and every **Organization** as reported in the **Named Entity's** audited financial statements as of the **Inception Date** of this policy; or

(b) 25% or more of those total consolidated assets, but such entity shall be a "**Subsidiary**" only: (i) for a period of sixty (60) days from the date the **Named Entity** first had **Management Control** of such entity; or (ii) until the end of the **Policy Period**, whichever expires or ends first (the "**Auto-Subsidiary Period**");

provided that, with respect only to entities described in subparagraph (b) above, the **Named Entity** or any other **Insured** shall report such **Subsidiary** to the **Insurer**, in writing, prior to the end of the **Policy Period**.

The **Insurer** shall extend coverage for any **Subsidiary** described in subparagraph (b) above, and any **Insured Person** thereof, beyond its respective **Auto-Subsidiary Period** if during such **Auto-Subsidiary Period**, the **Named Entity** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium and amendment of the provisions of this policy required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Insured Person** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

#### *B. Former Subsidiaries*

In the event the **Named Entity** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this **Coverage Section** but only with respect to **Claims** for **Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Entity** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

#### *C. Scope Of Subsidiary Coverage*

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

## 11. APPLICATION AND UNDERWRITING

### *A. Application And Reliance*

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

### *B. Insured Person Coverage Non-Rescindable*

Under no circumstances shall the coverage provided by this **Coverage Section** for **Loss** under Insuring Agreement A. Insured Person Coverage be deemed void, whether by rescission or otherwise, once the premium has been paid.

### *C. Severability Of The Application*

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, ab initio, with respect to:

- (1) **Loss** under Insuring Agreement B. Indemnification Of Insured Person Coverage for the indemnification of any **Insured Person** who knew, as of the **Inception Date** of this policy, the facts that were not accurately and completely disclosed; and
- (2) **Loss** under Insuring Agreement C. Organization Coverage if any **Insured Person** who is or was a chief executive officer or chief financial officer of the **Named Entity** knew, as of the **Inception Date** of this policy, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

## 12. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

### *A. Indemnification By Organizations*

The **Organizations** agree to indemnify the **Insured Persons** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this **Coverage Section** any indemnification or advancement owed to any **Insured Person** by any **Organization** within an applicable Retention, then that **Organization** shall reimburse the

**Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to indemnify the **Insured Persons** and/or advance **Defense Costs** under this **Coverage Section** shall not impair the rights of any **Insured Person** under this **Coverage Section**.

*B. Other Insurance And Indemnification*

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible directors and officers liability insurance, unless such other insurance is specifically written as excess insurance over the applicable **Separate Limit of Liability, Shared Limit of Liability** or **Excess Limit for Executives** provided by this **Coverage Section**. This **Coverage Section** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this **Coverage Section** may be obligated to pay **Loss**. Such insurance as is provided by this **Coverage Section** shall apply as primary to any personal "umbrella" excess liability insurance purchased by an **Insured Person**.

In the event of a **Claim** made against an **Outside Entity Executive**, coverage as is afforded by this **Coverage Section**, whether under the Insured Person Coverage or the Indemnification Of Insured Person Coverage, shall be specifically excess of: (a) any indemnification provided by an **Outside Entity**; and (b) any insurance coverage afforded to an **Outside Entity** or its **Executives** applicable to such **Claim**. Further, in the event such other **Outside Entity** insurance is provided by the **Insurer** or any other insurance company affiliate thereof ("**Other Policy**") (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required), then the **Insurer's** applicable **Separate Limit of Liability, Shared Limit of Liability** or **Excess Limit for Executives** for all **Loss** under this **Coverage Section**, as respects any such **Claim**, shall be reduced by the amount recoverable under such **Other Policy** for loss incurred in connection with such **Claim**.

*C. Subrogation*

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**.

13. ALTERNATIVE DISPUTE RESOLUTION

*ADR Options*

All disputes or differences which may arise under or in connection with this **Coverage Section**, whether arising

before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to an alternative dispute resolution (ADR) process as provided in this Clause. The **Named Entity** may elect the type of ADR process discussed below; provided, however, that absent a timely election, the **Insurer** may elect the type of ADR. In that case, the **Named Entity** shall have the right to reject the **Insurer's** choice of the type of ADR process at any time prior to its commencement, after which, the **Insured's** choice of ADR shall control.

*Mediation*

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least ninety (90) days shall have elapsed from the date of the termination of the mediation.

*Arbitration*

In the event of arbitration, the decision of the arbitrator(s) shall be final, binding and provided to both parties, and the arbitration award shall not include attorney's fees or other costs.

*ADR Process*

*Selection of Arbitrator(s) or Mediator:* The **Insurer** and the **Named Entity** shall mutually consent to: (i) in the case of arbitration, an odd number of arbitrators which shall constitute the arbitration panel, or (ii) in the case of mediation, a single mediator. The arbitrator, arbitration panel members or mediator must be disinterested and have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the absence of agreement, the **Insurer** and the **Named Entity** each shall select one arbitrator, the two arbitrators shall select a third arbitrator, and the panel shall then determine applicable procedural rules.

*ADR Rules:* In considering the construction or interpretation of the provisions of this policy, the mediator or arbitrator(s) must give due consideration to the general principles of the law of the **State of Formation** of the **Named Entity**. Each party shall share equally the expenses of the process elected. At the election of the **Named Entity**, either choice of ADR process shall be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state reflected in the **Named Entity Address**. The **Named Entity** shall act on behalf of each and every **Insured** under this *Alternative Dispute Resolution Clause*. In all other respects, the **Insurer** and the **Named Entity** shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after

reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.

14. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the Definitions Clause of the **General Terms and Conditions**.

**Affiliate** means: (1) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, another person or entity; or (2) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to another person or entity.

**Application** means:  
(1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy; and  
(2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time.

**Asset Protection Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** incurred by an **Executive** of an **Organization** to oppose any efforts by an **Enforcement Body** to seize or otherwise enjoin the personal assets or real property of such **Executive** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in any way impairing the use thereof.

**Claim** means:  
(1) a written demand for monetary, non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process;  
(2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (i) service of a complaint or



similar pleading; (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or (iii) receipt or filing of a notice of charges;

(3) an **Insured Person Investigation** ;

(4) a **Derivative Demand**; or

(5) an official request for **Extradition** of any **Insured Person**, or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

"**Claim**" shall include any **Securities Claim**.

**Cleanup Costs**

means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

**Defense Costs**

means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) resulting solely from:

(1) the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**; or

(2) an **Insured Person** lawfully: (i) opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of that **Insured Person**; or (ii) appealing any order or other grant of **Extradition** of that **Insured Person**.

**Defense Costs** shall not include: (a) **Derivative Investigation Costs**, (b) **Pre-Claim Inquiry Costs**, or (c) the compensation of any **Insured Person**.

**Derivative Demand**

means a written demand by any shareholder of an **Organization** upon the board of directors (or equivalent management body) of such **Organization** to commence a civil action on behalf of the **Organization** against any **Executive** of the **Organization** for any actual or alleged wrongdoing on the part of such **Executive**.

**Derivative Investigation**

means, after receipt by any **Insured** of a **Claim** that is either a **Derivative Suit** or a **Derivative Demand**, any investigation conducted by the **Organization**, or on behalf of the **Organization** by its board of directors (or the equivalent

management body) or any committee of the board of directors (or equivalent management body), as to how the **Organization** should respond.

**Derivative  
Investigation Costs**

means reasonable and necessary costs, charges, fees and expenses consented to by the **Insurer** and incurred by the **Organization**, or on behalf of the **Organization** by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), in connection with a **Derivative Investigation**. **Derivative Investigation Costs** shall not include the compensation of any **Insured Person**.

**Derivative Suit**

means a lawsuit purportedly brought derivatively on behalf of an **Organization** by a shareholder of such **Organization** against an **Executive** of the **Organization**.

**Employee**

means any past, present or future employee, other than an **Executive** of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee. An individual who is leased to the **Organization** shall also be an **Employee**, but only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization's** employees. Any other individual who is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization** shall also be an **Employee**, but only if the **Organization** provides indemnification to such individual in the same manner as that provided to the **Organization's** employees, pursuant to a written contract.

**Excess Limit For  
Executives**

means the amount stated as such in the Declarations for this **Coverage Section**.

**Executive**

means any:

- (1) past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position);
- (2) past, present and future person in a duly elected or appointed position in an entity organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited to, a supervisory board); and
- (3) past, present and future General Counsel and Risk Manager

(or equivalent position) of the **Named Entity**.

- Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.
- Extradition Costs** means **Defense Costs** incurred by an **Insured** in lawfully opposing any effort to obtain the **Extradition** of an **Insured Person**.
- Foreign Policy** means the standard executive managerial liability policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **Coverage Section**. If more than one such policy exists, then "**Foreign Policy**" means the standard basic policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**. The term "**Foreign Policy**" shall not include any partnership managerial, pension trust or professional liability coverage.
- Insured** means any:
- (1) **Insured Person**; or
  - (2) **Organization**.
- Insured Person** means any:
- (1) **Executive** of an **Organization**;
  - (2) **Employee** of an **Organization**; or
  - (3) **Outside Entity Executive**.
- Insured Person Investigation** means any civil, criminal, administrative or regulatory investigation of an **Insured Person**:
- (1) once the **Insured Person** is identified in writing by an **Enforcement Body** as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding;
  - (2) in the case of an investigation by the SEC or any state, local or foreign body with similar regulation or enforcement authority, after the service of a subpoena (or in a **Foreign Jurisdiction**, the equivalent legal process) upon the **Insured Person**;
  - (3) commenced by the arrest and detainment or incarceration for more than 24 hours of an **Insured Person** by any law

enforcement authority in a **Foreign Jurisdiction**.

Writings which may identify an **Insured Person** as a target can include a target or "Wells" letter, whether or not labeled as such.

**Liberty Protection Costs**

means:

- (1) reasonable and necessary fees, costs and expenses consented to by the **Insurer** and incurred by an **Insured Person** in order for an **Insured Person** to lawfully seek the release of the **Insured Person** from any pre-**Claim** arrest or confinement to a (i) specified residence or (ii) secure custodial premises operated by or on behalf of any law enforcement authority; or
- (2) reasonable and necessary premiums (but not collateral) consented to by the **Insurer** and incurred by an **Insured Person** for a bond or other financial instrument to guarantee the contingent obligation of the **Insured Person** for a specified amount required by a court that are incurred or required outside the United States of America during the **Policy Period**, if such premiums: (i) arise out of an actual or alleged **Wrongful Act**, or (ii) are incurred solely by reason of such **Insured Person's** status as an **Executive** or **Employee** of an **Organization**.

**Loss**

means damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), **Defense Costs**, **Derivative Investigation Costs**, **Liberty Protection Costs** and **Pre-Claim Inquiry Costs**; however, "**Loss**" (other than **Defense Costs**) shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; and (4) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed. Notwithstanding the foregoing subparagraph (4), the **Insurer** shall not assert that, in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, the portion of any amounts incurred by **Insureds** which is attributable to such violations constitutes uninsurable loss, and, unless precluded from doing so in a court order, shall treat that portion of all such settlements, judgments and **Defense Costs** as constituting **Loss** under this **Coverage Section**.

Notwithstanding the foregoing paragraph, **Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to the Conduct Exclusion): (1) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign

Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B); and (2) punitive, exemplary and multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiple damages.

**Management Control**

means:

- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

**Non-Indemnifiable Loss**

means **Loss** for which an **Organization** has neither indemnified nor is permitted or required to indemnify an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an **Organization**.

**Outside Entity**

means any: (1) not-for-profit entity; or (2) other entity listed as an "**Outside Entity**" in an endorsement attached to this policy.

**Outside Entity Executive**

means any: (1) **Executive** of an **Organization** who is or was acting at the specific request or direction of an **Organization** as an **Executive** of an **Outside Entity**; or (2) any other person listed as an **Outside Entity Executive** in an endorsement attached to this policy.

In the event of a disagreement between the **Organization** and an **Outside Entity Executive** as to whether such **Insured** was acting "at the specific request or direction of the **Organization**," this **Coverage Section** shall abide by the determination of the **Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** against such **Outside Entity Executive** is made. In the event no notice of any such determination is given to the **Insurer** within such period, this **Coverage Section** shall apply as if the **Organization** determined that such **Outside Entity Executive** was not acting at the **Organization's** specific request or direction.

**Personal Reputation Crisis**

means any negative statement that is included in any press release or published by any print or electronic media outlet

regarding an **Executive** of an **Organization** made during the **Policy Period** by any individual authorized to speak on behalf of an **Enforcement Body**.

**Personal Reputation Expenses**

means reasonable and necessary fees, costs and expenses of a **Crisis Firm** (as defined in the CrisisFund® Appendix attached to this policy) retained within 30 days of a **Personal Reputation Crisis** solely and exclusively by an **Executive** to mitigate the adverse effects specifically to such **Executive's** reputation from a **Personal Reputation Crisis**. "**Personal Reputation Expenses**" shall not include any fees, costs or expenses of any **Crisis Firm** incurred by an **Executive** if such **Crisis Firm** is also retained by or on behalf of an **Organization**.

**Pollutants**

means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and **Waste**. "**Waste**" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

**Pre-Claim Inquiry**

means any pre-**Claim**:

- (1) verifiable request for an **Insured Person** of any **Organization**: (a) to appear at a meeting or interview; or (b) produce documents that, in either case, concerns the business of that **Organization** or that **Insured Person's** insured capacities, but only if the request came from any:
  - (i) **Enforcement Body**; or
  - (ii) **Organization**, or, on behalf of an **Organization**, by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body):
    - (A) arising out of an inquiry or investigation by an **Enforcement Body** concerning the business of that **Organization** or that **Insured Person's** insured capacities; or
    - (B) as part of its **Derivative Investigation**; and
- (2) arrest or confinement of an **Executive** of an **Organization** to a: (a) specified residence; or (b) secure custodial premises operated by or on behalf of an **Enforcement Body**, in connection with the business of any **Organization** or an **Insured Person's** capacity as an **Executive** or **Employee** of an **Organization**.

"**Pre-Claim Inquiry**" shall not include any routine or regularly

scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an **Organization's** and/or **Enforcement Body's** normal review or compliance process.

**Pre-Claim Inquiry Costs**

means:

- (1) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (1) of the Definition of such term, the reasonable and necessary pre-**Claim** fees, costs and expenses consented to by the **Insurer** and incurred by an **Insured Person** solely in connection with his/her preparation for and response to a **Pre-Claim Inquiry** directed to such **Insured Person**, including attendance at an interview or meeting requested by an **Enforcement Body**, but excluding (i) any compensation of any Insured Person; and (ii) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of an **Organization**, the requestor or any other third party; and
- (2) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (2) of the Definition of such term, any **Liberty Protection Costs**.

**Related Claim**

means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were either: (i) alleged in another **Claim** made against an **Insured**; or (ii) the subject of a **Pre-Claim Inquiry** received by an **Insured Person**.

**Related Pre-Claim Inquiry**

means a **Pre-Claim Inquiry** involving, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were either: (i) alleged in a **Claim** made against an **Insured**; or (ii) the subject of another **Pre-Claim Inquiry** received by an **Insured Person**.

**Securities Claim**

means a **Claim** made against any **Insured**:

- (1) alleging a violation of any law, rule or regulation, whether statutory or common law (including but not limited to the purchase or sale or offer or solicitation of an offer to purchase or sell securities) which is:
  - (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of an **Organization**; or

(ii) brought by a security holder of an **Organization** with respect to such security holder's interest in securities of such **Organization**; or

(2) which is a **Derivative Suit**.

**Securities Retention**

means the Retention applicable to **Loss** (including **Pre-Claim Inquiry Costs**) that arises out of (i) a **Securities Claim**, or (ii) **Pre-Claim Inquiry Costs** incurred in response to: (a) a **Pre-Claim Inquiry** by an **Enforcement Body** charged with the regulation of securities, or (b) a **Derivative Investigation**.

**SOX 304 Costs**

means the reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including the premium or origination fee for a loan or bond) and incurred by the chief executive officer or chief financial officer of the **Named Entity** solely to facilitate the return of amounts required to be repaid by such **Executive** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002. **SOX 304 Costs** do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such **Executive** pursuant to Section 304(a).

**Subsidiary**

means:

(1) any for-profit entity, whose securities are not publicly traded, of which the **Named Entity** has or had **Management Control** on or before the **Inception Date** of this policy, either directly or indirectly through one or more of its other **Subsidiaries**; and

(2) any not-for-profit entity sponsored exclusively by an **Organization**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Entity** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by an **Organization**.

**Transaction**

means, in addition to the definition set forth in the **General Terms and Conditions**, the appointment by any **Enforcement Body** of, or where any **Enforcement Body** assumes the role of, a trustee, receiver, conservator, rehabilitator, liquidator or similar official to take control of, supervise or oversee the **Named Entity**, or to liquidate or sell all or substantially all of the assets of the **Named Entity**.



**UK Corporate  
Manslaughter Act  
Defense Costs**

means **Defense Costs** incurred by an **Insured Person** that result solely from the investigation, adjustment, defense and/or appeal of a **Claim** against an **Organization** for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute in any jurisdiction.

**Wrongful Act**

means:

- (1) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act:
  - (i) with respect to any **Executive** or **Employee** of an **Organization**, by such **Executive** or **Employee** in his or her capacity as such or any matter claimed against such **Executive** or **Employee** solely by reason of his or her status as such;
  - (ii) with respect to any **Outside Entity Executive**, by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as such;  
or
- (2) with respect to an **Organization**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Organization**.

[The balance of this page is intentionally left blank.]



## National Union Fire Insurance Company of Pittsburgh, PA

A capital stock company

### CRIMEGUARD CHOICE® FIDELITY & CRIME INSURANCE

("Crime Coverage Section")

**Notice:** The **General Terms and Conditions** are not applicable to this **Crime Coverage Section**.

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

#### 1. INSURING AGREEMENT

The **Insurer** will indemnify the **Insured** for the **Loss of Assets**, excess of any applicable Deductible, resulting directly from **Agent Theft, Computer Fraud, Dishonesty, Forgery, Funds Transfer Fraud, Impairment, or Non-Payment of Money Order/Counterfeit Paper Currency**, which is first discovered by the **Insured** during the Policy Period or applicable discovery period pursuant to Clause 6(a) *Discovery of Loss* of this **Coverage Section**.

#### 2. LIMIT OF LIABILITY

Any payment under this **Coverage Section** for a covered loss shall not reduce the **Insurer's** liability for other covered loss arising from unrelated acts, except as noted in the Declarations. The maximum liability of the **Insurer** for any single loss shall not exceed the applicable **Limit of Liability** amount stated in Item 6 of the Declarations for this **Coverage Section**.

The **Limit of Liability** stated in Item 6 of the Declarations for this **Coverage Section** shall be the maximum liability of the **Insurer** for all loss arising from a single act or series of related acts under this **Coverage Section**.

Regardless of the number of years this **Coverage Section** is in force and the number of premiums paid, the limit of the **Insurer's** liability as specified in the Declarations shall not be cumulative over policy periods.

#### 3. DEDUCTIBLE AND OTHER INSURANCE

For each covered loss, coverage under this **Coverage Section** will be in excess of the greater of the following amounts:

- the Deductible amount set forth in Item 6 of the Declarations for this **Coverage Section**, and
- the amount of any other valid and collectible insurance or indemnity available to the **Insured**.

If a loss is covered partly under this **Coverage Section** and partly under a prior policy written by another carrier, the Deductible amount under this **Coverage Section** applicable to the loss will be reduced by the amount of any deductible amount actually applied to loss under such prior policy. If the amount of any deductible amount actually applied to loss under such other carrier's prior policy is greater than the Deductible amount under this **Coverage Section**, then no deductible shall apply to the amount of covered loss under this **Coverage Section**.

#### 4. EXCLUSIONS

The coverage afforded by this **Coverage Section** does not apply to:

- a. loss or damage caused by fire, other than loss of or damage to **Money, Securities**, safes or vaults;
- b. loss resulting from **Theft** or any other fraudulent, dishonest or criminal act by the **Insured**, or any partner, owner, trustee, governor, management committee members, members of the management board, or director, of the **Insured**, except while any director is acting within the scope of the usual duties of an employee whether acting alone or in collusion with others;
- c. loss of potential income, including interest and dividends, of the **Insured**, a **Client** or any third party;
- d. loss or damage arising out of war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to the foregoing;
- e. loss resulting from the loss of or damage to manuscripts, books of account or records maintained in any format or medium; provided, however, this Exclusion shall not apply to the cost of the manuscripts, books of account or records plus the cost of labor and computer time for the actual transcription or copying of data maintained in any format or medium in order to reproduce such manuscripts, books of account or records;
- f. loss resulting from, arising out of, based upon, attributable to, related to, in connection with, or from, directly or indirectly, the loss of or damage to proprietary information, trade secrets, confidential processing methods, patents, service marks, trademarks, copyrights, or other confidential information or intellectual property of any kind, or infringement of copyright, patent, service mark, trademark, trade secret or other intellectual property rights;
- g. loss resulting from the surrendering of **Assets** away from the **Premises** or any other location resulting from a threat to do:
  - bodily harm to any person; or
  - damage to the **Premises** or property owned or held or utilized by the **Insured**;provided, however, this Exclusion does not apply to loss resulting from **Impairment** while being conveyed by a **Messenger** when the **Insured** had no knowledge of any threat at the time of the incident;
- h. loss, the proof of which is dependent solely upon:
  - a profit and loss computation or comparison, or
  - a comparison of inventory records with an actual physical count;

provided, however, where an **Employee** is involved, inventory records and actual physical count of inventory can be submitted as supporting documentation;

- i. loss caused by any **Employee** from the time that an individual, as described in Clause 6(a) *Discovery of Loss*, not in collusion with the **Employee** shall have knowledge or information that the **Employee** has committed any **Theft** or fraudulent or dishonest act;
- j. loss or damage to **Assets** while in the custody of any armored car company unless loss or damage is in excess of the amount recovered, recoverable or received by the **Insured** under:
  - the **Insured's** contract with the armored car company; and
  - any indemnity or insurance carried by the armored car company;
- k. loss or damage resulting from **Impairment of Money or Securities** which benefits any party (other than the **Insured's** bank) acting in the capacity of a broker, factor, commission merchant, consignee, contractor or other agent or representative of the **Insured** except an **Agent**;
- l. loss or damage to other tangible property while in the custody of any party other than the **Insured** or a **Messenger**;
- m. loss or damage resulting from **Impairment** as a result of the unauthorized access and use of the **Insured's** telephone system or service or other communications system or service;
- n. the costs of defending any legal proceeding brought against the **Insured**, or the fees, costs or expenses incurred or paid by the **Insured** in prosecuting or defending any legal proceeding;
- o. loss or damage resulting from nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to any of the foregoing;
- p. fines, penalties, consequential damages, punitive damages, expenses as a result of regularly scheduled recurring or routine regulatory examinations, or compliance activities or non-monetary relief, including without limitation, injunctive relief, or other equitable remedies of any type for which the **Insured** is legally liable;
- q. loss or damage resulting from **Impairment** or **Computer Fraud** arising out of the giving or surrendering of **Assets** in any exchange or purchase, whether legitimate or fraudulent;
- r. loss resulting from **Impairment** or **Computer Fraud** which induces the **Insured** to make any purchase or sale, whether legitimate or fraudulent;
- s. loss caused by **Forgery** or the alteration of **Assets** received by the **Insured** in purported payment for property or services sold and delivered on credit;
- t. loss or damage resulting from **Impairment** relating to the **Theft** of other tangible property within the **Premises**, while the **Premises** are not open for business, except other tangible property found within a safe, vault, cash box, locked cash drawer or cash register;

- u. loss or damage resulting from **Computer Fraud** arising out of unintentional errors or omissions;
- v. loss of computer time or use due to **Computer Fraud**;
- w. loss or damage resulting from **Funds Transfer Fraud** caused by a **Financial Institution**, or any electronic funds transfer system, or electronic data processor, except to the extent that such loss or damage exceeds any indemnity or other insurance provided for the benefit of customers of any of the aforesaid;
- x. loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities** or other tangible property whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account; provided, however, this exclusion shall not apply to direct losses caused by **Dishonesty**. Direct losses as used herein shall mean only the amount of improper financial gain to the **Employee**;
- y. loss caused by any **Agent** from the time the **Insured** or any owner, partner or officer not in collusion with the **Agent** shall have knowledge or information that the **Agent** has committed any **Agent Theft**, or fraudulent or dishonest act;
- z. loss or damage resulting from **Credit Card Forgery**;
- aa. loss resulting directly or indirectly from the: (i) **Theft**, disappearance or destruction of; (ii) unauthorized use or disclosure of; (iii) unauthorized access to; or (iv) failure to protect any:
  - (1) confidential or non-public; or
  - (2) personal or personally identifiable;

information that any person or entity has a duty to protect under any law, rule or regulation, any agreement or any industry guideline or standard.

This Exclusion shall not apply to loss of any **Money, Securities** or tangible property of the **Insured** or that the **Insured** is holding for a third party that was the subject of a **Theft**, disappearance, damage or destruction resulting directly from the unauthorized use or disclosure of such information;
- bb. loss that is an indirect or consequential result of an **Occurrence**, including but not limited to loss resulting from payment of damages of any type for which the **Insured** is legally liable.

5. WORLDWIDE TERRITORY

This **Crime Coverage Section** shall apply to loss incurred by an **Insured** anywhere in the world unless prohibited by law.

6. LOSS PROVISIONS

(a) *Discovery of Loss*

Discovery of loss by the **Insured** occurs when the **Insured's** Corporate Insurance Risk Management Department, Internal Audit Department, Human Resources/Personnel Department or General Counsel, or any officer to whom they report, or any partner or owner of the **Insured**, first becomes aware of facts which would cause a reasonable person to believe that a loss covered by this insurance has been or will be incurred, even though the exact amount or details may not then be known.

The **Insurer** will pay the **Insured** for loss sustained as a direct result of acts committed prior to the effective date of termination or cancellation of this **Coverage Section** (except when cancellation is due to non-payment of premium), which is discovered by the **Insured** during the **Policy Period** or within ninety (90) days after the effective date of such termination or cancellation; provided, however, the ninety (90)-day extended period set forth herein to discover loss terminates immediately upon the effective date of any other fidelity and crime insurance obtained by the **Insured**.

*(b) Notification & Proof of Loss*

Upon knowledge or discovery of loss by the **Insured** or of an occurrence which would cause a reasonable person to believe that such loss or occurrence would give rise to a covered loss in the amount of 50% of the applicable deductible or more, the **Named Entity** shall, on behalf of any **Insured**:

- give notarized written notice to the **Insurer** of such loss or occurrence, at the **Claims Address** stated in Item 4 of the Declarations, no later than ninety (90) days after such discovery or first obtaining such knowledge, on the form provided;
- give notice to the police if loss results from **Agent Theft, Computer Fraud, Forgery, Funds Transfer Fraud, Impairment, or Non-Payment of Money Order/Counterfeit Paper Currency**;
- provide all requested information and documents and cooperate with the **Insurer** in all matters pertaining to such loss or occurrence; and
- give written notice to the **Insurer** of the **Insured's** election to apply to such loss either Loss Settlement Clause 1 or Loss Settlement Clause 2, as set forth below, no later than thirty (30) days after the submission of the notarized written notice of such loss to the **Insurer** and no later than 90 days after knowledge or discovery of such loss. If the **Named Entity** fails to give written notice to the **Insurer** of such election, this **Coverage Section** shall apply as if the **Insured** had elected to apply Loss Settlement Clause 2 to such loss.

1) LOSS SETTLEMENT CLAUSE 1: Election of the Fidelity Research & Investigative Settlement Clause (FRISC)

An independent investigative specialist will investigate the facts and determine the quantum of loss. The **Named Entity** and the **Insurer** shall jointly task and budget the investigative specialist regarding the scope and cost of the investigation to be performed. The final report issued by the investigative specialist will be definitive as respects the facts and the quantum of loss and shall be provided to both the **Insured** and the **Insurer**.

Upon receipt and acceptance of written notification by the **Insurer**, the **Named Entity** shall choose an investigative specialist from the attached endorsement, provided the choice does not present a clear conflict of interest. The **Insurer** and the **Named Entity** will share equally the cost of the investigative specialist. The Deductible amount is not applicable to the cost of the investigative specialist, and the expense paid by the **Insurer** will be a part of, and not in addition to, the applicable **Limit of Liability**.

After a joint review of the investigative report, if the **Named Entity** disputes the **Insurer's** coverage determination, the **Insurer**, at the **Named Entity's** request, will submit the dispute to mediation and/or arbitration (if applicable). The rules of the American Arbitration Association shall apply to this proceeding except for the selection of the mediator and/or arbitrator.

Upon receipt and acceptance of written notification by the **Insurer**, the **Named Entity** shall choose a mediator and/or arbitrator from the attached endorsement, provided the choice does not present a clear conflict of interest. The **Insurer** and the **Named Entity** will bear their own costs, in the event of a mediation and/or arbitration.

2) LOSS SETTLEMENT CLAUSE 2: Waiver of FRISC

(A) The **Insured** shall be required to meet the following conditions in presenting loss to the **Insurer**: (i) the **Insured** shall give notarized written notice to the **Insurer** no later than ninety (90) days after knowledge or discovery of the loss; ii) the **Insured** shall give notice to the police if the loss results from **Agent Theft, Computer Fraud, Forgery, Funds Transfer Fraud, Impairment, or non-Payment of Money Order/Counterfeit Paper Currency**; (iii) the **Insured** shall file a detailed proof of loss, duly sworn to, with the **Insurer** within one hundred twenty (120) days after knowledge or discovery of the loss; and (iv) the **Insured** shall provide all requested information and documents and cooperate with the **Insurer** in all matters pertaining to the loss.

Upon the **Insurer's** request, the **Insured** shall submit to examination by the **Insurer**, subscribe the same, under oath if required, and produce for the **Insurer's** examination all pertinent records, all at such reasonable times and places as the **Insurer** shall designate, and shall cooperate with the **Insurer** in all matters pertaining to the loss or the claim.

(B) Claims Expense: Coverage is extended to include reasonable expenses (excluding the cost of services rendered by **Employees** of the **Insured**) incurred by the **Insured** for producing and certifying particulars or details of the **Insured's** business required by the **Insurer** in order to arrive at a covered loss payable under this **Coverage Section** ("Claims Expense Coverage"). If no covered loss is established hereunder, then the **Insured** will bear all such expenses. The Limit of Liability for all Claims Expense Coverage provided hereunder shall be \$10,000, which shall be part of and not in addition to the applicable **Limit of Liability** for this **Coverage Section**. There shall be no coverage hereunder for any expenses arising out of any legal dispute, suit or arbitration with the **Insurer**. The Claims Expense Coverage afforded hereunder shall be subject to a deductible in the amount of \$1,000.

(C) No action shall lie against the **Insurer** unless, as a condition precedent thereto: (i) the **Insured** has complied with all the terms and conditions of this policy; (ii) ninety (90) days have elapsed after the date the required proof of loss was filed with the **Insurer**; and (iii) such action is commenced within two (2) years after knowledge or discovery of the loss.

If any limitation is prohibited by any law controlling the construction of this policy, the limitation shall be deemed to be amended to comply with the minimum period of limitation permitted by law.

Any dispute between the **Insured** and the **Insurer** involving the amount or valuation of the covered loss will be submitted to mediation or arbitration for resolution.

(c) *Settlement of Loss*

The **Insurer** may, with the **Insured's** consent, settle any claim for covered loss of property with the owner. Any property for which the **Insurer** has made indemnification shall become the property of the **Insurer**. At its discretion, the **Insurer** may pay the actual cash value or make applicable repairs or replacements.

(d) *Basis of Valuation*

In no event shall the **Insurer** be liable for more than:

- at the sole discretion of the **Insurer**, the actual cash value of **Securities** at the close of business on the day the covered loss was discovered subject to the **Limit of Liability**, or the actual cost of replacing the **Securities**, whichever is less, plus the cost to post any required lost instrument bonds. The costs of posting any required lost instrument bonds and replacing the **Securities** shall be paid by the **Insured** and the **Insurer**. The **Insured** shall pay the costs related to the value of covered loss within its deductible and the costs related to any amount of covered loss in excess of the **Limit of Liability** and the **Insurer** shall pay the costs related to the covered loss in excess of the Deductible and up to the **Limit of Liability**;
- the cost of blank books, blank pages or other materials plus the cost of labor and computer time for the actual transcription or copying of data maintained in any format or medium in order to reproduce books and records;
- the cost of labor for the actual transcription or copying of electronic data, furnished by the **Insured**, in order to reproduce such electronic data;
- the actual cash value of other tangible property at the time of loss or the actual cost of repairing or replacing the other tangible property with other tangible property or material of like quality or value, whichever is less. The actual cash value of other tangible property if held by the **Insured** as a pledge, or as collateral for an advance or a loan, shall be considered not to exceed the value of the other tangible property as determined and recorded by the **Insured** when making the advance or loan, or in the absence of a record, the unpaid portion of the advance or loan plus accrued interest at legal rates;



- if a foreign currency (a currency other than the currency in which this policy is written) is involved in a covered loss sustained by the **Insured**, then for the purpose of any required calculation in the settlement of covered loss, the rate of exchange shall be the rate as published in the Wall Street Journal on the date of discovery;
- the selling price of inventory that is held for sale or the cost of the inventory plus 5%, whichever is less; and
- if the loss of the value of services provided by the **Insured** is the subject of loss, then the actual cost to the **Insured** of providing such services.

7. CANCELLATION CLAUSE

A. This **Coverage Section** shall be canceled:

- upon receipt by the **Insurer** of written notice of cancellation from the **Named Entity**;
- in the event the **Named Entity** shall consolidate with or merge into another entity such that the **Named Entity** is not the surviving parent entity, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
- for reason of non-payment of premium, ten (10) days after the receipt by the **Named Entity** of written notice from the **Insurer**; or
- for reasons other than non-payment, sixty (60) days after the receipt by the **Named Entity** of a written notice from the **Insurer**.

Upon cancellation by either the **Named Entity** or the **Insurer** for any reason other than non-payment of premium, the **Insurer** shall refund any applicable unearned premium computed pro rata. Upon cancellation by the **Insurer** for non-payment of premium, the **Insurer** shall be due the premium computed at customary short rates for the time period that this **Coverage Section** was in effect.

B. This **Coverage Section** shall be canceled as respects any **Employee** or **Agent**:

- immediately upon discovery of any dishonesty by an individual, as described in Clause 6(a) Discovery of Loss, not in collusion with the **Employee**; or
- immediately from the time the **Insured** or any owner, partner or officer not in collusion with the **Agent** shall have knowledge or information that the **Agent** has committed any **Agent Theft** or fraudulent or dishonest act; or
- sixty (60) days after the receipt by the **Named Entity** of written notice of cancellation from the **Insurer**.

C. This **Coverage Section** shall be canceled as respects any **Subsidiary** immediately as of:

- 184
- the time that such entity, firm, company, organization or association no longer meets the definition of "**Subsidiary**" in this **Coverage Section**;
  - the effective time of any sale of all or substantially all of such **Subsidiary's** assets; or
  - the effective time of any liquidation or dissolution of such **Subsidiary**.

Notice of cancellation will be mailed or delivered to the **Insurer Address** shown on the Declarations. Proof of mailing or delivery will be sufficient proof of notice.

## 8. CONSOLIDATION, MERGER OR ACQUISITION

If the total assets of the **Insured** (as stated in the application for this **Coverage Section**) increase more than 15%, through any consolidation or merger with, purchase of assets of, or acquisition of the majority stock ownership of an organization, then the **Named Entity** shall:

- within ninety (90) days of the effective date of the transaction give the **Insurer** written notice of the transaction;
- within ninety (90) days of the effective date of the transaction provide to the **Insurer** any additional information it may request;

and shall pay the **Insurer** any additional premium calculated pro rata from the date of the transaction to the end of the **Policy Period**.

Notwithstanding the above, any entity acquired during the **Policy Period** shall be subject to coverage only for covered loss sustained as a direct result of acts committed subsequent to the effective date of the acquisition and during the **Policy Period**. There is no coverage for loss incurred prior to the acquisition of any said entity. If an entity was acquired before the **Inception Date** of this policy, then there is no coverage for loss incurred prior to the acquisition of any said entity. Such insurance as is provided by this **Coverage Section** to a **Subsidiary** acquired by an **Insured** shall apply only as specifically excess over any representations and warranties insurance issued in connection with such acquisition.

## 9. SUBROGATION

In the event of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to the extent of the payment to all of the **Insured's** rights of recovery. The **Insured** shall execute all papers required and shall do everything necessary to secure and preserve the rights, including the execution of the documents necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured**. And, the **Insured** shall do nothing after discovery of loss to prejudice the rights of recovery.

Recoveries (except from sureties, insurance, reinsurance or indemnity), less the actual cost of recovery, made after a covered loss will be distributed as follows:

- first, the **Insured** shall be reimbursed for covered loss exceeding the applicable **Limit of Liability** and the Deductible amount (if applicable);
- second, the **Insurer** shall be reimbursed for the settlement made; and

- third, the **Insured** shall be reimbursed for covered loss equal to the Deductible amount.

10. JOINT INSURED

If more than one **Insured** is covered under this **Coverage Section**, the **Named Entity** shall act for itself and for every other **Insured** for all purposes of this **Coverage Section**.

If any **Insured** or officer of that **Insured** has knowledge of any information relevant to this **Coverage Section**, that knowledge is considered knowledge of every **Insured**.

An **Employee** of any **Insured** is considered to be an **Employee** of every **Insured**.

If this **Coverage Section** is cancelled or terminated as to any **Insured**, loss sustained by such **Insured** is subject to coverage only if discovered prior to the effective date of cancellation or termination.

The **Insurer** will not pay more for loss sustained by more than one **Insured** than the amount the **Insurer** would pay if all the loss had been sustained by one **Insured**.

11. ASSIGNMENT AND CHANGES

No changes, modifications or assignments of interest of this **Coverage Section** shall be effective except when made by a written endorsement to this **Coverage Section** which is signed by an authorized representative of the **Insurer**. Additionally, notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this **Coverage Section** or estop the **Insurer** from asserting any right under the terms of this **Coverage Section**.

By acceptance of this **Coverage Section**, the **Named Entity** agrees the **Coverage Section** embodies all agreements existing between the **Insured** and the **Insurer** or any of its agents relating to this insurance.

12. ACTION AGAINST THE INSURER

The **Insured** cannot bring an action against the **Insurer** unless:

- the **Insured** has complied with all the terms and conditions of this **Coverage Section**; and
- the action is brought within ninety (90) days after the **Named Entity's** receipt of the issued investigative specialist's report outlining a loss, or within ninety (90) days after the **Insurer's** receipt of the proof of loss.

If any limitation listed above is prohibited by any law controlling the construction of this **Coverage Section**, the limitation shall be deemed to be amended to comply with the minimum period of limitation permitted by law. This **Coverage Section** is for the sole benefit of the **Insured**. No suit, action or legal proceedings shall be brought hereunder by anyone other than the **Insured**.

13. HEADINGS

The headings of the various clauses and paragraphs of this **Coverage Section** and

endorsements, if any, attached to this **Coverage Section**, are inserted solely for convenience or reference and are not to be deemed in any way to limit or expand the provisions to which they relate, and are not part of this **Coverage Section**.

#### 14. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**.

**Agent** means a natural person, entity, firm, company, organization or association duly authorized by written contract to hold **Money** or **Securities** for the **Insured**.

**Agent Theft** means loss of **Money** or **Securities** resulting directly from **Theft** by an **Agent** in excess of the amount of the **Agent's** contracted indemnity obligation or in excess of any insurance provided by the **Agent**. It shall be a condition precedent to the **Insurer's** obligation to pay any amount for such loss of **Money** or **Securities** that the **Insured** shall exhaust all remedies against the **Agent** and any other responsible parties and be paid under all such **Agent's** contracts, indemnities or insurance, first, then the **Insurer's** liability for **Agent Theft** shall be only the excess over the amount of such contracts, indemnities or insurance.

**Assets** means **Money**, **Securities** or other tangible property owned by the **Insured** or held by the **Insured**, whether pursuant to a written contract or not. **Assets** do not include income, interest or dividends that was not in fact earned or that potentially could have been earned by the **Insured** on such **Money**, **Securities** or other tangible property.

**Computer Fraud** means the unlawful taking of **Assets** under the direct or indirect control of a **Computer System** by means of:

1. the fraudulent accessing of such **Computer System**;
2. the insertion of fraudulent data or instructions into such **Computer System**; or
3. the fraudulent alteration of data, programs, or routines in such **Computer System**.

**Computer System** means any computer hardware, software or any components thereof that are linked together through a network of two or more devices accessible through the internet or internal network or that are connected through data storage or other peripheral devices (including, without limitation, wireless and mobile devices) and are under the ownership, operation or control (whether or not leased) of the **Insured**, provided that the **Insured's** security standards, procedures and controls are established and adhered to for operation of the **Computer System**. **Computer System** shall also include those written policies and procedures applicable to the security of a computer network.

**Consultant** means a natural person professional consultant under contract, either directly or through such **Consultant's** company or firm, with the **Insured** to provide solely expert or professional advice regarding the improved operation of the **Insured's** business ("**Consulting Services**"). **Consultant** shall not mean any individual or entity providing professional services, including but not limited to legal or accounting services, to the **Insured**, in whole or in part, other than **Consulting Services**.

**Counterfeit Paper Currency** means an imitation of a paper currency in actual use as a medium of exchange, and which is intended to deceive.

**Dishonesty** means the **Theft** by an **Employee** of the **Insured** acting alone or in collusion with others. If a loss is alleged to have been caused by the **Dishonesty** of any one or more **Employees** and the **Insured** is unable to designate the specific **Employee** or **Employees** causing such loss, the **Insured** shall nevertheless have the benefit of this **Coverage Section**, provided that the evidence submitted reasonably proves that the loss was in fact due to the **Dishonesty** of one or more of the said **Employees**, and provided further that the aggregate liability of the **Insurer** for any such loss shall not exceed the **Limit of Liability** for this **Coverage Section** as set forth in Item 6 of the Declarations.

**Employee** means any natural person while in the regular service of the **Insured** (and the first ninety (90) days following termination) in the ordinary course of the **Insured's** business during the **Policy Period** whom the **Insured** compensates by salary, wages or commissions and has the right to govern and direct in the performance of service.

Additionally, **Employee** shall also include:

1. part-time and temporary **Employees** of the **Insured**;
2. students and volunteers gaining work experience with the **Insured**;
3. any individual assigned to perform **Employee's** duties for the **Insured** by any agency furnishing either temporary personnel on a contingent or part-time basis of leased personnel on a full-time basis; provided this **Coverage Section** will be excess of any other insurance or suretyship held by the agency furnishing the temporary or leased personnel to the **Insured**;
4. an independent contractor with whom the **Insured** has a written services contract in effect to perform **Employee's** duties for the **insured**, who is working within the **Insured's Premises**, and who is performing acts within the scope of such services contract under the supervision of the **Insured**; provided, however, that such independent contractor is not a **Consultant**; and provided further that this **Coverage Section** will be excess of any other insurance or suretyship held by or providing coverage for such independent contractor;

- 5. a director, trustee or non-compensated officer of the **Insured** while performing acts within the scope of the usual duties of an **Employee**;
- 6. any natural person while acting as fiduciary, trustee, administrator, officer or **Employee** while servicing any Employee Benefit Plan sponsored by the **Insured**;
- 7. an **Employee** of the **Insured** on military leave of absence; and
- 8. a **Consultant**, but only while: 1) a consultancy agreement is in effect between the **Insured** and such consultant or between the **Insured** and such consultant's company or firm; 2) such consultant is performing acts within the scope of such consultancy agreement; and 3) such consultant is working within the **Insured's** premises and under the supervision, direction and control of the **Insured**; provided, however, that this **Coverage Section** will be excess of any other insurance or suretyship held by or providing coverage for such **Consultant**.

**Employee** shall include any natural person holding a position with an **Insured** organized and operating in a jurisdiction outside the United States or any of its territories or possessions that is equivalent to a position listed in subparagraphs 1 through 8 above. **Employee** does not mean any **Agent**, broker, factor, commission merchant, consignee, or other agent or representative who performs services for the **Insured**.

**Financial Institution**

means:  
 1. a banking, savings or thrift institution; or  
 2. a stockbroker, mutual fund, liquid assets fund or similar investment institution;  
 at which the **Insured** maintains a **Transfer Account**.

**Financial Instrument**

means any check, draft, promissory note, bill of exchange, or similar written promise, order or direction to pay a sum certain in **Money**; provided, however, **Financial Instrument** shall not mean any written instructions to a **Financial Institution** to debit a **Transfer Account** and to transfer, pay or deliver **Funds** from said **Transfer Account** through an electronic funds transfer system.

**Forgery**

means the unauthorized signing of another person's name upon, counterfeiting of or alteration of any **Financial Instrument** made or drawn by, upon, to the order of or for the benefit of the **Insured**. Additionally, mechanically or electronically reproduced signatures are treated the same as handwritten signatures.

**Funds**

means a credit balance in a **Transfer Account** maintained by the **Insured** at a **Financial Institution**.

**Funds Transfer Fraud**

means:  
 1. fraudulent electronic, e-mail, telegraphic, cable, teletype, telefacsimile or telephone instructions issued to a **Financial Institution** to debit a **Transfer Account** and to transfer, pay or deliver **Funds** from said **Transfer Account** which instructions purport to have been transmitted by the **Insured** or by a person

duly authorized by the **Insured** to issue such instructions but which have been fraudulently transmitted by another; and  
2. fraudulent written instructions to a **Financial Institution** to debit a **Transfer Account** and to transfer, pay or deliver **Funds** from said **Transfer Account** through an electronic funds transfer system at specified times or under specified conditions, which written instructions purport to have been duly issued by the **Insured** but which have been fraudulently issued, forged or altered by another.

**Impairment** means:  
1. the actual destruction or disappearance of **Money** or **Securities** owned or held by the **Insured**; or  
2. the wrongful abstraction of **Assets** resulting from **Theft** by any natural person other than an **Employee**.

**Insured** means the **Named Entity** and any **Subsidiary**.

**Loss of Assets** means the direct deprivation of the **Insured** of **Assets** by a single act or a series of related acts resulting directly from **Agent Theft, Computer Fraud, Dishonesty, Forgery, Funds Transfer Fraud, Impairment, or Non-Payment of Money Order/Counterfeit Paper Currency** that occurred prior to the effective date of termination or cancellation of this **Coverage Section**.

**Messenger** means:  
1. the **Insured** or a partner of the **Insured**;  
2. any **Employee** who is duly authorized by the **Insured** to have the care and custody of the insured property outside the **Premises**; and  
3. any armored motor vehicle company under contract with the **Insured** to transport the insured property outside the **Premises**, but solely while transporting **Assets** of the **Insured** outside of the **Premises**.

**Money** means currency, coins, bank notes and bullion, traveler's checks, registered checks and money orders held for sale to the public.

**Money Order** means any post office or express money order.

**Non-Payment of Money Order/Counterfeit Paper Currency** means the acceptance of any **Money Order** in good faith, in exchange for merchandise, **Money** or services, which **Money Order** has been issued or is purported to have been issued by any post office or express company, if such **Money Order** is not paid upon presentation, or due to the acceptance in good faith in the regular course of business of **Counterfeit Paper Currency**.

**Occurrence** means **Agent Theft, Computer Fraud, Dishonesty, Forgery, Funds Transfer Fraud, Impairment, Non-Payment of Money Order/Counterfeit Paper Currency, Loss of Client Assets, Personal Identity Event, Loss of Employee Benefit Plan Assets or Credit Card Forgery**.

**Policy Period** means the period of time from the **Inception Date** to the earlier of the **Expiration Date** or the effective date of cancellation of this **Coverage Section**. The **Policy Period** incepts and expires as of 12:01 A.M. at the **Named Entity Address**.

**Premises** means the portion of the interior of any enclosed building occupied by the **Insured** in conducting its business, including the office of the corporate registrar or transfer agent.

**Securities** means all negotiable and non-negotiable instruments or contracts representing either money or property and includes revenue and other stamps in current use, tokens and tickets, but does not include **Money**.

**Subsidiary** means any entity, firm, company, organization or association, other than a financial institution, investment bank, hedge fund, private equity fund, exchange traded fund, insurance or reinsurance company or a holding company with insurance or reinsurance subsidiaries or operations, or any similar institution engaged in the exchange or investment of assets, whether or not owned or held by an Insured, in which the **Named Entity** on the inception date of this policy:

1. owns more than a 50% financial interest; or
2. has an ownership interest of less than 50% through outstanding securities or voting rights, but where the **Named Entity's** policies and procedures and internal audit controls are established and adhered to for the operation of the entity; or
3. the **Named Entity** (i) has the largest interest of any owner of the entity, (ii) is contractually obligated to manage and supervise the operation, and (iii) the **Named Entity's** policies and procedures and internal audit controls are established and adhered to for the operation of the entity.

With regard to a **Subsidiary** as defined in subparagraphs (2) and (3) above, the **Named Entity** shall be entitled to indemnification of loss under this **Coverage Section** to the extent of the **Named Entity's** interest in such **Subsidiary**, unless the **Named Entity** is contractually required to provide fidelity insurance for the entire **Subsidiary**.

**Theft** means the unlawful taking to the deprivation of the **Insured**, including by violence or threat of violence, of **Assets** (other than any salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment).

**Transfer Account** means an account, maintained by the **Insured** at a **Financial Institution**, from which the **Insured** or the **Insured's** authorized representatives may cause the transfer, payment or delivery of **Funds**:

1. by means of electronic, e-mail, telegraphic, cable, teletype, telefacsimile or telephone instructions (communicated directly or through a cash management service or funds transfer system); or



2. by means of written instructions establishing the conditions under which such transfers are to be initiated by such **Financial Institution** through an electronic funds transfer system.

[The balance of this page is intentionally left blank.]

**CRISISFUND® APPENDIX  
(WHEN EPL COVERAGE SECTION PURCHASED)**

If the **EPL Coverage Section** is purchased, the following terms and conditions shall apply to the **CrisisFund Coverage Section**:

**I. DEFINITIONS**

- (a) "**Crisis**" means an **Employment Practices Crisis, Employee Information Breach Crisis or Workplace Violence Crisis**, as applicable.
- (b) "**Employment Practices Crisis**" means an **Allegation, Discovery or Media Report** of a **Wrongful Act** (specifically including, but not limited to, a hostile work environment), which, in the good faith opinion of the **Organization's** General Counsel (or equivalent position), resulted or is reasonably likely to result, in any:
  - (1) civil action or compliance audit by the EEOC or any similar state agency or commission;
  - (2) civil or criminal action alleging sexual harassment or conduct by an executive officer;
  - (3) civil class action;
  - (4) civil action involving multiple plaintiffs; or
  - (5) civil action by a person alleging **Retaliation** by an **Insured** in response to such person's actions or threatened actions as a "whistleblower".

Provided, however, that the term **Crisis** shall not include any:

- (1) revising or rewriting of personnel policies or procedures;
- (2) sensitivity or awareness training; or
- (3) accommodations made by the **Organization** pursuant to the Americans With Disabilities Act.
- (c) "**Employee Information Breach Crisis**" means a failure of an **Organization** to prevent unauthorized access, to or use of data containing **Employee Information**, which, in the good faith opinion of the **Organization**, can reasonably be expected to lessen public confidence in the competence of the **Organization**.
- (d) "**Workplace Violence Crisis**" means any intentional act involving the use of deadly force or the threat of deadly force with a deadly weapon which occurs on the **Organization's** premises and involving at least one **Employee**.
- (e) "**Crisis Loss**" means:

**(1) With Respect to an Employment Practices Crisis:**

Any of the following amounts incurred during the pendency of an **Employment Practices Crisis** for which an **Organization** is legally liable:

- (i) the reasonable and necessary fees and expenses incurred by a **Crisis Firm** in the performance of **Crisis Services** for an **Organization**;
- (ii) the reasonable and necessary fees and expenses incurred in the printing, advertising or mailing of materials; and
- (iii) travel costs incurred by **Executives**, employees or agents of an **Organization** or of the **Crisis Firm**, arising from or in connection with the **Employment Practices Crisis**.

**(2) With Respect to an Employee Information Breach Crisis:**

The reasonable and necessary fees and expenses incurred by a **Crisis Firm** in the performance of **Crisis Services** for an **Organization**

(3) **With Respect to a Workplace Violence Crisis :**

The reasonable fees and expenses, or cost of:

- (i) an independent security consultant for ninety (90) days following the date the **Workplace Violence Crisis** occurs;
- (ii) an independent public relations consultant for ninety (90) days following the date the **Workplace Violence Crisis** occurs; and
- (iii) onsite group counseling session(s) for **Employees** conducted by an independent consultant following a **Workplace Violence Crisis**.

(f) "**Crisis Services**" means:

(1) **With Respect to an Employment Practices Crisis:**

Those services performed by an **Crisis Firm** in advising the **Organization** on minimizing potential harm to the **Organization** arising from the **Employment Practices Crisis**; including, but not limited to, maintaining and restoring public and employee confidence in the **Organization**.

(2) **With Respect to an Employee Information Breach Crisis :**

Reasonable and necessary costs and expenses incurred by an **Organization** for a public relations firm, **Crisis Firm** or law firm agreed to by the **Insurer** to advise the **Organization** on minimizing the harm to such **Organization**, including, without limitation, maintaining and restoring public confidence in the **Organization**.

(g) "**Crisis Firm**" means: means any public relations firm, crisis management firm or law firm on the list of approved firms that is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "CrisisFund®" link. In the event the **Organization** chooses to retain the services of an entity not listed, the **Organization** must obtain the written consent of the **Insurer**, which shall not be unreasonably withheld.

(h) "**Employee Information**" means information regarding past, present or future **Employees** or applicant for employment with the **Organization**, collected or stored by an **Organization** for the purpose of establishing, maintaining or terminating the employment relationship

(i) "**Allegation**" means any complaint, whether written or verbal, communicated to the **Organization's** human resources department by:

- (1) an individual who believes that he or she was a victim of the alleged **Wrongful Act**; or
- (2) such individual's direct or indirect supervisor, if: such supervisor is an **Employee** and that supervisor's conduct is not the subject matter of the alleged **Wrongful Act**.

(j) "**Discovery**" means either:

- (1) an observation by any **Executive** or any human resources manager; or
- (2) an internal investigation conducted by the **Organization**, at the **Organization's** own expense, which concludes that there is a reasonable basis to believe that a **Wrongful Act** has occurred.

(k) "**Media Report**" means any of the following publications or reports received in the geographic area of the **Organization**: (i) a daily newspaper of general circulation; (ii) a weekly, monthly or quarterly newsletter or magazine of general circulation; (iii) a newsletter or trade publication applicable to the **Organization's** industry; or (iv) a radio or television newscast.

**II. EXCLUSIONS**

The term **Crisis** shall not include any event relating to any **Claim** which has been reported, or any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time.

[The balance of this page is intentionally left blank.]

**CRISISFUND® APPENDIX  
(WHEN FLI COVERAGE SECTION PURCHASED)**

If the **FLI Coverage Section** is purchased, the following terms and conditions shall apply to the **CrisisFund Coverage Section**:

**I. DEFINITIONS**

"**Crisis**" means one of the following:

**A. Investment Loss in a Covered Plan**

A loss in the total assets of a covered **Plan** of 25% or more in a thirty (30) day period caused by investment loss or a loss in a specific **Plan** investment of 75% or more in a thirty (30) day period, which may be alleged to have a material effect on a covered **Plan**.

**B. Third Party Service Provider Issues**

The public announcement of: (i) a **Plan's** Third Party Service Provider's fraud, arrest, indictment, bankruptcy, layoff of employees, or (ii) a governmental or regulatory agency's investigation into or litigation against a **Plan's** Third Party Service Provider.

**C. Material Effect on an Organization's Common Stock Price**

An event, which in the good faith opinion of the Chief Financial Officer of an **Organization** caused or is reasonably likely to cause a **Material Effect on an Organization's Common Stock Price** :

(i) Negative earning or sales announcement

The public announcement of an **Organization's** past or future earnings or sales, which is substantially less favorable than any of the following: (i) an **Organization's** prior year's earnings or sales for the same period; (ii) an **Organization's** prior public statements or projections regarding earnings or sales for such period; or (iii) an outside securities analyst's published estimate of an **Organization's** earnings or sales causing **Loss** in the **Plan's** investments in securities of or issued by (i) the **Organization**, (ii) the parent of the **Organization**, (iii) any company acquired in whole or in part by the **Organization**, or (iv) any former parent of any company acquired in whole or in part by the **Organization**.

(ii) Mass tort

The public announcement or accusation that an **Organization** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof.

(iii) Employee layoffs or loss of key executive officer(s)

The public announcement of layoffs of employees of an **Organization**. The death

or resignation of one or more key **Executives** of the **Named Entity**.

(iv) Write-off of assets

The public announcement that an **Organization** intends to write off a material amount of its assets.

(v) Debt restructuring or default

The public announcement that an **Organization** has defaulted or intends to default on its debt or intends to engage in a debt restructuring.

(vi) Bankruptcy

The public announcement that an **Organization** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of an **Organization**; or that bankruptcy proceedings are imminent, whether voluntary or involuntary.

(vii) Governmental or regulatory agency litigation

The public announcement of the commencement or threat of litigation or of governmental or regulatory agency proceedings against an **Organization**.

(viii) Unsolicited takeover bid

An unsolicited written offer or bid by any person or entity other than an **Insured** or any affiliate of any **Insured**, whether publicly announced or privately made to an **Executive** of an **Organization**, to effect a **Transaction** of the **Named Entity**.

A **Crisis** shall first commence when an **Organization** or any of its **Executives** first becomes aware of such **Crisis**. A **Crisis** shall conclude when a **Crisis Firm** advises an **Organization** that such **Crisis** no longer exists, the **Named Entity** determines such **Crisis** no longer exists, or when the **CrisisFund**<sup>SM</sup> has been exhausted, whichever occurs first.

"**Crisis Firm**" means any public relations firm, crisis management firm or law firm on the list of approved firms that is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "**CrisisFund**<sup>®</sup>" link. Once notice has been given of a **Pension Crisis** in accordance with the **CrisisFund Coverage Section**, any "**Crisis Firm**" may be hired by an **Organization** to perform **Crisis Services** without further approval by the **Insurer**.

"**Crisis Loss**" means the following costs incurred during the pendency of a **Crisis** for which an **Organization** is legally liable:

- (1) the reasonable and necessary fees and expenses incurred by a **Crisis Firm** in the performance of **Crisis Services** for an **Organization**;
- (2) the reasonable and necessary fees and expenses incurred in the printing, advertising or mailing of materials; and
- (3) travel expenses incurred by **Executives**, employees or agents of an **Organization** or of the **Crisis Firm**, arising from or in connection with the **Crisis**.

"**Crisis Services**" means those services performed by a **Crisis Firm** in advising an **Insured** or any employee of an **Organization** on minimizing potential harm to an **Organization** from the **Crisis** (including, but not limited to, maintaining and restoring investor confidence in an **Organization**).

"Material Effect on an Organization's Common Stock Price" means, within a period of 24 hours, that the price per share of an Organization's common stock shall decrease by \$2.00, or 15% net of the percentage change in the Standard & Poor's Composite Index, whichever is greater.

**II. EXCLUSIONS**

The term **Crisis** shall not include any event relating to any **Claim** which has been reported, or any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time.

[The balance of this page is intentionally left blank.]

**CRISISFUND® APPENDIX**  
**(WHEN PRIVATE D&O COVERAGE SECTION PURCHASED)**

If the **Private D&O Coverage Section** is purchased, the following shall apply to the **CrisisFund Coverage Section**:

I. DEFINITIONS

(a) "**Crisis**" means one of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause a **Material Effect**:

1. Management Crisis:

The death, incapacity or criminal indictment of any **Executive** of the **Organization**, or any **Employee** on whom the **Organization** maintains key person life insurance.

2. Employee Layoffs:

The public announcement of layoffs of **Employees** of the **Organization**.

3. Debt Default:

The public announcement that the **Organization** had defaulted or intends to default on its debt.

4. Bankruptcy:

The public announcement that the **Organization** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Organization**; or the imminence of bankruptcy proceedings, whether voluntary or involuntary.

5. Mass Tort:

The public announcement or accusation that an **Organization** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof.

6. Regulatory Crisis:

The public announcement of the commencement or threat of commencement of litigation or governmental or regulatory proceedings against an **Organization**.

The descriptions in the headings of the **Crises** are solely for convenience and form no part of the terms and conditions of coverage.

A **Crisis** shall first commence when the **Organization** or any of its **Executives** shall first become aware of the event during the **Policy Period** and shall conclude at the earliest of the time when the **Crisis Firm** advises the **Organization** that the crisis no longer exists or when the **CrisisFund** has been exhausted.



- (b) "**Crisis Firm**" means any public relations firm, crisis management firm or law firm on the list of approved firms that is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "CrisisFund®" link. Any "**Crisis Firm**" may be hired by the **Organization** or its **Executives** or **Employees** to perform **Crisis Services** without further approval by the Insurer.
- (c) "**Crisis Loss**" means the following amounts incurred during the pendency of or within 90 days prior to and in anticipation of, the **Crisis**, regardless of whether a **Claim** is ever made against an Insured arising from the **Crisis** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**:
  - (1) amounts for which the **Organization** is legally liable for the reasonable and necessary fees and expenses incurred by a **Crisis Firm** in the performance of **Crisis Services** for the **Organization** arising from a **Crisis**; and
  - (2) amounts for which the **Organization** is legally liable for the reasonable and necessary printing, advertising, mailing of materials, or travel by **Executives**, **Employees** or agents of the **Organization** or the **Crisis Firm**, in connection with the **Crisis**.
- (d) "**Crisis Services**" means those services performed by a **Crisis Firm** in advising the **Organization** or any of its **Executives** or **Employees** on minimizing potential harm to the **Organization** arising from the **Crisis**, including but not limited to maintaining and restoring public confidence in the **Organization**.
- (e) "**Material Effect**" means the publication of unfavorable information regarding the **Organization** which can reasonably be considered to lessen public confidence in the competence of the **Organization**. Such publication must in occur in either:
  - (1) a daily newspaper of general circulation in the geographic area of the **Organization**, or
  - (2) a radio or television news report on an **Organization** received in the geographic area of the **Organization**.

II. EXCLUSIONS

The term **Crisis** shall not include any event relating to:

- 1. any pending or prior litigation as of the **Continuity Date** for the **Private D&O Coverage Section**;
- 2. any **Claim** which has been reported, or any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- 3. the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or

4. the hazardous properties of nuclear materials.

[The balance of this page is intentionally left blank.]

**APPENDIX A**  
**SECURITIES CLAIMS PANEL COUNSEL LIST**

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is accessible through our online Panel Counsel Directory at <http://www.aig.com/us/panelcounseldirectory>. To access the applicable online Panel Counsel Directory, please go to the website and click on the "Directors & Officers (Securities Claims)" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

© All rights reserved.

**APPENDIX B  
EMPLOYMENT PRACTICES CLAIM PANEL COUNSEL**

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is accessible through our online Panel Counsel Directory at <http://www.aig.com/us/panelcounseldirectory>. To access the applicable online Panel Counsel Directory, please go to the website, click on the "Public and Private Companies (Employment Practices Liability)" link and then select the applicable Panel Counsel Directory, either the "4-97 Monoline/Public Companies" link or the "Private Edge" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**APPENDIX  
EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY  
PANEL COUNSEL LIST**

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is now accessible through our online Panel Counsel Directory at [AIG Panel Counsel Directory](#). To access the applicable online Panel Counsel Directory, please go to the website, click on the "Fiduciary Liability (ERISA and Non-ERISA) link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

© All rights reserved.

204

ENDORSEMENT# 1

This endorsement, effective *12:01 AM August 1, 2015* forms a part of  
policy number *16016710*  
issued to *HARVEST POWER, INC.*

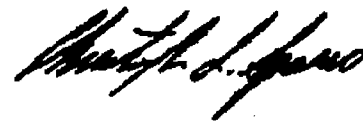
by *National Union Fire Insurance Company of Pittsburgh, PA*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ECONOMIC SANCTIONS ENDORSEMENT**

*This endorsement modifies insurance provided under the following:*

The Insurer shall not be deemed to provide cover and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or the United States of America.



---

AUTHORIZED REPRESENTATIVE

⊕ All rights reserved.

**END 001**

200

**ENDORSEMENT# 2**

This endorsement, effective *12:01 AM August 1, 2015* forms a part of  
policy number *16016710*  
issued to *HARVEST POWER, INC.*

by *National Union Fire Insurance Company of Pittsburgh, PA*

**CRISISFUND® Endorsement**

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

**I.**

Item 6. **COVERAGE SUMMARY** of the Declarations Page is amended to include:

<b>CRISISFUND®</b>	
Private D&O CrisisFund® Limit of Liability <i>*Shared with Private D&amp;O Limit of Liability</i>	\$100,000
EPL CrisisFund® Limit of Liability <i>*Shared with EPL Limit of Liability</i>	\$25,000
FLI CrisisFund® Limit of Liability <i>*Shared with FLI Limit of Liability</i>	\$100,000

**II.**

The following **CrisisFund Coverage Section** is added to the policy:

**CRISISFUND®**  
("CrisisFund Coverage Section")

**Notice:** Pursuant to Clause 1. **TERMS AND CONDITIONS** of the **General Terms and Conditions**, the **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **CrisisFund Coverage Section**, unless otherwise explicitly stated to the contrary in this **CrisisFund Coverage Section**.

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

**1. INSURING AGREEMENTS**

Solely with respect to a Crisis first occurring during the **Policy Period** and reported to the **Insurer** as required by this **Coverage Section**, this **Coverage Section** affords the following coverage:

© All rights reserved.

**END 002**

The **Insurer** shall pay all **Crisis Loss** that an **Insured** incurs solely as a result of a **Crisis**; provided that payment of any **Crisis Loss** under this policy shall not waive any of the **Insurer's** rights under this policy or at law.

**2. OTHER CRISISFUND INSURANCE**

In the event that an **Insured** has purchased another insurance policy from the **Insurer** providing similar coverage to this **Coverage Section**, then the highest applicable limit of insurance for such coverage among this policy and such other policies shall apply, and in all circumstances, the **Insurer's** maximum liability for such coverage shall not be greater than the highest limit of insurance for such coverage among all such policies.

**3. LIMITS OF LIABILITY**

In addition to the provisions of Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, the **CrisisFund** is the **Insurer's** maximum liability for all **Crisis Loss** in the aggregate arising from any and all **Crises** first occurring during the **Policy Period**, regardless of the number of **Crises** reported during the **Policy Period**. Each CrisisFund Limit of Liability stated in Item 6 of the Declarations (as amended above) is a **Shared Limit of Liability** to be shared with the respective **Coverage Section** indicated. Each CrisisFund Limit of Liability stated in Item 6 of the Declarations (as amended above) shall apply solely to a **Crisis** as defined in the CrisisFund Appendix for the respective **Coverage Section** with which such CrisisFund Limit of Liability is shared. The **Insurer** shall not be responsible to pay any **Crisis Loss** upon exhaustion of the **Policy Aggregate** or the applicable CrisisFund Limit of Liability stated in Item 6 of the Declarations (as amended above).

**4. RETENTION**

In no event shall a Retention be applied to **Crisis Loss**.

**5. EXCLUSIONS**

The **Insurer** shall not be liable to make any payment for **Crisis Loss**:

- (a) arising out of, based upon or attributable to any **Crises** related to: (1) any pending or prior litigation as of the **Continuity Date** for this **Coverage Section**; or (2) any act or event which has been reported, or in any circumstances of which notice has been given, under any policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time.
- (b) arising out of, based upon or attributable to any: (1) presence of **Pollutants**; (2) actual or threatened discharge, dispersal, release or escape of **Pollutants**; or (3) direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, or in any way respond to or assess the effects of **Pollutants**.



## 6. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

An **Organization** or an **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Crisis** as soon as practicable after the **Named Entity's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Crisis**. In all such events, notification must be provided no later than 60 days after the end of the **Policy Period**.

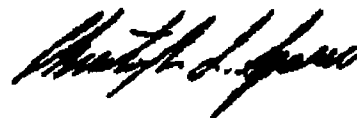
## 7. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

<b>Continuity Date</b>	means, for each <b>Crisis</b> as defined in the CrisisFund Appendix for the respective <b>Coverage Section</b> with which the applicable CrisisFund Limit of Liability is shared, the same <b>Continuity Date</b> applicable to such <b>Coverage Section</b> .
<b>CrisisFund Appendix</b>	means the appendix or appendices, as applicable, attached to this policy and entitled "CrisisFund Appendix," which is/are hereby incorporated by reference into, made a part of and are expressly applicable to this <b>CrisisFund Coverage Section</b> , unless otherwise explicitly stated to the contrary in this <b>CrisisFund Coverage Section</b> .
<b>Crisis</b>	has the meaning as defined in the applicable <b>CrisisFund Appendix</b> . A <b>Crisis</b> shall first commence when the <b>Insured</b> shall first become aware of such <b>Crisis</b> . A <b>Crisis</b> shall conclude once a <b>Crisis Firm</b> advises an <b>Insured</b> that such <b>Crisis</b> no longer exists or when the <b>CrisisFund</b> has been exhausted.
<b>Crisis Firm</b>	means any public relations firm, crisis management firm or law firm on the list of approved firms that is accessible through the online directory at <a href="http://www.aig.com/us/panelcounseldirectory">http://www.aig.com/us/panelcounseldirectory</a> under the "CrisisFund®" link. Any <b>Crisis Firm</b> may be hired by an <b>Insured</b> to perform <b>Crisis Services</b> without further approval by the <b>Insurer</b> .

- Crisis Services** has the meaning as defined in the applicable **CrisisFund Appendix**.
- Crisis Loss** has the meaning as defined in the applicable **CrisisFund Appendix**.
- CrisisFund** means the **Shared Limit of Liability** stated in Item 6 of the Declarations (as amended above), which shall be the **Insurer's** maximum liability for all **Crisis Loss** in the aggregate arising from any and all **Crises** first occurring during the **Policy Period**, regardless of the number of **Crises** reported during the **Policy Period**.
- Insured** means an **Organization**.
- Pollutants** means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



---

AUTHORIZED REPRESENTATIVE

**ENDORSEMENT# 3**

209

This endorsement, effective *12:01 AM August 1, 2015* forms a part of  
policy number *16016710*  
issued to *HARVEST POWER, INC.*

by *National Union Fire Insurance Company of Pittsburgh, PA*

**NOTICE OF CLAIM  
(REPORTING BY E-MAIL)**

In consideration of the premium charged, it is hereby understood and agreed as follows:

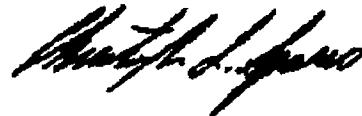
1. *Email Reporting of Claims:* In addition to the postal address set forth for any Notice of Claim Reporting under this policy, such notice may also be given in writing pursuant to the policy's other terms and conditions to the Insurer by email at the following email address: c-claim@aig.com

Your email must reference the policy number for this policy. The date of the Insurer's receipt of the emailed notice shall constitute the date of notice.

In addition to Notice of Claim Reporting via email, notice may also be given to the Insurer by mailing such notice to: AIG Property Casualty, Financial Lines Claims, P.O. Box 25947, Shawnee Mission, KS 66225 or faxing such notice to (866) 227-1750.

2. *Definitions:* For this endorsement only, the following definitions shall apply:
  - (a) "Insurer" means the "Insurer," "Underwriter" or "Company" or other name specifically ascribed in this policy as the insurance company or underwriter for this policy.
  - (b) "Notice of Claim Reporting" means "notice of claim/circumstance," "notice of loss" or other reference in the policy designated for reporting of claims, loss or occurrences or situations that may give rise or result in loss under this policy.
  - (c) "Policy" means the policy, bond or other insurance product to which this endorsement is attached.
3. This endorsement does not apply to any Kidnap & Ransom/Extortion Coverage Section, if any, provided by this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED



AUTHORIZED REPRESENTATIVE

© All rights reserved.

**END 003**

This endorsement, effective *12:01 AM August 1, 2015* forms a part of  
policy number *16016710*  
issued to *HARVEST POWER, INC.*

by *National Union Fire Insurance Company of Pittsburgh, Pa.*

**SEVERABILITY OF THE APPLICATION AMENDED  
(NON-RESCINDABLE)**

**This endorsement modifies the Private D&O Coverage Section.**

In consideration of the premium charged, it is hereby understood and agreed that Clause 11. APPLICATION AND UNDERWRITING of the **Private D&O Coverage Section** is amended by deleting paragraphs B & C thereof and replacing it with the following:

*B. Non-Rescindable*

Under no circumstances shall the coverage provided by this **Coverage Section** be deemed void, whether by rescission or otherwise, once the premium has been paid.

*C. Severability of the Application*

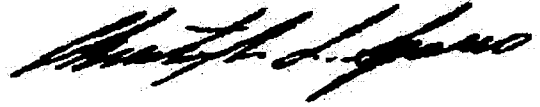
The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

However, if the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under the policy, no coverage shall be afforded for any **Claim** alleging, arising out of, based upon, attributable to or in consequence of the subject matter of any incomplete or inaccurate statements, warranties or representations with respect to:

1. **Loss of any Insured Person** who knew, as of the inception date of the **Policy Period**, of such inaccurate or incomplete statements, warranties or representations; and
2. **Loss of an Organization**, if any past or present chief executive officer or chief financial officer of the **Named Entity** knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

A handwritten signature in black ink, appearing to be "M. J. ...", written over a horizontal line.

AUTHORIZED REPRESENTATIVE

This endorsement, effective *12:01 AM August 1, 2015* forms a part of  
policy number *16016710*  
issued to *HARVEST POWER, INC.*

by *National Union Fire Insurance Company of Pittsburgh, Pa.*

**SEVERABILITY OF THE APPLICATION AMENDED  
(NON-RESCINDABLE)**

**This endorsement modifies the FLI Coverage Section.**

In consideration of the premium charged, it is hereby understood and agreed that Clause 12. APPLICATION AND UNDERWRITING of the **FLI Coverage Section** is amended by deleting paragraphs B and C thereof and replacing it with the following:

*B. Non-Rescindable*

Under no circumstances shall the coverage provided by this **Coverage Section** be deemed void, whether by rescission or otherwise, once the premium has been paid.

*C. Severability of the Application*

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

However, if the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under the policy, no coverage shall be afforded for any **Claim** alleging, arising out of, based upon, attributable to or in consequence of the subject matter of any incomplete or inaccurate statements, warranties or representations with respect to:

1. **Loss** of any **Insured Person** who knew, as of the inception date of the **Policy Period**, of such inaccurate or incomplete statements, warranties or representations; and
2. **Loss** of an **Organization** and **Plan**, if any past or present chief executive officer or chief financial officer of the **Named Entity** knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

A handwritten signature in black ink, appearing to read "M. J. ...", is written above a horizontal line.

AUTHORIZED REPRESENTATIVE

ENDORSEMENT# 6

This endorsement, effective 12:01 AM August 1, 2015 forms a part of policy number 16016710 issued to HARVEST POWER, INC.

by National Union Fire Insurance Company of Pittsburgh, Pa.

**EMPLOYED LAWYERS PROFESSIONAL LIABILITY  
EXTENSION ENDORSEMENT WITH SUBLIMIT**

This endorsement modifies the General Terms and Conditions and Private D&O Coverage Section.

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

1. Clause 14. **DEFINITIONS** of the **Private D&O Coverage Section** is amended as follows:

(a) The definition of **"Insured Person"** is amended to include the following paragraph at the end of that definition:

**"Insured Person"** also means any **Employed Lawyer** of an **Organization**, but only for **Wrongful Acts** (as defined below) in such **Employed Lawyer's** capacity as such, subject to the terms, conditions and exclusions of this policy and this endorsement.

(b) Solely for the purposes of the extension of coverage provided by this endorsement, the definition of **"Wrongful Act"** is deleted in its entirety and replaced with the following:

**"Wrongful Act"** means any act, error or omission of an **Employed Lawyer**, in the rendering or failure to render professional legal services for an **Organization**, but solely in his or her capacity as such; provided, however, the term **"Wrongful Act"** shall not mean, and this endorsement does not provide coverage for, any act, error or omission in connection with any activities by such **Employed Lawyer**: (1) which are not related to such **Employed Lawyer's** employment with an **Organization**; (2) which are not rendered on the behalf of an **Organization** at the **Organization's** written request; or (3) which are performed by the **Employed Lawyer** for others for a fee.

(c) The following definition is added at the end thereof:

**"Employed Lawyer"** means any **Employee** of a **Organization**, in his or her capacity as such, who is admitted to practice law and who is or was employed as a lawyer full time and salaried by a **Organization**.

2. Clause 4. **EXCLUSIONS** of the **Private D&O Coverage Section** is amended by adding the following at the end of that Clause:

It is understood and agreed that solely with respect to the coverage afforded by this endorsement, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Employed Lawyer**:



**ENDORSEMENT# 6 (Continued)**

- (aa) alleging, arising out of, based upon or attributable to any **Wrongful Act** occurring at a time when the **Employed Lawyer(s)** was not employed as a lawyer by an **Organization**;
- (bb) alleging, arising out of, based upon or attributable to as of 08/01/2015, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (cc) alleging, arising out of, based upon or attributable to any **Wrongful Act**, if as of 08/01/2015, an **Employed Lawyer** knew or could have reasonably foreseen that such **Wrongful Act** could give rise to a **Claim**; or
- (dd) alleging, arising out of, based upon or attributable to any activities by an **Employed Lawyer(s)** as an officer or director of any entity, other than an **Organization**.

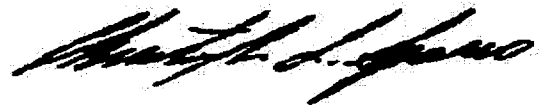
3. Clause 6. LIMITS OF LIABILITY of the **Private D&O Coverage Section** is amended by adding the following at the end thereof:

**EMPLOYED LAWYERS SUBLIMIT OF LIABILITY**

Notwithstanding anything to the contrary stated above or in Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, the maximum limit of the **Insurer's** liability for all **Loss** arising from all **Claim(s)** alleging a **Wrongful Act** by any **Employed Lawyer(s)** shall be \$1,000,000 (hereinafter the "**Employed Lawyer Coverage Sublimit of Liability**"). This **Employed Lawyer Coverage Sublimit of Liability** shall be part of and not in addition to the **Policy Aggregate** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section**.

- 4. It is further understood and agreed that coverage as is afforded under this endorsement shall apply only if one or more **Insured(s)** (other than an **Employed Lawyer**) are and remain co-defendants in the action along with an **Employed Lawyer**.
- 5. In addition to the provisions of Clause 12.B. *Other Insurance and Indemnification*, the coverage provided by this endorsement is specifically excess over any other valid or collectible lawyers' professional insurance, legal malpractice or errors and omissions insurance and shall only drop down and be primary insurance only in the event of exhaustion of such other insurance due to losses paid thereunder.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

ENDORSEMENT# 7

This endorsement, effective *12:01 AM August 1, 2015* forms a part of  
policy number *16016710*  
issued to *HARVEST POWER, INC.*

by *National Union Fire Insurance Company of Pittsburgh, Pa.*

**RELIANCE UPON APPLICATION MADE TO ANOTHER CARRIER**

**This endorsement modifies Specified Coverage Section(s).**

In consideration of the premium charged, it is hereby understood and agreed, solely with respect to coverage as may be provided under the **Specified Coverage Section(s)** (as defined below), as follows:

- In granting this coverage under the **Specified Coverage Section(s)**, the Insurer has relied upon the **Competitor's Application** and the statements, warranties and representations contained therein as being accurate and complete as of the **Date Signed**. The Insureds extend any warranties and representations in the **Competitor's Application** to the Insurer and further warrant and represent to the Insurer that the statements and representations made in the **Competitor's Application** were accurate and complete on the **Date Signed**. All such statements and representations shall be deemed to be material to the risk assumed by the Insurer, are the basis of this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.
- "**Competitor's Application**" means the application of the **Named Applicant(s)** to the **Other Carrier** for the **Type of Coverage** reflected in the table below:

Named Applicant(s)	Other Carrier	Type of Coverage	Date Signed
HARVEST POWER, INC.	Westchester Fire Insurance Company	Management Liability	06/02/2015

If such application form was submitted to the **Other Carrier** in connection with a renewal of coverage, then "**Competitor's Application**" shall also mean all previous policy application forms submitted to that **Other Carrier** for any policy of which this **Coverage Section** is a renewal, replacement or succeeds in time. "**Competitor's Application**" also means all the materials submitted with or incorporated by reference into any of the application forms referenced above.

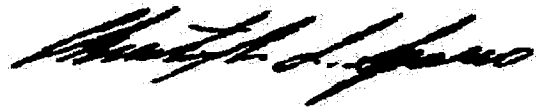
- "**Application**" also means the **Competitor's Application**.

4. "Specified Coverage Section(s)" means the following Coverage Sections:

SPECIFIED COVERAGE SECTIONS:

D&O  
EPL  
FLI  
Crime

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



---

AUTHORIZED REPRESENTATIVE

This endorsement, effective *12:01 AM August 1, 2015* forms a part of  
 policy number *16016710*  
 issued to *HARVEST POWER, INC.*

by *National Union Fire Insurance Company of Pittsburgh, PA*

**FORMS INDEX ENDORSEMENT**

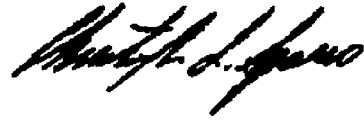
The contents of the Policy are comprised of the following forms:

FORM NUMBER	EDITION DATE	FORM TITLE
113986	8/14	US Admitted DEC Page
113989	6/13	GENERAL TERMS AND CONDITIONS
115486	6/13	EPL COVERAGE SECTION
115487	6/13	FLI COVERAGE SECTION
115370	6/13	PRIVATE D&O COVERAGE SECTION
115488	6/13	CRIME COVERAGE SECTION
NULL	6/08	Employment Practices Claim Panel Counsel
115540	6/13	Crisisfund Appendix Epl Coverage Section
99544	6/08	Employee Benefit Plan Fiduciary Liability Panel Counsel
115541	6/13	Crisisfund Appendix Fli Coverage Section
115538	6/13	Crisisfund Appendix Private D&O Coverage Section
APPMAN	06/08	SECURITIES CLAIM PANEL COUNSEL LIST
89644	6/13	Economic Sanctions Endorsement
118041	07/14	CRISISFUND Endorsement
99758	08/08	Notice Of Claim (Reporting By E-Mail)
M115791	00/00	SEVERABILITY OF THE APPLICATION AMENDED
M115792	00/00	SEVERABILITY OF THE APPLICATION AMENDED
M116113	00/00	EMPLOYED LAWYERS PROFESSIONAL LIABILITY
M116074	00/00	RELIANCE UPON APPLICATION MADE TO ANOTHER CARRIER

© All rights reserved.

**END 008**

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



---

AUTHORIZED REPRESENTATIVE

**CLAIM REPORTING FORM**

Issuing Company: *National Union Fire Insurance Company of Pittsburgh, PA*

Reported under Policy/Bond Number: 16016710 Date: \_\_\_\_\_

Type of Coverage: D&O \_\_\_\_\_ E&O \_\_\_\_\_ Fidelity \_\_\_\_\_ (complete the Fidelity Supplemental on the next page)

Insured's Name, as given on Policy Declarations (Face Page):

HARVEST POWER, INC.

Contact Person: \_\_\_\_\_

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

Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Ext \_\_\_\_\_

eMail: \_\_\_\_\_ @ \_\_\_\_\_

Case or Claimant Name: \_\_\_\_\_

If the party involved is different from "Insured" Name (as given on Policy Declarations) state relationship:

Insurance Broker/Agent: CAPSTONE INSURANCE LLC

Address: 300 WASHINGTON STREET SUITE 551

Address: NEWTON, MA 02458

Contact: ROGER MOORE Phone: (617) 658-7173 Ext \_\_\_\_\_

eMail: rmoore@capstonerisk.com

Send Notice of Claims to:

AIG  
Financial Lines Claims  
P.O. Box 25947  
Shawnee Mission, KS 66225

Phone: (888) 602-5246  
Fax: (866) 227-1750  
Email: c-Claim@AIG.com



**CLAIM REPORTING FORM  
FIDELITY SUPPLEMENTAL**

(Only complete this supplemental if the Claim is being reported under Fidelity Coverage)

Issuing Company: *National Union Fire Insurance Company of Pittsburgh, PA*

Reported under Policy/Bond Number: 16016710



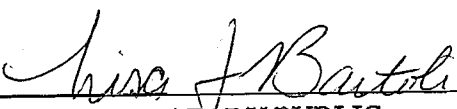
Date of Discovery: \_\_\_\_\_ Estimated Amount of loss: \_\_\_\_\_

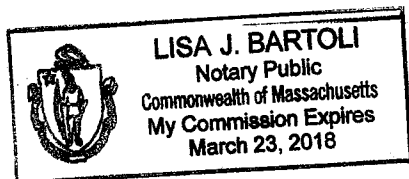
Cause of Loss:	Employee Dishonesty	_____	Computer Fraud	_____
	Funds Transfer	_____	Robbery/Burglary	_____
	ID Theft	_____	Forgery	_____
	Client Property	_____	In Transit	_____
	ERISA	_____	Credit Card Forgery	_____
	Other	_____	if Other, describe:	_____



Send Notice Of Claims To:	AIG	Phone: (888) 602-5246
	Financial Lines Claims	Fax: (866) 227-1750
	P.O. Box 25947	Email: <a href="mailto:c-Claim@AIG.com">c-Claim@AIG.com</a>
	Shawnee Mission, KS 66225	

THIS IS **EXHIBIT "K"** REFERRED TO IN THE  
AFFIDAVIT OF **WAYNE H. DAVIS**  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF OCTOBER, 2015

  
\_\_\_\_\_  
A NOTARY PUBLIC





**ASSET PURCHASE AGREEMENT**

This Agreement made this            day of October, 2015.

**BETWEEN:**

**HARVEST MUSTANG GP LTD., HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP and HARVEST POWER MUSTANG GENERATION LTD.**

**(collectively called the "Vendors" and each a "Vendor")**

**- and -**

**STORMFISHER ENVIRONMENTAL LTD.**

**(the "Purchaser")**

**WHEREAS** each Vendor has filed a notice of intention to make a proposal under the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA Proceedings**");

**AND WHEREAS** Deloitte Restructuring Inc. has been appointed as proposal trustee of each Vendor under the BIA Proceedings (the "**Trustee**");

**AND WHEREAS** the Vendors will bring a motion for the Sales Process Order (as hereinafter defined) to authorize the Vendors to enter into this Agreement and conduct a sales process with respect to the Purchased Assets (as hereinafter defined);

**AND WHEREAS**, subject to the granting of the Approval and Vesting Order (as hereinafter defined), the Vendors have agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Vendors their respective right, title and interest in and to the Purchased Assets in accordance with the terms of this Agreement;

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

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

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

**"Administrative Charge"** means the charge in favour of the Vendors' Solicitors, the Trustee and the Trustee's solicitors granted by the Court in the BIA Proceedings as security for their respective fees and expenses;

**"Agreement"** means this asset purchase agreement, including all schedules attached hereto and forming part hereof, written amendments and written restatements thereto from time to time;

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

"**Approval and Vesting Order**" has the meaning given in Section 4.2;

"**Article**" "**Section**" or "**Schedule**" mean the specified Article, Section of or Schedule to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

"**Affiliate**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate;

"**Assumed Contracts**" has the meaning given in Section 2.9;

"**Assumed Obligations**" has the meaning given in Section 2.7;

"**Bid Deadline**" has the meaning set out in Schedule "A" to the Sales Process Order;

"**BIA**" means the *Bankruptcy and Insolvency Act* (Canada), R.S.C., 1985, c.B-3;

"**BIA Proceedings**" has the meaning given in the recitals above;

"**Books and Records**" means all of the books and records relating to the Purchased Assets, including, without limitation, all personnel files/records relating to all Transferred Employees and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, projections and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media, excluding any of the foregoing as applicable to any Excluded Asset;

"**Business**" means the operation of a biodigester that receives waste for fees and produces biogas that can be converted into electricity sold to the Independent Electricity System Operator (formerly the Ontario Power Authority) and fertilizer;

"**Business Day**" means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

"**Claims**" means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, and "**Claim**" means any one of them;

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

"**Closing Date**" means subject to the terms hereof, one (1) Business Day following the date on which the conditions set forth in Article 4 have been satisfied or waived by the appropriate Party or such other date as may be agreed, provided that such Closing Date shall not occur later than November 30, 2015.

"**Closing Time**" has the meaning given in Section 3.1;

"**Contracts**" means the right, title and interest of the respective Vendors to and in all pending and/or executory contracts, agreements, leases and arrangements Related to the Business to or by which any of the Vendors or any of the Purchased Assets or Business is bound or affected;

"**Court**" means the Ontario Superior Court of Justice;

"**D&O Charge**" means the charge in favour of the directors and officers of the Vendors granted by the Court in the BIA Proceedings;

"**DIP Loan**" means the loan by the Purchaser to the Vendors pursuant to the DIP Term Sheet approved by the Court in the BIA Proceedings;

"**DIP Charge**" means the charge in favour of the Purchaser granted by the Court in the BIA Proceedings as security for the Vendor's obligations under the DIP Term Sheet;

"**Effective Time**" means 12:01 a.m. on the Closing Date;

"**Employee**" means an individual who was formerly employed or engaged by the Vendors (or any predecessor of the Vendors) or, as at the Effective Time, is employed or engaged by the Vendors in connection with the Business, and "**Employees**" means every Employee;

"**Employee Liabilities**" means any and all Liabilities having priority over the Purchaser Security (whether by statute, contract, common law or otherwise) owed to any of the Employees, or otherwise arising out of, or resulting from, the relationship between the Vendors (or any predecessor of the Vendors) and any of the Employees, including any Liability arising as a result of such party being deemed to be a successor employer, related employer or otherwise responsible or liable for payment of any amounts owing to, on behalf of, or in respect of, any of the Employees (including, but not limited to, the Transferred Employees), whether pursuant to the *Employment Standards Act* (Ontario), the *Pay Equity Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario). Without limiting the foregoing, Employee Liabilities shall include:

- (a) all salaries, wages, bonuses, commissions, vacation pay, public holiday pay and other compensation relating to the employment of the Employees (including accrued but unpaid vacation pay and any retroactive pay) and all Liabilities under employee benefit plans relating to employment of the Employees; and
- (b) all termination pay, severance pay, damages in lieu of reasonable notice and other related Liabilities (under statute, contract, common law or otherwise) in respect of the termination and/or severance of employment of the Employees.

"**Encumbrances**" means any security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including the Administrative Charge, the DIP Charge and the D&O Charge, and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever, other than Permitted Encumbrances;

"**Ereg**" shall have the meaning ascribed thereto in Section 3.5 hereof;

"**Estimated Fees**" has the meaning ascribed thereto in Section 1.1(f)

**"Excluded Assets"** means the following assets of the Vendors excluded from the Purchased Assets: (a) any Contracts that are not Assumed Contracts; (b) 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 Vendors that do not relate exclusively or primarily to any of the Purchased Assets or the Business; (c) any refunds or reassessments for any Taxes paid or payable by the Vendors on or prior to the Closing Date; and (d) any other assets that the Purchaser elects to exclude in writing prior to Closing pursuant to Section 2.5;

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

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

**"Intellectual Property"** means any or all of the following items, wherever located: all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, copyrights and copyright rights, brand names, trade dress, business and product names, domain names, corporate names, logos, slogans, trade secrets, inventions, processes, formulae, industrial models, designs, specifications, data, technology, methodologies, computer programs (including all source code), confidential and proprietary information, whether or not subject to statutory registration, all related technical information, manufacturing, engineering and technical drawings, know how, all pending applications for and registrations of patents, trademarks, service marks and copyrights, including all obligations of third parties relating to the protection of the foregoing, the goodwill associated with the foregoing, and the right to sue for past payment, if any, in connection with any of the foregoing, and all documents, disks and other media on which any of the foregoing is stored, including without limitation;

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

**"Inventory and Supplies"** means all items that are held by the Vendors for sale, license, rental, lease or other distribution Related to the Business (and includes all supplies used by the Vendors in the operation of the Business) on hand at Closing;

**"Lands"** means the lands and premises municipally described as 1087 Green Valley Road, London, Ontario and legally described on Schedule "A" attached hereto;

**"Liability"** means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in or under statute, contract, tort, strict liability or otherwise), and includes all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation), including, without limitation, Employee Liabilities and **"Liabilities"** means the plural thereof;

**"Licences and Permits"** means all licences, permits, filings, certificates, authorizations, approvals or indicia of authority Related to the Business or the Purchased Assets or necessary for the operation or use of the Purchased Assets;

**"Parties"** means the Vendors and the Purchaser collectively, and **"Party"** means any one of them;

**"Permitted Encumbrances"** means collectively, (i) all security interests and other interests arising exclusively from the Assumed Contracts and (ii) the Encumbrances listed in Schedule "A";

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

**"Personal Property"** means all of the Vendors' machinery, equipment, furniture, including, without limitation, sound systems, weight scales, artwork, desks, chairs, tables, copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles, cabinets, televisions, all computer hardware, including servers, computers and peripherals, printers and miscellaneous office furnishings and supplies, if any, motor vehicles, laptops, cell phones and all other tangible personal property used in the Business, including all property subject to the Assumed Contracts, including the Personal Property set out in Schedule "B" hereto;

**"Prepaid Amounts"** means all prepayments, prepaid charges, deposits, security deposits, sums and fees Related to the Business or in respect of the Purchased Assets;

**"Purchase Price"** has the meaning given in Section 2.2;

**"Purchased Assets"** means collectively, all of the Vendors' right, title and interest in all of the assets, properties and undertakings Related to the Business, including, but not limited to, the following assets:

- (a) the Assumed Contracts;
- (b) the Personal Property;
- (c) the Inventory and Supplies;
- (d) the Receivables;
- (e) the Lands;
- (f) the Intellectual Property;
- (g) the Licenses and Permits;
- (h) the Prepaid Amounts;
- (i) the Books and Records;
- (j) the right to receive insurance recoveries under any insurance policies in existence on the date hereof in respect only of any claims with respect to Purchased Assets;

- (k) the monies on deposit in Bank of Montreal in account numbered 03489788369 in the amount of at least Four Hundred and Five Thousand Dollars (\$405,000.00), which stands as security for the letter of credit issued by BMO to the *Ministry of the Environment* (Ontario);
- (l) all rights and interests under or pursuant to all warranties, representations and guarantees, express implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or otherwise Related to the Business,
- (m) all goodwill and other intangible assets associated with the Business, including all telephone and facsimile numbers used in Related to the Business; and
- (n) all other property, assets and undertaking of the Vendors used in or relating to the Business of whatsoever nature or kind, including without limitation all property, assets and undertaking of the Vendors located at the Lands,

other than the Excluded Assets.

**"Original Debt"** means collectively, all Liabilities of (i) Harvest Ontario Partners Limited Partnership to Farm Credit Canada pursuant to a Credit Agreement dated May 22, 2012 and (ii) Harvest Power Mustang Generation Ltd. to Farm Credit Canada pursuant to a Guarantee dated June 5, 2012, each as may be amended, restated, supplemented or replaced from time to time;

**"Original Security"** means collectively, (i) a Security Agreement dated June 5, 2015 granted by Harvest Ontario Partners Limited Partnership in favour of Farm Credit Canada, (ii) a General Assignment of Material Contracts dated June 5, 2015 granted by Harvest Ontario Partners Limited Partnership in favour of Farm Credit Canada, (iii) a Security Agreement dated February 28, 2012 granted by Harvest Power Mustang Generation Ltd. in favour of Farm Credit Canada, (iv) a Charge/Mortgage of Land in the principal amount of \$11,000,000 granted by Harvest Power Mustang Generation Ltd. in favour of Farm Credit Canada registered against the Lands on February 28, 2012 as Instrument No. ER811453 and (v) an Assignment of Specific Lease or Leases dated June 5, 2012 granted by Harvest Power Mustang Generation Ltd. in favour of Farm Credit Canada registered against the Lands on June 5, 2012 as Instrument No. ER827004, each as may be amended, restated, supplemented or replaced from time to time;

**"Purchaser Debt"** means the Original Debt as assigned by Farm Credit Canada to 2478223 Ontario Limited pursuant to an assignment of debt and security interest dated August 7, 2015, and as further assigned by 2478223 Ontario Limited to the Purchaser pursuant to an assignment of debt and security interest dated September 25, 2015;

**"Purchaser Security"** means the Original Security as assigned by Farm Credit Canada to 2478223 Ontario Limited pursuant to an assignment of debt and security interest dated August 7, 2015, and as further assigned by 2478223 Ontario Limited to the Purchaser pursuant to an assignment of debt and security interest dated September 25, 2015;

**"Purchaser's Solicitors"** means Siskinds LLP;

**"Receivables"** means the right, title and interest of the respective Vendors to all accounts receivable, bills receivable, trade accounts, book debts, insurance claims, and choses-in-action, now or hereafter due or owing to any of the Vendors, Related to the Business together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing;

**"Related to the Business"** means, directly or indirectly, used in, arising from, or relating in any manner to the Business or the Purchased Assets.

**"Sales Process Order"** means an order or orders to be sought from the Court upon terms acceptable to the Parties, each acting reasonably, that alone or in combination, among other things, authorizes the Vendors to enter into this Agreement and to conduct a sales process for the right, title and interest of the respective Vendors to the Purchased Assets and the Excluded Assets;

**"Stalking Horse Bid"** has the meaning ascribed thereto in Section 4.1(a) hereof;

**"Superior Bid(s)"** shall mean an all cash offer or offers by any Person(s) other than the Purchaser or its Affiliates to purchase all or any of the right, title and interest of the respective Vendors to the Purchased Assets, provided that no offer(s) shall qualify as a Superior Bid unless it meets, among other things, the following minimum criteria:

- (a) the offer(s) must be accompanied by a cash deposit which is not less than ten (10%) percent of the purchase price or aggregate purchase prices offered therein;
- (b) the offer(s) must provide for the payout in full in cash of the Purchaser Debt, all Priority Payables and all amounts secured by the Administrative Charge, the D&O Charge and the DIP Charge on Closing;
- (c) the offer(s) must be irrevocable until ten days after the Bid Deadline (as defined in the Sales Process Order) and shall specify that closing shall take place one (1) Business Day after the date of the Winning Bid Approval Order or such later date as the parties may agree;
- (d) the offer(s) must be on terms in the aggregate no less favourable and no more burdensome or conditional than the Stalking Horse Bid;
- (e) except as provided in sub-clause (b) above, the offer(s) must be substantially in the form of the Stalking Horse Bid, with any changes to the offer(s) black-lined against the Stalking Horse Bid;
- (f) the offer(s) must be supported by evidence in writing of (a) liquidity, or (b) committed financing from a lender and on terms and conditions (if any) satisfactory to the Vendors and the Trustee, in their sole discretion, in each case sufficient, in the sole discretion of the Vendors and the Trustee, to close a transaction within the timelines detailed in the Sales Process Order.

**"Taxes"** means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including, Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

**"Transferred Employees"** means Employees who have accepted an offer of employment from the Purchaser as of the Closing;

"Trustee" has the meaning given in the recitals above;

"Winning Bidder" has the meaning ascribed thereto in Section 4.1(b) hereof; and

"Vendors' Solicitors" means Chaitons LLP.

**1.2 Section and Schedule References**

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections and Schedules, as applicable, of this Agreement. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

Schedule	Description
Schedule "A"	Lands/Permitted Encumbrances
Schedule "B"	Personal Property
Schedule "C"	Purchaser Debt

**ARTICLE 2**  
**PURCHASE AND SALE**

**2.1 Purchase and Sale of Purchased Assets**

At the Closing Time, subject to the terms and conditions of this Agreement, the Vendors shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Obligations.

**2.2 Purchase Price**

The purchase price payable by the Purchaser to the Vendors (or as it may otherwise direct) for the Purchased Assets shall be equal to the aggregate of the following (the "**Purchase Price**"), which amounts shall be adjusted as of the Closing Date in accordance with the provisions hereof:

- (a) Two Hundred Fifty Thousand (\$250,000) of the Purchaser Debt in respect of amounts secured by the Purchaser Security, which as of October 7, 2015 was \$10,200,316.23, inclusive of principal, interest and costs, the particulars of which are set out in Schedule "C";
- (b) any and all amounts secured by the DIP Charge, without duplication
- (c) any and all amounts secured by the Administrative Charge at Closing, without duplication;
- (d) any and all amounts secured by the D&O Charge incurred during the BIA Proceedings which are not otherwise covered by the Vendors' insurance coverage at Closing, without duplication;
- (e) any and all other amounts and claims which rank in priority to the Purchaser Security on or against the Purchased Assets, if any, including, without limitation, on account of realty



tax arrears, utility arrears and source deductions (collectively, the "**Priority Payables**"); and

- (f) the amount estimated by the Trustee to be the aggregate fees, disbursements and expenses for the period from and after Closing to the completion of the BIA Proceedings and/or the discharge of Deloitte Restructuring Inc. as trustee in bankruptcy of estate of the Vendors (the "**Estimated Fees**"). Should the aggregate of the Estimated Fees be less than the amount so paid, any surplus shall be refunded to the Purchaser no later than thirty (30) days after the later of the completion of the BIA Proceedings and/or the discharge of Deloitte Restructuring Inc. as trustee in bankruptcy of estate of the Vendors;

### **2.3 Satisfaction of Purchase Price**

The Purchaser shall satisfy the Purchase Price as follows:

- (a) by the cancelation of Two Hundred Fifty Thousand Dollars (\$250,000) of the Purchaser Debt, to be credited against the Purchase Price;
- (b) by the cancelation of any and all amounts secured by the DIP Charge on Closing, to be credited against the Purchase Price;
- (c) by payment to the Trustee, in trust, of (i) the Estimated Fees and (ii) any and all amounts secured by the Administrative Charge on Closing by way of a certified cheque, wire transfer or bank draft to be credited against the cash portion the Purchase Price on Closing
- (d) by the assumption of D&O Charge incurred during the BIA Proceedings which are not otherwise covered by the Vendors' insurance coverage on Closing, in either case, to be credited against the Purchase Price; and
- (e) by (i) payment to the Trustee, in trust, of any and all Priority Payables on Closing by way of a certified cheque, wire transfer or bank draft to be credited against the cash portion the Purchase Price on Closing or (ii) the assumption of any and all Priority Payables on Closing, in either case, to be credited against the Purchase Price.

### **2.4 Allocation of Purchase Price**

The Purchase Price shall be allocated among the Purchased Assets in the manner agreed to by the Purchaser and the Vendors (each acting reasonably) prior to the Closing Date and the Purchaser and the Vendors shall report an allocation consistent with such allocation in preparing, determining and reporting their liabilities for Taxes, take no position inconsistent with such allocation in the preparation of their respective financial statements or for any other reason, and, without limitation, shall file their respective Tax returns prepared in accordance with such allocations.

### **2.5 Additional Excluded Assets**

Save and except as otherwise expressly set out herein, the Purchaser may, at its option, exclude any of the Purchased Assets from the transaction contemplated hereby at any time prior to Closing upon delivery of prior written notice to the Vendors, whereupon such assets shall be deemed to form part of the Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

## 2.6 Sales and Transfer Taxes; HST and Receivables Elections

- (a) The Purchaser shall be responsible for the payment on Closing of any Taxes that are required to be paid or remitted in connection with the consummation of the transactions contemplated in this Agreement.
- (b) At the Closing, the Vendors and the Purchaser shall, if applicable, jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to cause the sale of the Purchased Assets to take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) Each Vendor transferring Receivables to the Purchaser and the Purchaser shall execute jointly an election in prescribed form under Section 22 of the *Income Tax Act* (Canada) in respect of the Receivables and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date.

## 2.7 Assumed Obligations

At Closing, the Purchaser shall assume and be liable for the following (collectively, the "**Assumed Obligations**"):

- (a) the Vendors' Liabilities under any of the Assumed Contracts that arise out of, are incurred, or relate to the period from and after the Closing;
- (b) the Vendors' Liabilities under the D&O Charge incurred during the BIA Proceedings which are not otherwise covered by the Vendors' insurance coverage;
- (c) the Vendors' Liabilities for Priority Payables on Closing, if assumed pursuant to Section 2.3(e);
- (d) all Liabilities and Claims arising or accruing from the use of the Purchased Assets from and after the Closing;
- (e) all Employee Liabilities in respect of any of the Transferred Employees, in each case in respect of the period commencing at the Closing Time;
- (f) all Permitted Encumbrances; and
- (g) all Taxes arising or accruing from and after the Closing from the use of the: (i) Purchased Assets, including, without limitation, HST to be collected and remitted to Canada Revenue Agency when due.

## 2.8 Excluded Liabilities

Except for the Assumed Obligations, the Purchaser is not assuming, and shall not be deemed to have assumed, any Liabilities, Contracts of the Vendors not specifically assumed (collectively, the "**Excluded Liabilities**"), which Excluded Liabilities include, but are not limited to, the following:

- (a) all Liabilities and Claims arising or accruing from the use of the Purchased Assets prior to the Closing;

- (b) all Employee Liabilities that arise out of, or result from the employment or engagement by the Vendors (or any predecessor to the Vendors) of any of the Employees (other than Transferred Employees) (unless otherwise imposed by law) and/or the termination or severance of such engagement or employment; and
- (c) all Encumbrances, other than Permitted Encumbrances.

## 2.9 Assumed Contracts

Save and except as hereinafter set out, the Purchaser shall give notice to the Vendors in writing, at least five (5) Business Days prior to the Closing Date, of those Contracts that it elects to assume on Closing (which Contracts shall be referred to as the "**Assumed Contracts**"). This Agreement and any document delivered under this Agreement will not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third Person if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract, in which event, the provisions of Section 2.10 hereof shall govern. The Purchaser shall be responsible for any pre-Closing Liabilities of the Vendors required to be paid by the third Person in order to complete the assignment of any Assumed Contract to the Purchaser.

## 2.10 Assignment of Purchased Assets

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an assignment or transfer the Purchased Assets or any right thereunder if an attempted assignment or transfer, without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Purchaser hereunder. To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "**Rights**" and each a "**Right**") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as otherwise expressly provided in this Agreement, and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an assignment or transfer of such Rights unless and until such approval, consent or waiver has been obtained or an order of the Court is granted under the BIA Proceedings compelling assignment. After the Closing and until all such Rights are transferred to the Purchaser, the Vendors shall:

- (a) hold the Rights as bare trustee for the Purchaser;
- (b) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (c) enforce, at the reasonable request of and at the expense of the Purchaser, any rights of the Vendors arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendors shall, at the request and expense and under the direction of the Purchaser and in consultation with the Trustee, in the name of the Vendors or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, acting reasonably, necessary or proper in order that the obligations of the Vendors under such Rights may be performed in such

manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Rights are received by the Purchaser. The Vendors shall hold as bare trustee and promptly pay to the Purchaser all moneys collected by or paid to the Vendors in respect of every such Right. To the extent that such approval, consent, waiver or order of the Court has not been obtained by the 90<sup>th</sup> day following the Closing, such Right shall deemed to be an Excluded Asset and the Vendors may terminate any agreement pertaining to such Right. The Purchaser shall indemnify and hold the Vendors harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendors taken in accordance with this Section.

**ARTICLE 3**  
**CLOSING ARRANGEMENTS**

**3.1 Closing**

Closing shall take place at 10:00 a.m. (the "**Closing Time**") on the Closing Date at the offices of the Purchaser's Solicitors, or such other time and location as the Parties may agree upon in writing.

**3.2 Tender**

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

**3.3 Vendors' Closing Deliveries**

At the Closing, the Vendors shall deliver to the Purchaser the following, each in form and substance satisfactory to the Vendors and the Purchaser, acting reasonably:

- (a) if applicable, the elections referred to in Section 2.5;
- (b) a copy of the Approval and Vesting Order and the Trustee's Certificate contemplated thereby;
- (c) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendors contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (d) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Obligations;
- (e) a purchase price allocation agreement;
- (f) a registerable application for vesting order in respect of the transfer of the Lands to the Purchaser; and
- (g) such further and other documentation as is referred to in this Agreement or as the Purchaser or the Purchaser's Solicitors may reasonably require to complete the transactions provided for in this Agreement.

### 3.4 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver to the Vendors the following, each in form and substance satisfactory to the Vendors and the Purchasers, acting reasonably:

- (a) all payments in respect of the amounts referred to in Section 2.3;
- (b) satisfactory evidence of cancelation of Two Hundred and Fifty Thousand Dollars (\$250,000) of the Purchaser Debt;
- (c) satisfactory evidence of cancelation of any and all amounts secured by the DIP Charge;
- (d) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Obligations;
- (e) a purchase price allocation agreement;
- (f) if applicable, the elections referred to in Section 2.5;
- (g) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendors or the Vendors' Solicitors may reasonably require to complete the transactions provided for in this Agreement.

**3.5 Electronic Registration.** In the event that a system for electronic registration ("**Ereg**") is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendors or the Vendor's Solicitors, to complete this transaction using Ereg in accordance with the Law Society of Upper Canada's guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the Law Society of Upper Canada and (ii) the Purchaser's Solicitors will enter into the Vendor's Solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing this transaction provided same are in accordance with Law Society guidelines.

## ARTICLE 4 SALES PROCESS AND CONDITIONS PRECEDENT

### 4.1 Sale Process.

- (a) The Vendors shall bring a motion for the Sales Process Order on or before October [19], 2015. The Sales Process Order shall recognize the Purchase Price as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**"), and shall also provide for a marketing process of the Purchased Assets by the Vendors with the potential for competitive bidding, to be administered by the Vendors with the assistance of the Trustee. The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a Superior Bid can be obtained for the Purchased Assets.

- (b) In the event that one or more Persons submit a Superior Bid on or before the Bid Deadline, such Superior Bids shall be considered for acceptance by the Vendors. The Vendors, in consultation with the Trustee, will then review all Superior Bids received to determine which Superior Bid it considers to be the most favourable, and will then notify the successful party that its Superior Bid has been selected as the winning bid (the "**Winning Bidder**"). Upon the selection of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Vendors. The Vendors shall make a motion to the Court, within seven (7) Business Days following the selection of the Winning Bidder, for an order approving the agreement reached with the Winning Bidder and to vest the Purchased Assets in the Winning Bidder (the "**Winning Bid Approval Order**") and, if granted, shall proceed with closing the transaction forthwith.
- (c) Notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not the Winning Bidder, then upon the making of the order by the Court contemplated in subsection 4.1(b) above, this Agreement shall be terminated. If no Superior Bid(s) is received by the Bid Deadline, the Vendors shall forthwith bring a motion to the Court to obtain the Vesting Order and, if granted, shall proceed with completing the transaction contemplated hereby forthwith.

#### 4.2 Approval and Vesting Order

The Approval and Vesting Order shall approve this Agreement and the transactions contemplated hereby and vest, upon the delivery of the Trustee's Certificate (as defined therein) to the Purchaser, all right, title and interest of the Vendors in and to the Purchased Assets to the Purchaser, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, other than Permitted Encumbrances (the "**Approval and Vesting Order**"). The Approval and Vesting Order shall be substantially in the form of the model order approved by the "Ontario Commercial List Users Committee". The Approval and Vesting Order shall be served upon the necessary parties, and in the time frame, as approved by the Purchaser, acting reasonably.

#### 4.3 Conditions Precedent of the Purchaser

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

- (a) Representations and Warranties. The representations and warranties of the Vendors in Section 5.1 shall be true and correct at the Closing Time;
- (b) Vendors' Compliance. The Vendors shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered to the Purchaser at the Closing Time all the deliveries contemplated in Section 3.3 or elsewhere in this Agreement; and

- (c) **Material Change.** There shall be no material change in (i) the nature or conduct of the Business from that existing on the date of this Agreement or (ii) the nature and extent of the Purchased Assets between the dated of this Agreement.

**4.4 Conditions Precedent of the Vendors**

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

- (a) **Representations and Warranties.** The representations and warranties of the Purchaser in Section 5.2 shall be true and correct at the Closing Time; and
- (b) **Purchaser's Compliance.** The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Vendors at the Closing Time all the deliveries contemplated in Section 3.4 or elsewhere in this Agreement.

**4.5 Non-Satisfaction of Conditions**

If any condition precedent set out in this Article 4 is not satisfied or performed prior to the time specified therefor, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement.

**4.6 Approval and Vesting Order**

The obligations of the Vendors and the Purchaser hereunder are subject to the mutual conditions that:

- (a) the Purchaser becomes the Winning Bidder.
- (b) the Approval and Vesting Order shall have been made by the Court within 10 days of the Purchaser becoming the Winning Bidder (or such later date agreed upon by the Parties) approving this Agreement and vesting in the Purchaser all the right, title and interest of the Vendors in and to the Purchased Assets free and clear of all Encumbrances, other than Permitted Encumbrances; and
- (c) the Approval and Vesting Order will not have been stayed, varied or vacated and no order will have been issued to restrain or prohibit the completion of the transactions herein contemplated.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchaser and cannot be waived by either Party.

#### 4.7 Condition not Fulfilled

If any condition in Section 4.6 shall not have been fulfilled on or before November 30, 2015 or such later date agreed upon by the Parties, then the Vendors or the Purchaser, in its sole discretion, may terminate this Agreement by notice to the other Party in which event each Party shall be released from all obligations under this Agreement.

### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

#### 5.1 Representations and Warranties of the Vendors

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendors set out in this Section 5.1, the Vendors hereby represent and warrant to the Purchaser as follows:

- (a) Incorporation and Power. The Vendors (other than Harvest Ontario Partners Limited Partnership) are corporations duly incorporated under the laws of the jurisdiction of its incorporation and are duly organized, validly subsisting and in good standing under such laws. Harvest Ontario Partners Limited Partnership is a limited partnership duly formed under the laws of the jurisdiction of its formation and is duly organized, validly subsisting and in good standing under such laws.
- (b) Corporate Power and Authorization. The Vendors have the requisite power to own its property and assets, including the Purchased Assets, and to carry on the Business as it is currently conducted;
- (c) Due Authorization. Subject to the granting of the Approval and Vesting Order, the Vendors have all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by them as contemplated by this Agreement and to carry out their obligations under this Agreement and such other agreements and instruments;
- (d) Enforceability of Obligations. Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Vendors, enforceable against the Vendors, in accordance with its terms;
- (e) HST. Harvest Ontario Partners Limited Partnership and Harvest Power Mustang Generation Ltd. are each registrant under Part IX of the *Excise Tax Act* (Canada) and their Business Number are 80075 0085 RT0001 and 80321 2059 RT0001, respectively. Harvest Power GP Ltd. is not a registrant under Part IX of the *Excise Tax Act* (Canada); and
- (f) Residency. Each of the Vendors is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).



## 5.2 Representations and Warranties of the Purchaser

As a material inducement to the Vendors entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendors are entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.2, the Purchaser hereby represents and warrants to the Vendors as follows:

- (a) Incorporation of the Purchaser. The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws;
- (b) Due Authorization. The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (c) Enforceability of Obligations. Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms;
- (d) Approvals and Consents. Except as otherwise provided herein, no authorization, consent or approval of or filing with or notice to any Governmental Authority or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder;
- (e) HST The Purchaser is a registrant under Part IX of the *Excise Tax Act* (Canada) and its registration number is 803370378 RT 0001; and
- (f) Residency. The Purchaser is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).

## 5.3 Survival of Representations and Warranties

- (a) The representations and warranties of the Vendors contained in Section 5.1 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive for six (6) months following Closing.
- (b) The representations and warranties of the Purchaser contained in Section 5.2 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive for six (6) months following Closing.

## 5.4 Acquisition of Assets on "As Is, Where Is" Basis

The Purchaser acknowledges that the Vendors are selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendors do not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the

Vendors to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendors or the Trustee concerning the completeness or accuracy of the description of the Purchased Assets contained in the Schedules hereto. The Purchaser further acknowledges that all written and oral information (including analyses, financial information and projections and studies) obtained by the Purchaser from the Vendors, the Trustee or any of their respective directors, officers, employees, professional consultants or advisors with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendors shall be under no obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

## ARTICLE 6 INTERIM PERIOD

### 6.1 Access

During the Interim Period and subject to the terms herein, the Purchaser shall have reasonable access to the Purchased Assets during normal business hours and at such other times as agreed to by the Vendors to, among other things, conduct such inspections of the Purchased Assets as it deems appropriate. Such inspection shall only be conducted in the presence of a representative of the Vendors or the Trustee. The Purchaser shall not be provided with access to any of the foregoing to the extent that such access would violate or conflict with:

- (a) any Applicable Law to which the Vendors or any of the Purchased Assets is subject; or
- (b) any agreement, instrument or understanding by which the Vendors are bound.

The Purchaser shall indemnify and hold harmless the Vendors from and against all claims, demands, losses, damages, actions and costs incurred or arising from or in any way related to the inspection of the Purchased Assets by the Purchaser or attendance by the Purchaser at the Lands, save and except for any claims, demands, losses, damages, actions and costs incurred or resulting from the negligence or wilful misconduct of the Vendors.

### 6.2 Risk of Loss

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

### 6.3 Purchaser's Right to Close or Terminate

In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendors shall advise the Purchaser, in writing, within twenty-four (24) hours of the Vendors learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendors or Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the other party and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Parties shall not elect to terminate this Agreement as set out above, then the Transaction

shall be completed and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

**ARTICLE 7**  
**EMPLOYEES**

**7.1 Discussions with Employees**

- (a) Immediately following the execution of this Agreement, the Vendors will provide access to and undertake all reasonable efforts to make available to the Purchaser all individuals who are then Employees of the Vendors for the purpose of permitting the Purchaser to conduct interviews and/or to offer to employ or otherwise engage any of these Employees after the Effective Time on terms substantially similar to their respective terms and conditions of employment with the Vendors existing as of the Closing Date, determines, but any such offer to employ or any expression of interest shall be made subject to (a) confidentiality; (b) the issuance of the Approval and Vesting Order; and (c) Closing.
- (b) The Purchaser shall provide the Vendors and the Trustee with a running list, updated and delivered each Friday during the Interim Period and with a final listing provided two (2) Business Days before Closing, indicating:
  - (i) those Employees to whom offers of employment or expressions of interest have been made;
  - (ii) those Employees who have accepted any such offer; and
  - (iii) those Employees who the Purchaser has determined will not be offered employment with the Purchaser.

**7.2 Employment Offers**

The Purchaser may, in its sole discretion, offer new employment, conditional upon Closing and effective as of the Effective Time, to such of the Employees as determined by the Purchaser, in its sole discretion, on terms and conditions substantially similar to their respective terms and conditions of employment with the Vendors existing as of the Closing Date.

**ARTICLE 8**  
**TERMINATION**

**8.1 Termination by the Parties**

This Agreement may be terminated:

- (a) upon the mutual written agreement of the Vendors and the Purchaser;
- (b) pursuant to Sections 4.5(b) or 4.7 by either Party; and
- (c) pursuant to Sections 4.1(c) or 6.3.

## **8.2 Remedies for Breach of Agreement**

If this Agreement is terminated as a result of any breach of a representation or warranty, or failure to satisfy a covenant or obligation of a Party, the terminating Party's right to pursue all legal remedies with respect to such breach shall survive such termination. For greater certainty, if any order of the Court is made which directly or indirectly results in the termination of this Agreement, then no Party shall have any remedy, legal or otherwise, against the other Party or its property.

## **ARTICLE 9** **POST-CLOSING MATTERS**

### **9.1 Post-Closing Receipts**

If, following the Closing Date, any of the Purchased Assets are paid to or otherwise received by the Vendors, or if any of the Excluded Assets are paid to or otherwise received by the Purchaser, then the Vendors or the Purchaser, as the case may be, shall hold such assets in trust for the other and shall promptly deliver such assets to the Vendors or the Purchaser, as the case may be.

### **9.2 Books and Records**

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of six years from the Closing Date or for any longer period as may be required by any Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Vendors and the Trustee (or any of their assigns) and, in the event the Vendors are adjudged bankrupt, any trustee of the estate of any of the Vendors and their respective representatives, reasonable access during normal business hours, to use such Books and Records included in the Purchased Assets, including, without limitation, any personnel files/records of the Transferred Employees relating to the period up to the Closing and any Employees engaged by the Vendors at or in respect of the Purchased Assets up to and including the Closing Date, and computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

## **ARTICLE 10** **GENERAL CONTRACT PROVISIONS**

### **10.1 Headings and Sections**

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

### **10.2 Number and Gender**

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

### **10.3 Currency**

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

#### **10.4 Statute References**

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

#### **10.5 Time Periods**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

#### **10.6 Consent**

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

#### **10.7 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, including, without limitation, the doctrine of contra preferentum.

#### **10.8 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 sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

#### **10.9 Expenses**

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

#### **10.10 Announcements**

Except as required by Applicable Law, all public announcements concerning the transactions provided for in this Agreement or contemplated by this Agreement shall be jointly approved in advance as to form, substance and timing by the Parties after consultation.

### 10.11 Notices

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

- (a) in the case of notice to the Vendors at

1087 Green Valley Road  
London, ON N6N 1E4

Attention: Matt Vittiglio  
Fax No.:

with a copy to:

Chaitons LLP  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

Attention: Harvey G. Chaiton  
Fax No.: (416) 218-1849

with a copy to the Trustee:

Deloitte Restructuring Inc.  
1005 Skyview Drive, Suite 200  
Burlington, ON L7P 5B1

Attention: Rob Biehler  
Fax No: (905) 315-6700

with a copy to:

Brown, Beattie, O'Donovan LLP  
1600-380 Wellington St  
London, ON N6A 5B5

Attention: James R. Fisher  
Fax No.: (519) 679 6350

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

Stormfisher Environmental Ltd.  
680 Waterloo Street  
London, ON N6A 3V8

Attention: Chris Guillon  
Fax No:

with a copy to:

Siskinds LLP  
680 Waterloo Street London, ON N6A 3V8

Attention: Barry Cleaver  
Fax No: (519) 660-7809

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

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

**10.12 Successors and Assigns**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns including a receiver or trustee in bankruptcy of the Vendors. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the above, the Purchaser may at any time assign any of its rights or obligations arising under this Agreement to any Affiliate of the Purchaser and, upon such assignment and completion of the transactions contemplated by this Agreement, the Purchaser shall be released and discharged from all obligations hereunder but not before Closing.

**10.13 Third Party Beneficiaries**

Unless where provided to the contrary by the specific terms hereof, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

**10.14 Time of the Essence**

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

**10.15 Amendment**

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

**10.16 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before

or after the Closing Date, provided that the reasonable costs and expenses of any actions taken after the Closing Date at the request of a Party shall be the responsibility of the requesting Party.

#### **10.17 Severability**

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

#### **10.18 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.

#### **10.19 Execution and Delivery**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

#### **10.20 Non-Merger**

The representations, warranties and covenants of each Party contained in this Agreement (other than Article 4) will not merge on and will survive the closing of the Transaction and will continue in full force and effect, notwithstanding the closing of the Transaction or any investigation or knowledge acquired by or on behalf of the other Party.

#### **10.21 Independent Legal Representation or Advice**

As this Agreement has been prepared with the assistance of the Vendors' Solicitors, the Parties acknowledge that they are aware that such solicitors have had a continuing solicitor/client relationship with certain of the shareholders of the Vendors and that the Vendors' Solicitors may continue now and in the future to act for such shareholders, and no Party hereto shall in any manner attempt to have the Vendors Solicitors continuing role terminated for any reason.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



IN WITNESS OF WHICH the Parties have executed this Agreement.

**HARVEST MUSTANG GP LTD.**

Per:

Name:

Title:

I have the authority to bind the corporation

**HARVEST ONTARIO PARTNERS LIMITED  
PARTNERSHIP, by its general partner HARVEST  
MUSTANG GP LTD.**

Per:

Name:

Title:

I have the authority to bind the limited  
partnership

**HARVEST POWER MUSTANG GENERATION  
LTD.**

Per:

Name:

Title:

I have the authority to bind the corporation

**STORMFISHER ENVIRONMENTAL LTD.**

Per:

Name:

Title:

I have the authority to bind the corporation

**SCHEDULE A****Legal Description of Lands and Permitted Encumbrances****Lands**

**Part of Lot 13, Concession 3 designated as Part 1 on 33R-17471; City of London; PIN 08203-0194 (LT)**

1. Bylaw registered on April 3, 1964 as Instrument No. 195932.
2. Plan Reference registered on April 1, 2009 as Instrument No. 33R17471.
3. Notice registered on December 1, 2010 as Instrument No. ER741168.
4. Notice registered on December 21, 2011 as Instrument No. ER802713.
5. Notice registered on November 5, 2012 as Instrument No. ER852554.

**Personal Property****Personal Property Security Act (Ontario) ("ONPPSA")**

1. A financing statement registered pursuant to the ONPPSA on December 5, 2012 as Registration No. 683352864, Reference File No. 20121205 1255 1902 4627 against the Borrower, as debtor and Roynat Inc., as secured party for a period of 6 years in respect of all of the Borrower's Equipment, Other and Motor Vehicle (as such terms are defined in the ONPPSA), identified as 2009 Terex TL80 (VIN TL00801824) and further described in the General Collateral Description as wheel loader(s) together with all attachments accessories accessions replacements substitutions additions and improvements thereto and all proceeds in any form derived directly or indirectly from any sale.

**SCHEDULE B**

**Personal Property**

**Bank Accounts**

**BMO**

Account #0041824022

Account #03489788369

The branch address on the account is 595 Burrard Street, Vancouver, B.C. V7X 1L7

**MAJOR EQUIPMENT**

Name	Location	Functionality	Category	Subcategory 1	Make	Notes
CHP genset #1	CHP	CHP genset #1	Special Equipment		Jenbacher gas engines	J420 (1.4 MW)
CHP genset #2	CHP	CHP genset #2	Special Equipment		Jenbacher gas engines	J420 (1.4 MW)
Centrifuge	DMB	Centrifuge	Special Equipment		Centrisys	
Tank 1	RT1	Reception tank #1, FOG	Tank	Reception tank 1	CST Storage	Glass lined - 264 m3
Tank 2	RT2	Reception tank #2, blood waste	Tank	Reception tank 2	CST Storage	Glass lined - 105 m3
Tank 3	RT3	Reception tank #3, food waste	Tank	Reception tank 3	CST Storage	Glass lined - 1711 m3
Tank 4	TAR	Thermophilic acidification reactor (TAR)	Tank	TAR	CST Storage	Glass lined - 1095 m3
Tank 5	North Anamix	Anamix digester #1	Tank	Anamix digester 1	CST Storage	Glass lined - 6090 m3
Tank 6	South Anamix	Anamix digester #2	Tank	Anamix digester 2	CST Storage	Glass lined - 6090 m3
Tank 7	DHT	Digestate and gas holding tank	Tank	Digestate and gas holding tank	CST Storage	Glass lined - 947m3
Tank 8	Pre-Air	Pre-aeration tank	Tank	Pre-aeration Tank	CST Storage	Glass lined - 3502m3
Paddle dryer	DMB	Paddle dryer	Special Equipment		Komline-Sanderson	

**MEDIUM EQUIPMENT**

Name	Location	Functionality	Category	Subcategory 1	Make
Mixer 1	RT1	Reception tank #1 lower mixer	Mixer		Stamo Agitation Solutions
Mixer 2	RT1	Reception tank #1 upper mixer	Mixer		Stamo Agitation Solutions
Mixer 3	RT2	Reception tank #2 mixer	Mixer		Stamo Agitation Solutions
Mixer 4	RT3	Reception tank #3 mixer	Mixer		Stamo Agitation Solutions
Mixer 5	RT3	Reception tank #3 mixer	Mixer		Stamo Agitation Solutions
Mixer 6	North Anamix	Anamix digester #1 mixer	Mixer		Stamo Agitation Solutions
Mixer 7	South Anamix	Anamix digester #2 mixer	Mixer		Stamo Agitation Solutions
Mixer 8	DHT	Digestate and gas holding tank mixer	Mixer		Stamo Agitation Solutions
Mixer 9	DHT	Digestate and gas holding tank mixer	Mixer		Stamo Agitation Solutions
Mixer 10	BIOREM skid	100 gallon nutrient tank mixer	Mixer		Neptune
Mixer 11	DMB	Polymer day tank #1 mixer	Mixer		Chemineer
Mixer 12	DMB	Polymer day tank #2 mixer	Mixer		Chemineer
Flare	Gas system	Flare	Special		DWS

2724391.7

25

			Equipment		
Crane 1	Reception hall	Crane for reception hall	Crane		R&M
Crane 2	DMB	Crane for DMB	Crane		R&M
Compressor 1	DMB	Air compressor	Compressor		Kaeser
Blower 1	DHT	Blower to digestate and gas holding tank	Blower	Centrifugal Blower	New York Blower
Blower 2	DHT	Blower to digestate and gas holding tank	Blower	Centrifugal Blower	New York Blower
Blower 3	MBR	Membrane bioreactor blower 1	Blower	Rotary Blower	Aerzen
Blower 4	MBR	Membrane bioreactor blower 2	Blower	Rotary Blower	Aerzen
Blower 5	MBR	Pre-aeration basin blower #1	Blower	Rotary Blower	Emmerthal
Blower 6	MBR	Pre-aeration basin blower #2	Blower	Rotary Blower	Emmerthal
Blower 7	MBR	Pre-aeration basin blower #3	Blower	Rotary Blower	Emmerthal
Blower 8	BIOREM skid	Blower from biofilter 1 to exhaust stack and carbon absorbers	Blower	Centrifugal Blower	Universal Fan and Blower
Blower 9	BIOREM skid	Blower from biofilter 2 to exhaust stack and carbon absorbers	Blower	Centrifugal Blower	Universal Fan and Blower
Blower 10	BIOREM skid	Blower from carbon absorber #1 to exhaust stack	Blower	Centrifugal Blower	Universal Fan and Blower
Blower 11	BIOREM skid	Blower from carbon absorber #2 to exhaust stack	Blower	Centrifugal Blower	Universal Fan and Blower
Blower 12	Biosulfurix	Blower to Biosulfurix	Blower	Centrifugal Blower	Becker
Blower 13	Gas system	Blower from biogas dryer to power generator	Blower	Centrifugal Blower	Savio

2724391.7

Blower 14	Gas system	Blower from biogas dryer to power generator	Blower	Centrifugal Blower	Savio
Blower 15	DMB	Blower to thermal fluid heater	Blower	Centrifugal Blower	Unknown
Blower 16	DMB	DMB make up air unit blower	Blower	Centrifugal Blower	Twin City
Blower 17	Reception hall	Reception hall make up air unit blower	Blower	Centrifugal Blower	Twin City
Blower 18	DMB	Blower from Venturi scrubber to biotrickler #1	Blower	Centrifugal Blower	New York Blower
Blower 19	DMB	Blower from bag house system to biotrickler #1	Blower	Centrifugal Blower	Cincinnati Fan
Blower 20	BIOREM skid	Blower for carbon absorber 3	Blower	Centrifugal Blower	Universal Fan and Blower
Chiller 1	Biogas dryer	Chiller for biogas dryer	Chiller		Global Water Engineering
Pump 1	Reception hall	Pumps FOG from waste pits to RT1	Pump	Rotary Pump	Börger
Pump 2	Reception hall	Pumps blood from waste pits to RT2	Pump	Rotary Pump	Börger
Pump 3	Reception hall	Clean waste pit pump	Pump	Chopper Pump	Landia
Pump 4	Reception hall	Clean waste pit pump	Pump	Chopper Pump	Vaughan
Pump 5	Reception hall	Contaminated waste pit pump	Pump	Chopper Pump	DODA
Pump 6	Reception hall	Contaminated waste pit pump	Pump	Chopper Pump	DODA
Pump 7	Reception hall	Discharge pump from bio separator (DODA)	Pump	Centrifugal Pump	DODA
Pump 8	Reception hall	Discharge pump from bio separator (DODA)	Pump	Centrifugal Pump	DODA
Pump 9	North pump house	Pump from reception tank 1 to TAR	Pump	Rotary Pump	Börger
Pump 10	North pump	Blood recycle pump	Pump	Rotary Pump	Börger

2724391.7

253





Pump 23	MBR	MBR recycle pump 1	Pump	Centrifugal Pump	Gorman-Rupp
Pump 24	MBR	MBR recycle pump 2	Pump	Centrifugal Pump	Gorman-Rupp
Pump 25	MBR	WAS pump from MB 01 to digestate holding	Pump	Centrifugal Pump	AMT
Pump 26	MBR	Permeate pump from MB 01 to DMB camlock header	Pump	Centrifugal Pump	Gorman-Rupp
Pump 27	MBR	Permeate pump from MB 01 to DMB camlock header	Pump	Centrifugal Pump	Gorman-Rupp
Pump 28	BIOREM skid	Biotrickler filter tank 1 discharge pump	Pump	Metering Pump	ProMinent
Pump 29	BIOREM skid	Waterbox metering pump	Pump	Centrifugal Pump	Not applicable
Pump 30	BIOREM skid	Biotrickler filter tank 2 discharge pump	Pump	Metering Pump	ProMinent
Pump 31	BIOREM skid	Waterbox metering pump	Pump	Centrifugal Pump	Stubbe
Pump 32	Biosulfurix	Pump from PTU nutrients to Biosulfurix	Pump	Centrifugal Pump	Stubbe
Pump 33	Biosulfurix	Pump from Biosulfurix to heat exchanger HX 53101	Pump	Centrifugal Pump	AMT
Pump 34	Biosulfurix	Pump from CHP hot water supply to heat exchanger HX 53101	Pump	Centrifugal Pump	York
Pump 35	Biogas dryer	Pump from heat exchanger HX 54101 to chiller CHL 54101	Pump	Centrifugal Pump	KSB
Pump 36	Biogas dryer	Pump from biogas dryer to heat exchanger HX 54101	Pump	Centrifugal Pump	Armstrong
Pump 37	CHP	Pump from hot water return to CHP #1	Pump	Centrifugal Pump	Armstrong
Pump 38	CHP	Pump from hot water return to CHP #2	Pump	Centrifugal Pump	Taco
Pump 39	CHP	Pump from heat exchanger HX 57201 to CHP genset #1	Pump	Centrifugal Pump	Taco
Pump 40	CHP	Pump from dump radiator to CHP genset #1	Pump	Centrifugal Pump	Taco
Pump 41	CHP	Pump from heat exchanger HX 57301 to CHP genset #2	Pump	Centrifugal Pump	Taco

Pump	CHP	Pump from dump radiator to CHP genset #2	Pump	Centrifugal Pump	Taco
Pump 42	CHP	Pump from dump radiator to CHP genset #2	Pump	Centrifugal Pump	Taco
Pump 43	DMB	Thermal fluid recirculation pump	Pump	Centrifugal Pump	RA Dean Pump Division
Pump 44	South pump house	Pump from NaOH storage drum #1 to Anamix #1 recycle	Pump	Metering Pump	LMI
Pump 45	South pump house	Pump from NaOH storage drum #2 to Anamix #2 recycle	Pump	Metering Pump	LMI
Pump 46	South pump house	Pump from anti-foam polymer storage drum to Anamix #1, Anamix #2, and TAR	Pump	Metering Pump	LMI
Pump 47	North pump house	Pump from digestate and gas holding tank to centrifuge	Pump	Progressive Cavity Pump	Netzsch
Pump 48	DMB	Pump from live bottom to dryer	Pump	Progressive Cavity Pump	Netzsch
Pump 49	DMB	Pump from centrate process sump to pre-aeration and DMB camlock header	Pump	Centrifugal Pump	Gorman-Rupp
Pump 50	DMB	Pump from centrate process sump to pre-aeration and DMB camlock header	Pump	Centrifugal Pump	Gorman-Rupp
Pump 51	South pump house	Non-potable water storage tank discharge pump	Pump	Rotary Pump	Börger
Pump 52	South pump house	Non-potable water storage tank discharge pump	Pump	Rotary Pump	Börger
Pump 53	DMB	Pump from NPW sump to NPW storage	Pump	Centrifugal Pump	AMT
Pump 54	DMB	Pump from NPW sump to NPW storage	Pump	Centrifugal Pump	AMT
Pump 55	DMB	Polymer dosing pump	Pump	Metering Pump	LMI

Pump 56	DMB	Polymer pump	Pump	Screw Pump	Netzsch
Pump 57	DMB	Water booster pump	Pump	Centrifugal Pump	Armstrong
Pump 58	North pump house	FeCl pump	Pump	Metering Pump	Chem-Pro

**MINOR EQUIPMENT**

Name	Location	Functionality	Category	Subcategory 1	Subcategory 2	Make
Pressure Switch High 3	Reception hall	High pressure switch for pump PMP 14101 and pump PMP 14102 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 4	Reception hall	High pressure switch for pump PMP 15102 and pump PMP 15103 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 5	North pump house	High pressure switch for pump PMP 22103 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 6	North pump house	High pressure switch for pump PMP 22201 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 7	North pump house	High pressure switch for pump PMP 22203 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 8	North pump house	High pressure switch for pump PMP 22303 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 9	North pump house	High pressure switch for pump PMP 27101 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 10	North pump house	High pressure switch for pump PMP 27102 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 11	North pump house	High pressure switch for pump PMP 27103 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 12	North pump house	High pressure switch for pump PMP 27104 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 13	South pump house	High pressure switch for pump PMP 33101 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser

258

2724391.7

Pressure Switch High 14	South pump house	High pressure switch for pump PMP 33103 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 15	South pump house	High pressure switch for pump PMP 33201 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 16	South pump house	High pressure switch for pump PMP 33203 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 17	North pump house	High pressure switch for pump PMP 33905 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 18	North pump house	High pressure switch for pump PMP 33906 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 19	CHP	High pressure switch for CHP genset #1 intake	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 20	CHP	High pressure switch for CHP genset #2 intake	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 21	CHP	High pressure switch for biogas from CHP to thermal fluid heater	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 22	CHP	High pressure switch for natural gas to thermal fluid heater	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 23	DMB	High pressure switch for pump PMP 73303 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch Low 1	Reception hall	Low pressure switch for pump PMP 12403 intake	Sensor	Pressure Switch	Low Pressure Switch	Endress & Hauser
Pressure Switch Low 2	Reception hall	Low pressure switch for pump PMP 12404 intake	Sensor	Pressure Switch	Low Pressure Switch	Endress & Hauser
Pressure Switch Low 3	DMB	Low pressure switch for blower BLR 58102 discharge	Sensor	Pressure Switch	Low Pressure Switch	Endress & Hauser

259

2724391.7

Pressure Switch Low 4	CHP	Low pressure switch for natural gas pilot to thermal fluid heater	Sensor	Pressure Switch	Low Pressure Switch	Endress & Hauser
Pressure Switch Low 5	CHP	Low pressure switch for biogas from CHP to thermal fluid heater	Sensor	Pressure Switch	Low Pressure Switch	Endress & Hauser
Pressure Switch Low 6	CHP	Low pressure switch for natural gas to thermal fluid heater	Sensor	Pressure Switch	Low Pressure Switch	Endress & Hauser
Pressure Switch Low 7	DMB	Polymer system low pressure switch	Sensor	Pressure Switch	Low Pressure Switch	Endress & Hauser
Pressure Switch Low 8	DMB	Potable water pressure switch low	Sensor	Pressure Switch	Low Pressure Switch	Ashcroft Inc.
Pressure Switch Low 9	DMB	Low pressure switch for potable water to inclined cooling conveyor #2 CC 75302	Sensor	Pressure Switch	Low Pressure Switch	Ashcroft Inc.
Analytical Sensor 1	Reception hall	Sensor for alarm ASH 12201	Sensor	Analytical sensor		Allen Bradley
Analytical Sensor 2	Reception hall	Sensor for alarm ASH 12301	Sensor	Analytical sensor		Allen Bradley
Analytical Sensor 3	DHT	Digestate and gas holding tank analytical sensor	Sensor	Analytical sensor		Endress & Hauser
Flow Sensor 1	RT1	Flow sensor for CW to mixer MOT 22102	Sensor	Flow sensor		Endress & Hauser
Flow Sensor 2	RT2	Flow sensor for CW to motor MOT 22202	Sensor	Flow sensor		Endress & Hauser
Flow Sensor 3	RT3	CW to motor MOT 22301 flow sensor	Sensor	Flow sensor		Endress & Hauser
Flow Sensor 4	RT3	CW to motor MOT 22302 flow sensor	Sensor	Flow sensor		Endress & Hauser
Flow Sensor 5	DHT	CW to motor MOT 33903 flow sensor	Sensor	Flow sensor		Endress & Hauser
Flow Sensor 6	DHT	CW to motor MOT 33904 flow sensor	Sensor	Flow sensor		Endress & Hauser

2724391.7

Flow Sensor 7	BIOREM skid	Pump PMP 50101 discharge flow sensor	Sensor	Flow sensor	Bürkert
Flow Sensor 8	BIOREM skid	Potable water to biofilter 1 discharge flow sensor	Sensor	Flow sensor	Bürkert
Flow Sensor 9	BIOREM skid	Pump PMP 50201 discharge flow sensor	Sensor	Flow sensor	Bürkert
Flow Sensor 10	BIOREM skid	Potable water to biofilter 2 discharge flow sensor	Sensor	Flow sensor	Bürkert
Flow Sensor 11	Biosulfurix	Blower BLR 53102 discharge flow sensor	Sensor	Flow sensor	ZE
Flow Sensor 12	Gas system	Biogas flow sensor	Sensor	Flow sensor	Endress & Hauser
Flow Sensor 13	MBR	Camlock fitting flow sensor	Sensor	Flow sensor	Endress & Hauser
Level Sensor 1	NPW	Level sensor for non-potable water storage tank	Sensor	Level sensor	Endress & Hauser
Temperature Sensor 1	MBR	Membrane bioreactor blower 1 temperature sensor	Sensor	Temperature sensor	Endress & Hauser
Temperature Sensor 2	MBR	Membrane bioreactor blower 2 temperature sensor	Sensor	Temperature sensor	Endress & Hauser
Temperature Sensor 3	MBR	Pre-aeration blower 1 temperature sensor	Sensor	Temperature sensor	Endress & Hauser
Temperature Sensor 4	MBR	Pre-aeration blower 2 temperature sensor	Sensor	Temperature sensor	Endress & Hauser
Temperature Sensor 5	MBR	Pre-aeration blower 3 temperature sensor	Sensor	Temperature sensor	Endress & Hauser
Temperature Sensor 6	BIOREM skid	Biotrickler filter tank 1 temperature sensor	Sensor	Temperature sensor	Watlow

Temperature Sensor 7	BIOREM skid	Biotrickler filter tank 2 temperature sensor	Sensor	Temperature sensor		Watlow
Temperature Sensor 8	Gas system	Flare temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 9	Gas system	Flare temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 10	Biosulfurix	Biosulfurix temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 11	Gas system	Hot water return to gensets temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 12	Gas system	Blower BLR 54103 temperature sensor	Sensor	Temperature sensor		Savio
Temperature Sensor 13	Gas system	Blower BLR 54104 temperature sensor	Sensor	Temperature sensor		Savio
Temperature Sensor 14	CHP	CHP 1 temperature sensor	Sensor	Temperature sensor		Greystone
Temperature Sensor 15	CHP	CHP 2 temperature sensor	Sensor	Temperature sensor		Greystone
Temperature Sensor 16	DMB	Thermal fluid heater temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 17	DMB	Thermal fluid heater temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 18	DMB	Paddle dryer temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 19	DMB	Paddle dryer temperature sensor	Sensor	Temperature sensor		Endress & Hauser

2724391.7



Temperature Sensor 20	DMB	Paddle dryer temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 21	DMB	Paddle dryer temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 22	DMB	Inclined cooling conveyor 2 temperature sensor	Sensor	Temperature sensor		Endress & Hauser
Temperature Sensor 23	CHP	CHP 1 temperature sensor	Sensor	Temperature sensor		Greystone
Temperature Sensor 24	CHP	CHP 1 temperature sensor	Sensor	Temperature sensor		Greystone
Temperature Sensor 25	CHP	CHP 2 temperature sensor	Sensor	Temperature sensor		Greystone
Temperature Sensor 26	CHP	CHP 2 temperature sensor	Sensor	Temperature sensor		Greystone
Level Switch High 1	Reception hall	Bioseperator level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 2	RT1	RT1 level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 3	RT2	RT2 level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 4	RT3	RT3 level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 5	Pre-aeration basin	Pre-aeration basin level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 6	MBR	Membrane bioreactor basin level switch high	Sensor	Level switch	Level switch high	Endress & Hauser

265

2724391.7

Level Switch High 7	DMB	Dry polymer hopper polymer level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 8	DMB	Polymer day tank 1 level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 9	DMB	Polymer day tank 2 level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 10	DMB	Paddle dryer level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 11	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 12	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 13	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 14	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 15	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 16	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 17	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 18	DMB	Dried solids loading level switch high	Sensor	Level switch	Level switch high	Endress & Hauser
Level Switch High 19	DMB	Bag house system	Sensor	Level switch	Level switch high	Not applicable

2724391.7

Level Switch High High 1	DMB	Centrate process sump level switch high high	Sensor	Level switch	Level switch high high	Endress & Hauser
Level Switch High High 2	DMB	NPW sump level switch high high	Sensor	Level switch	Level switch high high	Endress & Hauser
Level Switch Low 1	Reception hall	Pump PMP 14101 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 2	Reception hall	Pump PMP 14102 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 3	North Anamix	Anamix digester 1 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 4	South Anamix	Anamix digester 2 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 5	MBR	Membrane bioreactor basin level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 6	BIOREM skid	Biotrickler filter tank 1 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 7	BIOREM skid	Biotrickler filter tank 2 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 8	Biogas dryer	Biogas dryer level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 9	South pump house	NaOH storage drum 1 level switch low	Sensor	Level Switch	Level switch low	Not applicable
Level Switch Low 10	South pump house	NaOH storage drum 2 level switch low	Sensor	Level Switch	Level switch low	Not applicable
Level Switch Low 11	BIOREM skid	Nutrient tank level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser

2724391.7

Level Switch Low 12	South pump house	Anti-foam polymer storage drum level switch low	Sensor	Level Switch	Level switch low	Not applicable
Level Switch Low 13	DMB	Dry polymer hopper level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 14	DMB	Polymer day tank 1 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 15	DMB	Polymer day tank 2 level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 16	DMB	Hydraulic unit level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Level Switch Low 17	DMB	Centrate process sump level switch low	Sensor	Level Switch	Level switch low	Endress & Hauser
Flow Switch Low 1	BIOREM skid	Pump PMP 50101 discharge flow switch low	Sensor	Flow switch	Flow switch low	Endress & Hauser
Flow Switch Low 2	BIOREM skid	Pump PMP 50201 discharge flow switch low	Sensor	Flow switch	Flow switch low	Endress & Hauser
Flow Switch Low 3	Biosulfurix	Biosulfurix flow switch low	Sensor	Flow switch	Flow switch low	Endress & Hauser
Flow Switch Low 4	DMB	Spray tower condenser flow switch low	Sensor	Flow switch	Flow switch low	Appleton
Level Switch Low Low 1	South pump house	NaOH storage drum 1 level switch low low	Sensor	Level switch	Level switch low low	Not applicable
Level Switch Low Low 2	South pump house	NaOH storage drum 2 level switch low low	Sensor	Level switch	Level switch low low	Not applicable
Level Switch Low Low 3	South pump house	Anti-foam polymer storage drum level switch low low	Sensor	Level switch	Level switch low low	Not applicable

266

2724391.7

Temperature Switch High 1	MBR	Membrane bioreactor blower 1 temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Temperature Switch High 2	MBR	Membrane bioreactor blower 2 temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Temperature Switch High 3	MBR	Pre-aeration blower 1 temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Temperature Switch High 4	MBR	Pre-aeration blower 2 temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Temperature Switch High 5	MBR	Pre-aeration blower 3 temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Temperature Switch High 6	DMB	Hydraulic unit temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Temperature Switch High 7	DMB	Pump PMP 73303 temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Temperature Switch High 8	DMB	Inclined cooling conveyor 1 temperature switch high	Sensor	Temperature Switch	Temperature Switch High	Endress & Hauser
Pressure Switch High 1	Reception hall	High pressure switch for pump PMP 12403 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Pressure Switch High 2	Reception hall	High pressure switch for pump PMP 12404 discharge	Sensor	Pressure Switch	High Pressure Switch	Endress & Hauser
Automated Open/Close Valve 1	Reception hall	FOG from lanes 1 and 2 valve	Valve	Plug	Motor actuator	Valve: Pratt, Actuator: Bettis
Automated Open/Close Valve 2	Reception hall	Blood from lanes 1 and 2 valve	Valve	Plug	Motor actuator	Valve: Pratt, Actuator: Bettis
Automated Open/Close Valve 3	Reception hall	Discharge valve from pump PMP 12403	Valve	Plug	Motor actuator	Valve: Pratt, Actuator: Bettis

2724391.7

Automated Open/Close Valve 4	Reception hall	Discharge valve from pump PMP 12404	Valve	Plug	Motor actuator	Valve: Pratt, Actuator: Bettis
Automated Open/Close Valve 5	Reception hall	Blood waste to reception tank #2	Valve	Plug	Motor actuator	Unknown
Automated Open/Close Valve 6	Reception hall	FOG waste to reception tank #1	Valve	Plug	Motor actuator	Unknown
Automated Open/Close Valve 7	Reception hall	Organic waste to reception tank #3	Valve	Plug	Motor actuator	Unknown
Automated Open/Close Valve 8	Reception hall	Blood waste to reception tank #2	Valve	Plug	Motor actuator	Unknown
Automated Open/Close Valve 9	Reception hall	FOG waste to reception tank #1	Valve	Plug	Motor actuator	Unknown
Automated Open/Close Valve 10	Reception hall	Organic waste to reception tank #3	Valve	Plug	Motor actuator	Unknown
Automated Open/Close Valve 11	Reception hall	Dilution water to clean waste pit	Valve	Butterfly	Motor actuator	Keystone valve, Bettis actuator
Automated Open/Close Valve 12	Reception hall	Discharge valve for pump PMP 14101	Valve	Gate	Manual	Trueline
Automated Open/Close Valve 13	Reception hall	Discharge valve for pump PMP 14102	Valve	Ball	Motor actuator	Not applicable
Automated Open/Close Valve 14	Reception hall	Dilution water to contaminated waste pit	Valve	Butterfly	Motor actuator	Keystone valve, Bettis actuator
Automated Open/Close Valve 15	Reception hall	Contaminated waste pit valve	Valve	Gate	Motor actuator	DODA
Automated Open/Close Valve 16	Reception hall	Contaminated waste pit valve	Valve	Gate	Motor actuator	DODA

2724391.7

2008

Automated Open/Close Valve 17	Reception hall	Valve to bioseparator	Valve	Gate	Motor actuator	DODA
Automated Open/Close Valve 18	Reception hall	Valve to bioseparator	Valve	Gate	Motor actuator	DODA
Automated Open/Close Valve 19	Reception hall	Contaminated waste pit valve	Valve	Gate	Motor actuator	DODA
Automated Open/Close Valve 20	Reception hall	Contaminated waste pit valve	Valve	Gate	Motor actuator	DODA
Automated Open/Close Valve 21	Reception hall	Discharge valve for pump PMP 14205	Valve	Gate	Motor actuator	Unknown
Automated Open/Close Valve 22	Reception hall	Discharge valve for pump PMP 14206	Valve	Gate	Motor actuator	Unknown
Automated Open/Close Valve 23	Reception hall	Valve to rotating nozzle in contaminated waste pit	Valve	Gate	Motor actuator	DODA
Automated Open/Close Valve 24	North pump house	Valve between pump PMP 22103 and TAR	Valve	Plug	Motor actuator	Actuator: Bettis, Valve: Pratt
Automated Open/Close Valve 25	North pump house	Valve between pump PMP 22203 and DMB	Valve	Plug	Motor actuator	NA
Automated Open/Close Valve 26	Reception hall	Valve between contaminated waste and reception tank #3	Valve	Plug	Motor actuator	Unknown
Automated Open/Close Valve 27	North pump house	Valve between pump PMP 22303 and TAR	Valve	Plug	Motor actuator	Actuator: Bettis, Valve: Pratt
Automated Open/Close Valve 28	North pump house	Valve to pump PMP 33906	Valve	Plug	Motor actuator	Actuator: Bettis, Valve: Pratt
Automated Open/Close Valve 29	PAB	Valve between overflow from PA 01 to membrane bioreactor basin	Valve	Butterfly	Motor actuator	Valve: Keystone; Actuator: Bettis

2724391.7

209

Automated Open/Close Valve 30	MBR	Valve to membrane bioreactor basin	Valve	Butterfly	Motor actuator	Actuator: Bettis, Valve: obscured by ice
Automated Open/Close Valve 31	Gas system	Valve between natural gas feed and flare	Valve	Ball	Solenoid actuator	Actuator: Premi-air, Valve: Keystone
Automated Open/Close Valve 32	Gas system	Valve between biogas dryer and blower BLR 54103	Valve	Butterfly	Motor actuator	Actuator: Bettis
Automated Open/Close Valve 33	Gas system	Valve for recycle to blower BLR 54103	Valve	Ball	Motor actuator	Actuator: Bettis
Automated Open/Close Valve 34	CHP	CHP #1 Genset exhaust valve	Valve	Butterfly	Motor actuator	Actuator: Rotork, Valve: LT
Automated Open/Close Valve 35	CHP	CHP #1 Genset exhaust valve	Valve	Butterfly	Motor actuator	Actuator: Rotork, Valve: LT
Automated Open/Close Valve 36	CHP	CHP #2 Genset exhaust valve	Valve	Butterfly	Motor actuator	Actuator: Rotork, Valve: LT
Automated Open/Close Valve 37	CHP	CHP #2 Genset exhaust valve	Valve	Butterfly	Motor actuator	Actuator: Rotork, Valve: FSA
Automated Open/Close Valve 38	DMB	Valve from thermal fluid to cooler	Valve	Butterfly	Motor actuator	Actuator: Valvcon, Valve: Jamesbury
Automated Open/Close Valve 39	MBR	Potable water valve	Valve	Ball	Motor actuator	Actuator: Bettis, Valve: Asahi
Automated Open/Close Valve 40	DMB	Valve between potable water and polymer day tank #1	Valve	Diaphragm	Solenoid actuator	Actuator: ASCO, Valve: ASCO
Automated Open/Close Valve 41	DMB	Valve between pneumatic air and bag punch	Valve	Ball	Solenoid actuator	Actuator: Norgren
Automated Open/Close Valve 42	DMB	Pneumatic air valve	Valve	Ball	Solenoid actuator	Actuator: Norgren

2724391.7

270



Automated Open/Close Valve 43	DMB	Valve between polymer day tank #1 and polymer day tank #2	Valve	Ball	Motor actuator	Actuator: Chemline, Valve: Chemline
Automated Open/Close Valve 44	DMB	Valve between centrifuge and cake conveyor	Valve	Ball	Solenoid actuator	Actuator: ASCO
Automated Open/Close Valve 45	DMB	Valve between centrifuge and cake conveyor	Valve	Ball	Solenoid actuator	Actuator: ASCO
Automated Open/Close Valve 46	DMB	Valve between potable water and centrate sump	Valve	Ball	Solenoid actuator	Unknown
Automated Open/Close Valve 47	DMB	Deluge valve for paddle dryer	Valve	Ball	Motor actuator	Actuator: Valvcon, Valve: Flo-tite
Automated Open/Close Valve 48	DMB	Deluge valve for paddle dryer	Valve	Ball	Motor actuator	Actuator: Valvcon, Valve: Flo-tite
Automated Open/Close Valve 49	DMB	Deluge valve for paddle dryer	Valve	Ball	Motor actuator	Actuator: Valvcon, Valve: Flo-tite
Automated Open/Close Valve 50	DMB	Deluge valve for paddle dryer	Valve	Ball	Motor actuator	Actuator: Valvcon, Valve: Flo-tite
Automated Open/Close Valve 51	DMB	Valve between potable water and dried solids	Valve	Butterfly	Motor actuator	Actuator: Valvcon, Valve: Flo-tite
Automated Open/Close Valve 52	DMB	Valve to spray tower condenser	Valve	Ball	Motor actuator	Actuator: Valvcon, Valve: Flo-tite
Automated Open/Close Valve 53	DMB	Deluge valve for cooling conveyor 1	Valve	Ball	Motor actuator	Valvcon
Automated Open/Close Valve 54	DMB	Deluge valve for cooling conveyor 2	Valve	Ball	Motor actuator	Valvcon
Automated Open/Close Valve 55	DMB	Valve between potable water and inclined cooling conveyor #2	Valve	Ball	Motor actuator	Actuator: Valvcon, Valve: Flo-tite

2724391.7

271

Automated Open/Close Valve 56	DMB	Valve to truck	Valve	Gate	Solenoid actuator	Valve: Norgren; Actuator: ASCO
Automated Open/Close Valve 57	DMB	Valve to truck	Valve	Gate	Solenoid actuator	Valve: Norgren; Actuator: ASCO
Automated Open/Close Valve 58	DMB	Valve to truck	Valve	Gate	Solenoid actuator	Valve: Norgren; Actuator: ASCO
Automated Open/Close Valve 59	DMB	Valve to truck	Valve	Gate	Solenoid actuator	Valve: Norgren; Actuator: ASCO
Automated Open/Close Valve 60	DMB	Valve to truck	Valve	Gate	Solenoid actuator	Valve: Norgren; Actuator: ASCO
Automated Open/Close Valve 61	DMB	Valve to truck	Valve	Gate	Solenoid actuator	Valve: Norgren; Actuator: ASCO
Automated Open/Close Valve 62	DMB	Pneumatic air to bag house	Valve	Diaphragm	Solenoid actuator	Valve: Goyen; Actuator: ITT Alcon
Automated Open/Close Valve 63	DMB	Pneumatic air to bag house	Valve	Diaphragm	Solenoid actuator	Valve: Goyen; Actuator: ITT Alcon
Automated Open/Close Valve 64	DMB	Pneumatic air to bag house	Valve	Diaphragm	Solenoid actuator	Valve: Goyen; Actuator: ITT Alcon
Automated Open/Close Valve 65	DMB	Pneumatic air to bag house	Valve	Diaphragm	Solenoid actuator	Valve: Goyen; Actuator: ITT Alcon
Automated Open/Close Valve 66	NPW	Potable water from MBR building to non-potable water storage tank (TNK-92101)	Valve	Ball	Solenoid actuator	Not applicable
Automated Open/Close Valve 67	North pump house	Hot dilution water to RT #1	Valve	Ball	Solenoid actuator	ASCO
Automated Open/Close Valve 68	North pump house	Hot dilution water to RT #2	Valve	Ball	Solenoid actuator	ASCO

2724391.7

212

Automated Open/Close Valve 69	North pump house	Hot dilution water to RT #3	Valve	Ball	Solenoid actuator	ASCO
Automated Open/Close Valve 70	North pump house	Hot dilution water to TAR	Valve	Ball	Solenoid actuator	ASCO
Automated Open/Close Valve 71	CHP	CHP 1 glycol supply control valve	Valve	Ball	Motor actuator	Siemens
Automated Open/Close Valve 72	CHP	CHP 1 heat exchanger control valve	Valve	Ball	Motor actuator	Siemens
Automated Open/Close Valve 73	CHP	CHP 2 glycol supply control valve	Valve	Ball	Motor actuator	Siemens
Automated Open/Close Valve 74	CHP	CHP 2 heat exchanger control valve	Valve	Ball	Motor actuator	Siemens
Modulating Control Valve 1	South pump house	Digestate modulating control valve	Valve	Plug	Motor actuator	Actuator: Bettis, Valve: Pratt
Modulating Control Valve 2	South pump house	Digestate modulating control valve	Valve	Plug	Motor actuator	Actuator: Bettis, Valve: Pratt
Modulating Control Valve 3	Biosulfurix	Biosulfurix modulating control valve	Valve	Butterfly	Motor actuator	Valve: Effast; Actuator: Belimo
Modulating Control Valve 4	Biosulfurix	Gas system modulating control valve	Valve	Butterfly	Motor actuator	+GF+
Modulating Control Valve 5	Biosulfurix	Biosulfurix modulating control valve	Valve	Ball	Motor actuator	+GF+
Temperature Control Valve 1	North pump house	Hot water supply from CHP temperature control valve	Valve	Butterfly	Motor actuator	Actuator: Bettis, Valve: Keystone
Temperature Control Valve 2	North pump house	Hot water supply from CHP temperature control valve	Valve	Butterfly	Motor actuator	Actuator: Bettis, Valve: Keystone

2724391.7

215

Temperature Control Valve 3	North pump house	Hot water from gensets temperature control valve	Valve	Butterfly	Motor actuator	Actuator: Bettis, Valve: Keystone
Temperature Control Valve 4	North pump house	Hot water from CHP temperature control valve	Valve	Globe	Motor actuator	Siemens
Temperature Control Valve 5	South pump house	Hot water return temperature control valve	Valve	Globe	Motor actuator	Siemens
Temperature Control Valve 6	South pump house	Hot water return temperature control valve	Valve	Globe	Motor actuator	Siemens

**SCHEDULE C**

**Purchaser Debt**

<b>Customer: Harvest Ontario Partners Limited Partnership (0200636727)</b>	
<b>Balances as of: 07-Aug-2015    Status: All</b>	
Credit Facility	0000445005000
Loan Product	Construction Loan
Balance for	0000445005001
Original Loan Amount	\$11,000,000.00
Interest Rate	5.700%
Principal Not Due	\$9,818,721.36
Accrued Interest	\$41,453.86
Fee Balance	\$0.00
Insurance balance	\$0.00
Interest On Arrears	\$1,480.40
Principal Past Due	\$0.00
Interest Past Due	\$135,140.97
Fees Past Due	\$60,201.64
Insurance Past Due	\$0.00
Early Pay	\$0.00
Unearned Insurance Premium	\$0.00
Suspense	\$0.00
SubTotal	\$10,057,004.23
Interest to Oct 7, 2015	143,312.00
<b>Total</b>	<b><u>\$10,200,316.23</u></b>

TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

Court File No. 35-2041153

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST MUSTANG GP LTD.**

Court File No. 35-2041155

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

Court File No. 35-2041157

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST POWER MUSTANG GENERATION LTD.**

THE HONOURABLE ) DAY, THE DAY  
)  
JUSTICE ) OF OCTOBER 2015

**ORDER**

**THIS MOTION**, made by Mustang GP Ltd., Harvest Ontario Partners Limited Partnership and Harvest Power Mustang Generation Ltd. (collectively, the “**Debtors**”) for an Order, *inter alia*,

1. abridging the time for service of the Debtor’s Notice of Motion so that the motion is properly returnable on October 19, 2015;
2. administratively consolidating the Debtors’ proposal proceedings under the BIA;
3. authorizing the Debtors to enter into an Interim Financing Term Sheet (the “**DIP Term Sheet**”) with StormFisher Environmental Ltd. (in this capacity, the “**DIP Lender**”) and approving the DIP Term Sheet;

4. approving a charge in favour of the DIP Lender to secure payment of the money advanced by the DIP Lender;
5. approving the Administration Charge (as defined below);
6. approving the D&O Charge (as defined below);
7. approving the sale process described in the Proposal Trustee's First Report to the Court (the "**First Report**");
8. authorizing the Debtors to enter into an agreement of purchase and sale with StormFisher Environmental Ltd. (in this capacity, the "**Stalking Horse Bidder**") in the form attached as **Exhibit "●"** to the Affidavit of Wayne H. Davis sworn October 13, 2015 (the "**Stalking Horse APA**"); and
9. extending the time for filing a proposal to December [11], 2015,

was heard this day at 80 Dundas Street, London, Ontario (the "**Court**").

**ON READING** the Motion Record of the Debtors, including the Affidavit of Wayne H. Davis sworn October 13, 2015 (the "**Davis Affidavit**"), and the exhibits thereto, the First Report of Deloitte Restructuring Inc. in its capacity as the Proposal Trustee of the Debtors (the "**Proposal Trustee**"), and on hearing the submissions of counsel for the Proposal Trustee, the Debtors, ●, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of ●sworn ●, filed,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Debtors' notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the proposal proceedings of Mustang GP Ltd. (estate number 35-2041153), Harvest Ontario Partners Limited Partnership (estate number 35-2041155)



and Harvest Power Mustang Generation Ltd. (estate number 35-2041157) (collectively, the “**Proposal Proceedings**”) are hereby administratively consolidated and are hereby authorized and directed to continue under the following joint title of proceedings:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
MUSTANG GP LTD.**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST POWER MUSTANG GENERATION LTD.**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Court only in the Harvest Power Mustang Generation Ltd. estate and court file, bearing Estate No./Court File No. 35-2041157.

**DIP FINANCING**

4. **THIS COURT ORDERS** that the execution by the Debtors of the DIP Term Sheet is hereby approved, *nunc pro tunc*, and the Debtors are hereby authorized and empowered to perform their obligations under the DIP Term Sheet and to obtain and borrow amounts under the DIP Term Sheet, provided that borrowings under such credit facility shall not exceed the principal amount of \$1,000,000, unless permitted by further order of this Court.

5. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to execute such credit agreements, mortgages, charges, hypothecs and security documents, guarantees or other definitive documents (such documents, together with the DIP Term Sheet, collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may reasonably be required by the DIP Lender pursuant to the terms thereof together with such modifications as may be agreed by the Debtors and the DIP Lender and consented to by the Proposal Trustee, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant

to the Definitive Documents as and when the same become due and are to be performed notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is granted a charge (the “**DIP Lender’s Charge**”) on all assets, rights, undertakings and properties of the Debtors, of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (the “**Property**”), which shall not secure an obligations that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs • and • of this Order.

7. **THIS COURT ORDERS** that, notwithstanding any other provisions of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents, the DIP Lender may, with leave of the Court: (i) cease making advances to the Debtors; and (ii) exercise any and all of its rights and remedies against the Debtors and the Property under or pursuant to the Definitive Documents and the DIP Lender’s Charge, including without limitation, set-off and/or consolidate any amounts owing by the DIP Lender to the Debtors against the obligations of the Debtors to the DIP Lender under the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim manager, or for a bankruptcy order against the Debtors and for the appointment of Deloitte Restructuring Inc. as trustee in bankruptcy of the Debtors; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or manager and manager of the Debtors or the Property.

8. **THIS COURT ORDERS AND DECLARES** that all claims of the DIP Lender pursuant to the Definitive Documents are not claims that may be compromised pursuant to any proposal

under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) (“**Proposal**”) filed by the Debtors or any plan of arrangement or compromise (“**Plan**”) filed by the Debtors under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”) without consent of the DIP Lender and, the DIP Lender shall be treated as unaffected in any Proposal, Plan or other restructuring with respect to any obligations outstanding to the DIP Lender under or in respect of the Definitive Documents.

#### **ADMINISTRATION CHARGE**

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtors shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Debtors as part of the costs of the Proposal Proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtors on bi-weekly basis.

10. **THIS COURT ORDERS** that the Proposal Trustee (including in its capacity as trustee in bankruptcy, if applicable), counsel for the Proposal Trustee (including in its capacity as counsel for the trustee in bankruptcy, if applicable), and counsel for the Debtors shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which Administration Charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs • and • hereof.

## **D&O CHARGE**

11. **THIS COURT ORDERS** that the Debtors shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtors after the commencement of the Proposal Proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that the directors and officers of the Debtors shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,000,000, as security for the indemnity provided in paragraph [11] of this Order. The D&O Charge shall have the priority set out in paragraphs • and • herein.

13. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Debtors' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [13] of this Order.

## **PRIORITY OF COURT ORDERED CHARGES**

14. **THIS COURT ORDERS** that the priority of the charges granted in this Order shall be as follows:

- (a) firstly, the Administration Charge to a maximum of \$150,000;
- (b) second, the D&O Charge to a maximum of \$2,000,000; and
- (c) thirdly, the DIP Charge.

15. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the D&O Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as

against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register, record or perfect.

16. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, municipal taxes (including realty taxes), charges and encumbrances, claims of secured creditors, statutory or otherwise, in favour of any person, notwithstanding the order of perfection or attachment (collectively, the "**Encumbrances**").

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Debtors also obtain the prior written consent of the Proposal Trustee, the DIP Lender and all other beneficiaries of the Charges, or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by the pendency of these proceedings and the declarations of insolvency made herein; (b) any motion(s) or application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such motions or applications; (c) the filing of any assignments for the general benefit of creditors made or deemed to have been made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, leases, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtors or the DIP Lender, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Debtors or the DIP Lender of any Agreement to which any one of them is a party;

- (b) (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Kenton Group entering into the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Kenton Group pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

**SALE PROCESS AND STALKING HORSE**

- 19. **THIS COURT ORDERS** that the Sale Process set out in the First Report be and hereby is approved.
- 20. **THIS COURT ORDERS** that the Debtors and the Proposal Trustee be and are hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the Sale Process, provided that any definitive agreement to be executed by the Debtors in respect of the sale of all or part of the Property shall require further approval of the Court.
- 21. **THIS COURT ORDERS** that the Debtors are hereby authorized and directed, *nunc pro tunc*, to enter into the Stalking Horse APA and the Stalking Horse APA is hereby approved and accepted for the purpose of conducting the Sale Process.
- 22. **THIS COURT ORDERS** that in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Documents Act* (Canada), the Debtors may disclose personal information of identifiable individuals to prospective bidders in the Sale Process and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evolution of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Debtors or in the alternative shall destroy all such information and certify such destruction to the Debtors. The purchase of

the Property in the Sale Process shall be entitled to use the personal information provided to it, and related to the purchased assets, in a manner which is in all material respects identical to the prior use of such information by the Debtors and shall return all other personal information to the Debtors, or ensure that all other personal information is destroyed.

### **CONFIDENTIAL EXHIBIT**

23. **THIS COURT ORDERS** that Confidential Exhibit to the Davis Affidavit be and hereby is sealed pending the termination of the Proposal Proceedings or further order of the Court.

### **EXTENSION OF TIME TO FILE A PROPOSAL**

24. **THIS COURT ORDERS** that the time within which the Debtors must file a proposal with the Official Receiver be and is hereby extended to [December 11], 2015.

### **SERVICE OF MATERIALS AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in the Proposal Proceedings, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<img alt="at symbol icon" data-bbox="398 705 425 725>'.  
</a>

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or

distribution by courier, personal delivery or facsimile transmission shall be deemed to <sup>280</sup>be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**AID AND ASSISTANCE**

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

---



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceedings commenced at London, Ontario**

**ORDER**

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

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

**Maya Poliak (LSUC# 54100A)**  
Tel: (416) 218-1161  
Fax: (416) 218-1844  
E-mail: [maya@chaitons.com](mailto:maya@chaitons.com)

**Lawyers for the Debtors**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST MUSTANG GP LTD.**

Court File No. 35-2041153

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

Court File No. 35-2041155

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST POWER MUSTANG GENERATION LTD.**

Court File No. 35-2041157

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY**  
Proceedings commenced at LONDON

---

**MOTION RECORD**  
**(RETURNABLE OCTOBER 19, 2015)**

---

**CHAITONS LLP**

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

**Harvey Chaiton (LSUC #21592F)**

Tel: (416) 218-1129  
Fax: (416) 218-1849

**Maya Poliak (LSUC #54100A)**

Tel: (416) 218-1161  
Fax: (416) 218-1844

**Lawyers for Harvest Mustang GP Ltd., Harvest  
Ontario Partners Limited Partnership and Harvest  
Mustang Generation Ltd.**