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**PCAS PATIENT CARE AUTOMATION SERVICES INC. AND  
2163279 ONTARIO INC.**

**SEVENTH REPORT OF THE MONITOR**

**June 1, 2012**

Court File No. CV-12-9656-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PCAS PATIENT CARE AUTOMATION SERVICES INC. AND 2163279 ONTARIO  
INC.**

**APPLICANTS**

**SEVENTH REPORT OF PRICEWATERHOUSECOOPERS INC.**

**In its capacity as Monitor of the Applicants**

**June 1, 2012**

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- APPENDIX "D" – Pari Passu Priority Agreement among, inter alia, the DIP Lender and Castcan, dated March 22, 2012
- APPENDIX "E" – SR&ED/OITC/HST Purchase Agreement among Castcan, PCAS and Touchpoint, dated March 6, 2012

## I. INTRODUCTION

1. On March 23, 2012 (the “**Filing Date**”), PCAS Patient Care Automation Services Inc. (“**PCAS**”) and 2163279 Ontario Inc. (“**Touchpoint**”) (collectively, the “**Company**” or the “**Applicants**”) made an application under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) and an initial order (the “**Initial Order**”) was granted by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicants to April 21, 2012 (the “**Stay Period**”) and appointing PricewaterhouseCoopers Inc. (“**PwC**”) as the monitor (the “**Monitor**”). The proceedings commenced by the Company under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. PwC was previously retained by the Company to act as financial advisor to assist management and the Company’s board of directors (the “**Board**”) to review strategic alternatives available to the Company for the resolution of its liquidity concerns.
3. On April 16, 2012, this Court granted an Order (the “**April 16 Order**”) which provided, *inter alia*, for approval of the Amended and Restated DIP Agreement, an increase in the limit of the DIP Facility from \$2,800,000 to \$3,800,000 and approval of the KERP and KERP Charge (all as defined therein).
4. On April 20, 2012, this Court granted an Order (the “**April 20 Order**”) which provided, *inter alia*, for an increase in the DIP Facility from \$3,800,000 to \$4,370,000 and an extension of the stay of proceedings to May 4, 2012.
5. On May 3, 2012, this Court granted an Order (the “**May 3 Order**”) which provided, *inter alia*, for an increase in the DIP Facility from \$4,370,000 to \$4,525,000 and an extension of the stay of proceedings to May 8, 2012.
6. On May 7, 2012, this Court granted an Order (the “**May 7 Order**”) which provided, *inter alia*, for approval of the Second Amended and Restated DIP Loan Agreement, an increase in the DIP Facility from \$4,525,000 to \$5,350,000 and an extension of the stay of proceedings to May 28, 2012 (the “**Stay Period**”).
7. On May 14, 2012, this Court granted an Order (the “**May 14 Order**”) which provided, *inter alia*, for an increase in the DIP Facility from \$5,350,000 to \$6,000,000 and the approval of a SISF as set out in the Fifth Report.

8. On May 28, 2012, this Court granted an Order (the “**May 28 Order**”) which provided, *inter alia*, for an extension of the Stay Period to June 6, 2012.

## II. PURPOSE OF REPORT

9. In conjunction with the Company’s application for relief under the CCAA, on March 23, 2012, PwC in its capacity as proposed Monitor filed the Proposed Monitor’s Report with this Court. Subsequently, on April 15, 2012, the Monitor filed the First Report with this Court. On April 19, 2012, the Monitor filed the Second Report with this Court. On May 3, 2012, the Monitor filed the Third Report with this Court. On May 7, 2012, the Monitor filed the Fourth Report with this Court. On May 11, 2012, the Monitor filed the Fifth Report with this Court. On May 28, 2012, the Monitor filed the Sixth Report with this Court, which is attached hereto as **Appendix “A”**.
10. The purpose of this report (the “**Seventh Report**”) is to:
- a) Provide this Court with the following:
    - (i) A summary of the Company’s activities since the Sixth Report;
    - (ii) A summary of the bids that were received in connection with the SISP;
    - (iii) A summary of the asset purchase agreement (“**APA**”) negotiated between the Company and DashRx LLC (the “**Purchaser**”) (a redacted copy of such APA is attached as an Exhibit to the June 1 Affidavit);
    - (iv) The Company’s intention to assign the Company into bankruptcy after the closing of the transactions contemplated by the APA;
    - (v) A summary of the Monitor’s key activities since the commencement of these CCAA Proceedings; and
    - (vi) The reasons for the Company’s request for the termination of these CCAA Proceedings and the discharge of the Monitor.
  - b) Recommend that this Court issue an order:
    - (i) Approving the APA and vesting the Purchased Assets (as defined in the APA) in the Purchaser;
    - (ii) Sealing Confidential **Appendix “B”** to this Seventh Report (“**Confidential Appendix B**”);
    - (iii) Granting the Applicant’s request for a distribution to the DIP Lender and the beneficiaries of the KERP;
    - (iv) Approving the activities of the Monitor as set out in this Seventh Report; and

- (v) Terminating the CCAA Proceedings and discharging the Monitor.

### III. QUALIFICATIONS

11. In preparing this Seventh Report, the Monitor has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management and legal counsel to the Company. The Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Monitor expresses no opinion or other form of assurance with respect to the information contained in this Seventh Report. Future-oriented financial information relied upon in this Seventh Report is based on management's assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance with respect to the accuracy or completeness of any financial information contained herein. The Monitor reserves the right to refine or amend its comments and findings as further information is obtained or brought to its attention subsequent to the date of this Seventh Report.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Initial Order, the Proposed Monitor's Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report or the Affidavit of Farouk Ahamed dated June 1, 2012 (the "**June 1 Affidavit**").

### IV. COMPANY'S ACTIVITIES

13. Since the date of the Sixth Report, the Company has been working with the Purchaser to negotiate the terms of the APA in consultation with the Monitor and the DIP Lender.
14. The Company, the DIP Lender, the Monitor and their respective counsel have participated in numerous meetings, conference calls and email exchanges with the Purchaser and its counsel in order to finalize the terms of the APA, seek Court approval of the transactions contemplated therein and to prepare for the closing of the transaction.
15. In addition, as described in the Sixth Report, the Company, with the assistance of the Monitor, has prepared a budget for approval by the Purchaser for funding of the Company's operating requirements until June 6, 2012, which will allow for the projected closing to occur (subject to a \$250,000 cap). The Monitor notes that the budget is substantially similar to the

May 28 Forecast that was appended as Appendix D to the Sixth Report and that the \$250,000 cap will be sufficient to fund the Company's cash flow requirements until June 6, 2012.

16. The Company and the Purchaser have agreed on the approved budget and the Company has received the \$250,000 from the Purchaser.

## **V. OVERVIEW OF BIDS RECEIVED IN CONNECTION WITH THE SISP**

### **Overview of Developments since the Bid Deadline**

17. A detailed description of the process that the Company, in consultation with the Monitor, followed in implementing the SISP is provided in the Sixth Report. As described in the Sixth Report, the Monitor reminded certain of the Potential Purchasers of the Bid Deadline where such Potential Purchasers had expressed an ongoing interest in submitting a bid. The Monitor enquired as to whether these Potential Purchasers had any requests for additional information or questions pertaining to the Company or the SISP.
18. The Company received three bids in connection with the SISP in addition to the Stalking Horse Bid. These bids are discussed in general terms below and are described in detail in Confidential Appendix B, for which a sealing order is being sought.
19. The Company, in consultation with the Monitor, sought clarifications and/or enhancements from three parties, Unsuccessful Bidder 1, Unsuccessful Bidder 2 and the Purchaser, all of whom submitted bids in connection with the SISP prior to the selection of the Successful Bid. Copies of the relevant correspondence are provided as part of Confidential Appendix B and a general description of such correspondence is set out in further detail below.
20. With respect to the Purchaser, conference calls among any one or more of the Company, the DIP Lender, and the Monitor took place on May 25, 2012 and over the course of the weekend that followed the Bid Deadline. In these conversations, the Company and the DIP Lender, in consultation with the Monitor, requested that DashRx LLC clarification and enhance its bid. Among other things, the Company and the Monitor requested that DashRx LLC enhance its bid to provide for a recovery to unsecured creditors.
21. The Purchaser submitted a revised bid on May 26, 2012, which included, among the clarifications and enhancements it was prepared to offer, some recovery for unsecured creditors. Based upon these enhancements, the Company, with the support of the Monitor and with the consent of the DIP Lender, selected the Purchaser as the Successful Bidder under the SISP. Copies of the Purchaser's initial bid and its revised bid are included as part of Confidential Appendix B.

## Overview of the Stalking Horse Bid

22. As described in the Fifth Report, the DIP Lender submitted the Stalking Horse Bid for the purchase of substantially all of the property, assets and undertaking of the Company on an “as is, where is” basis. The Stalking Horse Bid in essence consisted of a credit bid by the DIP Lender of its debt in exchange for the purchase of the Company’s Property. The Stalking Horse Bid provided for a purchase price equal to the amount of outstanding secured liabilities owing by the Company to the DIP Lender plus the assumption of all senior secured indebtedness of the Company, all initially estimated to be approximately \$7,900,000 (the “**Secured Indebtedness**”). The purchase price contained in the Stalking Horse Bid was to be satisfied by the release of the liabilities owed to the DIP Lender by the Company plus the value of the assumed senior secured indebtedness. Prior to the Bid Deadline, the DIP Lender prepared an asset purchase agreement that set out the terms and conditions of its Stalking Horse Bid (the “**Stalking Horse Agreement**”). The Stalking Horse Agreement signed by the DIP Lender was posted in the Company’s dataroom on May 23, 2012. The Stalking Horse Agreement is attached hereto as **Appendix “D”**.

## Overview of the Unsuccessful Bid 1

23. Prior to the commencement of the SISP, the Company and the Monitor were in communication with Unsuccessful Bidder 1 regarding its interest in submitting a bid for the Company. Unsuccessful Bidder 1 submitted letters dated April 17, 2012 and April 19, 2012 to the Company, in which Unsuccessful Bidder 1 advised the Company that it would be making a bid consisting of non-cash consideration for the Company’s business. These letters were subsequently forwarded to the Monitor. A similar letter was sent to the Monitor on May 20, 2012 and the Monitor responded on May 22, 2012. Copies of this correspondence are included in Confidential Appendix B.
24. In connection with the SISP, Unsuccessful Bidder 1, the Company and the Monitor participated in numerous email exchanges and telephone calls and Unsuccessful Bidder 1 attended a site tour.
25. Unsuccessful Bidder 1 was reminded that May 24, 2012 at 12:00 pm was the Bid Deadline. After receiving this reminder, Unsuccessful Bidder 1 advised the Company and the Monitor on May 24, 2012 at 12:03 pm that it intended to submit a bid and that its bid was being reviewed by counsel to Unsuccessful Bidder 1.
26. Unsuccessful Bidder 1 provided a bid for the Company which was received by the Company and the Monitor after the Bid Deadline. Such bid, along with details of the deposit which was

held in trust by Unsuccessful Bidder 1's counsel, was received on May 24, 2012 at 4:49 pm. Subsequently, on May 24, 2012 at 6:53 pm Unsuccessful Bidder 1 submitted a revised bid to the Company and the Monitor in replacement of the previously submitted bid ("**Unsuccessful Bid 1**"). Copies of these communications are included in Confidential Appendix B.

27. Unsuccessful Bid 1 consisted of a detailed letter of intent, which provided no cash consideration to the Company. By letter dated May 25, 2012, counsel to the Company advised Unsuccessful Bidder 1 that Unsuccessful Bid 1 was not a Qualified Bid and that certain additional details, including details regarding the valuation of the non-cash consideration, would need to be provided before Unsuccessful Bid 1 could be considered a Qualified Bid. Counsel to the Company advised Unsuccessful Bidder 1 that the Company would consider asking the Monitor to consent to a request to waive certain requirements to become a Qualified Bid if appropriate clarifications were received from Unsuccessful Bidder 1. The Company reserved the right not to request that the Monitor waive any requirements contained in the SISP. Counsel to the Company repeated its request for clarification on the evening of May 26, 2012. Unsuccessful Bidder 1 did not respond to the requests for clarification and the Monitor has received no further communication from Unsuccessful Bidder 1. Accordingly, the Company did not request that the Monitor consent to waive the requirements of a Qualified Bid under the SISP in respect of Unsuccessful Bidder 1.

#### **Overview of the Unsuccessful Bid 2**

28. Prior to the commencement of the SISP, a member of the Board was in contact with a representative of Unsuccessful Bidder 2. Unsuccessful Bidder 2, through its representative, advised the Company that it would be submitting an all cash bid for the Company ("**Unsuccessful Bid 2**"). Unsuccessful Bidder 2, through its representative, sent a letter dated May 22, 2012 to the Company and the Monitor by email on May 23, 2012 at 9:45 am expressing its interest in purchasing the Company.
29. Based on the letter received, the Company and the Monitor were concerned that Unsuccessful Bid 2 was not capable of being a Qualified Bid under the SISP. In the Monitor's view, Unsuccessful Bid 2 was a non-binding, highly conditional expression of interest that contained insufficient information about Unsuccessful Bidder 2 to enable the Company or the Monitor to evaluate the merits of Unsuccessful Bid 2. Among the information lacking from Unsuccessful Bid 2 was sufficient evidence that Unsuccessful Bidder 2 had the financial wherewithal to close a transaction in the event that Unsuccessful Bidder 2 made a detailed offer to purchase the Company.

30. The Company responded to Unsuccessful Bidder 2 on May 23, 2012 reminding Unsuccessful Bidder 2 of the requirements that a bidder must meet in order to be a Qualified Bidder under the SISP and enclosed a copy of the May 14 Order and the SISP Summary. On the morning of May 24, 2012, the Company and the Monitor called the representative of Unsuccessful Bidder 2 to follow up on the communication of May 23, 2012.
31. On the evening of May 25, 2012, a member of the Board sent a communication to Unsuccessful Bidder 2 advising it that Unsuccessful Bidder 2 was not a Qualified Bid and that additional details, including details regarding the financial wherewithal of Unsuccessful Bidder 2, would need to be provided before the Company would consider asking the Monitor to consent to a request to waive certain requirements of a Qualified Bid under the SISP. The Company reserved the right not to request that the Monitor consent to waive any requirements of the SISP.
32. The Company, in consultation with the Monitor, made repeated efforts to obtain additional information from Unsuccessful Bidder 2, including repeatedly encouraging Unsuccessful Bidder 2, through its representative, to retain Canadian counsel. This encouragement was made over the course of the month prior to the Bid Deadline. The Company made further efforts to obtain clarification of Unsuccessful Bid 2 after the Bid Deadline through communication on May 25, 2012 and May 26, 2012.
33. The Company received an email on May 27, 2012 from Unsuccessful Bidder 2 which attached a letter dated May 26, 2012. The letter contained information substantially identical to the information that it had previously sent to the Company. Accordingly, the Company did not request that the Monitor consent to waive the requirements of a Qualified Bid under the SISP in respect of Unsuccessful Bidder 2. Copies of the correspondence referenced above are included in Confidential Appendix B.

#### **Overview of the APA**

34. As described in the Sixth Report, the Purchaser is DashRx LLC, which is a Delaware company that counsel to the Purchaser advises has been and will be capitalized by pooled investment vehicles (i.e. investment funds) that are managed by an investment manager with approximately \$500 million in assets under management (the "**Investment Manager**"). Furthermore, as previously disclosed, Walgreens, or an affiliate, will be participating in the transaction as a substantial investor in the Purchaser.
35. As discussed in the Sixth Report, the Monitor has requested that it be permitted to disclose the identity of the Investment Manager. The Investment Manager has expressed a strong

preference that its identity not be disclosed. On May 27, 2012, the Monitor requested independent evidence of the financial position of the investment funds managed by the Investment Manager. As of the date of this Seventh Report, the Monitor has received additional information regarding the Investment Manager and is satisfied that the Purchaser should have the financial wherewithal to close the transaction. The Purchaser and Walgreens have shown their commitment by jointly paying the deposit and agreeing to fund the operating needs of the Company to June 6, 2012 (with a cap of \$250,000). The Monitor also notes that Walgreens' participation provides another source of financial support to the Purchaser.

36. The APA provides that the Purchaser will Purchase the Purchased Assets on an "as is, where is" basis. The Purchase Assets include, among other things, all of the Company's Personal Property, Inventories excluding prescription pharmaceutical drugs, Receivables excluding Tax Credit Entitlements, Intellectual Property, Contracts, Licenses and Permits, Prepaid Amounts, Books and Records and all goodwill relating to the Business (all as defined in the APA).
37. The Purchased Assets exclude all of the Excluded Assets, which include prescription pharmaceutical drugs, all pharmacy customer files, the Tax Credit Entitlements and all tax refunds in respect thereof and any other assets that the Purchaser elects to exclude prior to the closing of the transaction (all as defined in the APA).
38. The APA provides the Purchaser with the right to provide the Company with a list of employees to whom the Purchaser may make offers of employment on terms and conditions substantially similar in the aggregate to the current terms of such employees' employment (the "**Transferred Employees**").
39. The APA provides for purchase price that consists of a combination of cash, secured notes and unsecured notes to be paid to the Company's creditors, including its unsecured creditors. The APA does not provide for any recovery for the Company's shareholders. The APA provides as follows:
  - a) statutory priority claims are paid in full in cash.
  - b) The beneficiaries of the KERP are to be paid in full and in cash.
  - c) The claim of the DIP Lender will be partially satisfied through a combination of cash and interest bearing secured notes convertible at maturity into cash or common shares of the Purchaser.

- d) The Company's unsecured creditors will receive their pro rata share of a pool of interest bearing unsecured notes convertible at maturity into cash or common shares of the Purchaser.
- e) The Company will assume the Assumed Liability (as defined in the APA).

40. In addition, the APA also provides funding for a bankruptcy of the Company or a continuation of the CCAA Proceedings in respect of the Company. As described in further detail below, it is anticipated that the Company will be assigned into bankruptcy and that the entitlement of the unsecured creditors to the unsecured convertible notes will be determined through the statutory claims process provided under the *Bankruptcy and Insolvency Act* (the "BIA"). It is anticipated that one unsecured note will be provided to a trustee in bankruptcy to be appointed in respect of the Company (the "Trustee").

## **VI. MONITOR'S COMMENTS AND RECOMMENDATIONS IN RESPECT OF THE TRANSACTION CONTEMPLATED BY THE APA**

### **Monitor's Comments on the Negotiation of the APA**

- 41. As described in greater detail in the Fifth Report, the Company implemented a process to solicit an investment in the Company prior to the CCAA Proceedings. As described in greater detail in the Sixth Report, the Company, in consultation with the Monitor, implemented an expedited SISF that involved an extensive canvassing of the market for strategic and financial investors. 164 parties in total were contacted, 18 of those parties signed NDAs and 7 parties attended site tours.
- 42. As described above, the Company requested clarifications and/or enhancements from the 3 parties who submitted bids in connection with the SISF. The Company and the Monitor were of the view that neither Unsuccessful Bid 1 nor Unsuccessful Bid 2 was capable of meeting the threshold for being accepted as Qualified Bids without significant clarification and/or enhancement. Such clarification and enhancement was not forthcoming from either unsuccessful bidder. Accordingly, the Company had a choice between accepting the Stalking Horse Bid or accepting the Successful Bid and negotiating an APA with the Purchaser.
- 43. The Company consulted with the DIP Lender and the Monitor with respect to whether to proceed with the Stalking Horse Bid or the Successful Bid with the Purchaser. After negotiations between the Company, the DIP Lender and the Purchaser in respect of enhancements to the Successful Bid which have been reflected in the APA, the Company, with

the consent of the DIP Lender and the support of the Monitor, determined that it would proceed to seek Court approval of the APA.

44. As noted above, the Purchaser has agreed to fund the Company's operating requirements until June 6, 2012, which will allow for the projected closing to occur (subject to a \$250,000 cap). Without this funding, the Company would not be able to meet its obligations in order to be able to close this transaction. Furthermore, these funds are being provided on an unsecured basis and are not being set off against the purchase price. The Purchaser has also agreed to close immediately should a vesting order be issued by this Court, thereby reducing uncertainty and risk to the estate. Finally, the Purchaser has agreed to provide consideration to the Company's unsecured creditors who would receive no value under the Stalking Horse Bid.
45. The APA provides that the Purchased Assets include any claims against former employees, including the Transferred Employees, in respect of any breach of confidentiality, non-compete or non-solicit obligations. The Monitor notes that this provision will have the effect of releasing employees from any claims the Company may have against them (the "**Employee Release**").
46. The APA requires the Company to deliver on closing a broad release by the Company in favour of the Purchaser, its affiliates, subsidiaries, shareholders and their respective affiliates and subsidiaries, and each of their respective shareholders, directors, officers, employees, and agents (the "**Purchaser Release**").
47. The Monitor notes that the Employee Release and the Purchaser Release are broad. The Monitor also notes that the Purchaser Release has the effect of releasing Walgreens in addition to the Purchaser, as an affiliate or shareholder of the Purchaser, from any claims by the Company. The Monitor notes that that Walgreens is the Potential Customer (as referenced in previous reports) and it was disclosed to the Company that Walgreens was participating in the Purchaser's Bid on May 23, 2012, one day before the Bid Deadline.
48. The Monitor notes that the effect of the Employee Release and the Purchaser Release would potentially affect the rights of creditors to pursue claims pursuant to section 38 of the BIA in a subsequent bankruptcy or other interested stakeholders attempting to pursue derivative actions. The Monitor has been advised that the Purchaser is indemnifying Walgreens from any claims against Walgreens in respect of the transaction contemplated by the APA and/or Walgreens' involvement with the Company.

49. The Monitor notes that the Employee Release and the Purchaser Release were negotiated as part of the comprehensive arrangements in respect of the transactions contemplated by the APA.

**Monitor's Recommendation in respect of the Transaction Contemplated by the APA**

50. The Monitor is of the view that the transaction contemplated by the APA meets the factors set out in section 36(3) of the CCAA. As previously described in the Fifth Report and the Sixth Report, the Monitor is of the view that an expedited SISP was likely the only viable process to maximize the value of the Company for the benefit of its stakeholders given the Company's dire liquidity situation.
51. The APA provides for a going concern sale of the Company's business that maintains some Canadian operations and should allow for some continued employment.
52. The Company and the DIP Lender developed the SISP in consultation with Monitor and, in the Monitor's view, the Company implemented a fair, transparent and efficient SISP in the circumstances in accordance with the Orders of this Court and the Court's reasons for decision dated May 14, 2012. Given the Company's liquidity situation, the necessity of implementing an expedited SISP and the bids received, it is the Monitor's view that the price obtained for the Company's assets is fair and reasonable in the circumstances. In addition, as reported in the Second Report, the Monitor is of the view that it is unlikely that a Trustee would have been able to appropriately take possession, market and sell the technology, intellectual property and other assets of the Company as a result of the Company having effectively no cash, limited accounts receivable and few unencumbered assets available to be monetized quickly in liquidation.
53. The Company is seeking a sealing order for Confidential Appendix B, which contains a copy of the unredacted APA, Unsuccessful Bid 1, Unsuccessful Bid 2 and relevant correspondence between the various bidders and the Company. Disclosure of the identities of the bidders and the terms of their bids before the closing of the transaction contemplated by the APA could negatively affect any future transaction with respect to the Company. As such, the Monitor supports the Applicants request for an order sealing Confidential Appendix B. The Monitor intends to post a copy of Confidential Appendix B on the Monitor's website once the sealing order has expired.

## **VII. COMPANY'S REQUEST TO MAKE DISTRIBUTIONS**

### **Statutory Priority Payables**

54. The APA provides that a portion of the Purchase Price up to the amount of \$235,315 shall be paid to beneficiaries of any statutory priority claims. The Monitor is of the view that this amount is adequate to satisfy such priority statutory claims. The only statutory priority claims that will be owing on closing are in respect of accrued and unpaid vacation pay for employees who either have been terminated or are being terminated and that has not been paid to date.

### **Court Ordered Charges**

55. Pursuant to the Initial Order, the April 16 Order and the May 7 Order, this Court granted a DIP Lender's Charge securing the obligations owing under the Second Amended and Restated DIP Loan Agreement. The DIP Lender's Charge is senior to all obligations and security other than the Administration Charge and the security of any person with a valid, enforceable and perfected Encumbrance effective as of the Filing Date. The Monitor is not aware of any party who is claiming an interest in priority to the DIP Lender other than IBM, RBC and Castcan. The DIP Lender has allowed the Company to run the SISF and to maintain operations in order to allow for the sale of the Company's business. The Monitor supports entering into the APA and the Company's request to make a distribution to the DIP Lender on closing of the transaction contemplated in the APA. The Monitor understands that all secured creditors will be provided with notice of this motion and have consented to such distribution subject to the arrangement described below among the Company, the DIP Lender and the secured creditors.
56. In order for the distribution to be made to the secured creditors and the beneficiaries of the KERP pursuant to the APA, the Company has requested that this Court terminate the Directors' Charge. The Monitor understands that the beneficiaries of the Directors Charge do not oppose such termination. The Monitor supports the Company's request.
57. Pursuant to the April 16 Order, this Court granted a KERP Charge to secure the obligations owing to the beneficiaries of the KERP. The KERP Charge is subordinate in priority to the DIP Charge. As discussed above, the APA provides for the payment of the amounts owing to the beneficiaries of the KERP in full and in cash. The Monitor notes that the DIP Lender has consented to this distribution and the Monitor supports such distribution.

### **Pre-filing Secured Creditors**

58. The Monitor has been advised that the DIP Lender entered into an agreement with Castcan and others, whereby the DIP Lender agreed that its claims against the Company would be

subordinate to the claims of Castcan (the “**Pari Passu Agreement**”). Pursuant to the Pari Passu Agreement, Castcan has the right to be repaid in full before the DIP Lender receives any consideration for the amounts it advanced under the DIP Facility. The Pari Passu Agreement without signature pages is attached hereto as **Appendix “D”**. The Monitor has been advised that the DIP Lender has agreed that its position will also be subordinate to RBC I, as provided for in the Initial Order.

59. Although the Purchaser was willing to assume the liabilities owed to RBC and Castcan, they both advised that they were not willing to become creditors of the Purchaser and wanted to be paid in cash in full on closing. In order to accommodate the secured creditors’ requests, the DIP Lender has agreed to pay RBC and Castcan in full in cash from the amount payable to the DIP Lender pursuant to the terms of the APA. As a result of that payment, the DIP Lender will be subrogated to or take an assignment of the positions of RBC and Castcan in respect of their validly perfected and secured positions, subject to the lack of clarity in the law in respect of the Castcan Loan and Security discussed below.

#### **The Castcan Loan and Security**

60. In the First Report, the Monitor reported that Osler had conducted a security review and would render an opinion that would provide that, subject to the customary assumptions, qualifications and limitations contained therein, the KFL Security, the RBC Loan and Security and the Castcan Loan and Security constitute legal, valid and binding obligations of the parties thereto, enforceable against such parties in accordance with their respective terms.
61. Subsequently, counsel to the Monitor, counsel to the Company and counsel to Castcan have been in discussions regarding an issue relating to a portion of the Castcan Loan and Security. The issue is in respect of a customary qualification contained in security review opinions regarding the assignability of Crown debts dealt with in section 67 of the *Financial Administration Act* (Canada) (“**FAA**”).
62. Section 67 of the FAA provides as follows:

Except as provided in this Act or any other Act of Parliament,

- (a) a Crown debt is not assignable; and
- (b) no transaction purporting to be an assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt.

63. The SR&ED/OITC/HST Purchase Agreement among Castcan, PCAS and Touchpoint dated March 6, 2012 (the “**Factor Agreement**”) contains an assignment of Crown debts on a full recourse basis. A copy of the Factor Agreement is attached hereto as **Appendix “E”**.
64. The Crown debts assigned to Castcan under the Factor Agreement include certain Scientific Research and Experimental Development refundable tax credit entitlements (the “**SR&ED Tax Credits**”), certain Ontario Innovation Tax Credit entitlements (the “**OITC Tax Credits**”) and certain Harmonized Sales Tax refunds (the “**HST Refunds**”). PCAS and Touchpoint each executed a general security agreement (a “**GSA**”) in favour of Castcan to secure any obligations owing to Castcan, including the obligations in the Factor Agreement.
65. Counsel to the Monitor has provided an opinion that the assignment of the SR&ED Tax Credits and the OITC Tax Credits under the Factor Agreement is valid and the security granted in each GSA in respect of such assignments is valid and enforceable.
66. Counsel to the Monitor has advised that the HST Refunds may not be assignable and that security granted in respect thereof may not be valid and enforceable as a result of the provisions in the FAA as described in the customary qualification regarding the FAA in security review opinions. The reason for this is that there is no provision in the *Excise Tax Act* (Canada) or the FAA exempting the HST Refunds from section 67 of the FAA.
67. Counsel to the Monitor has reviewed case law on the assignment of Crown debts and has advised that there are two cases which indicate that the HST Refunds may not be assignable.<sup>1</sup> However, the Monitor’s counsel has advised that there is jurisprudence to the effect that a security interest created by a GSA attaches to amounts received in respect of a Crown debt once such amounts are received.<sup>2</sup> The Monitor understands that these cases will be provided to the Court with the Company’s motion materials.

### **Castcan’s Security Interest**

68. Castcan’s position is that there are a number of obligations under the Factor Agreement that are secured by the GSAs, including the obligation to repurchase the Tax Credit Entitlements

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<sup>1</sup> The two cases are *Marzetti v. Marzetti*, [1994] 2 S.C.R. 765 (“*Marzetti*”) and *Profitt v. A.D. Productions Ltd. (Trustee of)* (2002), 157 O.A.C. 356 (“*Profitt*”). In *Marzetti*, the Supreme Court of Canada held that a purported assignment of a Crown debt is rendered absolutely ineffective, as between debtor and creditor, and as between assignor and assignee (at paragraph 99). In *Profitt* the Ontario Court of Appeal held that (i) a GSA that purported to assign a federal sales tax refund and (ii) a sale of such federal sales tax refund were invalid by operation of the FAA.

<sup>2</sup> In *Cargill Ltd. v. Ronald (Trustee of)*, 2008 MBCA 104, the Manitoba Court of Appeal stated in obiter that once the funds in respect of a Crown debt are received by the bankrupt, they would no longer constitute a “Crown debt” (at paragraph 34) and as such the security provided for in a GSA would attach to such funds once the funds were received. Counsel to Castcan has advised that it does not consider these comments to be obiter.

(as defined in the Factor Agreement) in Section 5, the indemnity obligations in section 11 and the trust provisions in Section 12. As a result, Castcan is of the view that, notwithstanding the FAA, it is entitled to receive the HST Refunds.

69. The Monitor notes that Section 5 of the Factor Agreement contains an obligation in favour of Castcan that the Company repurchase any Tax Credit Entitlements that Castcan does not receive. One interpretation of Section 5 is that it creates a debt owing from the Company to Castcan and that such debt is secured by the GSAs. Another interpretation is that the express language in Section 5 simply creates an obligation to repurchase and it is unclear whether such section is enforceable in respect of the HST Refunds and therefore secured by the GSAs given the FAA and existing case law.
70. Section 12 of the Factor Agreement provides that if any right or entitlement that, as a matter of law, is not assignable, the Company will: (a) co-operate with Castcan to provide the benefits of these Non-Assignable Rights to Castcan, including, holding them in trust; (b) enforce any rights of Castcan arising from these Non-Assignable Rights; (c) take all actions to ensure that the value of these Non-Assignable Rights are preserved; and (d) pay over to Castcan all monies collected in respect of these Non-Assignable Rights. One interpretation is that the obligations set out in Section 12 of the Factor Agreement with respect to the HST Refunds are enforceable and are secured by the GSAs. Another interpretation is that Section 12 simply gives rise to a claim in equity against the Company and that such an equitable claim may not be secured by the GSAs.
71. The Monitor is of the view that there is strong argument that Castcan has a claim against the Company for unjust enrichment and, to the extent of such unjust enrichment, a Court may order that a constructive trust applies to the monies advanced by Castcan in respect of the HST Refunds.
72. Given the provisions of the FAA and existing case law, counsel to the Monitor has advised that it cannot conclude with certainty that the obligations in the Factor Agreement in favour of Castcan with respect to the HST Refunds are secured by the GSAs. Accordingly, the Monitor is of the view that it is unclear whether any payment by the Company to Castcan in respect of the HST Refunds should be made in priority to other creditors.

#### **Monitor's View on the Equities in favour of Castcan**

73. The Monitor is of the view that the equities clearly favour paying Castcan the full amount owed to it under the Factor Agreement, including the amounts in respect of the HST Refunds. The Monitor notes that Castcan paid \$1,000,000 to the Company in good faith on a full

recourse basis at a time when the Company was in dire need of liquidity. The vast majority of the amounts paid by Castcan were used to fund the Company's payroll. In the Monitor's view, it would be inequitable for the Company or any of its creditors to get a windfall at the expense of a creditor that provided value to the Company as a result of lack of clarity in the existing law and the wording of the Factor Agreement.

### **Monitor's View on the Proposed Distributions**

74. As noted above, it is proposed that the DIP Lender receive cash and secured convertible notes in exchange for the amounts advanced under the DIP Facility. The secured convertible notes are not redeemable for cash until maturity and it is very likely that there will be no secondary market for such notes. For the DIP Lender to be repaid in full, the secured, convertible notes must retain their value until maturity. The DIP Lender has no guarantee that the secured convertible notes will retain their value. Should the Purchaser experience delays in commercializing the MedCentres or other financial difficulties analogous to those faced by the Company, the DIP Lender may suffer a significant shortfall in its recovery.
75. As described above, the DIP Lender's Charge is on "all property" of the Company in priority to all claims other than valid, enforceable and perfected Encumbrances, including those in favour of RBC and Castcan, pursuant to paragraph 40 of the Initial Order.
76. Based on the decision in *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379, it can be argued that the priorities established by the Initial Order, including with respect to the DIP Lender's Charge, override or are superior to contrary provisions of other federal statutes, including the FAA. Section 67 of the FAA states that assignments of Crown debt are prohibited except as provided for in the FAA or any other Act of Parliament. On this basis, the Monitor believes there is a strong argument that the non-assignment provision under the FAA ought not to trump the express statutory authority given to the Court under the CCAA to grant an effective charge on "all property" of the Company.
77. Pursuant to the Initial Order and the Pari Passu Agreement, both RBC and Castcan have the right to be repaid in full before the DIP Lender receives any consideration for the amounts it advanced under the DIP Facility.
78. The Monitor is of the view that the DIP Lender is entitled to be repaid in full upon the conclusion of these CCAA Proceedings. As noted above, RBC and Castcan were not prepared to consent to the transaction contemplated by the APA unless they received payment in full in cash on closing. Accordingly, the DIP Lender has agreed to pay a portion of the consideration it is receiving pursuant to the APA to RBC and Castcan.

79. The DIP Lender is of the view that since there is likely no secondary market for the secured convertible notes, the net present value of the secured convertible notes is less than the face value of such notes. As a result, the DIP Lender is taking the position that the consideration it is receiving is insufficient to satisfy the full amount of the DIP Lender's claim against the Company. The DIP Lender is also of the view that the DIP Lender's Charge should continue to secure the obligations owing to the DIP Lender as a result of its shortfall after distribution of the proceeds to it on closing of the transaction contemplated by the APA. The Monitor supports the DIP Lender's views.
80. The DIP Lender is also of the view that the value of the notes should be discounted by an amount that is at least as great as the amount of the HST Refunds in order to permit the proceeds of the HST Refunds once received by the estate to be paid to the DIP Lender on account of its DIP Charge. The Monitor supports the DIP Lender's views with respect to the DIP Lender's Charge. Accordingly, the Monitor is of the view that the DIP Lender's Charge should remain effective over all of the Excluded Assets until such time as such refunds are received and become proceeds of the estate and the DIP Lender is repaid in full.
81. The parties with an economic interest in the proceeds of the transaction and the Tax Credit Entitlements have agreed to the arrangement with the DIP Lender described above with respect to the HST Refunds. Such an arrangement will permit the DIP Lender to satisfy its obligations under the Pari Passu Agreement while still receiving the consideration that was agreed to be paid to it pursuant to the APA.
82. As described above, it is the Monitor's view that the equities of the situation are in favour of payment of the full amount owing to Castcan. In addition, the Monitor notes that there is no assurance that the transaction contemplated by the APA will close in the event that RBC and Castcan do not receive full payment at closing or the DIP Lender is forced to accept any further reduction of the recovery provided to it in the APA. Based on the arrangements described above, it is the Monitor's view that the Court does not need to decide whether HST Refunds are to be paid to Castcan on account of the Factor Agreement or the GSAs.
83. The Monitor supports the Company's request for the Court to issue the directions necessary to ensure that the DIP Lender receives all of the tax credits and tax refunds when paid, including the HST Refunds, in respect of either the assignment of the RBC Security and the Castcan Security or the DIP Lender's Charge notwithstanding the FAA for the reasons set out above.
84. The Monitor supports the Company's request for an order providing for the treatment of the Company's creditors as described above.

## **VIII. COMPANY'S INTENTION TO MAKE AN ASSIGNMENT IN BANKRUPTCY**

85. The Company intends to make an assignment in bankruptcy upon the closing of the APA and the termination of the Stay Period. The Purchaser has agreed to fund the bankruptcy up to a cap of \$100,000. Absent this funding, there would be no mechanism to run a proper process to allow the unsecured creditors to receive the consideration provided for in the APA.
86. In addition, the APA requires the Company to occupy its premises for a period of 30 days, which will be facilitated through the bankruptcy. The Company does not have sufficient liquidity to make lease payments during this period and will not have any employees to facilitate the ongoing occupation of the Company's offices. Upon bankruptcy, the Trustee will have the right to occupy the premises and has the capacity to facilitate such occupancy to expedite an orderly transition of the Company's Property to the Purchaser.
87. The Monitor understands the PwC will be proposed as the Trustee.

## **IX. ACTIVITIES OF THE MONITOR IN THE CCAA PROCEEDINGS**

88. Since March 23, 2012, the Monitor has been working to assist the Company to obtaining a going concern outcome in these CCAA Proceedings for the Company and its stakeholders. In addition to the activities of the Monitor reported in the Monitor's previous reports to this Court, a summary of the key activities of the Monitor are as follows:
- a) establishing a website at [www.pwc.com/ca/en/car/pcas](http://www.pwc.com/ca/en/car/pcas) to post periodic updates and materials with respect to the CCAA Proceedings;
  - b) participating in numerous calls and meetings with the Company, the Board, the DIP Lender, interested parties and Potential Purchasers;
  - c) consulting with secured lenders and their counsel with respect to the CCAA Proceedings;
  - d) assisting the Company and the DIP Lender in identifying additional sources of DIP funding;
  - e) assisting the Company in implementing the SISP;
  - f) attending the Company's Oakville offices on a daily basis to monitor the Company's receipts and disbursements;
  - g) assisting the Company in developing cash flows;

- h) discussions and correspondence with the Company and its counsel and the DIP Lender and its counsel on various matters, including in regards to the establishment and amendment of the DIP Facility and the Company's implementation of the SISP;
- i) discussions with various interested parties, including shareholders and former senior executives and Board members, who were seeking to obtain information and provide their views in respect of the CCAA Proceedings and the SISP;
- j) discussions with Walgreens on various matters, including the SISP;
- k) assisting the Company with negotiating and finalizing the APA with the Purchaser; and
- l) discussions with various stakeholders on the status of the CCAA Proceedings.

## **X. REQUESTED TERMINATION OF THE CCAA AND DISCHARGE OF THE MONITOR**

89. The CCAA Proceedings to date have facilitated an orderly sale of the majority of the Company's Property. The Company will have no material assets should the APA be approved by this Court. In addition, the Company does not have sufficient funding for the continuation of these CCAA Proceedings. It is contemplated that the CCAA Proceedings will be terminated and the Monitor will be released and discharged upon the filing of the certificate confirming that the Applicants and their subsidiaries have been assigned into bankruptcy.

90. Based on the foregoing, the Monitor is of the view that the most cost effective and efficient manner in which to complete the winding-up of the Company's affairs is a bankruptcy. As discussed above, a Trustee will have the power to fairly and efficiently wind-up the affairs of the Company and to establish a mechanic to determine the quantum of unsecured claims for purposes of making distributions of the convertible unsecured notes as provided for in the APA. In addition, the Purchaser has agreed to fund a bankruptcy to a cap of \$100,000.

## **XI. RECOMMENDATION**

91. The Monitor recommends that this Court issue Orders, *inter alia*;

- (i) Approving the Successful Bid;
- (ii) Granting the Applicant's request for an Approval and Vesting Order;
- (iii) Sealing Confidential Appendix B;
- (iv) Granting the Applicant's request for a distribution to the DIP Lender and the beneficiaries of the KERF;

- (v) Approving the activities of the Monitor as set out in this Seventh Report; and
- (vi) Terminating the CCAA Proceedings and discharging the Monitor.

Dated the 1st day of June, 2012.

**RESPECTFULLY SUBMITTED,**



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**Paul van Eyk, CA·CIRP, CA·IFA**  
Senior Vice-President

PricewaterhouseCoopers Inc.  
In its capacity as Monitor of  
PCAS Patient Care Automation  
Services Inc. and 2163279 Ontario Inc.  
and not in its personal capacity

## APPENDIX A

Sixth Report of the Monitor, dated May 11, 2012

**PCAS PATIENT CARE AUTOMATION SERVICES INC. AND  
2163279 ONTARIO INC.**

**SIXTH REPORT OF THE MONITOR**

**May 28, 2012**

Court File No. CV-12-9656-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PCAS PATIENT CARE AUTOMATION SERVICES INC. AND 2163279 ONTARIO  
INC.**

**APPLICANTS**

**SIXTH REPORT OF PRICEWATERHOUSECOOPERS INC.**

**In its capacity as Monitor of the Applicants**

**May 28, 2012**

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### APPENDICIES

- APPENDIX "A" – Fifth Report of the Monitor, dated May 11, 2012
- APPENDIX "B" – SISP Summary
- APPENDIX "C" – Cash flow variance analysis to May 25, 2012
- APPENDIX "D" – May 28 Forecast

## I. INTRODUCTION

1. On March 23, 2012 (the “**Filing Date**”), PCAS Patient Care Automation Services Inc. (“**PCAS**”) and 2163279 Ontario Inc. (“**Touchpoint**”) (collectively, the “**Company**” or the “**Applicants**”) made an application under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) and an initial order (the “**Initial Order**”) was granted by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicants to April 21, 2012 (the “**Stay Period**”) and appointing PricewaterhouseCoopers Inc. (“**PwC**”) as the monitor (the “**Monitor**”). The proceedings commenced by the Company under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. PwC was previously retained by the Company to act as financial advisor to assist management and the Company’s board of directors (the “**Board**”) to review strategic alternatives available to the Company for the resolution of its liquidity concerns.
3. On April 16, 2012, this Court granted an Order (the “**April 16 Order**”) which provided, *inter alia*, for approval of the Amended and Restated DIP Agreement, an increase in the limit of the DIP Facility from \$2,800,000 to \$3,800,000 and approval of the KERP and KERP Charge (all as defined therein).
4. On April 20, 2012, this Court granted an Order (the “**April 20 Order**”) which provided, *inter alia*, for an increase in the DIP Facility from \$3,800,000 to \$4,370,000 and an extension of the stay of proceedings to May 4, 2012.
5. On May 3, 2012, this Court granted an Order (the “**May 3 Order**”) which provided, *inter alia*, for an increase in the DIP Facility from \$4,370,000 to \$4,525,000 and an extension of the stay of proceedings to May 8, 2012.
6. On May 7, 2012, this Court granted an Order (the “**May 7 Order**”) which provided, *inter alia*, for approval of the Second Amended and Restated DIP Loan Agreement, an increase in the DIP Facility from \$4,525,000 to \$5,350,000 and an extension of the stay of proceedings to May 28, 2012 (the “**Stay Period**”).
7. On May 14, 2012, this Court granted an Order (the “**May 14 Order**”) which provided, *inter alia*, for an increase in the DIP Facility from \$5,350,000 to \$6,000,000 and the approval of a SISIP as set out in the Fifth Report.

## II. PURPOSE OF REPORT

8. In conjunction with the Company's application for relief under the CCAA, on March 23, 2012, PwC in its capacity as proposed Monitor filed the Proposed Monitor's Report with this Court. Subsequently, on April 15, 2012, the Monitor filed the First Report with this Court. On April 19, 2012, the Monitor filed the Second Report with this Court. On May 3, 2012, the Monitor filed the Third Report with this Court. On May 7, 2012, the Monitor filed the Fourth Report with this Court. On May 11, 2012, the Monitor filed the Fifth Report, attached hereto as **Appendix "A"**.
9. The purpose of this report (the **"Sixth Report"**) is to:
  - a) Provide this Court with a summary of the following:
    - (i) The Monitor's activities since the date of the Fifth Report;
    - (ii) An update on the status of the SISP; and
    - (iii) The Company's request for an extension of the stay of proceedings to June 6, 2012 to provide adequate time to close the transaction with the Successful Bidder subject to further Order of this Court;
  - b) Recommend that this Court issue an order:
    - (i) Approving the activities of the Monitor as set out in this Sixth Report; and
    - (ii) Extending the Stay Period to June 6, 2012.

## III. QUALIFICATIONS

10. In preparing this Sixth Report, the Monitor has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management and legal counsel to the Company. The Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Monitor expresses no opinion or other form of assurance with respect to the information contained in this Sixth Report. Future-oriented financial information relied upon in this Sixth Report is based on management's assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance with respect to the accuracy or completeness of any financial information contained herein. The Monitor reserves the right to refine or amend its comments and findings as further information is obtained or brought to its attention subsequent to the date of this Sixth Report.

11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Initial Order, the Proposed Monitor's Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report or the Affidavit of Kym Anthony dated May 27, 2012 (the "**May 27 Affidavit**").

#### **IV. ACTIVITIES**

##### **Monitor's activities since May 11, 2012**

12. Since May 11, 2012, the Monitor has been working to assist the Company in implementing the SISP including, among other things:
  - a) participating in numerous calls and meetings with the Company, the Board, the DIP Lender, interested parties and Potential Purchasers (as defined below) as discussed further below;
  - b) assisting the Company in preparing documentation for its dataroom in support of the SISP;
  - c) attending the Company's Oakville offices on a daily basis to assist with the SISP and monitor the Company's receipts and disbursements;
  - d) discussions and correspondence with Osler, counsel to the Monitor, on various matters;
  - e) discussions and correspondence with the Company and its counsel and the DIP Lender and its counsel on various matters, including in regards to the Company's implementation of the SISP;
  - f) discussions with various interested parties, including current shareholders and former senior executives and Board members, who were seeking to obtain information and provide their views in respect of the SISP and the CCAA Proceedings;
  - g) discussions with the Potential Customer, WalGreen Co. ("**WalGreens**") on various matters, including the SISP, as further discussed below; and
  - h) discussions with various stakeholders on the status of the CCAA Proceedings.

##### **Company's activities since May 11, 2012**

13. Since the date of the Fifth Report, the Company has been working to implement the SISP as further described below.

14. In addition to implementing the SISP, the Monitor has been advised by the Company that in order to preserve and protect its proprietary technology, the Company has been working to recover its MedCentres wherever located and to return them to the Company's headquarters in Oakville Ontario. As of the date of this Sixth Report, all but three of the outstanding MedCentres have been returned to the Company's Oakville offices. One of the remaining MedCentres is at the Company's offices in Illinois. The second remaining MedCentre is in transit. The third remaining MedCentre is in the possession of WalGreens and is not in the process of being recovered as of the date of this Sixth Report.
15. As certain MedCentres contain drugs and narcotics which are owned by the respective hospitals where the MedCentres are located, the Company is returning the drugs contained in these MedCentres to their respective owners. For drugs which are owned by PCAS, the Company is working to return these to their respective suppliers. As the suppliers have credited their accounts for the value of the drugs returned, all outstanding credit has been offset and the suppliers are now providing cash in exchange for the returned drugs.
16. As part of its efforts to raise DIP Financing, the Company offered to pay to certain consultants, including members of the Board, a commission of 5% of the incremental amount of DIP funding raised by such consultants. The most recent \$500,000 of DIP Financing was raised by a member of the Board, Mr. Donald Waugh. Accordingly, the Board approved the payment to Mr. Waugh of a commission in the amount of \$25,000 on the funds he raised. The DIP Lender consented to the payment and the Company is forecast to pay this commission on May 30, 2012. The Monitor was advised by the Company that there was no formal document in place addressing the payment of commission to consultants for raising DIP financing.

## V. STATUS OF THE SISP

### Overview of SISP Activities prior to the Bid Deadline

17. In the May 14 Order, the Court approved the SISP that was developed by the Company and the DIP Lender with the assistance of the Monitor. The SISP sets out the manner in which prospective bidders (the "**Potential Purchasers**") were to be provided with an opportunity to make a Qualified Bid to purchase the Company's Property or make an investment in the Company's business. The SISP is described in the Fifth Report and a copy of the SISP Summary is attached hereto as **Appendix "B"**. Defined terms used in this section and not otherwise defined have the meaning ascribed to them in the SISP.

18. As previously described to the Court during the hearing on May 14, 2012 in these CCAA Proceedings, the Company, with the support of the DIP Lender, thought it was appropriate for the Company to implement and have the primary role in the SISP rather than the Monitor or PWCCF. Given the Company's, and in particular, the Board's, previous efforts at seeking investment or acquisition proposals for the Company, the Company and the DIP Lender proposed that the continuity and familiarity that the Company and the Board would provide with respect to the SISP would be more beneficial for the Company's stakeholders than a SISP implemented by a third party. Accordingly, at the Monitor's request, the Company sought to terminate the Monitor's powers that were granted to it in the May 7 Order regarding a sale process involving the Company. However, the Court, as noted in its reasons for decision dated May 14, 2012, did not terminate those powers but noted that it accepted the Monitor's reasons for its decision not to exercise the authority given to it in connection with the sale process in the May 7 Order based on the Company and the DIP Lender's desire to implement the SISP.
19. The Company implemented the SISP in accordance with the May 14 Order and the SISP Summary with the assistance of the Monitor. Certain members of the Board had the primary role in the discussions with Potential Purchasers. The Monitor was actively involved with the Company and the members of the Board during all stages of the SISP, as further described below.
20. The Monitor attended at PCAS head office in Oakville beginning on May 9, 2012 to prepare for and assist in the implementation of the SISP and was present at the Company's office to attend meetings, conference calls and assist the Company with implementing the SISP.
21. In order to ensure a fair and transparent process and to address issues in a timely and consistent manner, the Monitor and its counsel participated in update calls at 8:00 am every weekday morning from May 10, 2012 until May 23, 2012 with the certain members of the Board, the DIP Lender and its counsel and the Company's counsel. In addition, the Monitor participated in numerous ad hoc calls and meetings to discuss the progress of the SISP and any issues raised by Potential Purchasers or other interested stakeholders.
22. In advance of May 14, 2012, the Company, with the assistance of the Monitor, reviewed the contents of the Company's electronic dataroom and updated the materials posted in the dataroom, including materials related to the financial, operational, human resources, legal, customer and supplier information of the Company to assist Potential Purchasers in analyzing the Company to determine if they would submit an offer to purchase or invest in the Company that was capable of being a Qualified Bid. The dataroom also contained the SISP Summary,

which stipulated the requirements for Qualified Bids. The updated dataroom was available to Potential Purchasers on May 16, 2012.

23. Additional documents were added to the dataroom as they became available throughout the SISP. Certain documents prepared by third party independent consultants deemed by the Company to be technically sensitive were not included in the dataroom but were made available to Potential Purchasers under the supervision of the Company and the Monitor at the Company's premises.
24. Two Potential Purchasers requested meetings with the third party independent technology consultants. The Company, in consultation with the Monitor, facilitated meetings between these Potential Purchasers and the third party independent technology consultants. The Monitor was in attendance at such meetings.
25. All the Potential Purchasers who executed an NDA were informed that they could access the dataroom upon request to the Company and notice to the Monitor. Each Potential Purchaser who requested access to the dataroom was provided with such access. All Potential Purchasers who executed the NDA but did not request access to the dataroom received either a telephone call or email correspondence from the Monitor informing such Potential Purchasers that they could access the dataroom.
26. As described in further detail in the Fifth Report, prior to the commencement of the CCAA Proceedings, the Company had engaged reputable investment bankers to assist the Company in raising additional financing. These investment bankers actively contacted potential investors from December 2011 to March 2012. Following the commencement of the CCAA Proceedings, the Company continued to seek potential investors and contacted various parties in this regard.
27. On May 8, 2012, the Monitor met with senior management and the Board and requested a list of all Potential Purchasers contacted as part of the Company's previous investment and financing efforts discussed above. The Company presented the Monitor with a list of 86 Potential Purchasers that the Company had identified as part of its previous refinancing efforts during the December 2011 private placement process, as well as a list of subsequent Potential Purchasers contacted by the Company as part of its parallel informal sales and investment process. These solicitation processes are described in further detail in the Fifth Report.
28. On May 9, 2012, the Monitor prepared a supplemental list of Potential Purchasers, comprising 39 potential strategic buyers and 50 potential financial buyers, for an additional

89 Potential Purchasers for the Company. The supplemental list of potential strategic buyers included a range of Potential Purchasers from around the world and across a number of logical industry sub-sectors, including:

- a) Pharmaceutical distribution companies;
- b) Retail pharmacies, including grocery chains and superstores with pharmacy offerings;
- c) General healthcare companies, including those with operations in elder care, hospital management and pharmaceutical production; and
- d) Automated sales services companies, including ATM and vending machine manufacturers.

29. The Company's list and the Monitor's list were consolidated into a total of 175 Potential Purchasers. This list was presented to and approved by the Board and management team on May 10, 2012.
30. In order for the SISP to proceed in a fair and efficient manner, it was determined that the Monitor should contact 119 of the Potential Purchasers from the consolidated buyer list, and the Company would contact the remaining 56 Potential Purchasers. All individuals responsible for contacting Potential Purchasers were directed by the Company, in consultation with the Monitor, to provide only those documents prepared specifically for the SISP. This direction was intended to promote a fair and transparent process by ensuring that each Potential Purchaser contacted as part of the SISP approved by this Court received consistent information.
31. As described in the Fifth Report, the Monitor assisted the Company with preparation of the Teaser Letter which was sent to Potential Purchasers commencing May 11, 2012. A copy of the Teaser Letter was appended to the Fifth Report as Appendix C.
32. On May 11, 2012, the Monitor sent an email communication to all members of PwC's global corporate finance practice. The email communication included the Teaser Letter and an outline of the SISP and requested that interested recipients contact the Monitor with the names and contact details of any additional Potential Purchasers. The email correspondence was sent to approximately 1,200 PwC employees globally and resulted in 3 additional Potential Purchasers.
33. The sale process was publically advertized continuously on the Monitor's website and through an advertisement that ran in the Globe and Mail on May 18, 2012. These efforts resulted in 6 additional Potential Purchasers.

34. The Company prepared a Confidential Information Memorandum (“**CIM**”) with the assistance of the Monitor, which provided detailed information on the Company, its operations and financial results. The CIM placed particular focus on the revised business plan, which was largely based on a third party independent assessment of the technology. The CIM was completed on May 16, 2012 and was posted in the dataroom. Electronic notification was sent to all dataroom participants updating them that the CIM was available. Throughout the SISP, the CIM was sent electronically to all parties that signed NDAs and did not request access to the dataroom.
35. By May 23, 2012, the Company and the Monitor made contact with 164 of the 184 Potential Purchasers that were identified. These 164 Potential Purchasers contacted were comprised of 75 strategic purchasers and 89 financial purchasers. The Monitor contacted each Prospective Purchaser at least two times during the SISP by either telephone or email unless the Prospective Purchaser declined the opportunity on a previous contact. The Monitor and the Company were unable to make contact with the additional 20 Potential Purchasers within the timeframe that was available during the SISP.
36. Of the 164 Potential Purchasers that were contacted, the Monitor distributed 121 Teaser Letters and NDAs to 42 strategic purchasers and 79 financial purchasers. Of the Potential Purchasers that received the NDAs, 18 executed the NDA and were provided with the opportunity to access management and the dataroom. The Monitor sent the CIM to all Potential Purchasers who executed an NDA and did not access to the data room.
37. A total of 7 Potential Purchasers attended the Company’s office for site tours and management meetings that were led by the Company and attended by the Monitor. Of these 7 Potential Purchasers, 6 of them were either in continuous discussions or had been in previous discussions with the Company as a result of the Company’s ongoing efforts to find an investor or acquirer. The Company remained the primary contact for these Potential Purchasers throughout the SISP with discussions and correspondence with such Potential Purchasers coordinated by certain members of the Board. The relationship with the 7th Prospective Purchaser was managed by the Monitor.
38. All Potential Purchasers who requested a site tour and meeting with management were accommodated and the Monitor was present at such meetings. On May 22 and 23, 2012, the Monitor and the Company contacted all Potential Purchasers that had attended site visits other than those that had declined to submit a bid upon review of the CIM and dataroom. The Monitor reminded each of the remaining Potential Purchasers of the Bid Deadline of May

24, 2012 and enquired if they had any requests for additional information or questions pertaining to the Company or the SISP.

39. During the SISP, the Company, in consultation with the Monitor, withdrew access to the dataroom from 18 parties who were initially granted access that, in the Company's view, either no longer met the requirements contained in the SISP, including those in paragraph 6 thereof, or were not active in pursuing an investment or acquisition. The reasons for the Company's decision to withdraw access to the dataroom from these 18 parties were as follows: 5 parties were not active in the dataroom for a minimum of 6 weeks; 1 party advised that it was not interested in becoming a Qualified Bidder; 2 parties were independent advisors that advised the Company that they were not acting for any Potential Purchaser; 8 parties were individuals who did not have the financial ability to become Qualified Bidders; and 2 parties were former employees who also did not have the financial ability to become Qualified Bidders.

#### **Overview of the involvement of WalGreens in the SISP**

40. On May 15, 2012, the Company and the Monitor had a discussion with WalGreens regarding whether WalGreens would be willing to meet with Potential Purchasers during the SISP. WalGreens advised that it would be willing to discuss the SISP with Potential Purchasers after the Company, in consultation with the Monitor, had determined that such Potential Purchasers were willing and able to become Qualified Bidders.
41. Certain Potential Purchasers advised the Company and the Monitor that they were interested in partnering with WalGreens. The Company and the Monitor informed these Potential Purchasers that if a partnership with WalGreens materialized, they were required to disclose the fact that they were submitting a bid in partnership with WalGreens in advance of doing so. The Monitor understands that 1 Potential Purchaser, in addition to the Successful Bidder, had discussions with WalGreens regarding a potential partnership in making a bid. This Potential Purchaser ultimately withdrew from the SISP.
42. On May 23, 2012, a Potential Purchaser advised the Monitor that it would be submitting a bid in partnership with WalGreens and that the deposit would be funded in part by the Potential Purchaser and in part by WalGreens.

#### **Overview of Developments since the Bid Deadline**

43. The Company and the Monitor received a number of bids for the Company in connection with the SISP. The detail of the number of bids received and the details of such bids will be described in a subsequent report (and a confidential appendix attached thereto) in connection

with a motion by the Company to seek approval of the Successful Bid, as further discussed below.

44. Following receipt of the bids, certain members of the Board, the Company's counsel, the DIP Lender and the Monitor and their respective counsel met at 2:00 pm on May 24, 2012 at the Monitor's office to review the bids received under the SISP. Upon initial review of the bids received, the Company and the DIP Lender required additional time to review the offers and requested the meeting be adjourned until Friday May 25, 2012 at 2:00 pm.
45. During the course of the week ending May 25, 2012 and after the Bid Deadline, the Company and the DIP Lender, in consultation with the Monitor, communicated with the parties who made offers under the SISP to clarify and/or seek enhancements to their bids in accordance with the terms of the SISP. On the evening of May 27, 2012, the Company, with the support of the Monitor and with the consent of the DIP Lender, selected the Successful Bid and communicated its selection to the Successful Bidder.
46. The Successful Bidder is DashRx LLC, which is a Delaware company that counsel to the Successful Bidder advises has been and will be capitalized by pooled investment vehicles (i.e. investment funds) that are managed by an investment manager with approximately \$500 million in assets under management (the "**Investment Manager**"). Furthermore, counsel to the Successful Bidder has advised that WalGreens, or an affiliate, will be participating in the Successful Bid as a substantial investor in the Successful Bidder. The Monitor has been advised that WalGreens is a leading national pharmacy chain operator in the United States.
47. The Monitor has requested that it be permitted to disclose the identity of the Investment Manager. The Investment Manager has expressed a strong preference that its identity not be disclosed at any time. On May 27, 2012, the Monitor requested independent evidence of the financial wherewithal of the investment funds managed by the Investment Manager. The Company has advised the Monitor that it is satisfied that the investment funds managed by the Investment Manager have sufficient capital to execute on this transaction and to fund the ongoing operations of the Company's business until closing and thereafter. As of the date of this Sixth Report, the Monitor has received certain financial information regarding the Investment Manager. Given the Memorial Day holiday in the United States, at this time the Monitor has been unable to independently verify such information. The Monitor has no reason to believe that the investment funds do not have sufficient capital and the Monitor notes that WalGreens participation provides another source of additional financial support to the Successful Bidder.

48. The Monitor plans to provide a detailed summary of the Successful Bid and the other bids received in connection with the SISP when the Company seeks approval of the Successful Bid. It is intended that certain of this information will be contained in a confidential appendix for which a sealing order will be sought. The Monitor understands that it is the Company's intention to seek approval of the Successful Bid and a vesting order with respect to the Successful Bid on a motion before the Court on or about June 4, 2012 and serve materials in respect of such motion in the next 24 to 48 hours.

#### **Monitor's Observations and Comments on the SISP**

49. As described in the Fifth Report, the timeline for the SISP was very short. Certain interested parties with previously signed NDAs received a head start on their due diligence of the Company. The Monitor recognizes that these parties have had a longer time period to conduct due diligence, understand the Company's property and business and may have had an opportunity to meet with management and WalGreens and to review the information contained the Company's dataroom.
50. As reported in the Fifth Report, notwithstanding the potential advantage that these parties may have with respect to the opportunity to participate in the SISP, given the Company's current dire liquidity situation, there did not appear to be another option for the Company to realize value for the benefit of its stakeholders and seek a going concern solution for the business absent the expedited SISP.
51. While the time-frame of the SISP was condensed, the Company and the Monitor still contacted 147 Potential Purchasers and had distributed 114 Teaser Letters and NDAs within 3 business days of receiving the May 14 Order. In total, the Company and the Monitor made contact with 164 Potential Purchasers. The Monitor and the Company were in communication with numerous Potential Purchasers during the SISP and responded to all enquiries from Potential Purchasers. While Potential Purchasers presented a range of commentary on their reasons for declining to submit a bid, the most common reason was that PCAS was still viewed as a development stage company that would require significant additional capital before commercialization of its product could be achieved.
52. Some Perspective Purchasers indicated that the SISP timeline was too short to perform adequate diligence in light of the significant capital investment still required to commercialize the MedCentres. However, as previously described in the Fifth Report and as noted above, an expedited SISP was likely the only viable process to maximize value of the Company for the benefit of its stakeholders given the Company's liquidity situation.

53. Prior to the commencement of the SISP, it was agreed that the Company would include a representative of the Monitor on all discussions with any Potential Purchaser and be copied on communications with any Potential Purchaser.
54. As previously discussed, certain members of the Board had the primary responsibility for implementing the SISP on behalf of the Company with assistance from the Monitor. These members of the Board advised the Monitor that the Monitor was copied on all communications with any Potential Purchaser, involved in the vast majority of discussions with any Potential Purchaser and received a report of any discussions that such members of the Board had with any Potential Purchaser that did not include the Monitor.
55. The Monitor believes, based on the multiple conversations it was included in between the Company and/or members of the Board and Potential Purchasers, the multiple communications it was copied on between the Company and/or members of the Board and Potential Purchasers and the reports it received from members of the Board regarding discussions with Potential Purchasers that did not include the Monitor (including on the daily 8:00 am update calls), that the Company, and in particular the members of the Board that had the primary role in implementing the SISP, implemented a fair, transparent and efficient SISP in the circumstances in accordance with the Orders of this Court dealing with the SISP and the Court's reasons for decision dated May 14, 2012.

## **VI. CASH FLOW VARIANCE ANALYSIS**

56. A summary of the Applicants' cumulative cash flow from March 23 to May 25, 2012 as well as a comparison of actual versus forecast cash flow for the period May 7 to May 25, 2012 (the "**Comparative Period**") as compared against the cash flow forecast filed as part of the application for the May 7 Order (the "**May 7 Forecast**"), is shown below:

**PCAS****Cash flow variance analysis**

CAD\$ (000's)

	For the period May 7 to 25, 2012		Variance Favourable / (Unfavourable)		Cumulative Actual from March 23 to May 25, 2012
	Forecast	Actual	(\$)	(%)	
<b>RECEIPTS</b>					
New AR Collections	15	2	(13)	(87%)	63
SRED Recovery	-	-	-	0%	-
HST Recovery	493	176	(318)	(64%)	659
Other Receipts	-	7	7	100%	50
<b>TOTAL RECEIPTS</b>	<b>508</b>	<b>185</b>	<b>(323)</b>	<b>(64%)</b>	<b>771</b>
<b>DISBURSEMENTS</b>					
Employee and contractor costs	633	628	5	1%	3,678
Operating costs	59	17	43	72%	76
Lease costs	26	-	26	100%	215
SG&A	171	97	74	43%	316
DIP Interest	-	-	-	0%	-
Principal payment	484	48	436	90%	344
Professional Fees	380	319	61	16%	942
HST Payments	64	51	13	20%	175
<b>TOTAL DISBURSEMENTS</b>	<b>1,817</b>	<b>1,159</b>	<b>657</b>	<b>36%</b>	<b>5,746</b>
<b>NET CASH FLOW</b>	<b>(1,308)</b>	<b>(974)</b>	<b>334</b>	<b>26%</b>	<b>(4,975)</b>
<b>BEGINNING CASH</b>	<b>329</b>	<b>329</b>	<b>(0)</b>	<b>(0%)</b>	<b>155</b>
DIP Draw / (Repayment)	1,175	1,185	10	1%	5,360
<b>CLOSING CASH BALANCE</b>	<b>196</b>	<b>539</b>	<b>344</b>	<b>176%</b>	<b>539</b>
Accrued Payroll		(95)			(95)
<b>Net Cash Balance</b>		<b>445</b>			<b>445</b>

57. The May 7 Forecast includes actual results to May 4, 2012, accordingly the comparison against forecast addresses the period from May 7 to May 25, 2012. During the Comparative Period, the Company experienced a net cash outflow of \$974,000 resulting in a net favourable variance from forecast of \$334,000. This variance is comprised of an unfavourable difference in receipts of \$323,000 offset by a favourable variance in disbursements of \$657,000. A further analysis of the variances from forecast is attached hereto as **Appendix "C"**.

58. The majority of variance results from the deferral of all but critical payments during the period. In addition to these cost deferrals, the primary variances from forecast include:

- a) A forecast recovery of the 2011 Touchpoint HST return of \$441,000, which was anticipated to be received on the week of May 11, 2012 and which was forecast to be paid to Castcan subject to the enforceability of its security, has not yet been received. This has resulted in offsetting \$441,000 variances in both receipts and disbursements.

Offsetting the unfavourable variance in receipts was an HST recovery for the month of March which was \$90,000 favourable to forecast.

- b) The remaining variances are primarily favourable variances comprised of permanent differences arising from the Company's efforts to minimize its cash requirements during the SISP in addition to favourable timing differences on certain lease and utility payments which are anticipated to reverse at the end of May.

#### **CURRENT ACCRUED COSTS**

- 59. The Company's employees are paid on a weekly basis, one week in arrears. The payroll forecast to be funded on May 28, 2012 will bring employees current to May 25, 2012. The Monitor and the Company are closely monitoring the accrued payroll in comparison to the available cash on hand to ensure that sufficient funds exist to pay for compensation earned to date.

### **VII. REVISED FORECAST**

- 60. The Company has prepared a revised cash flow forecast for the period from May 28 to June 15, 2012 (the "**May 28 Forecast**"). A schedule detailing the May 28 Forecast by week is attached as **Appendix "D"**.
- 61. The May 28 Forecast is based on the assumption that, during the completion of the SISP and the closing of a transaction with the Successful Bidder, if approved by the Court, the Company will be operating on a minimal cost structure with reduced regular operating costs in order to preserve cash.
- 62. The May 28 Forecast indicates that the current committed DIP funds to date of \$5,360,000 will provide sufficient liquidity to last the Company to May 30, 2012. As noted in paragraph 31 of the Fifth Report, the Company only had approximately 4 days between the Bid Deadline and the exhaustion of available liquidity under the DIP Facility. As noted below, the Company is seeking an extension of the Stay Period until June 6, 2012 in order to provide the Company with an opportunity to seek approval of the Successful Bid and to close the transaction in connection therewith to the extent such approval is granted.
- 63. The Monitor has been advised by the DIP Lender that it is not prepared and does not have access to capital to continue to fund the Company's ongoing operations. The Monitor has been advised by counsel to the Successful Bidder that the Successful Bidder is prepared to advance funding in tranches on an as-needed basis in a combined amount not to exceed \$250,000 to the extent necessary during the period between May 30, 2012 and the closing of

the Successful Bid (to the extent approved by this Court). This amount will not be credited against the purchase price and will not be secured by any Court order or other charge against the assets of the Company. Counsel to the Successful Bidder has advised the Monitor that the availability of these funds will be subject to the Company and the Monitor developing a budget for this period that is agreeable to the Successful Bidder.

64. The Company, with the assistance of the Monitor, is preparing a budget for approval by the Successful Bidder for funding of the Company's operating requirements until June 6, 2012 (subject to a \$250,000 cap and settlement of the budget). The Monitor notes that it is expected that this budget will be substantially similar to the May 28 Forecast and that the \$250,000 cap will be sufficient to fund the Company's cash flow requirements until June 6, 2012.
65. The Successful Bidder has advised that it is prepared to fund the Company's operations prior to this Court's approval of the Successful Bid, which approval is anticipated to be sought on or about June 4, 2012. To the extent that the necessary funds are not received by the Successful Bidder on or before May 30, 2012 in accordance with its commitment as detailed above, the Monitor will seek an appearance on notice to the service list with this Court to advise the Court of the Company's liquidity position and seek advice and direction from the Court.
66. As discussed above, the Monitor is working closely with the Company to monitor receipts and disbursements to ensure that sufficient funds remain to allow the Company to operate to June 6, 2012.

### **VIII. COMPANY'S REQUEST FOR AN EXTENSION**

67. Pursuant to the May 14 Order, the stay of proceedings expires on May 28, 2012. The Company is now seeking an extension of the Stay Period to June 6, 2012.
68. Based on the May 28 Forecast and the financial support of the Successful Bidder, the Company should have sufficient liquidity to continue to fund its operations during the extension of the Stay Period, if such extension is granted.
69. An extension of the Stay Period is necessary to provide the Company with the time to finalize the terms of a purchase agreement with the Successful Bidder, seek approval from this Court of the Successful Bid and to the extent such approval is granted close the transactions contemplated thereby. The termination of the stay of proceedings against the Applicants would likely lead to the Company not being able to seek approval of the Successful Bid and if such approval is granted complete the transaction with the Successful Bidder.

70. The Company, the Monitor and the Successful Bidder are all of the view that it would not be sufficient notice to the Service List to seek approval of the Successful Bid and a purchase agreement in respect thereof on May 28, 2012. As described in the May 27 Affidavit, an extension of the Stay Period to June 6, 2012 is necessary to permit the Company to give sufficient notice to the Service List prior to a return of the motion for an approval and vesting order. It is the Company's intention to serve the Notice of Motion for an approval and vesting order by May 30, 2012.
71. The Monitor believes that, based on the information currently available and the remaining funds available to the Company and the commitment made by the Successful Bidder to fund the Company's ongoing operations on the basis set out herein, an extension of the Stay Period to June 6, 2012 is appropriate having regard to the circumstances. The extension of the Stay Period to June 6, 2012 will also eliminate the need for and costs associated with an additional Court appearance to seek a further extension once the budget to fund to June 6, 2012 is finalized among the Company, the Monitor and the Successful Bidder. The Monitor is aware of the Company's liquidity difficulties and is working closely on a daily basis with the Company to monitor its cash flows.
72. The Monitor is of the view that the Applicants have acted and are acting in good faith and with due diligence to pursue a transaction in accordance with the SISP and to seek a going concern outcome.

## **IX. RECOMMENDATION**

73. The Monitor recommends that this Court issue an Order approving, *inter alia*;
- a) the activities of the Monitor as set out in this Sixth Report; and
  - b) Approving the Company's request for an extension of the Stay Period to June 6, 2012.

Dated the 28th day of May, 2012.

**RESPECTFULLY SUBMITTED,**



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**Paul van Eyk, CA·CIRP, CA·IFA**  
Senior Vice-President

PricewaterhouseCoopers Inc.  
In its capacity as Monitor of  
PCAS Patient Care Automation  
Services Inc. and 2163279 Ontario Inc.  
and not in its personal capacity

**APPENDIX B**

**Confidential Appendix B**

**(Appendix subject to a request for a Sealing Order)**

## APPENDIX C

### Stalking Horse Asset Purchase Agreement

**PCAS PATIENT CARE AUTOMATION SERVICES INC.  
AND 2163279 ONTARIO INC.**

**- and -**

**2320714 ONTARIO INC.**

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**ASSET PURCHASE AGREEMENT**

**May 23, 2012**

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## **LIST OF SCHEDULES**

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SCHEDULE B	-	ASSUMED LIABILITIES
SCHEDULE C	-	PATENTS
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SCHEDULE E	-	EMPLOYEES TO BE OFFERED EMPLOYMENT
SCHEDULE F	-	ASSUMED CONTRACTS
SCHEDULE G	-	EXISTING ENCUMBRANCES

THIS ASSET PURCHASE AGREEMENT is made this 23rd day of May, 2012

**BETWEEN:**

**PCAS Patient Care Automation Services Inc.**, a company governed by the Laws of Canada and **2163279 Ontario Inc.**, a company governed by the Laws of the Province of Ontario

(collectively, the “**Vendors**”)

- and -

**2320714 Ontario Inc.**, a company governed by the Laws of the Province of Ontario

(the “**Purchaser**”)

**RECITALS:**

- A. Pursuant to an order (as may be amended or restated from time to time, the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 23, 2012, the Vendors, PCAS Patient Care Automation Services Inc. (“**PCAS**”) and 2163279 Ontario Inc., doing business as Touchpoint (“**Touchpoint**”) applied for protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCA**”);
- B. pursuant to the Initial Order, Pricewaterhouse Coopers Inc. was appointed as the monitor (the “**Monitor**”) in the CCA proceedings of the Vendors;
- C. the Initial Order approved a debtor-in-possession financing facility provided by the Purchaser (the “**DIP Facility**”) and a corresponding priority charge for the DIP Facility (the “**DIP Charge**”) over the property, assets and undertaking of the Vendors (the “**Property**”), along with certain other charges specified therein;
- D. the Purchaser has agreed to act as a “stalking horse bidder” in connection with the sale of the Vendors’ right, title and interest, if any, in and to the Property, meaning that, in the absence of the acceptance of a bid for the Purchased Assets (as defined herein) or an offer to invest in PCAS made in accordance with the Bidding Procedures (as defined herein) that is superior to this Agreement (as determined by the Vendors and the Monitor in accordance with the Bidding Procedures), the Purchaser has agreed to purchase the Vendors’ right, title and interest, if any, in and to the Purchased Assets on the terms and subject to the conditions set forth in this Agreement, in accordance with the Bidding Procedures and subject to obtaining the Vesting Order (as defined herein);

- E. The Vendors have obtained the Bidding Procedures Order (as defined herein) authorizing the Vendors to enter into this Agreement and authorizing the sales process with respect to the Vendors' right, title and interest, if any, in and to Purchased Assets pursuant to the Bidding Procedures.

**THEREFORE**, in consideration of the mutual covenants herein contained and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

### **1.1 Definitions**

Whenever used in this Agreement the following words shall have the meanings set out below:

**“Administrative Charge”** means the charge (to the maximum amount of \$500,000) to secure the Claims of the Monitor, its counsel and Vendors' counsel under the Initial Order;

**“Agreement”** means this asset purchase agreement, including all schedules, and all amendments or restatements, as permitted, and references to “Article”, “Section” or “Schedule” mean the specified Article or Section of, or Schedule to, this Agreement;

**“Ancillary Agreements”** means a bill of sale, assignment and assumption agreement, assignment of intellectual property, and such other agreements, documents, assignments, or instruments of transfer and conveyance reasonably satisfactory in form and substance to the Vendors, the Purchaser and the Monitor; none of which shall contain any representations or warranties of the Vendors except for those provided herein;

**“Assumed Contracts”** has the meaning given in Section 2.4;

**“Assumed Liabilities”** has the meaning given in Section 2.3;

**“Bidding Procedures Order”** means the Order of the Court dated May 14, 2012;

**“Books and Records”** means the books and records of the Vendors relating to the Purchased Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, plans and 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;

**“Business”** means the business of the Vendors, which business relates to the development, manufacturing and deployment of healthcare technology, which consists principally of the “PharmaTrust MedCentre,” a pharmacist-controlled, customer-interactive prescription dispensing system and all such other commercial activities incidental and ancillary thereto;

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

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

**“Closing”** means the completion of the purchase and sale transaction described in Article 2;

**“Closing Certificate”** has the meaning given in Section 8.6;

**“Closing Date”** has the meaning given in Section 6.1(a);

**“Closing Time”** has the meaning given in Section 6.1(b);

**“Consent”** means any approval, authorization, consent, order, license, permission, permit (including any environmental permit), qualification, exemption or waiver by any Governmental Authority or other Person;

**“Contracts”** means contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Vendors are a party or by which the Vendors are bound or under which the Vendors have, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied) relating to the Purchased Assets and/or the Business, as same may be amended and/or restated, and including any and all related quotations, orders, proposals or tenders which remain open for acceptance, warranties and guarantees and documents ancillary thereto;

**“Court”** has the meaning given in the Recitals;

**“Credit Bid Amount”** means the aggregate amount of the DIP Loan Obligations. For greater certainty, any fees, costs or expenses of the Purchaser (including legal fees) in connection with the Transaction, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement shall also form part of the Credit Bid Amount;

**“DIP Loan Agreement”** means the Second Amended and Restated DIP Loan Agreement between the Purchaser and PCAS made as of March 22, 2012 pursuant to which the Purchaser committed to provide to the Vendors a credit facility in an amount necessary to fund the cash flow requirements of the Vendors during their restructuring proceedings on the terms and conditions set out therein, as amended from time to time;

**“DIP Loan Obligations”** means all outstanding obligations of any kind pursuant to the DIP Loan Agreement;

**“Encumbrances”** means liens, hypothecs, charges, security interests, pledges, leases, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever and including the Encumbrances listed in Schedule G;

**“Employees”** means any and all (i) employees who are currently employed (including full-time, part-time and temporary employees) in connection with the Business; and (ii) employees who are currently employed in connection with the Business who are on leaves of absence (including maternity leave, parental leave, disability leave, sickness leave, workers’ compensation and other statutory leaves). For greater certainty, the term “Employees” shall not include contractors;

**“Excluded Assets”** means the assets listed in Schedule A;

**“Excluded Contracts”** means all Contracts except Assumed Contracts;

**“Excluded Employee Obligations”** means any obligation to recognize the prior service of the Employees, or to deem such service to be service with the Purchaser for any purpose (including for notice of termination and termination and severance pay) other than as required in accordance with applicable Law;

**“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;

**“Initial Order”** has the meaning given in the Recitals;

**“Intellectual Property”** means, with respect to the Vendors, all rights in and to patents, patent applications and patent disclosures, including without limitation: (a) the Patents, trademarks, trade names and corporate names and including all goodwill associated therewith, (b) works of authorship, copyrightable works, copyrights, (c) Internet addresses, domain names, websites and web pages, and (d) any and all other intellectual property and proprietary rights;

**“Laws”** means currently existing applicable statutes, by-laws, rules, regulations, orders, ordinances or judgments, in each case of any Governmental Authority having the force of law;

**“Monitor”** has the meaning given in the Recitals;

**“Parties”** means the Vendors and the Purchaser collectively, and **“Party”** means any one of them;

**“Patents”** means all of the patents, patent applications and rights to patents owned or held by the Vendors and used in the Business including the patents and patent applications listed in Schedule C;

**“PCAS”** has the meaning given in the Recitals;

**“Person”** means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate,

Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

“**Premises**” has the meaning given in Section 5.1(h);

“**Property**” has the meaning given in the Recitals;

“**Purchaser**” has the meaning given in the Recitals;

“**Purchase Price**” has the meaning given in Section 2.5;

“**Purchased Assets**” means the tangible and intangible properties, assets, undertaking, interests, rights, Claims and Contracts of the Vendors, wherever located, as of the Closing Date, including without limitation the following assets, if any:

- (a) all cash, cash equivalents and all positive bank balances;
- (b) all inventory and accounts receivable;
- (c) all Intellectual Property;
- (d) all furniture, fixtures and equipment;
- (e) all rights under non-disclosure or confidentiality, non-compete or non-solicitation agreements with employees and agents or with third parties;
- (f) any rights, Claims or causes of action for Claims arising out of the operation of the Business;
- (g) all goodwill and other intangibles; and
- (h) all other personal property not contemplated by the foregoing;

which for greater certainty does not include the Excluded Assets;

“**Qualified Bids**” has the meaning given in the Bidding Procedures;

“**Successful Bidder**” has the meaning given in the Bidding Procedures;

“**Target Closing Date**” has the meaning given in Section 7.1(d);

“**Tax**” and “**Taxes**” includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise

and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

“**Termination Date**” has the meaning given in Section 7.1(e);

“**Transaction**” means the purchase and sale of all of the Vendors’ right, title and interest, if any, in and to the Purchased Assets contemplated by this Agreement;

“**Transfer Taxes**” has the meaning given in Section 8.3(c); and

“**Vesting Order**” has the meaning given in Section 4.1(b).

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** – All references to money amounts are to lawful currency of Canada;
- (b) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the Laws of the Province of Ontario and the federal Laws of Canada applicable in the Province of Ontario;
- (c) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”;
- (e) **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;
- (f) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders;
- (g) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances; and
- (h) **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.

### 1.3 Entire Agreement

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

### 1.4 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	– Excluded Assets
Schedule B	– Assumed Liabilities
Schedule C	– Patents
Schedule D	– Assumed Premises
Schedule E	– Employees to be Offered Employment
Schedule F	– Assumed Contracts
Schedule G	– Existing Encumbrances

## ARTICLE 2 PURCHASE AND SALE

### 2.1 Purchase and Sale of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement (which conditions, for greater certainty, include the determination by the Vendors and the Monitor that this Agreement is the Successful Bid (as defined in and determined in accordance with the Bidding Procedures), and the issuance of the Vesting Order), the Vendors shall transfer, sell, convey, assign and deliver unto the Purchaser, and the Purchaser shall acquire and accept all of the Vendors' right, title and interest, if any, in and to the Purchased Assets, which will be, pursuant to the Vesting Order, free and clear of all Encumbrances.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the Excluded Assets and nothing herein shall be deemed to sell, transfer, assign or convey the Excluded Assets.

## 2.3 Assumed Liabilities

The Purchaser shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, only those liabilities and obligations with respect to the Business and/or the Purchased Assets listed on Schedule B (collectively, the “**Assumed Liabilities**”).

The Purchaser shall not assume or be liable for any Encumbrances, the Excluded Employee Obligations, or any other liabilities or obligations of any nature whatsoever, other than the Assumed Liabilities.

## 2.4 Assignment and Assumption of Contracts

- (a) The Purchaser covenants to the Vendors that prior to the Target Closing Date the Purchaser shall advise the Vendors and the Monitor in writing as to which Contracts shall be assumed by the Purchaser (collectively, the “**Assumed Contracts**”). All other contracts shall be Excluded Contracts. For greater certainty any exclusion of Contracts pursuant to this Section 2.4 shall not affect the Purchase Price.
- (b) Subject to any rights of Consent by counterparties thereto, the terms and conditions of this Section 2.4 and the Vesting Order, the Assumed Contracts of the Vendors shall form part of the Purchased Assets assigned and transferred to the Purchaser at Closing, the consideration for which is included in the Purchase Price. The Purchaser will assume and agree to perform and discharge the Assumed Liabilities under the Assumed Contracts pursuant to this Agreement and the applicable Ancillary Agreements.
- (c) At or prior to Closing, the Vendors shall use commercially reasonable efforts to obtain all necessary Consents to assign the Assumed Contracts (other than the Excluded Contracts) to the Purchaser. If a counterparty to an Assumed Contract requires, as a condition to its Consent to the assignment of such Assumed Contract, payment of any monetary default which arose or is related to the period prior to the date of the Initial Order, the Vendors shall not be required to pay such amounts.
- (d) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract, to the extent such Assumed Contract is not assignable under applicable Law without the consent of any other Person party thereto where the Consent of such Person has not been given or received. In any case where the Consent of a Person has not been given or received, the Assumed Contract to be assigned shall be held by the appropriate

Vendor in trust for the Purchaser until such consent has been given or received.

- (e) For greater certainty, if any necessary Consent is required to assign an Assumed Contract but not obtained, neither the Vendors nor the Purchaser shall be in breach of this Agreement nor shall the Purchase Price be adjusted or the Closing delayed.

## **2.5 Purchase Price**

The purchase price for the Purchased Assets, exclusive of all applicable Transfer Taxes, shall be the aggregate of the following (the "**Purchase Price**"):

- (a) the Credit Bid Amount; and
- (b) the Assumed Liabilities.

All applicable Transfer Taxes shall be paid by the Purchaser by certified cheque or bank draft, subject to the terms hereof and the availability of any exemptions or elections under any applicable legislation for such applicable Transfer Taxes.

## **2.6 Satisfaction of Purchase Price**

The Purchaser shall satisfy the Purchase Price on Closing by:

- (a) delivering to the Vendors and the Monitor fully executed releases and waivers with respect to all amounts outstanding under the DIP Loan Agreement (including any accrued interest thereon and all fees thereunder); and
- (b) the assumption by the Purchaser of the Assumed Liabilities.

## **2.7 Purchase Price Allocation**

On or prior to the Target Closing Date, the Purchaser shall prepare a written initial allocation of the Purchase Price in respect of each of the Purchased Assets. The Parties, acting reasonably, shall agree, prior to the Closing, on an allocation of the Purchase Price for Tax purposes.

## **2.8 Employees**

- (a) Prior to but conditional on Closing and with effect as of the Closing Date, the Purchaser shall offer continuing employment to only those Employees listed in Schedule E, if any, as such list of Employees may be varied by the Purchaser in its discretion by written notice to the Vendors prior to Closing. Such offers of employment are to be on terms no less favourable as to salary or wages, benefits, hours of work, duties and working conditions than those in effect at Closing. The Vendors will cooperate with the Purchaser in giving notice to the Employees concerning such matters referred to in this Section 2.8 as are reasonable under the circumstances.

- (b) As of and following the Closing Date, the Purchaser shall assume and be responsible for all liabilities and obligations (other than the Excluded Employee Obligations), whether accrued after, on or before the Closing Date, with respect to those Employees who accept the Purchaser's offer of employment or who otherwise continue employment with the Purchaser and the Purchaser shall indemnify and save the Vendors and the Monitor harmless in respect of all liabilities and obligations assumed by the Purchaser pursuant to this Section 2.8, including defending the Vendors against any claims regarding such liabilities and obligations and paying all damages and all reasonable costs, expenses and legal fees.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

#### **3.1 Representations and Warranties of the Vendors**

The Vendors hereby represent and warrant to the Purchaser, as of the date hereof and as of the Closing Date, the matters set out below.

- (a) Subject to the issuance of the Vesting Order, the Vendors have all necessary power and authority to enter into this Agreement and to carry out their obligations under this Agreement. This Agreement constitutes a valid and binding obligation of the Vendors enforceable against them in accordance with its terms subject to any limitations imposed by Law.
- (b) The Vendors are not non-residents of Canada for the purposes of the *Income Tax Act* (Canada).
- (c) The Vendors are registered for harmonized sales tax purposes under Part IX of the *Excise Tax Act* (Canada).
- (d) The Vendors have not knowingly or willingly engaged in any act that has or could result in an Encumbrance affecting any of the Purchased Assets (other than the Encumbrances listed in Schedule G and any charge created by the Initial Order or arising by operation of Law in the normal course of the Business).
- (e) The Vendors have paid, or will pay prior to Closing, any liabilities that are or could be secured by the Administrative Charge under the Initial Order.

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

The Purchaser hereby represents and warrants to the Vendors, as of the date hereof and as of the Closing Date, the matters set out below.

- (a) The Purchaser has been duly incorporated and is validly subsisting under the Laws of the jurisdiction of its incorporation, and has all requisite corporate capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets.

- (b) The execution, delivery and performance by the Purchaser of this Agreement:
  - (i) has been duly authorized by all necessary corporate action on the part of the Purchaser;
  - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws; and
  - (iii) will not result in the violation of any Law.
- (c) This Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with its terms subject only to any limitation under applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) Except for the Vesting Order, no Consent and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or the performance by the Purchaser of its obligations hereunder.
- (e) There is no action, suit, proceeding or claim that is pending or, to the Purchaser's knowledge, threatened in any court or by or before any Governmental Authority that would adversely affect the Purchaser's ability to perform its obligations under this Agreement on a timely basis.
- (f) The Purchaser or its designee will be a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada) on or prior to Closing or the Purchaser will be liable for any Tax consequences of not so being.
- (g) The Purchaser or its designee will not be a non-resident of Canada for purposes of the *Income Tax Act* (Canada) on or prior to Closing or the Purchaser will be liable for any Tax consequences of not so being.
- (h) As at Closing, the Purchaser or its designee will be Canadian, or if not Canadian, will qualify as a WTO investor within the meaning of the *Investment Canada Act* (Canada).

#### ARTICLE 4 PROCEDURES

##### 4.1 Bidding Procedures Order; Vesting Order

- (a) The Vendors and the Purchaser acknowledge that (i) this Agreement is subject to

Court approval, and (ii) Closing the Transaction is subject to this Agreement being determined by the Vendors and the Monitor to be the "**Successful Bid**" (as defined in and determined in accordance with the Bidding Procedures), and to the issuance of the Vesting Order.

- (b) If the Vendors do not receive any Qualified Bids (other than this Agreement) or if the Purchaser is determined by the Vendors, in consultation with the Monitor and pursuant to the Bidding Procedures Order to be the Successful Bidder, the Vendors shall use their commercially reasonable efforts to promptly file and serve a motion with the Court for an Order (the "**Vesting Order**") in form and substance satisfactory to the Vendors and the Purchaser, acting reasonably, approving the sale of the Vendors' right, title and interest, if any, in and to the Purchased Assets to the Purchaser pursuant to this Agreement and vesting title to the Purchased Assets in the Purchaser free and clear of all Encumbrances.
- (c) If the Vendors and the Monitor receive one or more Qualified Bids (other than this Agreement), the Vendors, in consultation with the Monitor, shall determine the Successful Bidder in a manner consistent with the requirements of the Bidding Procedures Order.

#### **4.2 Pre-Closing Cooperation**

- (a) Prior to the Closing, upon the terms, and subject to the conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the Transaction as soon as practicable, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing, and the taking of such actions as are necessary to obtain any requisite Consent, provided that the Vendors shall not be obligated to make any payment or deliver anything of value to any Person in order to obtain any Consent.
- (b) Each of the Vendors, the Monitor and the Purchaser shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Section 5.1 or Section 5.2 not being satisfied.

#### **4.3 Acquisition of Assets on "As Is, Where Is" Basis**

The Purchaser hereby acknowledges and agrees as follows:

- (a) the Purchased Assets are being purchased on an "as is, where is" basis at the Closing Date;
- (b) it has conducted or will conduct its own searches and investigations relating to the Purchased Assets;

- (c) it has conducted such inspections of the Purchased Assets as it deemed appropriate, satisfied itself with respect to the Purchased Assets and all matters connected with or related to the Purchased Assets, and has relied entirely upon its own investigations and inspections in entering into this Agreement to acquire the Vendors' right, title and interest, if any, in and to the Purchased Assets without regard to any information made available or provided by the Vendors and the Monitor or their officers, directors, employees or agents;
- (d) it will accept the Purchased Assets in their state, condition and location as at the Closing Time and except as expressly set forth in this Agreement, the Vendors make no representations, warranties, statements or promises in favour of the Purchaser concerning the Purchased Assets, or the Vendors' right, title or interest in or to the Purchased Assets, which the Purchaser acknowledges are being acquired on an as-is where-is basis, or the uses or applications of the Purchased Assets, whether express or implied, statutory or collateral, arising by operation of Law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (Ontario) do not apply to the sale of the Vendors' right, title and interest, if any, in and to the Purchased Assets and are hereby waived by the Purchaser; and
- (e) without limiting the generality of foregoing, it acknowledges and accepts that the description of the Purchased Assets and any portion thereof contained in the Schedules hereto or otherwise provided by the Vendors or the Monitor is for the purpose of identification only; and that no representation, warranty or condition has or will be given by the Vendors or the Monitor or any other party concerning completeness or the accuracy of such descriptions or with respect to any data room set up by the Vendors.

#### 4.4 Title and Risk

The Purchased Assets shall remain at the risk of the Vendors, to the extent of their interest therein, until Closing and at the risk of the Purchaser from and after Closing. The Vendors covenant to the Purchaser that, during the period from and including the date hereof through and including the Closing Date or the earlier termination of this Agreement, the Vendors shall use commercially reasonable efforts to conduct the Business in substantially the same manner as conducted as of the date hereof, pay all fees with respect to the Patents, to the extent such funding is available to the Vendors, and make all other filings required by Governmental Authorities to enable the Purchaser to maintain the Patents in good standing from and after Closing.

**ARTICLE 5**  
**CONDITIONS PRECEDENT**

**5.1 Conditions Precedent of the Purchaser**

The obligations of the Purchaser to complete the purchase of all of the Vendors' right, title and interest, if any, in and to the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Vendors made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Purchaser shall have received a certificate from a senior officer of the Vendors confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Vendors shall have performed or complied with, in all material respects, all of its obligations, covenants and agreements under this Agreement;
- (c) the Vendors shall have executed and delivered, or caused to be executed and delivered, to the Purchaser on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Purchaser or its solicitors;
- (d) there shall be no order issued by any Governmental Authority delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws;
- (e) the Vendors and the Monitor shall have determined in accordance with the Bidding Procedures that this Agreement is the Successful Bid (as defined in the Bidding Procedures);
- (f) the Initial Order, the Bidding Procedures Order and the Vesting Order shall have been issued and entered by the Court and such orders shall not have been stayed or vacated and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
- (g) the Vendors shall have made arrangements satisfactory to the Purchaser to make assignments into bankruptcy upon or immediately after Closing.
- (h) the Purchaser shall have reached an agreement with either: (a) the landlord or

landlords of the premises listed in Schedule D, if any, as such list of Premises as may be varied by the Purchaser in its discretion by written notice to the Vendors prior to Closing (the "Premises") or (b) with the putative trustee in bankruptcy of the Vendors, in either case, to allow the Purchaser to occupy the Premises for a period of not greater than ninety (90) days provided the Purchaser agrees to pay occupation rent at the current rate or at such other rate and on such terms as may be satisfactory to the Purchaser and agreed with either the landlord(s) or the putative trustee, as the case may be;

If any of the foregoing conditions in this Section 5.1 have not been fulfilled by the Termination Date, the Purchaser may terminate this Agreement by notice to the Vendors. However, the Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

For the avoidance of doubt, there shall be no conditions precedent to the Purchaser's obligation to consummate the Transaction, except for those conditions precedent specifically set forth in this Section 5.1.

## **5.2 Conditions Precedent of the Vendors**

The obligations of the Vendors to complete the sale of the Vendors' right, title and interest, if any, in and to the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Vendors and may be waived by them in whole or in part):

- (a) all of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Vendors shall have received a certificate from a senior officer of the Purchaser confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Purchaser shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Purchaser shall have executed and delivered or caused to be executed and delivered to the Vendors on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Vendors or their solicitors;
- (d) there shall be no order issued by any Governmental Authority delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of

enjoining, delaying, restricting or preventing, the consummation of the Transactions or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws;

- (e) the Vendors and the Monitor shall have determined in accordance with the Bidding Procedures that this Agreement is the Successful Bid (as defined in the Bidding Procedures);
- (f) the Initial Order, the Bidding Procedures Order and the Vesting Order shall have been issued and entered by the Court and such orders shall not have been stayed, vacated or subject to pending appeal and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
- (g) if the Purchaser assigns any of its rights or obligations arising under this Agreement to an affiliate of the Purchaser at or before Closing, such affiliate shall have executed and delivered an assignment and assumption agreement (pursuant to which the Purchaser shall remain jointly and severally liable) satisfactory to the Vendors, acting reasonably.

If any of the foregoing conditions in this Section 5.2 have not been fulfilled by the Target Closing Date, the Vendors may terminate this Agreement by notice to the Purchaser. However, the Vendors may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

For the avoidance of doubt, there shall be no conditions precedent to the Vendors obligation to consummate the Transaction, except for those conditions precedent specifically set forth in this Section.

## ARTICLE 6 CLOSING AND DELIVERIES

### 6.1 Closing

- (a) Unless otherwise agreed by the Parties, Closing shall occur as soon as practicable after the satisfaction or waiver of all conditions set out in Sections 5.1 and 5.2 (such Closing date, the "**Closing Date**").
- (b) Closing shall take place at 10:00 a.m. (the "**Closing Time**") on the Closing Date at the offices of the Vendors' solicitors, or such other time and location as the Parties may agree upon in writing. Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or upon the solicitors acting for the Party on whom tender is desired. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

## 6.2 Vendors' Deliveries

At the Closing,

- (a) the sale, transfer, assignment, conveyance and delivery by the Vendors of their right, title and interest, if any, in and to the Purchased Assets to the Purchaser, free and clear of all Encumbrances, shall be effected by the issued and entered Vesting Order and by execution and delivery by the Vendors of the Ancillary Agreements;
- (b) the Vendors shall deliver, pursuant to the Vesting Order, free and clear title and possession of the Purchased Assets on an "as is, where is" basis in accordance with Section 4.3, provided that delivery shall occur *in situ* wherever such Purchased Assets are located on the Closing Date;
- (c) the Vendors shall deliver a true and complete copy of the Vesting Order and the Closing Certificate;
- (d) the Vendors shall deliver a bring-down certificate executed by the Vendors, in a form satisfactory to the Purchaser, acting reasonably, certifying that all of the representations and warranties of the Vendors hereunder remain true and correct in all material respects as of the Closing;
- (e) the Vendors shall make the elections referred to in Section 8.3, to the extent such elections are applicable to the Transaction and available to the Purchaser;
- (f) the Vendors shall deliver the Ancillary Agreement, including an agreement executed by the Vendors, in a form satisfactory to the Purchaser, acting reasonably, assigning the Vendors' right, title and interest in and to the Intellectual Property to the Purchaser, all to be in a form satisfactory to the Purchaser acting reasonably; and
- (g) the Vendors shall deliver a document setting out the allocation of the Purchase Price, in form and substance satisfactory to the Purchaser, acting reasonably.

## 6.3 Purchaser's Deliveries

At the Closing,

- (a) the Purchaser shall deliver the releases and waivers set out in Section 2.6(a) executed by the Purchaser, in a form satisfactory to the Vendors and the Monitor, acting reasonably;
- (b) the Purchaser shall deliver the Ancillary Agreements to which it is party, executed by the Purchaser, in a form satisfactory to the Vendors and the Monitor, acting reasonably;
- (c) the Purchaser shall deliver a bring-down certificate executed by the Purchaser, in

a form satisfactory to the Vendors and the Monitor, acting reasonably, certifying that all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing;

- (d) the Purchaser shall make the elections referred to in Section 8.3, to the extent such elections are applicable to the Transaction, or shall make a cash payment to the Vendors in an amount sufficient to satisfy any Transfer Taxes;
- (e) the Purchaser shall deliver a document setting out the allocation of the Purchase Price, in form and substance satisfactory to the Vendors and the Monitor, acting reasonably.

## ARTICLE 7 TERMINATION

### 7.1 Termination

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

- (a) automatically and without any action or notice by either the Vendors to the Purchaser or the Purchaser to the Vendors, immediately upon the closing of a transaction pursuant to a Successful Bid if this Agreement is not the Successful Bid;
- (b) subject to any approvals required by the Court, by mutual written consent of the Vendors, the Monitor and the Purchaser;
- (c) automatically and without any action or notice by either the Vendors to the Purchaser or the Purchaser to the Vendors, immediately upon the issuance of a final and non-appealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Vendors' right, title and interest, if any, in and to the Purchased Assets as contemplated hereby;
- (d) by the Vendors if the Closing has not occurred on or before May 31, 2012 (the "**Target Closing Date**");
- (e) by either the Vendors or the Purchaser if the Closing has not occurred on or before June 7, 2012 (the "**Termination Date**");
- (f) by the Vendors, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.2 by the Target Closing Date and such violation or breach has not been waived by the Vendors or cured by the Target Closing Date, unless the Vendors are in material breach of their obligations under this Agreement; and
- (g) by the Purchaser, if there has been a material violation or breach by the Vendors

of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.1 by the Termination Date and such violation or breach has not been waived by the Purchaser or cured by the Termination Date, unless the Purchaser is in material breach of its obligations under this Agreement.

## **7.2 Effects of Termination**

If this Agreement is terminated pursuant to Section 7.1, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party.

# **ARTICLE 8 OTHER COVENANTS OF THE PARTIES; GENERAL**

## **8.1 Books and Records**

At Closing, the Vendors shall deliver to the Purchaser, at the Purchaser's sole expense, copies of the Books and Records that relate to the Purchased Assets and that are in the possession of the Vendors or that are reasonably within the Vendors' control, including personal and employment files pertaining to those Employees who accept the Purchaser's offer of employment or who otherwise continue employment with the Purchaser, to the extent permitted by applicable Law. The Purchaser shall honour and observe, in connection with the Transaction, all applicable privacy Laws with respect to the collection, use, transfer and disclosure of personal information about Employees.

## **8.2 Access of the Monitor to Books and Records**

The Monitor, any trustee, trustee in bankruptcy or similar official appointed with respect to the Vendors, and each of their representatives shall, for a period of six (6) years from the Closing Date, have access to, and the right to copy, at their expense for *bona fide* business purposes, to the extent necessary or useful in connection with their administration, including the filing of any Tax return or the defence or settlement of any litigation or to comply with any applicable Law and during usual business hours, upon reasonable prior notice to the Purchaser, all books and records relating to the Business, the Purchased Assets and the Assumed Liabilities which are to be transferred and conveyed to the Purchaser pursuant to this Agreement. The Purchaser shall use reasonable efforts to retain and preserve all such Books and Records for such six (6) year period and shall advise the Monitor and any trustee, trustee in bankruptcy or similar official appointed with respect to the Vendors (if any) prior to disposing of any such Books and Records so that they may take possession of any such Books and Records, if required.

## **8.3 Tax Matters**

- (a) The Purchaser and the Vendors agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution

of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.

- (b) For all Tax purposes, the Purchaser and, to the extent applicable, the Vendors, agree to report the Transaction in a manner consistent with the Purchase Price allocation determined in accordance with Section 2.7, and the Purchaser and the Vendors shall not voluntarily take any action inconsistent therewith in any Tax return, refund claim, litigation or otherwise, unless required by applicable Tax Laws. The Purchaser and the Vendors shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar fowls in accordance with applicable Tax Laws.
- (c) All amounts payable by the Purchaser to the Vendors pursuant to this Agreement do not include any federal, provincial, state or local value-added, sale, use, consumption, multi-staged, *ad valorem*, personal property, customs, excise, stamp, transfer, land transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, "Transfer Taxes") properly exigible or payable in connection with the transactions contemplated hereby and all Transfer Taxes are the responsibility of and for the account of the Purchaser. The Purchaser and the Vendors agree to cooperate to determine the amount of Transfer Taxes payable in connection with the Transaction. If the Vendors are required by applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Purchaser, the Purchaser shall pay such Transfer Taxes to the appropriate Government Authority on Closing on the Vendors' behalf, unless the Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case the Purchaser shall not pay any such applicable Transfer Taxes provided the Purchaser, in lieu of payment of such applicable Transfer Taxes to the Vendors, delivers to the Vendors such certificates, elections or other documentation required by applicable Law or the administration thereof to substantiate and affect the exemption claimed by the Purchaser.
- (d) The Purchaser shall indemnify and save the Vendors harmless from and against all claims and demands for payment of the Taxes referenced in this Section, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.
- (e) If applicable, at the Closing, the Vendors and the Purchaser shall jointly execute an election under Section 167(1)(b) of the *Excise Tax Act* (Canada) to have subsection 167(1.1) of the *Excise Tax Act* (Canada) apply in respect of the sale of the Vendors' right, title and interest, if any, in and to the Purchased Assets under this Agreement. The Purchaser shall file the election in the manner and within the time prescribed by subsection 167(1.1) of the *Excise Tax Act* (Canada). Notwithstanding anything to the contrary in this Agreement, the Purchaser shall indemnify and hold the Vendors and the Monitor, and their respective shareholders, directors, officers and employees, harmless in respect of any harmonized sales tax, goods and services tax, penalties, interest and other

amounts which may be assessed against the Vendors and/or the Monitor as a result of the Transaction not being eligible for such elections or as a result of the Purchaser's failure to file the election within the prescribed time.

- (f) If applicable, the Vendors and the Purchaser shall jointly elect in the prescribed form under Section 22 of the *Income Tax Act* (Canada) and the corresponding provisions of any other applicable Tax statute as to the sale of accounts receivable of the Vendors and designate in such election an amount equal to the portion of the Purchase Price allocated to such accounts receivable pursuant to the allocation determined in accordance with Section 2.7. This election or these elections, shall be made within the prescribed time for such elections.
- (g) The Purchaser and the Vendors shall also execute and deliver such other Tax elections and forms as they may mutually agree upon.

#### 8.4 Vendors' Disclosures

The Vendors shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, to the parties in interest to the proceedings in connection with the CCAA proceedings, and to any parties considering a bid in respect of the Vendors or Property. The Parties will consult with and be cooperative with each other in respect of any press release or public statement or public communication with respect to this Agreement or Transaction.

#### 8.5 Closing Certificate

The Parties hereby acknowledge and agree that the Vendors shall be entitled to file a certificate, substantially in the form attached to the Vesting Order (the "**Closing Certificate**"), with the Court upon receiving written confirmation from the Purchaser that all conditions of Closing have been satisfied or waived, and the Vendors shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

#### 8.6 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 e-mail or facsimile:

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

2320714 Ontario Inc.  
c/o Forstar Group  
Suite 5850, 100 King Street West  
Toronto, Ontario

Attention: George Swan  
Fax: (416) 214-5522  
Email: [gswan@forstargroup.com](mailto:gswan@forstargroup.com)

with a copy (which shall not constitute notice) to:

Thornton Grout Finnigan LLP  
Canadian Pacific Tower  
100 Wellington St. West  
Suite 3200  
Toronto, ON M5K 1K7

Attention: Robert I. Thornton  
Fax: (416) 304-1313  
Email: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)

and

Grundy, Cass & Campbell Professional Corporation  
Suite 3150, P.O. Box 11  
Canadian Pacific Tower  
Toronto-Dominion Centre  
100 Wellington St. West  
Toronto, ON M5K 1H1

Attention: Doug Grundy  
Fax: (416) 849-8004  
Email: [dgrundy@grundycass.com](mailto:dgrundy@grundycass.com)

(b) in the case of a notice to the Vendors at:

PCAS Patient Care Automation Services Inc.  
2 – 2880 Brighton Road  
Oakville, On L6H 5S3

Attention: Kym Anthony, Chairman  
Fax: (905) 829-5504  
Email: [kym.anthony@yahoo.com](mailto:kym.anthony@yahoo.com)

and

2163279 Ontario Inc.  
2 – 2880 Brighton Road  
Oakville, On L6H 5S3

Attention: Donald Waugh, Chairman  
Fax: (905) 829-5504  
Email: [don\\_waugh@pcasinc.com](mailto:don_waugh@pcasinc.com)

with a copy (which shall not constitute notice) to:

Aird & Berlis LLP  
Brookfield Place, P.O. Box 754  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attention: Sam Babe  
Fax: (416) 863-1515  
Email: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

with a copy (which shall not constitute notice) to the Monitor:

PricewaterhouseCoopers Inc.  
PwC Tower  
18 York Street, Suite 2600  
Toronto, ON M5J 0B2

Attention: Paul van Eyk  
Fax: (416) 814-3210  
Email: [paul.vaneyk@ca.pwc.com](mailto:paul.vaneyk@ca.pwc.com)

and:

Osler, Hoksins & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Attention: Marc Wasserman  
Fax: (416) 862-6666  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

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 8.6.

### **8.7 Assignment**

The Purchaser may at any time assign any of its rights or obligations arising under this Agreement to an affiliate of the Purchaser; provided, however, that in the event of any such assignment, the Purchaser shall be jointly and severally liable for the obligations it assigns and shall not be relieved of any liability or obligation hereunder. Subject to the foregoing, no Party

may assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party.

#### **8.8 Expenses**

Except as set forth in Sections 5.1 and 5.2, each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the Transaction, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

#### **8.9 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.

#### **8.10 Enurement**

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.

#### **8.11 Amendment**

No amendment, supplement, modification or waiver 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.

#### **8.12 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 Transaction, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

#### **8.13 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

*[Signature page follows]*

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

**PCAS PATIENT CARE AUTOMATION  
SERVICES INC.**

By:

Name: Kym Anthony

Title: Chairman

**2163279 ONTARIO INC.**

By

Name: Donald Waugh

Title: Chairman

**2320714 ONTARIO INC.**

By

Name:   
George Swan

Title: President

**SCHEDULE A  
EXCLUDED ASSETS**

The Excluded Assets shall include:

- (a) any asset that otherwise would constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business prior to the Closing Date not in violation of this Agreement;
- (b) the rights of the Vendors under this Agreement or any Ancillary Agreement and all cash and non-cash consideration payable or deliverable to the Vendors under this Agreement or any Ancillary Agreement;
- (c) all rights under or arising out of insurance policies not relating to the Business or the Purchased Assets or non-assignable as a matter of law; and
- (d) all Excluded Contracts and rights of the Vendors related thereto.

**SCHEDULE B  
ASSUMED LIABILITIES**

The Assumed Liabilities shall include:

- (a) the obligations of the Vendors secured by the existing Encumbrances listed in Schedule G;
- (b) the Assumed Contracts as determined in accordance with Section 2.4;
- (c) the obligations of the Vendors to the employees listed on Schedule E that accept offers of employment from the Purchaser; and
- (d) the amounts owing to current or former employees of the Vendor in respect only of unpaid wages secured by s. 81.3 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, and only to the limit of \$2,000 per employee (subject to deduction of any amounts paid by the Vendors to any employee on or prior to Closing).

**SCHEDULE C  
PATENTS**

**[At present, no patents]**

**SCHEDULE D**  
**ASSUMED PREMISES**

1. 2-2880 Brighton Road, Oakville, Ontario L6H 5S3.

**SCHEDULE E  
EMPLOYEES TO BE OFFERED EMPLOYMENT**

**[Redacted]**

**SCHEDULE F  
ASSUMED CONTRACTS**

**[Redacted]**

**SCHEDULE G  
EXISTING ENCUMBRANCES**

The secured claims existing as at the date of this Agreement are those that may arise pursuant to the following security (collectively, the “**Security**”):

- (a) a general security agreement granted by PCAS in favour of Royal Bank of Canada, undated;
- (b) a general security agreement granted by Touchpoint in favour of Royal Bank of Canada dated November 18, 2011;
- (c) an inventory purchase money security agreement granted by PCAS in favour of Kohl & Frisch Limited dated February 26, 2008;
- (d) a general security agreement granted by Touchpoint in favour of Kohl & Frisch Limited dated November 11, 2011;
- (e) a general security agreement granted by PCAS in favour of Castcan Investments Inc. (in trust for itself and certain others) dated March 6, 2012; and
- (f) a general security agreement granted by Touchpoint in favour of Castcan Investments Inc. (in trust for itself and certain others) dated March 6, 2012.

## APPENDIX D

Pari Passu Priority Agreement among, inter alia,  
the DIP Lender and Castcan, dated March 22, 2012

## PARI PASSU PRIORITY AGREEMENT

THIS AGREEMENT made as of the 22<sup>nd</sup> day of March, 2012.

BETWEEN:

**THE PARTIES LISTED ON SCHEDULE "A" TO THIS AGREEMENT**

(collectively, the "Secured Parties" and, each, a "Secured Party")

- and -

**2320714 ONTARIO INC.**  
(the "DIP Lender")

- and -

**CASTCAN INVESTMENTS INC.**  
(**"Castcan"**)

**WHEREAS:**

1. The DIP Lender has been incorporated for the sole purpose of providing debtor-in-possession financing (the "DIP Facility") to PCS Patient Care Automation Services Inc. ("PCAS") during PCAS' anticipated *Bankruptcy and Insolvency Act* proposal or *Companies' Creditors Arrangement Act* proceedings (the "Restructuring Proceedings");
2. The DIP Facility will be provided pursuant to the terms of a loan agreement between the DIP Lender and PCAS (the "DIP Loan Agreement");
3. The DIP Lender's obligations under the DIP Loan Agreement are subject to, among other things, PCAS obtaining an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") in the Restructuring Proceedings approving the DIP Loan Agreement and creating a super-priority charge in favour of the DIP Lender and whatever third parties fund the DIP Facility (the "DIP Charge"), subordinate to: (i) an administration charge in respect of the professional costs and expenses of PCAS and the proposal trustee or monitor in the Restructuring Proceedings in the maximum amount of \$500,000; and (ii) the Permitted Liens (as that term is defined the DIP Loan Agreement) in favour of the Royal Bank of Canada and Castcan, in trust, as described on **Schedule "B"** hereto (collectively, the "RBC and Castcan Security").
4. The Secured Parties have agreed to provide loans to the DIP Lender for the sole purpose of funding the DIP Facility (the "Loans"), which Loans have been or will be evidenced by separate promissory notes (collectively, the "Promissory Notes" and, each, a

“**Promissory Note**”) made by the DIP Lender in favour of each of the Secured Parties, each convertible to common shares in PCAS through direction to the DIP Lender to exercise its conversion rights under the DIP Loan Agreement in favour the relevant Secured Party;

5. Pursuant to separate general security agreements (collectively the “**Security Agreements**” and each a “**Security Agreement**”) between the DIP Lender and each of the Secured Parties respectively the DIP Lender has granted to each such Secured Party security in all of the property of the DIP Lender (such Security Agreements and any other security so given in addition to or in substitution for the whole or any part of such Security Agreements being collectively referred to as the “**Security**”);
6. The parties consider that it is desirable to establish and agree as to the equal ranking of the Security and the respective indebtedness secured thereby;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the premises and the sum of \$1.00 of lawful money of Canada and other good and valuable consideration now paid by each of the parties hereto to the other (the receipt and sufficiency of which are hereby acknowledged by each such party), it is hereby declared and agreed by the parties hereto as follows:

1. The Secured Parties hereby agree with each other and hereby declare that, subject to the provisions hereof, their respective rights and interests in the Security and all indebtedness secured thereby or by any portion thereof shall, in all respects, rank *pari passu*, equally and ratably among the Secured Parties, to the effect that all funds received by any Secured Party from the DIP Lender and all proceeds of realization of any of the Security shall be distributed between the Secured Parties on a *pro rata* basis, based upon the amounts of their respective Loans.
2. The equal ranking of the Security and all indebtedness secured thereby set out in section 3 and all other rights established, altered or specified herein shall extend to all proceeds in any form derived, arising or resulting from any realization of the Security.
3. Nothing contained in this agreement shall be construed as conferring any rights upon the DIP Lender, or upon any person not a party to this agreement.
4. Each of the Secured Parties agrees to co-operate fully with the other Secured Parties in connection with any enforcement or realization of the Security.
5. The DIP Lender agrees with the provisions hereof and further agrees with the Secured Parties and each of them that so long as the Security is outstanding and secures the indebtedness and other obligations of the DIP Lender under the Promissory Notes, the DIP Lender will stand possessed of its assets thereby mortgaged, charged or assigned for the parties hereto in accordance with the terms herein set out.
6. Each of the parties hereto acknowledge and agree to the extent permitted by law that:

- (a) the RBC and Castcan Security shall not be subject to or affected in any manner whatsoever by the DIP Charge and/or any directors and officers charge that may be granted in the Restructuring Proceedings;
  - (b) they will not seek any orders or judgments from any court administering the Restructuring Proceedings affecting the RBC and Castcan Security without the consent of such parties;
  - (c) they will not take any steps or actions in the Restructuring Proceedings in any manner whatsoever to impair or defeat the RBC and Castcan Security;
  - (d) they will not assert any claims in the Restructuring Proceedings that could reasonably have the effect of altering the priorities, postponement and subordination set out in this Agreement;
  - (e) the obligations secured by the RBC and Castcan Security shall first be fully and finally paid before the DIP Lender or any Secured Party shall be entitled to receive or retain any payment or distribution of any kind or character in respect of the DIP Facility or the Promissory Notes; and
  - (f) Castcan is the owner of and holds all right, title and interest in and to the Tax Credit Entitlements and the Refunds, each as defined and in accordance with the terms of the SR&ED/OITC/HST Purchase Agreement dated as of March 6, 2012 among PCAS, 2163279 Ontario Inc. and Castcan (as may be amended from time to time).
7. The DIP Lender shall be entitled from and after the date of this Agreement to obtain additional Loans from persons who are not parties to this Agreement and who wish to participate in the provision of the DIP Facility ("**Additional Investors**"), provided that in doing so the DIP Lender shall issue promissory notes to such Additional Investors containing the same terms and conditions as the Promissory Notes issued to the Secured Parties, the DIP Lender shall grant security interests to the Additional Investors pursuant to general security agreements containing the same terms and conditions as the Security Agreements and the Additional Investors agree to the terms of and become parties to and bound by this Agreement by their execution and delivery to the DIP Lender of a counterpart of this Agreement. Each party to this Agreement confirms and agrees that such Additional Parties by executing and delivering a counterpart of this Agreement to the DIP Lender shall then have all of the rights and obligations of a Secured Party under this Agreement.
8. Each Secured Party hereby acknowledges and confirms that it has had the opportunity to seek independent legal advice with respect to this agreement, its respective Promissory Note and the Security, and agrees that it shall be deemed to have received such independent legal advice.
9. Any demand, notice or other communication in connection with this agreement shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee, mailed by registered mail or sent by telex, telefacsimile or other direct

written electronic means, charges prepaid, at or to the address, telex number or telefacsimile number of the party set out opposite its name below or to such other address or addresses, telex or telefacsimile number or numbers as either party may from time to time designate to the other party in such manner.

(a) In the case of the Secured Parties at the addresses and contact numbers listed next to their names on Schedule "A" hereto.

(b) In the case of the DIP Lender:

2320714 Ontario Inc.  
Suite 5865, First Canadian Place, 100 King St. West  
Toronto, Ontario M5X 1C9

Attention: George Swan, Secretary and Treasurer  
Telefax: 416.214.5522

(c) In the case of the Castcan:

Castcan Investments Inc.  
3700 Steeles Avenue West, Suite 800  
Vaughan, Ontario, L4L 8M9

Attention: Paul Joseph Sorbara  
Telefax: 905.856.9801

Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a business day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the business day next following such date of delivery. Any communication which is mailed as aforesaid shall be deemed to have been validly and effectively given on the fifth business day following the date of mailing, provided that, in the event of an interruption in postal service before such fifth business day, such communication shall be given by one of the other means. Any communication which is transmitted by telex, telefacsimile or other direct written electronic means as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a business day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the business day next following such date of transmission.

10. From time to time each of the parties hereto, at the request of any other, shall execute and deliver such additional documents and other assurances as may be reasonably required effectually to carry out the intent of this agreement.
11. In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by

a court, this agreement shall be construed as not containing such provision or such part of such provision and the invalidity of such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

12. This agreement may be executed and delivered in any number of counterparts by facsimile or emailed PDF, each of which when so executed shall be deemed to be an original.
13. This agreement and all documents delivered pursuant thereto shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
14. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. A Secured Party shall not assign or transfer any of its rights in or under the Security or the indebtedness secured thereby, except to a transferee who has previously agreed with the Secured Party in writing to be bound by the provisions of this agreement.

**IN WITNESS WHEREOF** this agreement has been executed by the parties hereto as of the date first above written.

**2320714 ONTARIO INC.**

By:   
George Swan, Secretary and Treasurer

*[Remainder of this page is intentionally left blank]*



## APPENDIX E

SR&ED/OITC/HST Purchase Agreement among Castcan,  
PCAS and Touchpoint, dated March 6, 2012

## SR&ED/OITC/HST PURCHASE AGREEMENT

In consideration of the mutual agreements and covenants herein contained and for other good and valuable consideration now paid by each of the parties hereto to the other (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. **Purchase and Sale:** CASTCAN INVESTMENTS INC., IN TRUST ("**Purchaser**") hereby purchases and PCAS PATIENT CARE AUTOMATION SERVICES INC., a corporation organized and existing under the federal laws of Canada, and 2163279 ONTARIO INC., a corporation organized and existing under the laws of the Province of Ontario, each with an office at 2880 Brighton Road, Unit 2, Oakville, ON L6H 5S3 (collectively, "**Vendor**"), hereby sells, on a full recourse basis, all of Vendor's right, title and interest in and to the Tax Credit Entitlements (as hereinafter defined). In this Agreement, the term "**Tax Credit Entitlements**" means, collectively, the Scientific Research and Experimental Development refundable tax credit entitlements, the Ontario Innovation Tax Credit entitlements and Harmonized Sales Tax refunds more particularly described in annexed Schedule "A" together with all tax refunds in respect thereof and any interest thereon (collectively, the "**Refunds**") payable or to be payable to Vendor in respect thereof as set out in annexed Schedule "A". Subject only to the provisions of section 12 hereof, ownership of the Tax Credit Entitlements (and all rights related thereto) shall automatically transfer to Purchaser upon the execution and delivery of this Agreement.

2. **Purchase Price:** The aggregate purchase price (the "**Purchase Price**") for the Tax Credit Entitlements, subject to adjustment (which shall include adjustments for interest received on the Tax Credit Entitlements) as hereinafter provided in section 4 hereof, is \$1,288,298.00 less the Discount Amount (as hereinafter defined). In this Agreement, the term "**Discount Amount**" means \$288,298.00.  

3. **Purchase Price Payment:** The Purchase Price shall be payable as follows:

- (a) \$1,000,000.00 (the "**Advance Amount**"), promptly upon the execution and delivery of this Agreement by Purchaser; and
- (b) the balance of the Purchase Price less the Discount Amount and any other charges under this Agreement payable by Vendor, within one (1) business day following receipt by Purchaser of the Refunds.

4. **Purchase Price Adjustment:** If the actual amount of the Refunds received by Purchaser (including, without limitation, interest received) exceeds the aggregate of the Advance Amount, the Discount Amount and any other charges under this Agreement owing by Vendor (such aggregate being hereinafter referred to as the "**Purchaser Entitlement**"), then the amount of the Purchase Price shall be adjusted, upwards or downwards as the case may be, to reflect the actual amount of the Refunds received by Purchaser. If the actual amount of the Refunds received by Purchaser is equal to or less than the Purchaser Entitlement, then the amount of the Purchase Price shall be decreased to

equal the Purchaser Entitlement. For greater certainty, should any assessment or reassessment of Vendor by any relevant taxing authority result in any requirement for all or any part of the Refunds previously received by Purchaser to be repaid, such obligation shall be the sole responsibility of Vendor.

**5. Recourse:** Should there be an Event of Default (as hereinafter defined), then Purchaser shall have the right at any time thereafter to require Vendor to immediately re-purchase, on a without recourse basis, the Tax Credit Entitlements (including, without limitation, any Non-Assignable Rights) for an amount (the "**Repurchase Price**") equal to the Advance Amount plus the Discount Amount less the actual amount of the Refunds, if any, having theretofore been received by Purchaser, together with interest on the Repurchase Price at the Rate (as hereinafter defined) from the date Purchaser requires such re-purchase.

**6. Interest on Late Payments:** All amounts owing hereunder by Vendor to Purchaser shall bear interest at the rate (the "**Rate**") of 30% per annum calculated yearly not in advance on any amounts owing hereunder and overdue interest, if any, from time to time remaining unpaid, such interest to accrue daily from and including the date the amount becomes owing hereunder (eg. the date Purchaser requires any re-purchase of the Tax Credit Entitlements) and to be payable on demand. Payments received shall be applied firstly in payment of unpaid accrued interest and the balance if any in reduction of other obligations.

**7. Representations and acknowledgements of Vendor:** Vendor represents, warrants and acknowledges to Purchaser as follows:

- (a) Vendor is duly incorporated, organized and existing under the federal laws of Canada or the laws of the Province of Ontario, as applicable, and has all requisite power to enter into, exercise its rights and perform and comply with its obligations under this Agreement;
- (b) Vendor is not a party to any agreement under the terms of which Vendor is prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by Vendor under this Agreement;
- (c) the descriptions of the Tax Credit Entitlements set out in annexed Schedule "A" are true and correct in all material respects and Vendor is fully entitled under all applicable law to receive the full amount of the Refunds;
- (d) Vendor is not in receipt of any correspondence, notices, enquiries, objections or other communications from Canada Revenue Agency ("**CRA**") respecting the Tax Credit Entitlements that have not been provided to Purchaser or Royal Bank of Canada;
- (e) the Tax Credit Entitlements have not been assigned, encumbered or postponed, in whole or in part otherwise than in favour of Purchaser;

- (f) all information which has been provided to Purchaser relating to the Tax Credit Entitlements is true and correct in all material respects and no material fact or facts have been omitted therefrom which would make such information misleading;
- (g) no due diligence undertaken by Vendor in respect of the Tax Credit Entitlements, or otherwise, shall affect, lessen, reduce or mitigate any of the representations, warranties or other obligations of Vendor under this Agreement; and
- (h) Purchaser does not guarantee or warrant in any way the validity, eligibility, completeness or any other aspect of the Tax Credit Entitlements and Purchaser shall not be liable or in any way responsible for the same.

**8. Obligations of Vendor:** Until receipt of the Refunds and/or Repurchase Price by Purchaser and payment in full of any accrued interest and other charges under this Agreement, Vendor shall:

- (a) give Purchaser written notice and copies of all correspondence, notices, enquiries, objections or other communications received from CRA respecting or affecting the Tax Credit Entitlements or the Refunds, within one (1) business day following receipt thereof, and not respond thereto without the prior written approval of Purchaser (such approval not to be unreasonably withheld or delayed);
- (b) hold in trust, not intermingle with any other assets of Vendor and immediately remit to Purchaser, within one (1) business day of receipt thereof, any portion of the Refunds received by Vendor;
- (c) fully co-operate with Purchaser respecting the collection of the Refunds;
- (d) not consent or agree to any modification of the Tax Credit Entitlements without the prior written consent of Purchaser (such consent not to be unreasonably withheld or delayed);
- (e) execute all documents and do all things which Purchaser, acting reasonably, from time to time, deems necessary or desirable in connection with this Agreement including, without limitation, the execution of directions to CRA to make payment of the Refunds to Purchaser or to forward such payment to an account (controlled by Purchaser) or address designated by Purchaser from time to time;
- (f) not revise or revoke any directions to CRA without the prior written approval of Purchaser;
- (g) observe and conform to all laws and all valid requirements of any governmental authority with respect to all or any part of its business and the Tax Credit Entitlements;

- (h) remit when due any and all taxes, withholdings and other charges due to any governmental authority (including employee source deductions, EHT, PST, HST, etc.) and advise Purchaser in writing of any arrears within twenty (20) days of the applicable due dates;
- (i) defend the Tax Credit Entitlements against claims and demands of all other parties claiming to have an interest therein, and not create or suffer or permit to be created or levied upon the Tax Credit Entitlements or any part thereof any charge, lien, encumbrance, execution, sequestration, extent or analogous process;
- (j) keep proper books and records with respect to the Tax Credit Entitlements and, permit Purchaser, by its officers or agents, upon reasonable notice, to enter the premises of Vendor and inspect and make copies of such books and records from time to time during Vendor's normal business hours or such other time as the parties may mutually agree;
- (k) provide Purchaser with such financial and other information as Purchaser may reasonably request, from time to time;
- (l) pay all reasonable costs incurred by Purchaser, including legal fees, professional fees, search and registration fees etc. in respect of negotiating and completing the transaction provided for in this agreement and all related security, any ongoing charges incurred in maintaining or reviewing the Tax Credit Entitlements or the security requirements of Purchaser, and the costs of any discharges.

**9. Power of Attorney:** Vendor hereby irrevocably appoints Purchaser as its attorney to execute (including the power to execute under the seal of Vendor) and deliver in Vendor's name all deeds, instruments or other documents that Purchaser may consider necessary or advisable in order to perfect Purchaser's title to the Tax Credit Entitlements, and Purchaser may supply any endorsement to any cheque or other instrument relating to the Tax Credit Entitlements or to the Refunds in order to obtain payment therefor, and that power of attorney shall be deemed to be coupled with an interest.

**10. Events of Default:** The happening of any of the following events or conditions shall constitute default under this Agreement (each an "Event of Default"):

- (a) any material adverse change in events or circumstances relating to the current or previous tax returns of Vendor, or to the Tax Credit Entitlements;
- (b) any default under any agreement by Vendor in favour of Purchaser or under any agreement by any other person in favour of Purchaser respecting debts and obligations of Vendor;
- (c) any material default by Vendor of its obligations to any third party, which default

could reasonably be expected to cause a material adverse change in the financial conditions, operations or ownership of Vendor;

- (d) any material adverse change in financial conditions, operations or ownership of Vendor;
- (e) the failure of Vendor to observe or perform any obligation, covenant, term, or provision contained in this Agreement and such failure having not been remedied by Vendor with five (5) days of having been given notice thereof;
- (f) Purchaser not being in receipt of the Refunds for the full amount of those Tax Credit Entitlements identified in Part I of annexed Schedule "A" by June 30, 2012;
- (g) Purchaser not being in receipt of the Refunds for the full amount of those Tax Credit Entitlements identified in Part II of annexed Schedule "A" by November 15, 2012;
- (h) the actual amount of the Refunds received by Purchaser being less than the Purchaser Entitlement.



**11. Indemnity by Vendor:** Vendor hereby forever indemnifies and holds harmless Purchaser from and against all liabilities, debts, costs (including solicitors costs on a solicitor and its own client basis) and expenses incurred or which Purchaser may incur due to:

- (a) exercising its rights hereunder (including without limitation collecting the Refunds or the Repurchase Price); or
- (b) its execution, delivery or performance of this Agreement.

**12. Non-Assignable Rights:** Nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to Purchaser any right or entitlement which would otherwise be part of the Tax Credit Entitlements and which, as a matter of law is either not assignable or not assignable without the approval or consent of a government authority (collectively, "Non-Assignable Rights"). In connection with Non-Assignable Rights, Vendor shall, at its own expense:

- (a) co-operate with Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Non-Assignable Rights to Purchaser, including without limitation, holding any such Non-Assignable Rights in trust for Purchaser or acting as agent for Purchaser;
- (b) enforce any rights of Vendor arising from such Non-Assignable Rights against the applicable government authority;
- (c) take all such actions and do or cause to be done all such things at the request of Purchaser as shall reasonably be necessary and proper in order that the value of any

Non-Assignable Rights shall be preserved and shall enure fully to the benefit of Purchaser; and

- (d) pay over to Purchaser all monies collected by or paid to Vendor in respect of such Non-Assignable Rights.

If Vendor is unable to lawfully provide to Purchaser the benefit of any Non-Assignable Right, Vendor shall not use any such Non-Assignable Right for its own purposes or assign the benefit thereof to any other person.

**13. Notice:** Any notice, instruction or document required or permitted to be given or served by this Agreement or by law may be given personally or by telecopier or by prepaid courier or registered mail to the intended recipient at its address as set out in this Agreement and any party may by notice given in accordance with this section change its address for the purposes of this section. Any notice shall be deemed (in the absence of evidence of prior receipt) to have been received by the intended recipient the same day if personally served, the next business day if sent by telecopier transmission or by courier, and on the fifth (5<sup>th</sup>) business day next following where sent by registered mail.

**14. General:**

- (a) This Agreement (including Schedule "A" annexed hereto) constitutes the entire agreement between the parties hereto with respect to all matters herein, and its execution has not been induced by, nor do any of the parties hereto rely upon or regard as material, any representations, warranties or promises whatsoever not incorporated herein or made a part hereof.
- (b) This Agreement shall not be deemed to be, or construed as having been, amended as a result of any oral communication between the parties or as a result of any practice of the parties. All amendments shall be in writing and signed by the party or parties to be bound thereby but may be executed in separate counterparts and delivered by telecopy transmission.
- (c) Section headings contained herein are included solely for convenience of reference, are not intended to be full or accurate descriptions of the contents thereof and shall not be considered part of this Agreement.
- (d) Time shall be the essence hereof.
- (e) Any provision of this Agreement which is illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

- (f) If two or more individuals or corporations (or any combination of two or more thereof) are named above and execute this Agreement as Vendor, the liability of such parties under this Agreement shall be joint and several and this Agreement shall be interpreted to reflect multiple parties being named and executing this Agreement as Vendor and selling their interests in the respective Tax Credit Entitlements and Refunds.
- (g) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- (h) This Agreement may be executed by the parties in separate counterparts and delivered by telecopy or other means of electronic transmission, each of which when so executed and delivered shall be deemed to be an original and all such counterparts shall together constitute one and the same instrument.

**SIGNED, SEALED AND DELIVERED** as of the 6th day of March, 2012.

**PCAS PATIENT CARE AUTOMATION  
SERVICES INC.**

(Vendor)

By: *Dana Turks*

Name: *Dana Turks*

Title: *CFO*

(Authorized Signing Officer)

**2163279 ONTARIO INC.**

(Vendor)

By: *Dana Turks*

Name: *Dana Turks*

Title: *CFO*

(Authorized Signing Officer)

Accepted and agreed to by CASTCAN INVESTMENTS INC., IN TRUST this 6th day of March, 2012.

**CASTCAN INVESTMENTS INC., IN TRUST**

(Purchaser)

By: *[Signature]*

Name: *Paul Sarkar*

Title: *ASO*

**SCHEDULE "A"**

**TAX CREDIT ENTITLEMENTS**

**PART I**

2009 / 2010 SRED / ITC  
claim

2009

Federal	480,021	see CRA letter dated July 21, 2011 - table on page 1
Provincial	<u>169,568</u>	and Deloitte's letter of March 6, 2012 - page 1
Total	649,589	
cash received	<u>406,248</u>	
	<u>243,341</u>	

2010

Federal	380,931	see Deloitte's letter of March 6, 2012 - page 1
Provincial	<u>120,931</u>	
Total	<u>501,862</u>	

RBC  
loan

408,374	see SRED recovery letter dated October 24, 2011
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HST Credits

2012	160,085	see HST filing for PCAS
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2011 Touchpoint	441,680	see HST filing for TouchPoint
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Total Part 1	938,594
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PART  
II

2011 SRED / ITC claim

Federal	265,438
Provincial	<u>84,266</u>
Total	<u>349,704</u>

see Deloitte's letter of March 6, 2012 - page 2 bullet 7

see Deloitte's letter of March 6, 2012 - page 2 bullet 7

Total Part 2 349,704

Total 1,288,298

Total Tax Credit Entitlement of Purchaser = Part I Tax Credit Entitlement + Part II Tax Credit Entitlement = 1,288,298.



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. CV-12-9656-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
PCAS PATIENT CARE AUTOMATION SERVICES INC. AND 2163279 ONTARIO INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SEVENTH REPORT OF  
PRICEWATERHOUSECOOPERS INC. IN ITS  
CAPACITY AS COURT APPOINTED  
MONITOR OF PCAS PATIENT CARE  
AUTOMATION SERVICES INC. AND 2163279  
ONTARIO INC. DATED JUNE 1, 2012**

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**Lawyers for the Monitor,  
PricewaterhouseCoopers Inc.**