PUBLIC

CT-2012-003

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the Competition Act;

AND IN THE MATTER OF certain policies and procedures of Direct Energy Marketing Limited.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

DIRECT ENERGY MARKETING LIMITED

Respondent

- and -

NATIONAL ENERGY CORPORATION

Intervenor

STATEMENT OF AGREED FACTS

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Court File No. CT-2012-003

THE COMPETITION TRIBUNAL

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

DIRECT ENERGY MARKETING LIMITED

Respondent

- and -

NATIONAL ENERGY CORPORATION

Intervener

STATEMENT OF AGREED FACTS

1. The Commissioner and the Respondent agree to the following facts.

Background

2. On December 20, 2012, the Commissioner of Competition filed a notice of application pursuant to section 79 of the *Competition Act*, R.S.C. 1985, c. C-34, (the "**Application**") against the respondent Direct Energy Marketing Limited ("**Direct Energy**"). The Commissioner alleges that Direct Energy has a dominant position in the supply of natural gas water heaters and related services to residential customers (the "**Residential Water Heater Business**") in certain local

markets in Ontario, and that it abused that position by implementing various return policies and procedures.

3. Specifically, the Commissioner alleges in the Application that the relevant market is the supply of natural gas water heaters and related services to residential customers in those local markets of Ontario where Enbridge distributes natural gas. In particular, the Commissioner alleges in the Application that Direct Energy has, since February 21, 2012, preserved and enhanced its market power in the proposed relevant market by imposing water heater return policies and procedures that impose significant costs on competitors and prevent customers from switching to those competitors.[1]

4. Pursuant to the Notice of Application filed on December 20, 2012, the Commissioner seeks the following relief pursuant to subsections 79(1), 79(2), and 79(3.1):

(a) an order prohibiting Direct Energy from directly or indirectly implementing water heater rental return policies and procedures which the Commissioner alleges to be exclusionary;

(b) an order directing Direct Energy to take certain other actions necessary to overcome the effects of its alleged practice of anti-competitive acts;

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[1] This is a high-level summary for context. For full particulars, see the Commissioner's Notice of Application, 20 December 2012, CT-2012-003 [Notice of Application], attached hereto as **Tab A**.

(c) an order directing Direct Energy to pay an administrative monetary penalty in the amount of $15,000,000;

(d) an order directing Direct Energy to pay the costs of this proceeding and

(e) such other relief as the Tribunal considers appropriate.

5. Direct Energy filed its response to the Application on August 26, 2013 (the "**Response**"). Direct Energy denies all the Commissioner's allegations and submits, among other things, that the Commissioner's definition of the relevant market is flawed, that Direct Energy was never dominant in any market, and that Direct Energy's water heater rental return policies were a commercially reasonable response to the ongoing deceptive marketing practices of door-to-door marketers of its competitors.[2]

6. Direct Energy maintains its Response but acknowledges that it operated a rental Residential Water Heater Business in the geographic areas that the Commissioner alleges to be the relevant market, and has since exited as described below.

Sale of Direct Energy's Business

7. At the time the Commissioner filed the Application, Direct Energy operated a rental Residential Water Heater Business in Ontario. The water heaters rented by Direct Energy to consumers were owned by EnerCare Inc. ("**EnerCare**").

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[2] This is a high-level summary for context. For full particulars, see Direct Energy's Response to Application, August 26, 2013, CT-2012-003 [Response to Application], attached hereto as **Tab B**.

Pursuant to a contractual agreement between Direct Energy and EnerCare, Direct Energy provided services and managed the customer relationships in return for 35% of the rental revenue.

8. On July 24, 2014, Direct Energy entered an acquisition agreement with EnerCare for the purchase by EnerCare of Direct Energy's home and small commercial services business (the "**Transaction**"). The Transaction included EnerCare's purchase of Direct Energy's Residential Water Heater Business in Ontario.[3]

9. As part of the Transaction, Direct Energy entered into a non-competition agreement in favour of EnerCare, effectively precluding Direct Energy from re-entering the Residential Water Heater Business in Ontario for a period of 8 years (the "**Non-Competition Agreement**").[4]

10. The Competition Bureau reviewed the Transaction and on or about September 19, 2014, the Bureau issued a "No-Action Letter"[5] in regard to the Transaction.

11. The Transaction closed on October 20, 2014. As a result of the Transaction, Direct Energy no longer operates a Residential Water Heater Business in Ontario

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[3] A copy of the Acquisition Agreement, dated July 24, 2014 (without exhibits), is attached as Confidential **Tab C.**

[4] A copy of the Non-Competition Agreement, dated October 20, 2014, is attached as Confidential **Tab D**

[5] A copy of the "No-Action Letter" is attached as Confidential **Tab E.**

(including the geographic areas that the Commissioner alleges to be the relevant market). Further, pursuant to the Non-Competition Agreement, Direct Energy is effectively precluded from re-entering the Residential Water Heater Business in Ontario for a period of 8 years after October 20, 2014.

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TAB A

CT-2012- 003

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain policies and procedures of Direct Energy Marketing Limited.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

AND

DIRECT ENERGY MARKETING LIMITED

Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the Applicant will make an application to the Competition Tribunal (the "**Tribunal**") pursuant to section 79 of the *Competition Act* (the "**Act**") for an Order pursuant to subsections 79(1), 79(2), and 79(3.1) of the Act, prohibiting the Respondent from abusing its dominant position by imposing exclusionary water heater return policies and procedures; directing the

Respondent to take certain other actions necessary to overcome the effects of its practice of anti-competitive acts; and directing the Respondent to pay an administrative monetary penalty and costs. The particulars of the Order sought by the Applicant are set out in paragraphs 51 and 52.

AND TAKE NOTICE that the timing and place of hearing of this matter shall be fixed in accordance with the practice of the Tribunal.

AND TAKE NOTICE that the Applicant has attached hereto as Schedule "A" a concise statement of the economic theory of the case.

AND TAKE FURTHER NOTICE that the Applicant will rely on the following Statement of Grounds and Material Facts in support of this application and on such further or other material as counsel may advise and the Tribunal may permit.

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW OF GROUNDS

1. The Commissioner of Competition (the "**Commissioner**") alleges that Direct Energy Marketing Limited ("**Direct Energy**") has abused and continues to abuse its dominant position in the supply of natural gas water heaters and related services to residential consumers in certain local markets in Ontario (the "**Relevant Market**", as described more fully at paragraphs 30-33 below).

2. Direct Energy substantially or completely controls the Relevant Market. Since 21 February 2012, Direct Energy has preserved and enhanced its market power in the Relevant Market by implementing water heater return policies and procedures that impose significant costs on competitors and prevent customers from switching to those competitors. Direct Energy's water heater return policies and procedures constitute a practice of anti-competitive acts, the purpose and effect of which is to exclude competitors in the Relevant Market.

3. Direct Energy imposed these water heater return policies and procedures knowing that they would have a negative exclusionary effect on competitors. Indeed, this is the second proceeding the Commissioner has commenced against Direct Energy or its predecessor for a similar practice of anti-competitive acts. On 20 February 2002, the Competition Tribunal (the "**Tribunal**") issued a Consent Order against Enbridge Services Inc. (now Direct Energy) pursuant to sections 79 and 105 of the Act (the "**Consent Order**") prohibiting it from, among other things, preventing competitors from disconnecting and returning its water heaters. For the past ten years, therefore, Direct Energy has known of the negative exclusionary effect on competitors of water heater return policies and procedures similar to those it is currently imposing on customers and competitors.

4. The day after the Consent Order expired, Direct Energy imposed, and continues to impose, the practice of anti-competitive acts that is the basis of the Commissioner's current application. This practice of anti-competitive acts has had and is having the effect of preventing and lessening competition substantially. But for Direct Energy's exclusionary water heater return policies and procedures, competitors would likely enter or expand in the Relevant Market and consumers would likely benefit from substantially greater competition.

5. The Commissioner therefore seeks an Order from the Tribunal: (i) prohibiting Direct Energy from directly or indirectly implementing exclusionary water heater return policies and procedures; (ii) directing Direct Energy to take certain other actions necessary to overcome the effects of its practice of anti-competitive acts; (iii) directing Direct Energy to pay an administrative monetary penalty of $15,000,000; (iv) directing Direct Energy to pay the costs of this proceeding; and (v) such other relief as the Tribunal considers appropriate.

II. MATERIAL FACTS

A. THE PARTIES

6. The Commissioner is appointed under section 7 of the Act and is charged with the administration and enforcement of the Act.

7. Direct Energy, a wholly-owned subsidiary of Centrica plc, is a privately-held corporation that rents natural gas water heaters and provides related services to consumers in Ontario.

B. INDUSTRY BACKGROUND

(i) Residential Use of Water Heaters in Ontario

8. In Ontario, most residential consumers rent water heaters.

9. A significant majority of water heaters in Ontario are powered by natural gas. The next most common energy source for water heaters is electricity.

10. Residential consumers are limited in their choice of energy source for heating water by where they live and the infrastructure constraints of their residence. In rural areas, most residential consumers use electric water heaters as natural gas is generally not available in these areas. In contrast, in areas where natural gas is available, residential consumers commonly use natural gas instead of electric water heaters. Natural gas water heaters generally cost less to operate than electric water heaters.

11. Residential consumers may rent natural gas and electric water heaters from a utility company, if available, or from a rental water heater provider. Residential consumers may also purchase natural gas and electric water heaters from retailers, such as home improvement centres and hardware stores, or from heating, ventilation and air conditioning contractors. Most residential consumers who rent or purchase a water heater also obtain related water heater services, including installation, repair, maintenance and disconnection. When a customer renting a water heater switches providers, the original rental water heater provider generally requires customers to return the water heater.

(ii) Development of Ontario's Rental Water Heater Industry

12. Ontario's two largest natural gas suppliers, Enbridge, Inc. (**"Enbridge"**) and Union Gas Limited (**"Union Gas"**), developed the rental water heater industry in the 1950s to expand the use of natural gas in the distinct areas of Ontario where they each had a monopoly in distributing natural gas. Both natural gas suppliers were also regulated by the Ontario Energy Board (the "**OEB**").

13. In 1999, Enbridge transferred its rental natural gas water heater assets to Enbridge Services Inc, which is now Direct Energy. Similarly, Union Gas transferred its rental natural gas water heater assets to Union Energy Inc.,

which is now Reliance Comfort Limited Partnership ("**Reliance**"). The transfer of these water heater assets to Direct Energy and Reliance effectively removed the OEB's oversight and regulation of Ontario's rental natural gas water heater industry.

14. Since this transfer of natural gas water heater assets in 1999, Direct Energy has been the dominant supplier of natural gas water heaters in those areas of Ontario where Enbridge distributes natural gas. These areas correspond generally to the Ottawa area; to the Greater Toronto Area, north to Georgian Bay and east to Peterborough; and to the Niagara Region, covering most of the Niagara Peninsula.

15. On 9 May 2001, the Commissioner commenced a formal inquiry pursuant to subparagraph 10(1)(b)(ii) of the Act into certain water heater return policies and procedures imposed by Direct Energy (then Enbridge Services, Inc.) in the gas-powered residential water heater markets in those areas of Ontario where Enbridge distributes natural gas. On 20 February 2002, the Tribunal issued a ten year Consent Order against Direct Energy that prohibited it from, among other things, preventing competitors from disconnecting and returning water heaters and from imposing on customers a commercially unreasonable and discriminatory buy-out schedule.

16. On or about 30 April 2010 and while the Consent Order against Direct Energy was still in effect, Direct Energy imposed a new water heater return policy (the "**RAN Return Policy**") on competitors and customers. Before Direct Energy implemented this policy, Direct Energy's competitors regularly disconnected and returned Direct Energy's rental gas water heaters on behalf of customers.

17. The Competition Bureau (the "**Bureau**") received several complaints in relation to the RAN Return Policy. Further to these complaints, the Bureau expressed its concerns to Direct Energy. On 21 June 2010, Direct Energy suspended the RAN Return Policy.

C. DIRECT ENERGY'S EXCLUSIONARY WATER HEATER RETURN POLICIES AND PROCEDURES

18. The day after the Consent Order expired, Direct Energy introduced similar exclusionary water heater return policies and procedures to those prohibited under the Consent Order. These exclusionary policies and procedures were implemented by Direct Energy as an integrated strategy. They relate to Direct Energy's water heater removal process, its return depot operations, and its exit fees and charges, as described below.

(i) Direct Energy Imposes an Exclusionary Removal Authorization Number ("RAN") Return Policy

19. On 21 February 2012, Direct Energy reintroduced a RAN Return Policy.

20. Under the current RAN Return Policy, Direct Energy continues to create significant barriers to the return of its water heaters by, among other things:

i prohibiting the customer or competitor from returning a water heater unless the customer first obtains a RAN from Direct Energy and has signed and fully completed to Direct Energy's satisfaction a "**Rental Removal Order Form**";

ii refusing to provide a RAN to customers who contact Direct Energy with a competitor on the call; in such cases, Direct Energy regularly prevents these competitors from joining in on customer calls, notwithstanding that customers have agreed to have competitors on these calls;

iii refusing to provide a RAN to competitors calling Direct Energy on behalf of customers;

iv refusing to honour any RAN more than thirty days after its issuance; and

v refusing to recognize agency agreements between customers and competitors that give competitors the authority on behalf of the customer to disconnect and return Direct Energy rental water heaters.

21. Furthermore, Direct Energy has used its RAN Return Policy to deter, impede and prevent customers from terminating their Direct Energy rental agreements and switching to a competitor by, for example, keeping customers and competitors on hold for lengthy periods of time and intentionally dropping calls.

(ii) Direct Energy Imposes Exclusionary Return Depot Policies and Procedures

22. Through its exclusionary water heater return policies and procedures aimed at return depot operations, Direct Energy has created additional barriers for customers and competitors attempting to return their Direct Energy water heaters.

23. Direct Energy has imposed arbitrary restrictions on the return process at its return depots. These restrictions enable Direct Energy to reject at will attempts by customers and competitors to return water heaters, including by restricting the number of water heater return depots that accept water heater returns, restricting the hours of operation of those depots, and limiting the number of Rental Removal Order Forms it will supply to competitors attempting to return Direct Energy's water heaters. Direct Energy has also arbitrarily restricted the circumstances in which water heaters may be returned to such depots on a given day.

24. Where Direct Energy prevents, impedes or deters competitors from returning Direct Energy's water heaters through its restrictive return depot operations or its RAN Return Policy, competitors are forced to store these water heaters. Moreover, Direct Energy refuses to retrieve its water heaters from

competitors' storage facilities even though it retrieves its water heaters from customers' premises.

(iii) Direct Energy Levies Exclusionary Exit Fees and Charges

25. Further, Direct Energy levies multiple and unwarranted exit fees and charges to impede, prevent and deter customers from switching to competitors and to penalize customers and competitors.

26. Direct Energy regularly continues to charge customers the Direct Energy rental rate after customers have switched to a competitor and Direct Energy has prevented the customer or competitor from returning Direct Energy's water heater. Customers are billed extra rental rates by Direct Energy, in some cases for up to several months. These additional costs place a significant financial burden on customers.

27. Direct Energy also regularly imposes on customers unwarranted drain, disconnection and pick-up charges. Additionally, Direct Energy imposes buyout charges on customers who have been unable to obtain a RAN or who are unable to have competitors return a water heater on their behalf. These charges imposed by Direct Energy prevent customers from switching to competitors and need to be assumed by competitors to facilitate customer switching. Direct Energy also does not publish its buy-out prices; accordingly, customers may be unaware of the buy-out price.

28. Direct Energy employs collection processes to harass customers into paying these multiple and unwarranted exit fees and charges. To avoid this harassment and the potential effects on customers' credit ratings, customers pay these unwarranted fees and charges, and competitors need to assume these costs.

III. SECTION 79 OF THE ACT: DIRECT ENERGY HAS ABUSED AND CONTINUES TO ABUSE ITS DOMINANT POSITION

29. By imposing its various exclusionary water heater policies and procedures, Direct Energy has abused and continues to abuse its dominant position in the Relevant Market.

A. DIRECT ENERGY SUBSTANTIALLY OR COMPLETELY CONTROLS THE RELEVANT MARKET

(i) Relevant Market

30. The relevant product market is the supply of natural gas water heaters and related services to residential consumers. These related services include installation, disconnection, maintenance and repair of water heaters.

31. For the majority of residential consumers, no reasonable substitutes exist for natural gas water heaters.

32. The geographic market for the supply of natural gas water heaters and related services to residential consumers is local in nature. The relevant geographic markets are the local markets of Ontario where Enbridge distributes natural gas. For the purpose of this application, these geographic markets have been aggregated.

33. The Relevant Market is thus the supply of natural gas water heaters and related services to residential consumers in those local markets of Ontario where Enbridge distributes natural gas.

(ii) Direct Energy's Market Power

34. Direct Energy substantially or completely controls the Relevant Market.

35. Direct Energy's market power is indicated, for example, by its market share and by barriers to entry. Direct Energy controls over 70% of the Relevant Market, based on annual revenues. Further, Direct Energy's exclusionary

policies and procedures create significant artificial barriers to entry in the Relevant Market, which would otherwise be characterized by ease of entry.

B. DIRECT ENERGY'S WATER HEATER RETURN POLICIES AND PROCEDURES ARE A PRACTICE OF ANTI-COMPETITIVE ACTS

36. Through the various water heater return policies and procedures described above, Direct Energy has engaged and is engaging in a practice of anti-competitive acts. Direct Energy has imposed and continues to impose its water heater return policies and procedures with the purpose of having an intended negative effect on competitors that is exclusionary.

37. Direct Energy imposed these policies and procedures for the purpose of eliminating and preventing the entry or expansion of competitors and to make competitors less effective in competing against Direct Energy in the Relevant Market.

38. Furthermore, Direct Energy imposed and continues to impose these water heater return policies and procedures knowing of their negative exclusionary effects. Pursuant to the ten year Consent Order, the Tribunal prohibited Direct Energy from implementing similar exclusionary water heater return policies and procedures in the Relevant Market. Direct Energy has thus known for the past ten years of the anti-competitive effects of its water heater return policies and procedures. Notwithstanding the above, Direct Energy re-engaged in a similar practice of anti-competitive acts.

39. These exclusionary water heater return policies and procedures imposed by Direct Energy are intended to, and do, exclude and prevent competitors from entering or expanding in the Relevant Market. Direct Energy's water heater return policies and procedures have the exclusionary effect of imposing significant costs on competitors and preventing customers from switching to those competitors.

40. Direct Energy's RAN Return Policy and its arbitrary changes to return depot operations, along with its other exclusionary water heater return policies and procedures, have caused competitors to incur significant additional and unwarranted costs. These costs include transportation and labour costs, as well as the costs of storing the significant backlog of Direct Energy water heaters that Direct Energy has refused to accept or has prevented competitors from returning. These significant costs imposed by Direct Energy limit competitors' ability to compete effectively against Direct Energy.

41. Direct Energy's exclusionary water heater return policies and procedures also result in significant transactional costs for customers that deter, impede and prevent customers from switching to competitors. To facilitate customer switching, competitors need to assume the unwarranted exit fees and charges imposed by Direct Energy on customers during the water heater return process. Further, Direct Energy uses its RAN Return Policy to influence customers to continue their Direct Energy rental agreements despite their intentions and preferences to switch to competitors.

42. In some cases, competitors have declined to replace Direct Energy water heaters with their own water heaters given the significant costs of the unwarranted exit fees and charges they need to assume to facilitate customer switching. In these cases, Direct Energy customers must continue their Direct Energy rental agreements despite their preference and intentions to terminate these agreements and to switch to competitors.

43. In summary, Direct Energy has imposed and continues to impose its water heater return polices and procedures with the intended negative effect of excluding competitors. Moreover, given the aforementioned exclusionary effects, it was and is reasonably foreseeable that Direct Energy's water heater return policies and procedures would have a negative exclusionary effect on competitors.

C. DIRECT ENERGY'S EXCLUSIONARY WATER HEATER RETURN POLICIES AND PROCEDURES SUBSTANTIALLY LESSEN AND PREVENT COMPETITION

44. The exclusionary water heater return policies and procedures imposed by Direct Energy have substantially lessened and prevented and will continue to substantially lessen and prevent competition in the Relevant Market. But for Direct Energy's exclusionary water heater return policies and procedures, competitors would likely enter or expand in the Relevant Market and consumers would likely benefit from substantially greater competition.

45. Direct Energy's exclusionary water heater return policies and procedures establish significant artificial barriers to entry or expansion in the Relevant Market. These exclusionary policies and procedures have prevented and impeded the entry or expansion of competitors in the Relevant Market.

46. In the absence of Direct Energy's practice of anti-competitive acts, barriers to entry would be low and substantially greater competition would likely emerge in the Relevant Market from rental providers as well as retailers of residential water heaters.

47. Further, in the absence of Direct Energy's practice of anti-competitive acts, customer switching in the Relevant Market would likely be substantially greater, and consumers would likely benefit from lower prices and greater product quality and choice.

IV. CONCLUSION

48. Direct Energy has abused and continues to abuse its dominant position by imposing exclusionary water heater return policies and procedures.

49. Direct Energy implemented its exclusionary water heater return policies and procedures with the purpose and effect of excluding and preventing the entry or expansion of competitors. Direct Energy achieves these negative exclusionary effects by imposing significant costs on competitors and preventing customers from switching to those competitors. Direct Energy thus

relies on its exclusionary water heater return policies and procedures, not superior business performance, to retain customers.

50. Direct Energy's practice of anti-competitive acts has substantially lessened and prevented and continues to substantially lessen and prevent, competition in the Relevant Market.

V. RELIEF SOUGHT

51. The Commissioner seeks an Order from the Tribunal pursuant to subsections 79(1), 79(2), and 79(3.1) of the Act:

i. prohibiting Direct Energy from directly or indirectly implementing any exclusionary water heater return policies or procedures;

ii. directing Direct Energy to accept valid agency agreements between customers and competitors for return of Direct Energy water heaters;

iii. prohibiting Direct Energy from charging customers unwarranted exit fees and charges upon termination of a rental water heater agreement;

iv. directing Direct Energy to provide customers a fixed and commercially reasonably buy-out price upon entering into a rental water heater agreement with Direct Energy;

v. directing Direct Energy to provide copies of its buy-out price schedule to customers and to make it readily available on its website;

vi. directing Direct Energy to pay the amount of $15,000,000 as an administrative monetary penalty;

vii. directing Direct Energy to pay the costs of this proceeding;

viii. granting all other orders or remedies that may be required to give effect to the foregoing prohibitions, to restore competition in the

Relevant Market, or to reflect the intent of the Tribunal and its disposition of this matter; and

ix. granting such further and other relief as this Tribunal may consider appropriate.

52. In determining the amount of an administrative monetary penalty, the Tribunal should take into account the following aggravating factors:

i Direct Energy implemented its current exclusionary water heater return policies and procedures knowing that similar water heater return polices and procedures had been prohibited under the ten year Consent Order issued by the Tribunal against Direct Energy and knowing that its water heater return policies and procedures would have a negative exclusionary effect on competitors and competition in the Relevant Market;

ii As a result of its exclusionary water heater return policies and procedures, Direct Energy impedes, deters and prevents others from entering or expanding in the Relevant Market. Further, competitors have incurred significant costs and lost substantial revenue as a result of Direct Energy's exclusionary water heater return policies and procedures;

iii Direct Energy has financially benefited from its continued abuse of its dominant position;

iv The practice of anti-competitive acts has not been self-corrected and is unlikely to be self-corrected; and

v Any other relevant factor.

VI. PROCEDURAL MATTERS

53. The Applicant requests that this application be heard in English.

54. The Applicant requests that this application be heard in the City of Ottawa.

55. For the purpose of this application, service of all documents on the Applicant may be effected on:

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AND TO: **The Registrar**
Competition Tribunal
Thomas D'Arcy McGee Building
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Ottawa, Ontario
K1P 5B4

DATED AT Gatineau, Quebec, this 20th day of December 2012.

"John Pecman"

John Pecman
Interim Commissioner of Competition

Schedule "A"
CONCISE STATEMENT OF ECONOMIC THEORY

1. Direct Energy has implemented various exclusionary water heater return policies and procedures as an integrated strategy to exclude competitors in the Relevant Market. These exclusionary policies and procedures relate to Direct Energy's water heater removal process, its return depot operations, and its exit fees and charges.

2. Direct Energy's exclusionary water heater return policies and procedures impose significant costs on competitors and prevent consumers from switching to those competitors.

3. Direct Energy's exclusionary policies and procedures have substantially lessened and prevented, and will continue to substantially lessen and prevent, competition in the Relevant Market.

Market Power in the Relevant Market

4. The relevant product market is the supply of natural gas water heaters and related services to residential consumers. Related services include installation, disconnection, maintenance and repair of water heaters.

5. The relevant geographic markets for the supply of natural gas water heaters and related services to residential consumers are local in nature. The relevant geographic markets are the local markets of Ontario where Enbridge distributes natural gas. Direct Energy's water heater business is concentrated in these relevant geographic markets.

6. The relevant geographic markets can be aggregated. Thus, the Relevant Market is the supply of natural gas water heaters and related services to residential consumers in the local markets of Ontario where Enbridge distributes natural gas.

7. Direct Energy substantially or completely controls the Relevant Market. Direct Energy's market power is indicated by, for example, its high market share and barriers to entry.

Practice of Anti-competitive Acts

8. The water heater return policies and procedures imposed by Direct Energy create significant artificial barriers for Direct Energy customers to return their water heaters and switch suppliers. These barriers raise competitors' costs and impede Direct Energy's competitors from successfully winning customers based on the quality and price of their products and services.

9. Direct Energy uses its RAN Return Policy to deter, impede, and prevent customers from terminating their Direct Energy water heater rental agreements, from returning Direct Energy water heaters, and from switching to competitors.

10. In addition, Direct Energy has imposed arbitrary restrictions on the return process. Direct Energy uses these restrictions to enable it to reject at will attempts by customers and competitors to return water heaters. These restrictions impose additional costs on competitors and make it more difficult for them to compete effectively against Direct Energy.

11. Further, Direct Energy regularly levies multiple and unwarranted exit fees and charges on customers to deter impede and prevent customers from switching to competitors and to penalize customers and competitors. To successfully win a new customer from Direct Energy, competitors need to assume these exit fees and charges on behalf of customers, further increasing their costs and diminishing their ability to compete effectively against Direct Energy. In some cases, where a competitor is unable to absorb these significant additional costs, Direct Energy rental customers are prevented from switching to a competing water heater provider.

Substantial Lessening and Prevention of Competition

12. The exclusionary water heater return policies and procedures imposed by Direct Energy have substantially lessened and prevented and will continue to substantially lessen and prevent competition in the Relevant Market. But for Direct Energy's exclusionary water heater return policies and procedures, competitors would likely enter or expand in the Relevant Market and consumers would likely benefit from substantially greater competition.

13. Direct Energy's exclusionary water heater return policies and procedures establish significant artificial barriers to entry or expansion in the Relevant Market. In the absence of Direct Energy's practice of anti-competitive acts, barriers to entry would be low and substantially greater competition would likely emerge in the Relevant Market from rental providers as well as retailers of residential water heaters.

14. Further, in the absence of Direct Energy's practice of anti-competitive acts, customer switching in the Relevant Market would likely be substantially greater, and consumers would likely benefit from lower prices and greater product quality and choice.

CT-2012-

COMPETITION TRIBUNAL

B E T W E E N:

THE COMMISSIONER OF COMPETITION

(Applicant)

-AND-

DIRECT ENERGY MARKETING LIMITED

(Respondent)

NOTICE OF APPLICATION

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TAB B

THE COMPETITION TRIBUNAL

CT-2012-003

IN THE MATTER OF the *Competition Act*, RSC. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain policies and procedures of Direct Energy Marketing Limited.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

AND

DIRECT ENERGY MARKETING LIMITED

Respondent

RESPONSE

PART I – OVERVIEW

1. In response to the Commissioner's application, Direct Energy Marketing Limited ("Direct Energy") pleads:

   (a) That it is not dominant in any market;

(b) That it has not engaged in a practice of anti-competitive acts; and

(c) That its actions have not resulted and are not likely to result in a substantial lessening or prevention of competition.

2. This Application, if allowed, would facilitate the continued deception of Ontario consumers by door-to-door and other marketers of water heaters employing a variety of unscrupulous practices. The Application is fundamentally misconceived and should be dismissed.

3. The Ontario market for water heaters is highly competitive. Consumers throughout Ontario have an abundant array of water heater providers from which they can buy or rent water heaters, some of which operate throughout Ontario, and some of which operate locally. Direct Energy does not have dominance or market power in any market.

4. Unfortunately, some of Direct Energy's competitors engage in deceptive marketing practices to promote their products. The deception of Ontario consumers by door-to-door marketers of water heaters has been well documented by government (including the Ontario Ministry of Consumer Services), law enforcement agencies, consumer interest groups and in the media.

5. Recently, the Minister of Consumer Services introduced Bill 55, *Stronger Protection for Ontario Consumers Act, 2013*, to address these issues. Bill 55 has not yet become law. In the meantime, the deception of Ontario consumers by door-to-door marketers working on behalf of Direct Energy's competitors has continued. Notably, Direct Energy has not marketed to consumers via door-to-door sales since 2010.

6. In July, 2013, the Commissioner filed applications for search warrants against National Home Services, morEnergy Services Inc., and Ontario Consumers Home Services Inc. on the basis that he had reasonable grounds to believe that these companies had committed a criminal offence pursuant to subsection 52(1) and under Part VI of the *Competition Act* or had engaged in civilly reviewable conduct under Part VII.1 of the *Competition Act* by engaging in misleading representations and deceptive marketing practices.

7. The 2002 Consent Order entered into by Direct Energy's predecessor and the Commissioner of Competition, as interpreted by the Commissioner, had the unintended effect of facilitating deceptive practices by door-to-door marketers of water heaters by limiting Direct Energy's ability to communicate with its customers. The Consent Order did not have a significant impact on Direct Energy's attrition rates, which varied throughout the term of the Consent Order.

8. In February 2012, following expiration of the 2002 Consent Order, Direct Energy revised its water heater rental return policies as a commercially reasonable response to the ongoing deception of its customers by door-to-door marketers. The Commissioner has not fairly or accurately described Direct Energy's return policies and procedures, nor the commercial necessity of such given the sales practices utilized by Direct Energy's competitors. Direct Energy's policies do not preclude or inhibit customers of Direct Energy from switching to other service providers. Direct Energy's return policies are a reasonable measure that seek to ensure that its customers have the opportunity to make an informed choice with respect to their service provider and, when electing to switch, have their accounts adjusted accurately and in a timely manner.

9. Direct Energy's water heater return policies are a commercially reasonable and necessary response to the ongoing deceptive practices of door-to-door water heater marketers and service providers. As such, they cannot constitute a "practice of anti-competitive acts" within the meaning of section 79 of the *Competition Act*.

10. Not only have Direct Energy's return policies actually benefitted customers, those policies have not resulted and are not likely to result in a substantial lessening of competition. Direct Energy's customer base continues to shrink, and Ontario consumers have a variety of water heater service provider options. The return policies of Direct Energy have not resulted, nor are they likely to result in, a substantial lessening or prevention of competition.

11. There is no reasonable basis for the Commissioner's claim that Direct Energy should face an Administrative Monetary Penalty of $15 million, or any amount, in these circumstances.

12. Finally, section 79(3.1) of the *Competition Act* is not constitutionally valid. It provides for criminal fines without the required safeguards of criminal process, and therefore violates section 11(d) of the *Canadian Charter of Rights and Freedoms* (*Charter*).

PART II – ADMISSIONS AND DENIALS

13. Direct Energy admits the allegations in paragraphs 6, 7 and 8 of the Commissioner's Statement of Grounds and Material Facts. Except as expressly admitted herein, Direct Energy denies each and every other allegation in the Commissioner's Statement of Grounds and Material Facts.

PART III – MATERIAL FACTS RELIED UPON BY DIRECT ENERGY

14. Direct Energy is a leading supplier of energy and related services across North America. It has operations in 10 provinces and 46 states. It is a stable, long-term partner of more than 6,000,000 home and business customers across North America.

15. Direct Energy entered the home services business in Ontario with its acquisition of Enbridge Services Inc. (ESI) in 2002. Direct Energy and its predecessors have been providing water heater rentals in Ontario for over 50 years. Direct Energy has an outstanding reputation for safety, service and reliability. Its success in the home services industry has been due to its superior competitive performance.

16. The water heater business in Ontario is highly competitive. Competing products include natural gas water heaters, propane water heaters, electric water heaters, oil fired water heaters and tankless water heaters (electric or natural gas). Consumers can obtain any of these water heater products by buying them or by renting them and can switch between the various product options.

17. Retailers of water heater products in Ontario include Home Depot, Rona, Lowes, Home Hardware, Canadian Tire and Sears. Most retailers also provide installation and servicing for the water heaters they sell. Purchase of water heater products is also available through plumbing and HVAC contractors.

18. Suppliers of rental water heaters in Ontario include not only Direct Energy, but also a vast array of competitors including:

    Reliance Home Comfort
    National Home Services (a division of Just Energy)
    Summit Home Services
    Sears Home Services
    Vista Credit
    Ontario Consumers Home Services
    Enpure Home Comfort
    ENsaving Inc.
    LivClean
    Ozz Corp.
    Ecosmart Home Services
    Enercare
    Brantford Hydro
    Kingston Hydro
    Sandpiper Energy Solutions (a division of Oakville Hydro)
    Ontario Home Comfort

19. Many of these competitors operate throughout Ontario, as does Direct Energy. Others operate more locally.

20. Barriers to entry into the water heater business are low. As a result, and as evidenced by the substantial list of competing service providers in paragraph 19, consumers have a substantial number of water heater providers throughout Ontario from which to choose.

21. Water heater providers compete to provide water heaters for new homes, to replace existing water heaters at the end of their useful life, and to sell to customers who decide to upgrade or otherwise switch their water heater before the end of its useful life. Water heaters generally have a useful life in excess of 15 years.

22. Given the lack of barriers to entry, there are a large number of competitors providing water heaters throughout Ontario. Unfortunately, some of those providers have engaged and continue to engage in deceptive marketing practices to promote their products. These competitors seek to mislead consumers into switching their water heaters to the offending competitor, in many cases without the consumer even being aware that they are switching rental providers.

23. When it acquired ESI in 2002, Direct Energy inherited the 2002 Consent Order which had been issued by the Competition Tribunal at the request of the Commissioner and ESI. The Consent Order, as interpreted by the Commissioner, had the unintended consequence of facilitating deceptive practices of door-to-door and other direct marketers.

24. Tactics commonly used by door-to-door and other direct marketers include the following:

    (a) misleading consumers about the age, reliability, quality or safety of their water heater;

    (b) telling consumers they are associated with their “natural gas provider” or “local utility”;

    (c) telling consumers that they are acting on behalf of a government body;

    (d) otherwise misrepresenting their identity;

    (e) telling consumers, falsely, that they “have the contract” to replace the consumer’s water heater;

    (f) telling consumers that Direct Energy has exited the business;

(g) telling consumers that they have taken over or have merged with the business of Direct Energy;

(h) misleading consumers into signing agency agreements which purport to give the marketer authority to switch water heaters on the consumer's behalf;

(i) telling consumers that their water heaters were "unsafe" or "not up to code"; and

(j) otherwise seeking to deceive consumers into switching their water heaters.

25. Certain marketers also seek to frustrate the 10 day "cooling off" period prescribed by the *Consumer Protection Act, 2002* (Ontario) by immediately replacing a switching customer's water heater and delaying the return of the removed water heater to the previous supplier until after the 10 day "cooling off" period has expired.

26. In addition to affecting consumers' ability to make informed choices, in many instances these practices also lead to duplicative and other unwanted and unanticipated charges to consumers who are persuaded to switch water heater providers based on false premises.

27. As noted above, these deceptive marketing practices have been well documented by government (including the Ontario Ministry of Consumer Services), law enforcement agencies, and the media. The Minister of Consumer Services recently introduced Bill 55, *Stronger Protection for Ontario Consumers Act, 2013* to address these issues. Bill 55 has not yet become law, and in the meantime these practices have continued.

28. The gravity of these deceptive marketing practices is further evidenced by the Commissioner's July, 2013 search warrants against National Home Services, morEnergy Services Inc., and Ontario Consumers Home Services Inc. in relation to their deceptive marketing practices.

PART IV – STATEMENT OF GROUNDS ON WHICH THE APPLICATION IS OPPOSED

29. The Commissioner has the onus of proving three elements, none of which exist in this case:

(a) That Direct Energy "substantially or completely controls, throughout Canada or any area thereof, a class or species of business";

(b) That Direct Energy "has engaged in or is engaging in a practice of anti-competitive acts;" and

(c) That "the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market."

A. DIRECT ENERGY DOES NOT HAVE MARKET POWER

30. The water heater business in Ontario is highly competitive. Direct Energy does not have market power in the water heater business in Ontario or any part thereof.

31. In asserting that Direct Energy has market power, the Commissioner's approach to defining the "relevant market" is arbitrary and unsupported in at least the following ways:

(a) In limiting the relevant product market to the supply of natural gas water heaters, the Commissioner has arbitrarily excluded several relevant products which serve the consumer in precisely the same way, including electric water heaters, propane powered water heaters, oil fired water heaters and tankless water heaters (both electric and natural gas);

(b) The Commissioner artificially and arbitrarily asserts a geographic market by aggregating "the local markets of Ontario where Enbridge distributes natural gas." Under the Commissioner's faulty approach, Niagara Falls would be in the same geographic market as Ottawa, but would be in a different geographic market from Hamilton;

(c) The boundaries of the "local markets" alleged by the Commissioner are not defined; and

(d) The Commissioner's purported assessment of market share based on "annual revenues" is inappropriate in this case.

32. Direct Energy says, in response,

(a) That the relevant product market must include natural gas, electric, propane and oil fuelled water heaters, along with tankless water heaters, whether fuelled by natural gas or otherwise and whether they be owned or rented;

(b) That the relevant geographic market must include all of Ontario; and

(c) That competition among water heater providers cannot be properly measured based on "annual revenues", which would include rental revenues from each competitor's existing customer base. Market shares can only be fairly measured based on competition for new

and renewal business (i.e. from consumers who are making current water heater purchase or rental decisions).

33. Regardless of how the market is defined, Direct Energy is not dominant. The water heater business in Ontario is highly competitive, and as noted above, Direct Energy faces competition from a vast array of competitors.

34. Direct Energy's prices are at the low end of the competitive spectrum. Its customer contracts are reasonable and were expressly approved by the Commissioner in 2010. In March, 2012, Direct Energy sought to implement changes to its customer contracts which resulted in significant customer losses and, ultimately, Direct Energy's withdrawal of the changes in order to retain its existing customer base. The inability of Direct Energy to implement these changes to its customer contracts is additional clear evidence that Direct Energy does not have market power.

35. Further, barriers to entry into the water heater business are low. In addition to the fact that barriers to entry are low generally, the following factors particularly facilitate competition with Direct Energy:

    (i) The majority of Direct Energy's contracts with its customers provide for the customer to terminate the contract at will, without any penalty or additional charges. That fact is well known to Direct Energy's competitors, who aggressively seek to persuade Direct Energy's customers to cancel their contracts with Direct Energy. To Direct Energy's knowledge, none of its competitors offer customers the ability to terminate their rental contract at will; and

    (ii) In the areas of Ontario where Enbridge supplies natural gas, Enbridge's Open Billing Access (OBA) policy permits water heater rental providers, among other service providers, to do their billing through the Enbridge gas bill at the same cost per bill regardless of the size of the competitor. This makes it especially easy for competitors to enter in those areas.

B. DIRECT ENERGY DID NOT ENGAGE IN A "PRACTICE OF ANTI-COMPETITIVE ACTS"

36. Direct Energy denies the Commissioner's allegations that it has engaged in a practice of anti-competitive acts.

37. All competitors, whatever their market share, are entitled, and indeed obliged, to compete for new business and to preserve their existing business.

38. Direct Energy's water heater return policies are a commercially reasonable response to the deceptive marketing practices of other

marketers of water heaters. Direct Energy's policies benefit its customers and cannot be construed as a "practice of anti-competitive acts."

39. Direct Energy's responses to the Commissioner's specific allegations of anti-competitive acts are set out below:

(i) Direct Energy's removal authorization number ("RAN") return policy

40. Direct Energy's RAN return policy is neither unusual nor anti-competitive. It simply requires that a customer who wishes to return a water heater he or she is renting from Direct Energy, first obtain a RAN from Direct Energy and then provide Direct Energy with a written authorization for the removal.

41. Contrary to the Commissioner's allegations, Direct Energy's RAN return policy does not "deter, impede or prevent customers from terminating their Direct Energy rental agreements and switching to a competitor…" The policy facilitates informed choices by customers. It also permits Direct Energy to validate customer identity, better control and track the inventory of its water heater assets, and promote its business. It does not operate as a barrier to switching, except in cases where a customer is being misled by another marketer.

42. Further, if the customer decides to switch to another provider, Direct Energy's RAN policy facilitates a smooth transition and avoids duplicative or other unwanted billing to the consumer. It also addresses avoidance of the "cooling off" period prescribed by the *Consumer Protection Act, 2002* (Ontario) as described in paragraph 26.

43. Direct Energy's RAN policy has evolved since it was introduced in February, 2012. Contrary to what is alleged in paragraph 20(v) of the Application, Direct Energy recognizes valid agency agreements between customers and competitors. Unfortunately, customers are sometimes misled by other marketers into signing agency agreements.

44. Moreover, Enbridge honours agency contracts for billing purposes, which enables Direct Energy's competitors to return tanks without following the RAN policy. A significant number of returned tanks are returned on that basis.

45. While Direct Energy's RAN return policy has benefitted customers, it has not changed the fact that Direct Energy's customer base continues to shrink. Direct Energy's competitors continue to have success in switching Direct Energy customers.

46. Direct Energy denies the allegation in paragraph 21 of the Application that in implementing its RAN return policy it has deliberately kept customers on hold for lengthy periods of time or intentionally dropped calls.

47. During March and April, 2012, Direct Energy experienced technical and operational difficulties with its call centre which resulted in a temporary increase in waiting times. Direct Energy rectified those difficulties at that time.

(ii) Return Depot Policies and Procedures

48. Direct Energy denies the allegation that its return depot operations are exclusionary or anti-competitive, or that it has imposed "arbitrary restrictions" on the return process at its return depots, as alleged in paragraph 22 and 23 of the Notice of Application.

49. In February, 2012, Direct Energy designated four return depots for the return of three or more of its water heater tanks at one time. It did not change the process or number of depots which have continued to accept returns of less than three tanks.

50. Direct Energy's return process at its return depots is clear, consistent and well known to contractors who wish to return tanks to Direct Energy. It provides an efficient process by which customers and competitors can return tanks to Direct Energy.

(iii) Direct Energy does not levy exclusionary exit fees or charges

51. Direct Energy denies the allegations in paragraphs 25 through 28 of the Notice of Application. The only fees Direct Energy charges to its customers are those specifically provided for in its customer contracts, the form of which were expressly approved by the Commissioner of Competition while the 2002 Consent Order was in place.

52. Direct Energy has two forms of customer contracts. For the vast majority of its customers, Direct Energy's contract allows the customer to terminate the agreement without charge. A smaller number of contracts have buy-out provisions pursuant to which the customer takes ownership of the water heater in the event of early termination by the customer. Direct Energy does not assess any charges or other fees which are not specifically provided for in its contracts.

53. To the extent that Direct Energy customers have faced unwanted or unexpected charges in these circumstances, it has been largely as a result of customers being misled by other marketers, or as a result of other marketers failing to follow Direct Energy's water heater return process on behalf of the customer. Ironically, the RAN policy about which the Commissioner now complains directly addresses that issue.

C. DIRECT ENERGY'S WATER HEATER RETURN POLICIES AND PROCEDURES DO NOT SUBSTANTIALLY LESSEN OR PREVENT COMPETITION

54. Direct Energy's water heater return policies and procedures are a commercially reasonable response to the deceptive marketing practices of other marketers of water heater products.

55. Direct Energy's policies benefit its customers. As such, they cannot be said to be likely to substantially lessen or prevent competition in any market.

56. Further, Direct Energy's policies have not changed the fact that Direct Energy's customer base continues to shrink. Direct Energy's policies have not substantially lessened or prevented competition in any market nor are they likely to do so.

57. Since implementation of the changes to Direct Energy's water heater return policies and procedures in late February, 2012, more than 90 thousand water heater customers have left Direct Energy's service, which is the equivalent of 5% of Direct Energy's customer base on an annualized basis. In contrast, between 2002 and 2007, the first five years of the 2002 Consent Order, Direct Energy's equivalent customer attrition was less than 2% per year.

58. Direct Energy's success in the water heater business has been the result of its superior competitor performance and its outstanding reputation for safety, service and reliability. Key elements include:

    (a) Superior customer service;

    (b) implementation of Net Promoter Score (NPS®) customer satisfaction tracking in 2009;

    (c) doubling of NPS® performance between 2009 and 2012 for rental water heater customers; and

    (d) launch of industry-leading same-day service "customer promise" in the fourth quarter of 2012.

PART V – THERE IS NO BASIS FOR AN ADMINISTRATIVE MONETARY PENALTY IN THIS CASE

59. There is no basis for the imposition of an Administrative Monetary Penalty in this case. Practices which benefit consumers do not warrant the imposition of a punitive penalty (aka an Administrative Monetary Penalty).

60. Direct Energy denies the Commissioner's allegation that as a result of the 2002 Consent Order, Direct Energy knew that its return policies would have negative exclusionary effects. In fact, neither the 2002 Consent Order nor Direct Energy's current return policies have significantly impacted Direct Energy's attrition rates.

61. Further, there can be no basis for an increased $15 million penalty through the retroactive application of section 79(3.1) as it relates to a "second offence".

62. In any event, section 79(3.1) of the *Competition Act* is not constitutionally valid. It purports to provide for criminal fines without the required safeguards of criminal process, and therefore violates section 11(d) of the *Charter*.

PART VI – ORDER REQUESTED

63. Direct Energy requests an order dismissing the Application with costs payable to Direct Energy in an amount to be determined by the Tribunal.

PART VII – PROCEDURAL MATTERS

64. Direct Energy agrees that the Application be heard in English.

65. Direct Energy requests that the Application be heard in Toronto.

66. Direct Energy requests that the documents be filed electronically.

Dated this 26th day of August, 2013

Donald B. Houston
Helen Burnett
McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada

Counsel for Direct Energy Marketing Limited

SCHEDULE A
DIRECT ENERGY'S CONCISE STATEMENT OF ECONOMIC THEORY

1. The Commissioner has the onus proving three elements, none of which exist in this case:

   (a) That Direct Energy "substantially or completely controls, throughout Canada or any area thereof, a class or species of business";

   (b) That Direct Energy "has engaged in or is engaging in a practice of anti-competitive acts;" and

   (c) That "the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market."

2. The water heater business in Ontario is highly competitive. Direct Energy does not have market power in the water heater business in Ontario or any part thereof.

3. In asserting that Direct Energy has market power, the Commissioner's approach to defining the "relevant market" is arbitrary and unsupported in at least the following ways:

   (a) In limiting the relevant product market to the supply of natural gas water heaters, the Commissioner has arbitrarily excluded several relevant products which serve the consumer in precisely the same way, including electric water heaters, propane powered water heaters, oil fired water heaters and tankless water heaters (both electric and natural gas);

   (b) The Commissioner artificially and arbitrarily asserts a geographic market by aggregating "the local markets of Ontario where Enbridge distributes natural gas." Under the Commissioner's faulty approach, Niagara Falls would be in the same geographic market as Ottawa, but would be in a different geographic market from Hamilton.

   (c) The boundaries of the "local markets" alleged by the Commissioner are not defined; and

   (d) The Commissioner's purported assessment of market share based on "annual revenues" is inappropriate in this case.

4. Direct Energy says, in response,

   (a) That the relevant product market must include natural gas, electric, propane and oil fuelled water heaters, along with tankless water

heaters, whether fuelled by natural gas or otherwise and whether they be owned or rented;

(b) That the relevant geographic market must include all of Ontario; and

(c) That competition among water heater providers cannot be properly measured based on "annual revenues", which would include rental revenues from each competitor's existing customer base. Market shares can only be fairly measured based on competition for new and renewal business (i.e. from consumers who are making current water heater purchase or rental decisions).

5. Regardless of how the market is defined, Direct Energy is not dominant. The water heater business in Ontario is highly competitive, and as noted above, Direct Energy faces competition from a vast array of competitors.

6. Further, barriers to entry in the water heater business are low. In addition to the fact that barriers to entry are low generally, the following factors particularly facilitate competition with Direct Energy:

(i) The majority of Direct Energy's contracts with its customers provide for the customer to terminate the contract at will, without any penalty or additional charges. That fact is well known to Direct Energy's competitors, who aggressively seek to persuade Direct Energy's customers to cancel their contracts with Direct Energy. To Direct Energy's knowledge, none of its competitors offer customers the ability to terminate their rental contract at will; and

(ii) In the areas of Ontario where Enbridge supplies natural gas, Enbridge's Open Billing Access (OBA) policy permits water heater rental providers, among other service providers, to do their billing through the Enbridge gas bill at the same cost per bill regardless of the size of the competitor. This makes it especially easy for competitors to enter in those areas.

7. All competitors, whatever their market share, are entitled, and indeed obliged, to compete for business and to preserve existing business.

8. Direct Energy's water heater return policies are a commercially reasonable response to the deceptive marketing practices of other marketers of water heaters. Direct Energy's policies benefit its customers and cannot be construed as a "practice of anti-competitive acts."

9. Direct Energy's policies benefit customers. Further, Direct Energy's policies have not had a significant impact on the fact that Direct Energy's

customer base continues to shrink. They cannot be said to be likely to substantially lessen or prevent competition in any market.

TAB C

(REDACTED)

EXECUTION COPY

ENERCARE ACQUISITION LIMITED PARTNERSHIP

- and -

ENERCARE INC.

- and -

DIRECT ENERGY MARKETING LIMITED

PURCHASE AGREEMENT

JULY 24, 2014

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Exhibits

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Exhibit B	Form of IP License Agreement
Exhibit C	Form of New Nomination Agreement
Exhibit D	Form of Non-Competition and Non-Solicitation Agreement
Exhibit E	Form of Pension Asset Transfer Agreement
Exhibit F	Form of Consulting Agreement
Exhibit G	Draft Transition Services Agreement
Exhibit H	Form of Unit Transfer Agreement
Exhibit I	Form of Centrica Guarantee

THIS PURCHASE AGREEMENT is made as of this 24th day of July, 2014.

BETWEEN:

ENERCARE ACQUISITION LIMITED PARTNERSHIP, a limited partnership formed under the laws of the Province of Ontario,

(the "**Purchaser**")

- and –

ENERCARE INC., a corporation incorporated under the laws of Canada,

("**EnerCare**", and together with the Purchaser, the "**Purchaser Entities**")

- and –

DIRECT ENERGY MARKETING LIMITED, a corporation amalgamated under the laws of the Province of Ontario,

(the "**Vendor**")

RECITALS:

A. **WHEREAS** the Vendor is the owner of all of the Purchased Assets and the operator of the Business.

B. **WHEREAS** the Vendor desires to divest itself of the Business by selling the Purchased Assets to the Purchaser.

C. **WHEREAS** the Purchaser desires to acquire the Business by purchasing the Purchased Assets from the Vendor.

D. **WHEREAS** the Parties have agreed that upon transfer of the Purchased Assets from the Vendor to the Purchaser, the Purchaser shall not assume any Liabilities existing (including, for greater certainty, any contingent or unknown Liabilities) at or prior to the Effective Time, other than the Assumed Liabilities.

E. **WHEREAS** the Purchaser has agreed to purchase the Business and all of the Purchased Assets from the Vendor upon the terms and subject to the conditions set forth in this Agreement, including the condition that the Vendor shall enter into and execute the Ancillary Agreements concurrently with the Closing.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

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

"**Accounts Payable**" means all amounts relating to the Business or the Purchased Assets owing by the Vendor to any Person in the short term, which are incurred in the ordinary course of the Business consistent with past practice or in accordance with the terms of this Agreement, recorded as payable in the Books and Records in accordance with IFRS as of any date or time prior to the Effective Time;

"**Accounts Receivable**" means all accounts receivable, bills receivable, trade accounts, book debts and insurance claims and proceeds (other than in respect of the Excluded Assets and the Excluded Liabilities) of the Vendor relating to the Business or the Purchased Assets and any other amount due to the Vendor or any of its Affiliates relating to the Business or the Purchased Assets, including (i) the Enbridge Loan Book Receivable and (ii) any refunds and rebates receivable relating to the Business or the Purchased Assets, and the benefit of all security, guarantees and other collateral held by the Vendor or any of its Affiliates relating to the Business or the Purchased Assets, recorded as receivable in the Books and Records in accordance with IFRS as of any date or time prior to the Effective Time;

"**Action**" means any claim, action, petition, suit, inquiry or other proceeding or investigation, whether administrative, civil or criminal, in law or in equity, or before any arbitrator or Governmental Authority;

"**Additional PEB Valuation**" has the meaning given in Section 2.8(c);

"**Additional Purchase Transaction**" means, (i) any direct or indirect acquisition by the Purchaser Entities or any of their Affiliates of assets or securities of another water heater rental business (other than acquisitions that, in the aggregate, are not material to the Purchaser Entities and their Affiliates and that would not adversely affect the purchase and sale of the Purchased Assets contemplated by this Agreement) (or any lease, license, long-term supply agreement, exchange, mortgage, pledge or other arrangement having a similar economic effect) in a single transaction or a series of related transactions, or (ii) any bona fide proposal, or public announcement of an intention, to do any of the foregoing;

"**Affiliate**" when used to indicate a relationship with a specified Person, means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person and a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly. For

the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person directly or indirectly, whether through ownership of securities, by trust, by contract or otherwise; and the term "controlled" has the meaning correlative to the foregoing; provided that in any event, any Person which owns directly, indirectly or beneficially more than 50% of the securities having voting power for the election of directors or other governing body of a corporation or more than 50% of the partnership interests or other ownership interests of any other Person will be deemed to control such Person;

"**Agreement**" means this Purchase Agreement, including all exhibits and schedules hereto, the Disclosure Letter, and all amendments or restatements, as permitted, and references to expressions such as "**Article**" or "**Section**" mean the specified Article or Section of this Agreement;

"**Allocation Guidelines**" means the allocation guidelines jointly established and agreed to by the Vendor and EnerCare effective as of August 1, 2013 relating to the allocation of expenses between the Vendor and EnerCare in connection with leaking vessels;

"**Allstate Property**" means the leased premises of the Business located at 80 Allstate Parkway, Markham, Ontario, L3R 6H3;

"**Alternative Financing**" has the meaning given in Section 9.7(b);

"**Ancillary Agreements**" means, collectively: (i) the IP License Agreement, (ii) the Pension Asset Transfer Agreement, (iii) the High Meadow Sublease, (iv) the Transition Services Agreement, (v) the Non-Competition and Non-Solicitation Agreement, (vi) the New Nomination Agreement, (vii) the Enbridge OBA Assignment Agreement, (viii) the Consulting Agreement, (ix) the Limited Partnership Agreement, (x) the Unit Transfer Agreement, and (xi) the Centrica Guarantee, and "**Ancillary Agreement**" means any one of the Ancillary Agreements;

"**ARC**" means an advance ruling certificate issued pursuant to section 102 of the Competition Act;

"**arm's length**" has the meaning that it has for purposes of the ITA;

"**Arrangement**" means an unwritten arrangement between the Vendor and a Customer in respect of the Business;

"**Asset Replacement Costs**" has the meaning given in Section 2.5(d);

"**Assumed Bonus Amount**" means the result of (i) [redacted] dollars ($[redacted]) **[dollar amount redacted]** minus (ii) the product of (A) [redacted] dollars ($[redacted]) **[dollar amount redacted]** multiplied by (B) a fraction, the numerator of which is the number of days from July 1, 2014 through the Closing Date and the denominator of which is the number of days from July 1, 2014 through December 31, 2014;

"**Assumed Bonus Liabilities**" means Liabilities for performance bonuses payable in the ordinary and normal course relating to the Transferred Employees in the amount of the Assumed Bonus Amount;

"**Assumed Liabilities**" means the following Liabilities assumed hereunder by the Purchaser, being comprised solely and exclusively of the following: (i) all current Liabilities relating to the Business due or accruing due at or after the Closing and included as part of the Closing Working Capital Statement, (ii) all Liabilities and obligations of the Vendor relating to the conduct of the Business or relating to the Purchased Assets from and after the Effective Time under the Contracts, the Governmental Authorizations, the Permitted Encumbrances and the Collective Agreements, (iii) all Liabilities for vacation and sick-leave pay payable in the ordinary and normal course relating to the Transferred Employees in respect of the fiscal year ended December 31, 2014, (iv) all Assumed Bonus Liabilities, (v) all Liabilities for payroll amounts for the last payroll period commencing prior to, and ending on or after, the Closing Date incurred in the ordinary and normal course relating to the Transferred Employees to a maximum of [redacted] dollars ($[redacted]) **[dollar amount redacted]** in the aggregate, (vi) all Liabilities and obligations related to any litigation or Claims from customers of the Business, in each case incurred in the ordinary course of the Business, including litigation or Claims in respect of Water Heater and HVAC Equipment rentals and Other Portfolio Assets pursuant to the Co-Ownership Agreement, the HVAC Agreement and the Toronto Hydro Services Agreement (including any and all subcontracts (including with franchisees) related thereto) including such litigation and Claims set forth in Section 1.1(A) of the Disclosure Letter but excluding any Liabilities or obligations related to the Excluded Litigation; (vii) all Liabilities and obligations related to any Claims that would otherwise be Liabilities of the Vendor, in whole or in part, pursuant to the Allocation Guidelines, (viii) all Liabilities and obligations up to [redacted] dollars ($[redacted]) **[dollar amount redacted]** in the aggregate related to customers of the Business with extended warranties not transferred to Service Net, (ix) all Liabilities to be assumed by the Purchaser pursuant to the Pension Asset Transfer Agreement, (x) all Liabilities of the Vendor in connection with the Vendor Plaintiff Litigation, and (xi) all Liabilities related to any complaints, grievances, proceedings or arbitration cases under any Collective Agreement (A) as set forth in Section 1.1(B) of the Disclosure Letter, and (B) as may arise before the Effective Time, other than in each case monetary obligations payable to employees of the Business. For avoidance of doubt, Assumed Liabilities shall exclude, without limitation, the Excluded Liabilities;

"**Benefit Plans**" means all plans, programs or policies relating to the Employees or the Business to which the Vendor or any of its Affiliates contributes or is a party or by which the Vendor or any of its Affiliates is bound or under which the Vendor or any of its Affiliates has any Liability, including:

(a) all pension and retirement plans, including "registered retirement savings plans" (as defined in the ITA), "registered pension plans" (as defined in the ITA), "retirement compensation arrangements" (as defined in the ITA) and supplemental pension plans and arrangements;

(b) plans in the nature of insurance plans, providing for employment benefits relating to disability or wage or benefits continuation during periods of absence from work (including short-term disability, long-term disability, workers' compensation and maternity and parental leave), and any and all employment benefits relating to hospitalization, healthcare, medical or dental treatments or expenses, life insurance, accidental death and dismemberment insurance, death or survivor's benefits and supplementary employment insurance, in each case regardless of whether or not such benefits are insured or self-insured; or

(c) plans in the nature of compensation or incentive plans, which means all employment benefits relating to bonuses, incentive pay or compensation, performance compensation, deferred compensation, profit-sharing or deferred profit-sharing, share purchase, share option, stock appreciation, phantom stock, vacation or vacation pay, sick pay, severance or termination pay, employee loans or separation from service benefits, or any other type of arrangement providing for compensation or benefits additional to base pay or salary;

but excluding statutory benefit plans with which the Vendor is required to comply, including the Canada Pension Plan and plans administered pursuant to applicable health tax, pay equity, workers' compensation and employment insurance legislation; and "Benefit Plan" means any one of the Benefit Plans;

"**Books and Records**" means the books and records relating principally to the Business, the Purchased Assets and the Assumed Liabilities for the Business in the possession of the Business (meaning in the possession of the Transferred Employees and contained in the Leased Premises or in storage with Iron Mountain Canada Corporation or any Affiliate thereof) (whether in written, printed, electronic or computer printout form), including financial, operations and sales books, records, books of account, sales and purchase records, customer and supplier lists, formulae, production data, equipment maintenance data, sales promotional data, advertising materials, cost and pricing information, accounting records, business reports, plans and projections and all other documents, surveys, plans, files, records, correspondence, and other data and information, financial or otherwise, including all data and information stored on computer-related or other electronic media, but excluding Tax Returns, insurance related documentation and documentation related to the Excluded Assets and the Excluded Liabilities;

"**Bought Deal Letter**" means an executed bought deal engagement letter from the Equity Underwriters pursuant to which such Equity Underwriters have committed, subject to the terms and conditions therein, to purchase and distribute subscription receipts exchangeable for common shares of EnerCare in the amounts and on the terms set forth in such Bought Deal Letter;

"**Business**" means the businesses carried on and conducted by the Vendor in Ontario, Canada as at the date of this Agreement under the business unit name "Ontario Home Services", including the Vendor's Water Heater and Protection Plan service business, HVAC Equipment, plumbing, loan book, duct cleaning and energy audits businesses, the

Vendor's franchise system related to the aforementioned businesses and the small commercial services business under the business unit name "Mass Markets Commercial", but excluding the Clockwork Business, Alberta home services businesses and the "Airtron" branded business services business;

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

"**Business Intellectual Property**" means any and all Intellectual Property for use exclusively in the operation of the Business owned or used by, or licensed to the Vendor, including all rights of the Vendor in or to the trademarks, logos and domain names listed and described in Section 4.16(a)(i) of the Disclosure Letter and any goodwill associated therewith, including, for avoidance of doubt, the Comfort Intellectual Property, the Consumers Intellectual Property and the Business Trademarks, but excluding the Common Law Trademarks and the Vendor Domain Names;

"**Business Trademarks**" means those trademarks used by the Vendor exclusively in the Business, excluding the Common Law Trademarks, as set forth in Section 1.1(C) of the Disclosure Letter;

"**Cash Consideration**" has the meaning given in Section 3.1;

"**Centrica**" means Centrica plc, a company existing under the laws of England and Wales;

"**Centrica Guarantee**" means the guarantee to be entered into between Centrica and the Purchaser in the form set forth in Exhibit I;

"**Claims**" means any demand, action, suit, proceeding, grievance, arbitration, assessment, reassessment, charges, judgment or settlement or compromise relating thereto;

"**Clockwork Business**" means the retail business and franchises of the Vendor under one or more of the names "Clockwork", "One Hour Heating and Air Conditioning", or any similar name;

"**Closing**" means the completion of the sale to and purchase by the Purchaser of the Purchased Assets under this Agreement, at which time full legal and beneficial title to the Purchased Assets shall pass from the Vendor to the Purchaser;

"**Closing Date**" means the later of (i) October 1, 2014 and (ii) the date that is fifteen (15) Business Days after the date on which the last of the conditions set forth in Article 7 and Article 8 (other than any such conditions which by their terms are not capable of being satisfied until the Closing Date but subject to the satisfaction or waiver of such conditions) is satisfied or, when permissible, waived, or such other Business Day as the Vendor and the Purchaser may agree in writing as the date upon which the Closing shall take place, in each case, subject to each Party's termination rights set forth in Section 2.7;

"**Closing PEB Valuation**" has the meaning given in Section 2.8(d);

"**Closing Time**" means 8:00 a.m. Toronto time, on the Closing Date or such other time on such date as the Parties may agree in writing as the time at which the Closing shall take place;

"**Closing Working Capital Statement**" has the meaning given in Section 3.3(e) or Section 3.3(f), as the case may be;

"**Collective Agreements**" means collective agreements and related documents including all benefit agreements, letters of understanding, letters of intent and other written agreements with bargaining agents or Trade Unions relating to the Employees, by which the Vendor is bound or which impose any obligations upon the Vendor or set out the understanding of the parties with respect to the meaning of any provisions of such collective agreements; and "Collective Agreement" means any Collective Agreement;

"**Comfort Intellectual Property**" means the intellectual property set forth in Section 1.1(D) of the Disclosure Letter;

"**Commissioner**" means the Commissioner of Competition appointed under the Competition Act or any Person authorized to exercise the powers and perform the duties of the Commissioner;

"**Common Law Trademarks**" means trade-marks which are not the subject of active trade-mark registrations or applications, and which are used by the Vendor principally in the Business, of which the only material Common Law Trademark is "SAME DAY SERVICE";

"**Competition Act**" means the *Competition Act* (Canada), as amended, and the regulations promulgated thereunder;

"**Competition Act Approval**" means:

(a) the Commissioner has issued an ARC in respect of the transactions contemplated in this Agreement; or

(b) the waiver, termination or expiry of any applicable waiting periods under the Competition Act and the Purchaser shall have been advised in writing by the Commissioner that he does not intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement;

and in the case of either (a) or (b) no Governmental Authority has communicated an intention to seek or is seeking an order under Part VIII of the Competition Act, nor has an order been entered, which would have the effect of temporarily or permanently enjoining the Parties from completing the transactions contemplated by this Agreement;

"**Competition Bureau Notice of Application**" means the application filed by the Commissioner in December 2012 against the Vendor under the Competition Act;

"**Confidentiality Agreement**" means the confidentiality agreement between the Vendor and EnerCare dated September 17, 2013;

"**Consulting Agreement**" means the consulting agreement to be entered into and executed by the Vendor and the Purchaser concurrently with the Closing, in the form set forth in Exhibit F hereto;

"**Consumers Intellectual Property**" means the intellectual property set forth in Section 1.1(E) of the Disclosure Letter;

"**Contracts**" means contracts, Arrangements, licenses, leases (including the Premises Leases), agreements, Franchise Agreements, commitments, entitlements, undertakings, covenants, or engagements (oral or written) to which the Vendor is a party or by which the Vendor is bound or under which the Vendor has, or will have, any Liability relating to the Business or the Purchased Assets and includes (i) any quotation, order or tender for any contract which remains open for acceptance, (ii) all unfilled customer purchase orders, (iii) all forward commitments for supplies or materials, (iv) any deposits made in connection with any of the foregoing, (v) any warranty, guarantee or commitment (express or implied), and (vi) the contracts listed in Section 1.1(F) of the Disclosure Letter, but excludes Benefit Plans and contracts and agreements relating to Benefit Plans, insurance contracts, Contracts relating to Excluded Assets and Excluded Liabilities and the Excluded Contracts;

"**Co-Ownership Agreement**" means the co-ownership agreement dated December 17, 2002 between the Vendor (as successor by amalgamation to Enbridge Services Inc.), 4483588 Canada Inc. (formerly, Direct Waterheater Rentals Inc.), 4104285 Canada Limited, Centrica Canada Limited and CIBC Mellon Trust Company, as assigned by 4483588 Canada Inc. to EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership) on December 17, 2002, as amended on February 6, 2003, January 1, 2005, December 29, 2006, February 8, 2007 and April 25, 2007;

"**CRA**" means the Canada Revenue Agency;

"**Customer**" means a customer of the Vendor in respect of the Business;

"**Customer Contracts**" means all Contracts with Customers;

"**Data Room**" has the meaning given in Section 1.4;

"**Debt Commitment Letter**" means an executed commitment letter, together with the associated term sheets and other schedules attached thereto, dated as of the date hereof, between a subsidiary of EnerCare and the Lenders, pursuant to which the Lenders have committed, upon the terms and subject to the conditions set forth therein, to provide the Debt Financing;

"**Debt Financing**" means the term, bridge and revolving debt financing to be provided by the Lenders to a subsidiary of EnerCare;

"**Decoupling Plan**" means the plan to be agreed to by the Parties pursuant to Section 9.23(a) and attached as Schedule B to draft Transition Services Agreement in Schedule G hereto;

"**Disclosure Letter**" means the disclosure letter delivered by the Vendor to the Purchaser Parties concurrently with the execution and delivery of this Agreement;

"**Draft PEB Valuation**" has the meaning given in Section 2.8;

"**Draft Working Capital Statement**" has the meaning given in Section 3.3(b);

"**Effective Time**" means 12:01 a.m. (Toronto time) on the Closing Date;

"**Employees**" means (i) those individuals employed or retained by the Vendor immediately prior to the Effective Time set forth in Section 4.21(a) of the Disclosure Letter and (ii) those individuals employed or retained by the Vendor immediately prior to the Effective Time who become employed or retained by the Vendor on or after the date hereof on a full-time, part-time or temporary basis, whose employment and services rendered relate principally to the Business and the Purchased Assets; in each case excluding those employees (other than Unionized Employees and the employees set forth in Section 1.1 (G) of the Disclosure Letter) who are on long term disability leave as of the date the Vendor confirms the list of Non-Unionized Employees pursuant to Section 9.8(a);

"**Employment Contracts**" means verbal and written Contracts relating to Transferred Employees and includes employment, termination, severance, retention and change of control arrangements, other than the Collective Agreements;

"**Enbridge Loan Book Receivable**" means receivables arising pursuant to (i) financing contracts entered into by Vendor; and (ii) financing contracts entered into by Enbridge Services Inc. and subsequently transferred to the Vendor;

"**Enbridge OBA Agreement**" means the amended and restated open bill access billing and collection services agreement between Enbridge Gas Distribution Inc. and Direct Energy Marketing Limited dated as of January 6, 2014;

"**Enbridge OBA Assignment Agreement**" has the meaning given in Section 9.15(a);

"**Encumbrances**" means pledges, liens, charges, security interests, leases, licenses, title retention agreements, mortgages, hypothecs, restrictions, development or similar agreements, easements, rights-of-way, restrictive covenants, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"**EnerCare**" means EnerCare Inc., a corporation incorporated under the laws of Canada;

"**EnerCare Convertible Debentures**" means EnerCare's 6.25% convertible unsecured subordinated debentures, due June 30, 2017;

"**EnerCare Public Disclosure Documents**" means, collectively, all of the following documents:

(i) annual information form of EnerCare dated March 20, 2014;

(ii) management information circular of EnerCare dated March 21, 2014 distributed in connection with the annual meeting of shareholders held on May 1, 2014;

(iii) audited consolidated financial statements of EnerCare as at December 31, 2013 and December 31, 2012 and the consolidated statements of income, comprehensive income, changes in equity and cash flows for the years then ended, together with the notes thereto and auditor's report thereon;

(iv) management's discussion and analysis of financial condition and results of operations of EnerCare for the year ended December 31, 2013;

(v) unaudited interim condensed consolidated financial statements of EnerCare filed on SEDAR since December 31, 2013, together with the notes thereto; and

(vi) management's discussion and analysis of financial condition and results of operations of EnerCare filed on SEDAR since December 31, 2013,

together with any other continuous disclosure documents filed by EnerCare after the date hereof and prior to the Effective Time pursuant to National Instrument 51-102 – *Continuous Disclosure Obligations*;

"**EnerCare Shares**" means 7,692,308 common shares in the capital of EnerCare to be issued to the Vendor pursuant to the Unit Transfer Agreement;

"**Environment**" means the natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface and soil;

"**Environmental Approvals**" means legally binding approvals, permits, certificates, licenses, authorizations, consents, agreements or registrations issued or required by a Governmental Authority pursuant to an Environmental Law with respect to the operation of the Business or pertaining to the Purchased Assets;

"**Environmental Laws**" means any Laws relating to the protection of the Environment or the production, use, Release, transportation, storage or disposal of Hazardous Substances;

"**Equipment Contracts**" means motor vehicle leases, equipment leases, conditional sales contracts, title retention agreements and other similar agreements binding upon the Vendor relating to equipment and vehicles used by the Vendor and relating principally to the Business or the Purchased Assets;

"**Equity Financing**" means EnerCare's equity financing to be underwritten by the Equity Underwriters;

"**Equity Underwriters**" means the syndicate of underwriters that is formed pursuant to the Bought Deal Letter, led by National Bank Financial Inc. and TD Securities Inc.;

"**Estimated Working Capital**" has the meaning given in Section 3.3(a);

"**Estimated Working Capital Deficit**" means the amount, if any, by which the Target Working Capital exceeds the Estimated Working Capital;

"**Estimated Working Capital Statement**" has the meaning given in Section 3.3(a);

"**Estimated Working Capital Surplus**" means the amount, if any, by which the Estimated Working Capital exceeds the Target Working Capital;

"**ETA**" means the *Excise Tax Act* (Canada) and the regulations promulgated thereunder as amended from time to time;

"**Excluded Assets**" means (i) cash, bank balances, moneys in possession of banks and other depositories, term or term deposits and similar cash items of, owned or held by or for the account of the Vendor, in each case other than as contemplated by Section 9.18, (ii) marketable shares, notes, bonds, debentures or other securities of or issued by corporations or other Persons and not relating to the Business or the Purchased Assets and all certificates or other evidences of ownership thereof owned or held by or for the account of the Vendor, (iii) corporate, financial, taxation and other records of the Vendor not pertaining exclusively or primarily to the Business, (iv) extra-provincial, sales, excise or other licences or registrations issued to or held by the Vendor, whether in respect of the Business or otherwise, (v) all amounts receivable for Taxes, including all Tax refunds, immediately prior to the Closing, (vi) all trademarks used in the Business, save for the Business Trademarks, (vii) all accounts receivable, intercompany accounts or other amounts owing to the Vendor from (A) any Affiliate of the Vendor or (B) EnerCare or any Affiliate of EnerCare, (viii) items relating to all employees of the Vendor who are not Transferred Employees, (ix) items relating to customers of the Vendor who are not customers of the Business, (x) the Shared IT Assets, (xi) the Excluded Contracts, (xii) all insurance policies relating to the Business, (xiii) the Vendor's right to indemnification under the Franchise Agreements and the subcontractor agreements referenced in Section 1.1(H) of the Disclosure Letter, as well as the rights of the Vendor in connection with the Contracts and matters specifically listed in Sections 1.1(I)(A) and 1.1(I)(B) of the Disclosure Letter, (xiv) the Joint Assets; (xv) the Non-Transferred Trademarks, (xvi) the Benefit Plans; and (xvii) Contracts relating to the foregoing;

"**Excluded Contracts**" means the contracts being retained by the Vendor and listed in Section 1.1(J) of the Disclosure Letter;

"**Excluded Liabilities**" means (i) any indebtedness for borrowed money of the Vendor or guarantees of indebtedness granted by the Vendor for borrowed money of any third party,

(ii) all Liabilities and obligations related to any litigation or Claims from third parties, including those set forth in Section 4.25(c) of the Disclosure Letter, to the extent the matter giving rise to the litigation or Claim arose prior to the Effective Time, other than those matters contemplated by item (vi) in the definition of Assumed Liabilities, (iii) all (A) retention payments and (B) other bonuses or compensation related to the transactions contemplated by this Agreement and the Ancillary Agreements, in each case accrued by the Vendor in respect of all Employees (including Transferred Employees) for any and all periods prior to the Effective Time, even if payable after Closing, (iv) all obligations in excess of [redacted] dollars ($[redacted]) **[dollar amount redacted]** in the aggregate related to customers of the Business with extended warranties not transferred to Service Net, (v) all Liabilities for vacation and sick-leave pay relating to the Transferred Employees in respect of any period prior to January 1, 2014, (vi) all Liabilities for performance bonuses payable in the ordinary and normal course relating to the Transferred Employees other than the Assumed Bonus Liabilities, (vii) all Liabilities for payroll amounts relating to the Transferred Employees in excess of [redacted] dollars ($[redacted]) **[dollar amount redacted]** in the aggregate, (viii) any accounts payable, intercompany accounts or other amounts owing by the Vendor to (A) any Affiliate of the Vendor or (B) EnerCare or any Affiliate of EnerCare, (ix) items relating to Employees who are not Transferred Employees, (x) items relating to customers of the Vendor who are not customers of the Business, (xi) all monetary obligations payable to employees of the Business attributable to a period of time prior to the Effective Time related to any complaints, grievances, proceedings or arbitration cases under any Collective Agreement, to the extent the matter giving rise to the Liabilities arose prior to the Effective Time, including those set forth in Section 4.22(b) of the Disclosure Letter, but not including any Liabilities and obligations relating to any changes by the Purchaser Entities to the manner in which the Business is conducted, (xii) all warranty Liabilities not expressly included in the definition of Assumed Liabilities, (xiii) all restructuring Liabilities set forth in the Financial Statements, (xiv) all Liabilities and obligations relating to Excluded Assets, (xv) all Liabilities and obligations relating to Taxes in respect of any periods or portions thereof prior to the Effective Time (for greater certainty including hypothetical expatriate Taxes but excluding Taxes that are an obligation of the Purchaser Entities pursuant to Section 9.17(a)), (xvi) all Liabilities and obligations relating to the Franchise Agreements (including in respect of exercise of a rescission right by a franchisee), to the extent the matter giving rise to the liabilities and obligations arose prior to the Effective Time, (xvii) all Liabilities and obligations of the Vendor relating to or arising from the subject matter of the Competition Bureau Notice of Application to the extent the conduct giving rise to the liabilities and obligations was engaged in prior to the Effective Time, (xviii) all Liabilities with respect to the appliance line of business formerly operated by the Vendor, (xix) all entitlements of Employees under bonus and incentive compensation plans of the Vendor, including but not limited to the Employee Share Purchase Plan, Share Award Scheme and Long Term Incentive Scheme, and (xx) all Liabilities, rights and obligations relating to or arising from the subject matter of the Excluded Litigation and the matters set forth in Section 1.1(K) of the Disclosure Letter;

"**Excluded Litigation**" means the matters set forth in Section 1.1(L) of the Disclosure Letter and any Claims made in a superior level court prior to the Effective Time by

Customers relating to parts of the Business that are not governed by the Existing Business Agreements;

"**Existing Business Agreements**" means (i) the Existing Nomination Agreement, (ii) the Origination Agreement, (iii) the Co-Ownership Agreement, (iv) the Toronto Hydro Services Agreement, (v) the HVAC Agreement, (vi) the Interim System Access Agreement, (vii) the Existing Non-Competition Agreement, (viii) the Rentco Amended and Restated Lease Agreement, (ix) the Reporting Agreement, (x) the Existing Trademark License Agreement, (xi) the Value Dispute Agreement and (xii) the Allocation Guidelines;

"**Existing Nomination Agreement**" means the nomination agreement dated as of January 1, 2011 between Direct Energy Marketing Limited and EnerCare Inc.;

"**Existing Non-Competition Agreement**" means the non-competition agreement dated December 17, 2002 between EnerCare Inc. (formerly, The Consumers' Waterheater Income Fund), Direct Energy Marketing Limited (as successor by amalgamation to Enbridge Services Inc.), and Centrica Canada Limited, as amended on January 1, 2005 and December 29, 2006;

"**Existing Trademark License Agreement**" means the trademark license agreement dated December 5, 2002 between Direct Energy Marketing Limited (as successor by amalgamation to Enbridge Services Inc.), EnerCare Inc. (formerly, The Consumers' Waterheater Income Fund), The Consumers' Waterheater Operating Trust, Waterheater Holding Limited Partnership, EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership), 4483588 Canada Inc. (formerly, Direct Waterheater Rentals Inc.), 4113152 Canada Limited, 1544546 Ontario Limited and CIBC Mellon Trust Company, as amended on April 25, 2007;

"**Financial Statements**" means (i) the audited carve-out statement of financial position of the Business as at December 31, 2013 and the audited carve-out statements of income, comprehensive income, changes in divisional surplus and cash flow of the Business, and all notes thereto for the fiscal year ended December 31, 2013, together with a report of the auditors of the Business, (ii) the unaudited auditor reviewed carve-out statement of financial position of the Business as at December 31, 2012 and the unaudited auditor reviewed carve-out statements of income, comprehensive income, changes in divisional surplus and cash flow of the Business for the fiscal year ended December 31, 2012, and all notes thereto, which shall have been reviewed in accordance with Canadian generally accepted standards for review engagements, (iii) the unaudited auditor reviewed carve-out statement of financial position of the Business as at March 31, 2014, and the unaudited auditor reviewed carve-out statements of income, comprehensive income, changes in divisional surplus and cash flow of the Business for the three months ended March 31, 2014 and March 31, 2013, and all notes thereto which shall have been reviewed in accordance with Canadian generally accepted standards for a review of interim financial statements by an entity's auditor (the "Q1 2014 Financial Statements"), and (iv) upon delivery of any Interim Financial Statements in accordance with Section 9.6, "Financial Statements" shall also include such Interim Financial Statements;

"**Final Asset Replacement Costs Statement**" has the meaning given in Section 3.4;

"**Financings**" means the Debt Financing and the Equity Financing;

"**Fixed Assets**" means the fixed assets, machinery, equipment, computers, networking equipment, fixtures, furniture, furnishings, vehicles, material handling equipment, implements, spare parts owned by the Vendor relating to the Business or the Purchased Assets, including any of which are in storage, or in transit, and other tangible property and facilities owned by the Vendor and used in the Business or pertaining principally to the Purchased Assets whether located in or on the premises of the Vendor or elsewhere;

"**Franchise Agreements**" means the franchise agreements (together with any and all amendments, modifications and additions thereto) listed in Section 1.1(M) of the Disclosure Letter;

"**Franchisee Notes**" means the notes listed in Section 1.1(N) of the Disclosure Letter;

"**Fundamental Representations**" has the meaning given in Section 6.2(b)(i);

"**Goodwill**" means the goodwill of the Business, including lists of customers and suppliers, credit information, research materials, and the exclusive right of the Purchaser to represent itself as carrying on the Business in succession to the Vendor;

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation (whether national, federal, provincial, state or local), court, board, tribunal, dispute settlement panel or body, or other law or regulation-making entity:

(a) having jurisdiction on behalf of any nation, province, state or other geographic or political subdivision thereof; or

(b) exercising, or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Governmental Authorizations**" means authorizations, approvals, including any Environmental Approvals, orders, consents, directives, notices, licenses, permits, variances, registrations, certificates of authority or similar rights issued to or required by the Vendor relating to the Business or any of the Purchased Assets by or from any Governmental Authority;

"**GST/HST**" means the goods and services tax and/or harmonized sales tax levied under the ETA, together with any penalties and interest imposed thereon;

"**Hazardous Substance**" means any substance, pollutant, contaminant, waste of any nature, hazardous substance, hazardous material, toxic substance, prohibited substance, dangerous substance or dangerous good as defined, judicially interpreted or regulated by any Environmental Laws including any petroleum products, asbestos or asbestos containing materials;

"**High Level Decoupling Plan**" has the meaning given in Section 9.23;

"**High Meadow Lease**" means the Premises Lease with respect to the High Meadow Premises;

"**High Meadow Premises**" means the leased premises of the Business located at 30 High Meadow Place, Toronto Ontario, M9L 2Z5;

"**High Meadow Restoration**" means the restoration of the High Meadow Premises to "base building condition" pursuant to and in accordance with Section 8.3(b) of the High Meadow Lease, such restoration to include, all restoration work identified in any report prepared by the landlord's independent engineer or consultant pursuant to Section 8.3(c) of the High Meadow Lease;

"**High Meadow Sublease**" means the sublease relating to the High Meadow Premises to be entered into and executed by the Parties concurrently with the Closing, substantially in the form set forth in Exhibit A hereto;

"**HVAC Agreement**" means the HVAC origination and servicing agreement dated April 25, 2007 between Direct Energy Marketing Limited and EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership);

"**HVAC Equipment**" means all heating, ventilation, furnace and air conditioning equipment and accessories, related attachments, gas piping, water softeners, venting, ductwork and related equipment including power pipes, buffer tanks and air quality equipment;

"**IFRS**" means International Financial Reporting Standards, as adopted by the International Accounting Standards Board;

"**Incurred**" means, in relation to Claims under the Vendor Benefit Plans or the Purchaser Benefit Plans, the date on which the event giving rise to such Claim occurred and, in particular:

(a) with respect to a death or dismemberment claim, the date of the death or dismemberment;

(b) with respect to a disability claim, the date of occurrence of any injury or accident or the date of diagnosis of an illness or other event giving rise to such Claim or series of Claims;

(c) with respect to an extended health care claim, including dental and medical treatments, the date of the treatment; and

(d) with respect to a prescription drug or vision care claim, the date that the prescription was filled;

"**Indemnified Parties**" has the meaning given in Section 10.1(a);

"**Initial Hold Period**" means the period commencing on the Closing Date and ending one (1) year following the Closing Date;

"**Intellectual Property**" means any and all intellectual and industrial property and proprietary rights, including trade-marks and trade-mark applications, trade names, domain names, certification marks, patents and patent applications, copyrights, copyrighted works (including franchise operating manuals and disclosure documents), know-how, formulae, processes, methods, inventions, technical expertise, research data, trade secrets, industrial designs and other similar property, whether registered or unregistered, and includes software;

"**Interim Financial Statements**" means (i) the unaudited auditor reviewed carve-out statement of financial position of the Business as at June 30, 2014 and/or September 30, 2014 and/or any other interim period ending after the date hereof, and (ii) the unaudited auditor reviewed carve-out statements of income, comprehensive income, changes in divisional surplus and cash flow of the Business for the six months ended June 30, 2014 and/or September 30, 2014 and/or any other interim period ending after the date hereof and for the corresponding interim period in the prior year, and all notes thereto, in each case which shall be in the same form and prepared in the same manner as the Q1 2014 Financial Statements and shall have been reviewed in accordance with Canadian generally accepted standards for a review of interim financial statements by an entity's auditor;

"**Interim System Access Agreement**" means the interim agreement for system access dated December 1, 2007 between Direct Energy Marketing Limited and 4113152 Canada Limited;

"**IP License Agreement**" means the license agreement to be entered into and executed by the Vendor and the Purchaser concurrently with the Closing, in the form set forth in Exhibit B hereto;

"**IT Decoupling Activities**" means the activities required to be completed by the Parties to separate systems, data networks, and voice network IT systems associated with the Business, as set out in (i) Part II of Schedule A of the draft Transition Services Agreement in Schedule G hereto and to be set out in the Decoupling Plan;

"**IT Decoupling Employees**" has the meaning given in Section 9.8(a);

"**IT Decoupling Employees Transfer Date**" has the meaning given in Section 9.8(a);

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder, as amended from time to time;

"**JA Names**" has the meaning given in Section 9.24(a);

"**Joint Assets**" means the Intellectual Property set forth in Section 1.1(O) of the Disclosure Letter, but does not include any product, service or software application name

or logo that includes the trademark "Direct Energy" in whole or in part, or any Non-Transferred Trademarks or any marks confusingly similar therewith;

"**Laws**" means all applicable laws (including common law and decisions of courts and tribunals), statutes, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, decrees and judicial, arbitral, administrative, ministerial or departmental judgements, awards or requirements of any Governmental Authority in each case having the force of law, and which includes the following: (i) Privacy Laws, (ii) all provincial consumer protection legislation (including the *Consumer Protection Act* (Ontario)) and all provincial consumer credit reporting and fair credit reporting legislation, (iii) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), (iv) the *Arthur Wishart Act* (Franchise Disclosure), 2000 (Ontario) and other similar provincial statutes, and (v) any interpretation of applicable Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation; and "Law" means any one or any single provision, part or portion of the Laws;

"**Leased Premises**" means the leased premises of the Business located at (i) the High Meadow Premises, (ii) 80 Allstate Parkway, Markham, Ontario, L3R 6H3, (iii) 70 Allstate Parkway, Markham, Ontario, L3R 6H3, (iv) Unit 11A, 129 Hagar Street, Welland, Ontario, L3B 5V9, and (v) 635 Westburne Drive, Vaughan, Ontario, L4K 4T6;

"**Lenders**" means National Bank of Canada and The Toronto-Dominion Bank;

"**Liabilities**" means any liabilities, claims, demands, debts or other forms of indebtedness of, owing or owed by, or in any way relating to, the Business or the Purchased Assets, whether known or unknown, present or future, or absolute or contingent; and "Liability" means any of the Liabilities;

"**Limited Partnership Agreement**" means the amended and restated limited partnership agreement of the Purchaser to be dated as of the Closing Date between 8960593 Canada Inc., as the general partner, and the Vendor and 4483588 Canada Inc., as limited partners;

"**Losses**" means all damages, fines, penalties, deficiencies, losses, liabilities (whether accrued, actual, contingent, latent or otherwise), costs, fees and expenses (including interest, court costs and reasonable fees and expenses of lawyers, accountants and other experts and professionals and all costs incurred in investigating or pursuing any proceeding relating to the foregoing);

"**Material Adverse Effect**" means any change, development, event, fact, occurrence, circumstance or omission that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise), assets or liabilities (including contingent liabilities) of the Business, or (b) the ability of the Vendor to perform its obligations under this Agreement and each Ancillary Agreement and to consummate the transactions contemplated by this Agreement and each Ancillary Agreement on a timely basis; provided, however, that "Material Adverse Effect" shall not include any change, development, event, fact,

occurrence or omission, directly or indirectly, arising out of or attributable to: (i) general economic conditions affecting the industry in which the Business is carried on, (ii) worldwide, national or local conditions or circumstances of an economic, political or regulatory nature, including war, armed hostilities, acts of terrorism, emergencies, crises and natural disasters, or (iii) the announcement of this Agreement or the completion of the transactions contemplated by this Agreement and the Ancillary Agreements, (iv) any changes in IFRS or applicable Law, or (v) any actions taken by the Vendor pursuant to, or as contemplated by, this Agreement provided that in the case of clauses (i) and (ii), such changes, developments, events, facts, occurrences, circumstances and omissions shall be excluded only to the extent they do not have a disproportionately adverse effect on the business, results of operations, condition (financial or otherwise), assets or liabilities (including contingent liabilities) of the Business, taken as a whole, as compared to other Persons engaged in a similar business;

"**Material Contract**" means, in relation to the Business or the Purchased Assets, (a) any Contract involving aggregate annual payments to or by the Vendor or any of its Affiliates relating to the Business or the Purchased Assets in excess of five hundred thousand dollars ($500,000), (b) any Contract that is not in the ordinary course of the Business, (c) the Collective Agreements, (d) the Franchise Agreements, (e) any Contract which materially restricts the Business or activities of the Vendor relating to the Business or the Purchased Assets (other than Permitted Encumbrances), (f) any Contract that relates to Tax sharing, (g) any Contract contemplating prepayment or deposit by the Vendor of an amount in excess of five hundred thousand dollars ($500,000), (h) any Contract with any non-solicitation covenants in favour of the Vendor (other than any such Contract with employees, contractors, or distributors whereby such employee, contractor or distributor is to receive payments of less than five hundred thousand dollars ($500,000) per year), (i) any Contract related to billing (including with Enbridge Gas Distribution Inc.), (j) any joint venture, partnership, or similar Contract, and (k) any strategic alliance, co-marketing, co-promotion, or similar Contract, but "Material Contract" does not include any Benefit Plans;

"**Naming Sponsorship Agreement**" means the naming sponsorship agreement dated as of December 31, 2005 between The Board of Governors of Exhibition Place and Direct Energy Marketing Limited;

"**New Nomination Agreement**" means the Nomination Agreement to be entered into and executed by the Vendor and EnerCare concurrently with the Closing, in the form set forth in Exhibit C hereto;

"**NI 45-106**" means National Instrument 45-106 – *Prospectus and Registration Exemptions*;

"**Non-Competition and Non-Solicitation Agreement**" means the non-competition and non-solicitation agreement to be entered into and executed among Centrica plc, the Vendor and the Purchaser Entities concurrently with the Closing, in the form set forth in Exhibit D hereto;

"**Non-Transferable Rights**" has the meaning given in Section 2.6;

"**Non-Transferred Purchased Assets**" has the meaning given in Section 2.5(b);

"**Non-Transferred Purchased Assets List**" has the meaning given in Section 2.5(b);

"**Non-Transferred Trademarks**" means those trademarks that are used, but not exclusively used, in the Business, to be licensed by the Vendor to the Purchaser pursuant to the IP License Agreement;

"**Non-Unionized Employees**" means those Employees whose terms of employment are not covered by the terms of a Collective Agreement;

"**Notice**" has the meaning given in Section 11.3;

"**Occupational Health and Safety Laws**" means any Laws relating to occupational health and safety or the protection of employees, including the *Occupational Health and Safety Act* (Ontario);

"**Order**" means any decree, injunction, judgment, order, ruling, assessment, stipulation, determination, award or writ, including any Remedial Order;

"**Origination Agreement**" means the origination agreement dated December 17, 2002 between 4483588 Canada Inc. (formerly, Direct Waterheater Rentals Inc.) and Direct Energy Marketing Limited (as successor by amalgamation to Enbridge Services Inc.), as assigned by 4483588 Canada Inc. (formerly, Direct Waterheater Rentals Inc.) to EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership) on December 17, 2002, as amended on January 1, 2005, December 29, 2006, January 1, 2013, and August 1, 2013;

"**Other Portfolio Assets**" has the meaning given to such term in the Co-Ownership Agreement;

"**Outside Date**" means December 31, 2014; provided, however, that if on such date the conditions to Closing set forth in Sections 7.8 or 8.6 shall not have been satisfied due to the absence of the Competition Act Approval, but all other conditions to Closing shall be or shall be capable of being satisfied, the Purchaser or the Vendor shall each have the right to extend the Outside Date to March 31, 2015; provided, further, that no such right to extend the Outside Date shall be available to any Party whose breach of this Agreement has caused or resulted in the failure of the Closing to occur on or prior to December 31, 2014. For the avoidance of doubt, any references in this Agreement to "Outside Date" shall refer to the Outside Date as so extended;

"**Parties**" means, collectively, the Vendor, the Purchaser and EnerCare; and "Party" means any one of the Parties;

"**PEB Obligations**" has the meaning given in Section 2.8;

"**PEB Obligations Estimate Amount**" means thirty-two million dollars ($32,000,000);

"**PEB Valuation Date**" has the meaning given in Section 2.8;

"**Pension Asset Transfer Agreement**" means the pension asset transfer agreement contemplated in Section 9.9(b), to be entered into and executed by the Parties as soon as reasonably practicable from the date hereof in the form set forth in Exhibit E hereto;

"**Permitted Encumbrances**" means (a) statutory liens for current Taxes not yet due or delinquent or the validity or amount of which is being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with IFRS, (b) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of the Business relating to obligations as to which there is no default on the part of the Vendor, or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), and which are not, individually or in the aggregate, material to the Business or the Purchased Assets, (c) zoning and building by-laws and ordinances, municipal by-laws and requirements, development agreements, site plan agreements, restrictive covenants, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities which do not materially interfere with the present use of the assets of the Business, (d) defects or irregularities in title to the Leased Premises which are of a minor nature and do not have a material adverse effect on the use or value of the Leased Premises affected thereby and provided the same have been complied with in all material respects up to the Effective Time, (e) all covenants, conditions, restrictions, easements, charges, rights-of-way, other Encumbrances and other similar matters of record set forth in any provincial, local or municipal registry under which the Business is conducted, (f) liens arising under original purchase conditional sales contracts and equipment leases with third parties entered into in the ordinary course of the Business consistent with past practice which are not individually or in the aggregate, material to the Business or the Purchased Assets, and (g) statutory liens and deemed trusts arising under pension benefits standards legislation, to the extent that the Vendor has made all contributions and payments required under such legislation when due;

"**Person**" means any individual, sole proprietorship, partnership, limited partnership, corporation, limited liability company, unincorporated association, unincorporated syndicate, unincorporated organization, trust, foundation, 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;

"**Post Closing Asset Replacement Costs**" has the meaning given in Section 3.4;

"**Premises Leases**" means the agreements to lease, and other occupancy rights pursuant to which the Vendor uses or occupies (or has the right to use or occupy) any part of the Leased Premises; and "Premises Lease" shall mean any one of them;

"**Privacy Laws**" means any federal, provincial or other applicable statute, regulation or other law of any governmental or regulatory authority in Canada relating to the collection, use, storage and/or disclosure of information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act* (Canada) and the *Freedom of Information and Protection of Privacy Act* (Ontario);

"**Protection Plan**" means any maintenance and repair plan offered by the Vendor to its Customers;

"**Purchase Price**" has the meaning given in Section 3.1;

"**Purchased Assets**" means all of the Vendor's right, title and interest in, to and under, or relating to, the assets, property(ies) and undertakings, owned, leased or used by the Vendor relating to the operation of the Business, and including, for greater certainty, (a) the Books and Records, (b) the Fixed Assets, (c) the Goodwill, (d) the Accounts Receivable, (e) the Contracts, (f) the Business Intellectual Property (but for certainty other than the Non-Transferred Trademarks and the Joint Assets) and the Common Law Trademarks, (g) all prepaid expenses and deposits, (h) all inventory of the Business, (i) the Purchased IT Assets, (j) the Franchisee Notes, (k) the rights of the Vendor in connection with the Vendor Plaintiff Litigation (including any amounts received by the Vendor or any Affiliate of the Vendor in respect of such matters if settled or otherwise resolved prior to the Effective Time) and (l) all other rights, properties and assets of the Vendor owned by the Vendor for use in or relating to the operation of the Business of whatsoever nature or kind and wherever situated, but excluding, however, the Excluded Assets and the Non-Transferred Purchased Assets;

"**Purchased IT Assets**" means:

(A) the assets set forth in Section 1.1(P) of the Disclosure Letter; and

(B) all other systems hardware, third party software, custom code, software and hardware configurations, records and supplier contracts of the Vendor relating to the Business, excluding the Shared IT Assets;

"**Purchaser**" means EnerCare Acquisition Limited Partnership, a limited partnership formed under the laws of the Province of Ontario;

"**Purchaser Benefit Plans**" has the meaning given in Section 9.9(a)(i);

"**Purchaser Entities**" means the Purchaser and EnerCare; and "Purchaser Entity" means any one of them;

"**Purchaser Units**" means 100,000,000 limited partnership units of the Purchaser to be issued to the Vendor pursuant to this Agreement;

"**Q1 2014 Financial Statements**" has the meaning given in the definition of "Financial Statements";

"**Reference Balance Sheet Date**" means December 31, 2013;

"**Release**" means any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction, whether accidental or intentional;

"**Remedial Order**" means any administrative complaint, direction, order or sanction issued, filed or imposed by any Governmental Authority pursuant to any Environmental Laws and includes any order requiring any investigation, remediation or clean-up of any Hazardous Substance, or requiring that any Release of Hazardous Substances be reduced, modified or eliminated;

"**Rentco Amended and Restated Lease Agreement**" means the amended and restated lease agreement dated December 17, 2002 between CIBC Mellon Trust Company (as agent and nominee of Direct Energy Marketing Limited (as successor by amalgamation to Enbridge Services Inc.) and EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership)), EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership) and Direct Energy Marketing Limited (as successor by amalgamation to Enbridge Services Inc.);

"**Reporting Agreement**" means the reporting agreement dated February 29, 2012 between Direct Energy Marketing Limited and EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership) pursuant to which Direct Energy Marketing Limited provides certain reporting services to EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership);

"**Required Governmental Consents**" means (i) all consents, approvals, waivers, orders and authorizations of applicable Governmental Authorities, including the Competition Act Approval, that are required in connection with any of the transactions contemplated by this Agreement and the Ancillary Agreements, and (ii) for greater certainty, the consents, approvals, waivers, orders and authorizations set forth in Section 1.1(Q) of the Disclosure Letter;

"**Required Third Party Consents**" means the consents, approvals, waivers, orders and authorizations set forth in Section 1.1(R) of the Disclosure Letter;

"**Second Hold Period**" means the period commencing on the day immediately after the last day of the Initial Hold Period and ending six (6) months thereafter;

"**Securities Commissions**" means the applicable securities commission or securities regulatory authority in each of the provinces and territories of Canada;

"**Securities Laws**" means, collectively, the applicable securities Laws of each of the provinces and territories of Canada and the respective regulations and rules made under those securities Laws together with all applicable policy statements, instruments, notices,

blanket orders and rulings of the Canadian Securities Administrators and the Securities Commissions;

"**Service Net**" means, collectively, SN Warranty, LLC and SNAdmin (Canada), Inc.;

"**Shared Asset Threshold**" means the amount equal to the difference of [redacted] dollars ($[redacted]) **[dollar amount redacted]** less the reasonable direct, documented out-of-pocket cost, if any, incurred by the Purchaser in replacing the telephony software products located at 80 Allstate Parkway, Markham, Ontario;

"**Shared Assets**" means all assets of the Vendor which as of the date hereof are used by the Vendor in the Business and one or more businesses of the Vendor other than the Business, excluding the Shared IT Assets;

"**Shared IT Assets**" means the Shared IT Software and the Shared IT Hardware;

"**Shared IT Hardware**" means the IT hardware of the Business that is also used by the Vendor for businesses other than the Business and is required to operate the Business in a manner consistent with the operations of the Business as of the date hereof;

"**Shared IT Software**" means the IT software of the Business, as set forth in Section 1.1(S) of the Disclosure Letter, to the extent that it is also used by the Vendor for businesses other than the Business and is required to operate the Business in a manner consistent with the operations of the Business as of the date hereof;

"**Subsidiary**" means with respect to any Person, an entity which is controlled by such Person;

"**Target Working Capital**" means $44,075,000;

"**Tax Reassessment Period**" shall mean the period ending on the first date on which no assessment, reassessment or other document assessing liability for Tax, interest or penalties may be issued to the Vendor in respect of any taxation year or other period ended prior to the Closing Date, or within which the Closing Date occurs, pursuant to any applicable tax legislation;

"**Tax Returns**" includes all returns, information returns, reports, declarations, elections, notices, filings, forms, statements and other documents (whether paper or electronic form) and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto, made, prepared, filed or required to be made, prepared or filed by Law in respect of Taxes;

"**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, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, GST/HST, sales, use, value-added, excise, stamp, withholding, business, franchising,

property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping duties, all license, franchise and registration fees and all employment insurance, workers' compensation contributions, health insurance and Canada, Ontario and other government pension plan premiums or contributions;

"**Technical Information**" means any and all know-how and related technical knowledge owned by the Vendor for use principally in, or relating principally to, the operation of the Business or the ownership or use of the Purchased Assets, including:

(e) trade secrets, confidential information and other proprietary know-how, including headings, pre-press account management system know-how and other directory related know-how; and

(f) documented research, forecasts, studies, marketing plans, budgets, market data, developmental, demonstration or engineering work and drawings, blueprints, patterns, plans, flow charts, parts lists, manuals or records;

"**Technology**" means any and all technology owned by, or licensed to, the Vendor for use in or relating to the operation of the Business or the ownership or use of the Purchased Assets, including all computer systems, software and Technical Information;

"**Third Party Consent**" means any approval, consent or waiver required to be obtained from, or any notice required to be delivered to, any Person other than a Governmental Authority that is required in connection with any of the transactions contemplated by this Agreement and the Ancillary Agreements;

"**Threshold**" has the meaning given in Section 10.1(b)(ii)(A);

"**Toronto Hydro Services Agreement**" means the amended and restated servicing agreement dated as of March 31, 2010 between Direct Energy Marketing Limited and EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership) pursuant to which Direct Energy Marketing Limited services the Water Heaters which EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership) acquired from Toronto Hydro Energy Services Inc.;

"**Trade Union**" means an organization of employees formed for the purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union, a certified bargaining agent and any organization which has been declared a trade union pursuant to applicable labour relations legislation;

"**Transaction Documents**" means this Agreement, the Ancillary Agreements and all exhibits and schedules hereto and thereto;

"**Transferred Employees**" means all Employees covered by a Collective Agreement who continue to be employed by the Purchaser or an Affiliate of the Purchaser on and

after the Closing Date and the Non-Unionized Employees who accept offers of employment pursuant to Section 9.8(a);

"**Transition Services Agreement**" means the transition services agreement to be mutually agreed and entered into and executed by the Vendor and the Purchaser concurrently with the Closing;

"**Transition Billing Services**" has the meaning given in Section 9.15(d);

"**Unionized Employees**" means those Employees whose terms of employment are covered by the terms of a Collective Agreement;

"**Unit Transfer Agreement**" means the unit transfer agreement to be entered into and executed by the Vendor and EnerCare concurrently with Closing, in the form set forth in Exhibit H hereto, which shall provide for the exchange of the Purchaser Units for EnerCare Shares;

"**Value Dispute Agreement**" means the value dispute agreement dated December 17, 2002 between Direct Energy Marketing Limited (as successor by amalgamation to Enbridge Services Inc.), 4104285 Canada Limited, CIBC Mellon Trust Company, 4483588 Canada Inc. (formerly, Direct Waterheater Rentals Inc.), Waterheater Holding Limited Partnership, EnerCare Solutions Limited Partnership (formerly, Waterheater Operating Limited Partnership), 4113152 Canada Limited, EnerCare Inc. (formerly, The Consumers' Waterheater Income Fund), The Consumers' Waterheater Operating Trust, and Centrica Canada Limited;

"**Vendor**" means Direct Energy Marketing Limited, a corporation amalgamated under the laws of the Province of Ontario;

"**Vendor Benefit Plans**" means the Benefit Plans other than the Vendor Pension Plan;

"**Vendor Domain Names**" means any domain names owned by, or registered in favour of, the Vendor containing the words (i) "direct" and "energy", (ii) "directenergy", (iii) "energie" and "directe", or (iv) "energiedirecte";

"**Vendor High Meadow Restoration Amount**" means one hundred and fifty thousand dollars ($150,000);

"**Vendor OBA Intellectual Property**" means the Intellectual Property set forth in Section 1.1(T) of the Disclosure Letter;

"**Vendor Pension Plan**" means the Pension Plan for Employees of Direct Energy Marketing Limited, Financial Services Commission of Ontario registration #1086628;

"**Vendor Plaintiff Litigation**" means the matters set forth in Section 1.1(U) of the Disclosure Letter;

"**Water Heaters**" means all water heater tanks and smart thermostats bundled therewith, parts thereof, and related or ancillary equipment, including mixing valves, wires, pipes, and switches, rented or leased to Customers as part of the Business; and

"**Working Capital**" means, without duplication and at any time, the amount by which the current assets included in the Purchased Assets exceed the current liabilities included in the Assumed Liabilities, calculated in accordance with the same accounting principles and on a consistent basis with the calculation of the Working Capital as set out in Section 1.1(V) of the Disclosure Letter.

1.2 Certain Rules of Interpretation

In this Agreement:

(a) **Consent** — Whenever a provision of this Agreement requires an approval or consent by a Party to this Agreement and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

(b) **Currency** — Unless otherwise specified, all references to money amounts are to lawful currency of Canada.

(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 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.

(h) **Statutory References** — A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any

statute or regulation which amends, supplements or supersedes any such statute or any such regulation.

(i) **Time** — Time is of the essence in the performance of the Parties' respective obligations hereunder.

(j) **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 Knowledge

Any reference to the knowledge of the Parties means to the actual knowledge of the persons listed on Section 1.3 of the Disclosure Letter assuming such person shall have made reasonable inquiries in respect of the subject matter in question.

1.4 Virtual Data Room and Disclosure Letter

(a) Any reference to a document or matter being "made available to the Purchaser" or "provided to the Purchaser" means, and otherwise includes, the posting of a true and complete copy of such document or matter on the Vendor's virtual data room (the "**Data Room**") to which the Purchaser has had access, provided that continuous access to such documents or matters via the Data Room shall have been granted to the Purchaser no later than July 23, 2014. The Vendor shall provide a copy of the materials included in the Data Room on a memory stick delivered by the Vendor to the Purchaser or its counsel on the date of this Agreement.

(b) During the period from the date of this Agreement until the Closing or termination of this Agreement, each of the Purchaser Entities and the Vendor shall promptly notify the other in writing upon becoming aware of any representation or warranty made by any Purchaser Entity or the Vendor contained in this Agreement or any Ancillary Agreement becoming untrue or incorrect or that a Purchaser Entity or the Vendor has failed to perform or fulfill any covenant or obligation under this Agreement or any Ancillary Agreement. Any such notification shall set out particulars of the untrue or incorrect representation and warranty or unperformed or unfulfilled covenant or obligation, as applicable, and, if such notification refers to a representation or warranty made by the notifying party or covenant or obligation of the notifying party, details of any actions being taken by such party to rectify that state of affairs.

(c) The Vendor has prepared the Disclosure Letter in good faith and, to its knowledge, as of the date of this Agreement no additional disclosure is required in the Disclosure Letter so that the representations and warranties are true and accurate as of the date of this Agreement. Notwithstanding the foregoing,

following notice by either the Vendor or a Purchaser Entity under Section 1.4(b) on or before the tenth (10th) Business Day prior to the Closing Date, the Vendor may amend the Disclosure Letter to qualify the applicable representations and warranties in respect of any matter (i) first occurring after the date of this Agreement, (ii) which arises through no fault of the Vendor, and (iii) for which an amendment to the Disclosure Letter is required for the conditions in Article 7 to be satisfied on Closing. If any of the conditions in Article 7 would not have been satisfied without such an amendment to the Disclosure Letter, the Purchaser may terminate this Agreement by notice in writing to the Vendor within five (5) Business Days of receiving the revised Disclosure Letter. If the Purchaser does not terminate this Agreement in accordance with this Section 1.4(c), the Purchaser is deemed to have accepted and agreed to the Disclosure Letter and waived in full any breach or inaccuracy of the representations and warranties of the Vendor, and any corresponding closing conditions in favour of the Purchaser, addressed by the amendment (or proposed amendment) to the Disclosure Letter.

1.5 Entire Agreement

The Transaction Documents, together with the Confidentiality Agreement, constitute the entire agreement between the Vendor and its Affiliates, on the one hand, and the Purchaser Entities and their Affiliates, on the other hand, and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties pertaining to the subject matter of the Transaction Documents and supersede all prior agreements, understandings, negotiations, letters of intent, terms sheets and discussions, whether oral or written, binding or non-binding and signed or unsigned. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Vendor and any of its Affiliates, on the one hand, and the Purchaser Entity (and any of their Affiliates), on the other hand, in connection with the subject matter of this Agreement except as specifically set forth in the Transaction Documents or the Confidentiality Agreement.

ARTICLE 2
PURCHASE AND SALE

2.1 Actions by Vendor and Purchaser

Subject to the provisions of this Agreement, on the Closing Date, but as of and with effect from the Effective Time:

(a) **Purchase and Sale of Purchased Assets** — the Vendor shall sell, transfer, assign, convey and deliver to the Purchaser, and the Purchaser shall purchase, accept and receive from the Vendor, all right, title and interest in or to the Purchased Assets;

(b) **Assignment of Contracts** — the Vendor shall assign to the Purchaser and the Purchaser shall assume all of the rights and obligations of the Vendor under the Contracts;

(c) **Satisfaction of Purchase Price** — the Purchaser shall satisfy the Purchase Price as provided in Section 3.1; and

(d) **Other Documents** — the Parties shall sign, execute and/or deliver such other agreements and documents as may be reasonably necessary or desirable to complete the transactions contemplated by this Agreement, including the Ancillary Agreements.

2.2 Place of Closing

The Closing shall take place at the Closing Time at the offices of Torys LLP in Toronto, Ontario, or at such other place as may be agreed upon by the Parties.

2.3 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money shall be tendered by wire transfer of immediately available funds to the account specified by the party entitled to payment.

2.4 No Assumption of Liabilities other than Assumed Liabilities

Except for the Assumed Liabilities, which shall be assumed by the Purchaser as of and from the Effective Time, and any obligations of the Purchaser Entities under this Agreement or the Ancillary Agreements, the Purchaser Entities shall not assume and shall not be liable or responsible in any way for any Liability, whether or not in any way relating to or arising from the Business or the Purchased Assets. Except to the extent accounted for in the Closing Working Capital Statement, the Purchaser shall remit to the Vendor for payment upon receipt all invoices from suppliers of the Business relating to the provision of goods and services solely in respect of a period preceding the Effective Time. Except to the extent accounted for in the Closing Working Capital Statement, if the Purchaser pays any invoice from a third party relating to goods and services provided to the Business during a period starting before the Effective Time and ending on or after the Effective Time, the Vendor shall, within thirty (30) days of receipt of a written request to that effect from the Purchaser (which request shall include a copy of such invoice), reimburse the Purchaser for that portion of such invoice that relates solely to that part of the period ending before the Effective Time.

2.5 Transfer of Purchased Assets and Replacement of Non-Transferred Purchased Assets and Shared IT Assets

(a) Subject to the balance of Section 2.5 or as provided in the Transition Services Agreement, the Vendor shall be responsible for all costs and expenses incurred to transfer the Purchased Assets to the Purchaser, save and except for any Taxes and costs that are an obligation of the Purchaser pursuant to Section 9.14(a).

(b) Within thirty (30) days from the date hereof, the Vendor shall deliver to the Purchaser a list (the "**Non-Transferred Purchased Assets List**") of (i) all of the Shared Assets and (ii) all of the other Purchased Assets (other than the Non-Transferable Rights), which the Vendor determines not to transfer to the

Purchaser for any reason (together, the "**Non-Transferred Purchased Assets**"), and such list shall, for each Non-Transferred Purchased Asset, specify the reason such asset cannot be transferred to the Purchaser. Notwithstanding the above, if within ten (10) days from the date hereof, the Non-Transferred Purchased Assets List has yet to be delivered, the Vendor shall deliver to the Purchaser a draft version of such list. The Non-Transferred Purchased Assets shall not include any (A) Material Contracts, except for those Material Contracts set forth in Section 2.5(b) of the Disclosure Letter, or (B) other assets which the Purchaser cannot reasonably replace and fully integrate into the Business prior to the Closing Date. Notwithstanding the first sentence of this paragraph, Section 2.5(b) of the Disclosure Letter sets forth the Non-Transferred Purchased Assets identified as of the date hereof.

(c) Upon receipt of the Non-Transferred Purchased Assets List, the Purchaser shall, at its sole discretion, endeavor to replace any or all of the Non-Transferred Purchased Assets prior to the Closing, in consultation with the Vendor. For greater certainty, the Purchaser shall have complete discretion to determine which Non-Transferred Purchased Assets it shall choose to replace and timing of replacement provided that any Non-Transferred Purchased Assets to be replaced by the Purchaser shall be replaced with assets or services of similar quality, value and scope.

(d) The Vendor shall be responsible for all reasonable direct, documented out-of-pocket costs and expenses incurred by the Purchaser to replace any Non-Transferred Purchased Assets, as well as the costs outlined in Section 2.5(d) of the Disclosure Letter, excluding any GST/HST payable by the Purchaser on a like for like basis, provided that costs and expenses with respect to replacement of Shared Assets shall only be the responsibility of the Vendor to the extent such costs in the aggregate exceed the Shared Asset Threshold. Such costs and expenses, as qualified in the previous sentence, are the "**Asset Replacement Costs**". Prior to incurring any individual Asset Replacement Cost in excess of one hundred thousand dollars ($100,000), the Purchaser shall obtain the prior written approval of the Vendor, such approval not to be unreasonably withheld or delayed and which in any event shall be provided (or not provided) within two (2) Business Days. In the event that the Vendor does not respond within two (2) Business Days to a request for consent, the Vendor shall be deemed to have consented to the contemplated Asset Replacement Cost. In the event that the Vendor does not consent to such Asset Replacement Cost, the Purchaser shall make commercially reasonable efforts and co-operate with the Vendor to locate an alternative replacement of such Non-Transferred Purchased Asset, the Purchaser shall not be required to obtain the consent of the Vendor for any such alternative replacement, and the Vendor shall be responsible for the Asset Replacement Cost incurred in connection therewith. In the event that the Purchaser, after making commercially efforts, is unable to locate an alternative replacement of such Non-Transferred Purchased Asset, the Purchaser shall be permitted to replace such Non-Transferred Purchased Asset with the initially

contemplated replacement asset, and the Vendor shall be responsible for the Asset Replacement Cost incurred in connection therewith. In any event, the Purchaser shall work co-operatively with the Vendor to minimize any such Asset Replacement Cost. The Purchase Price paid to the Vendor on the Closing Date shall be reduced by the amount of any Asset Replacement Costs incurred prior to the Closing Date in accordance with Section 3.1.

(e) The Purchaser shall be responsible for all costs and expenses incurred by the Purchaser to replace any Shared IT Assets, including conducting negotiations with any third party vendors of Shared IT Assets.

(f) The Vendor shall, at its sole cost and expense (i) make commercially reasonable efforts to assist the Purchaser in connection with the replacement of the Shared IT Assets and any Non-Transferred Purchased Assets, whether before or following Closing, as requested, (ii) facilitate and provide reasonable support in connection with any negotiations with any third party vendors of similar Shared IT Assets and any Non-Transferred Purchased Assets, which shall include approaching any third party vendors to assist the Purchaser in transferring or replacing the Shared IT Assets and any Non-Transferred Purchased Assets, and (iii) cooperate to transition contractual operational relationships to the Purchaser and/or seek to acquire rights for the Purchaser to use the Shared IT Assets and any Non-Transferred Purchased Assets during the period of time that IT Support Services (as defined in the draft Transition Services Agreement in Schedule G hereto) are provided by the Vendor.

2.6 Assignment of Contracts

Notwithstanding any provision of this Agreement to the contrary, in the event any Contract (other than a Contract in respect of a Non-Transferred Purchased Asset) or Governmental Authorization which, as a matter of Law or by its terms, is (i) not assignable or transferable, (ii) not assignable or transferable without the approval or consent of the issuer thereof or the obtaining of a Third Party Consent, or (iii) otherwise requires a consent or approval of a third party to be obtained in connection with the consummation of any of the transactions contemplated by this Agreement (including, for greater certainty, the entering into and execution of the Ancillary Agreements) (collectively, "**Non-Transferable Rights**"), then the Vendor shall (and, if necessary, it shall cause its Affiliates to):

(a) apply for and use all commercially reasonable efforts to obtain such consents or approvals (including by paying such fees required under Contracts), in a form satisfactory to the Purchaser acting reasonably, prior to Closing and, if not obtained prior to Closing, after Closing;

(b) co-operate with the Purchaser in any reasonable arrangements requested by the Purchaser designed to provide the benefits of such Non-Transferable Rights to the Purchaser, including, where permitted by applicable Laws, holding or causing any of its Affiliates to hold any such Non-Transferable Rights in trust for the

Purchaser or acting as agent or causing any of its Affiliates to act as agent for the Purchaser;

(c) at the request and cost of the Purchaser, enforce any rights of the Vendor arising from such Non-Transferable Rights against the issuer thereof or the other party or parties thereto;

(d) take all such actions and do, or cause to be done, all such things as shall reasonably be necessary in order that the value, benefit or rights of any Non-Transferable Rights shall be preserved and shall enure to the benefit of the Purchaser; and

(e) hold such Non-Transferable Rights as a trustee and agent for the Purchaser and will pay or cause to be paid over to the Purchaser, all monies collected by or paid to the Vendor or any of its Affiliates, net of any applicable Taxes (excluding any income Taxes) required to be remitted by the Vendor or any of its Affiliates, in respect of such Non-Transferable Rights.

If the Vendor is unable to lawfully provide the benefit of any Contract or Governmental Authorization to the Purchaser, it shall not, at any time, assign or provide the benefit of such Contract or Governmental Authorization to any other party.

2.7 Termination

(a) This Agreement may be terminated by notice in writing given on or prior to the Closing,

(i) by mutual consent of each of the Vendor and the Purchaser; and

(ii) by the Purchaser or the Vendor if the Closing has not occurred on or prior to the Outside Date; provided that no Party shall have the right to terminate this Agreement pursuant to this Section 2.7(a)(ii) if such Party's failure to fulfill any obligation under this Agreement is the cause of, or has resulted in, the failure of the Closing to occur by such date.

(b) If this Agreement is terminated, and

(i) the Vendor's failure to fulfill any obligation under this Agreement is the cause of, or has resulted in, such termination, the Vendor shall pay to the Purchaser within thirty (30) days of such termination an amount equal to the Asset Replacement Costs incurred by the Purchaser pursuant to Section 2.5(d), if any;

(ii) the Purchaser's failure to fulfill any obligation under this Agreement is the cause of, or has resulted in, such termination, the Purchaser shall be responsible for the Asset Replacement Costs incurred by the Purchaser pursuant to Section 2.5(d), if any; or

(iii) neither the Vendor nor the Purchaser has failed to fulfill any obligation under this Agreement which has caused or resulted in such termination, the Vendor shall pay to the Purchaser within thirty (30) days of such termination an amount equal to fifty percent (50%) of the Asset Replacement Costs incurred by the Purchaser pursuant to Section 2.5(d), if any, and the Purchaser shall be responsible for the remaining fifty percent (50%) of such Asset Replacement Costs.

2.8 Post-Employment Benefit Obligations

(a) Within thirty (30) days of the date hereof, Mercer LLC shall, as at a date that is within thirty (30) days of the date hereof (the "**PEB Valuation Date**"), prepare an actuarial valuation (the "**Draft PEB Valuation**") of post-employment benefit obligations, excluding pension obligations, for the Employees who, as of the PEB Valuation Date, can reasonably be expected to become Transferred Employees ("**PEB Obligations**").

(b) Each Party will have five (5) Business Days to review the Draft PEB Valuation following receipt of it and must notify the other Party in writing if it has any objections to the Draft PEB Valuation within such five (5) Business Day period. The notice of objection must contain a statement of the basis of each of the Party's objections.

(c) If a Party sends a notice of objection of the Draft PEB Valuation in accordance with Section 2.8(b), the Parties will retain Towers Watson & Co. to complete a second actuarial valuation of the PEB Obligations as at the PEB Valuation Date (the "**Additional PEB Valuation**"), which shall be completed within ten (10) days of such request.

(d) If neither Party notifies the other Party of any objection within the five (5) Business Day period specified in Section 2.8(b), the Parties are deemed to have accepted and approved the Draft PEB Valuation and such Draft PEB Valuation will be final, conclusive and binding upon the Parties and will not be subject to further challenge or dispute, absent manifest error. The Draft PEB Valuation will become the "**Closing PEB Valuation**" on the next Business Day following the end of such five (5) Business Day period.

(e) If either Party sends a notice of objection in accordance with Section 2.8(b), the average of the valuations of the PEB Obligations contained in the Draft PEB Valuation and the Additional PEB Valuation will be calculated upon completion of the Additional PEB Valuation and such average will become the "**Closing PEB Valuation**".

(f) The Parties agree that the procedure set forth in this Section 2.8 for resolving disputes with respect to the Draft PEB Valuation is the sole and exclusive method of resolving such disputes, absent manifest error.

(g) To the extent that the valuation of PEB Obligations contained in the Closing PEB Valuation is more than the PEB Obligations Estimate Amount, the Purchase Price shall be reduced by such excess in accordance with Section 3.1.

(h) The Purchaser and the Vendor will each bear their own fees and expenses, including the fees and expenses of their respective advisors, in reviewing the Draft PEB Valuation and Additional PEB Valuation. The costs and expenses of Mercer LLC and Towers Watson & Co. shall be borne equally by the Purchaser and the Vendor.

ARTICLE 3
PURCHASE PRICE

3.1 Purchase Price

The aggregate purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be equal to (i) four hundred and fifty million dollars ($450,000,000), plus (ii) the Estimated Working Capital Surplus, if any, minus (iii) the Estimated Working Capital Deficit, if any, minus (iv) the aggregate Asset Replacement Costs, if any, incurred prior to the Closing Date, minus (v) the excess, if positive, of the valuation of PEB Obligations contained in the Closing PEB Closing PEB Valuation over the PEB Obligations Estimate Amount (such total, the "Cash Consideration"), plus (vi) the Purchaser Units, plus (vii) the value of the Assumed Liabilities (collectively, the "Purchase Price"), subject to adjustment in accordance with Section 3.5. The Purchase Price is exclusive of all Taxes payable by the Purchaser pursuant to applicable Law and Section 9.17(a).

3.2 Payment of Purchase Price

At the Closing Time, the Purchase Price shall be paid and satisfied, subject to adjustment in accordance with Section 3.3, as follows:

(a) The Cash Consideration shall be paid by wire transfer of immediately available funds to an account of the Vendor, which account will be designated in writing by the Vendor to the Purchaser no later than two (2) Business Days prior to the Closing Date;

(b) The Purchaser shall (i) issue the Purchaser Units in the name of the Vendor, (ii) deliver unit certificates representing such Purchaser Units to the Vendor, (iii) register the Vendor as holder of the Purchaser Units on the register of the partnership, and (iv) provide such other evidence reasonably acceptable to the Vendor to properly evidence the Vendor's partnership interest in the Purchaser; and

(c) The Purchaser shall assume as of the Effective Time and shall pay, discharge and perform, as the case may be, from and after the Effective Time, the Assumed Liabilities.

3.3 Preparation of Working Capital Statement

(a) No later than five (5) Business Days prior to the Closing Date, the Vendor shall prepare and deliver to the Purchaser a good faith, estimated, unaudited statement of the Working Capital expected to exist as of the Effective Time (the "**Estimated Working Capital Statement**" and the Working Capital set out therein, the "**Estimated Working Capital**"). The Vendor shall consider the reasonable comments of the Purchaser in preparing the Estimated Working Capital Statement.

(b) Within ninety (90) days following the Closing Date (or such other date as is mutually agreed to by the Vendor and the Purchaser in writing), the Purchaser will prepare and deliver to the Vendor a draft audited statement of Working Capital (the "**Draft Working Capital Statement**") prepared as of the Effective Time. The costs and expenses of the Draft Working Capital Statement shall be borne by the Purchaser.

(c) The Vendor will have twenty (20) Business Days to review the Draft Working Capital Statement following receipt of it and the Vendor must notify the Purchaser in writing if it has any objections to the Draft Working Capital Statement within such twenty (20) Business Day period. The notice of objection must contain a statement of the basis of each of the Vendor's objections and each amount in dispute. The Purchaser will (i) provide access to the Vendor, upon every reasonable request, to the accounts, books and records, financial systems and employees of the Business and (ii) cooperate with the Vendor for purposes of reviewing the Draft Working Capital Statement.

(d) If the Vendor sends a notice of objection of the Draft Working Capital Statement in accordance with Section 3.3(c), the Parties will work expeditiously and in good faith in an attempt to resolve such objections within twenty (20) Business Days following receipt of the notice. Failing resolution of any objection to the Draft Working Capital Statement raised by the Vendor, the dispute will be submitted for determination to an independent firm of chartered accountants mutually agreed to by the Purchaser and the Vendor (and, failing such agreement between the Purchaser and the Vendor within a further period of five (5) Business Days, such independent firm of chartered accountants shall be KPMG LLP, or if such firm is unable to act, Grant Thornton LLP). The determination of such firm of chartered accountants will be final, conclusive and binding upon the Parties and will not be subject to appeal, absent manifest error. Such firm of chartered accountants are deemed to be acting as experts and not as arbitrators. Notwithstanding the foregoing, the determination of such firm of chartered accountants shall in no event be more favourable to the Purchaser than reflected in the Draft Working Capital Statement delivered by the Purchaser or more favourable to the Vendor than shown in the proposed changes to the Draft Working Capital Statement delivered by the Vendor under its notice of objection pursuant to Section 3.3(c). During the review by the firm of chartered accountants, the Purchaser and the Vendor shall each make available to such firm

of chartered accountants, such individuals and such information, facilities, books, records and work papers as may be reasonably required by the firm of chartered accountants to fulfill their obligations hereunder during normal business hours (such access not to unreasonably disrupt the operations of the Purchaser or the Vendor).

(e) If the Vendor does not notify the Purchaser of any objection within the twenty (20) Business Day period, the Vendor is deemed to have accepted and approved the Draft Working Capital Statement and such Draft Working Capital Statement will be final, conclusive and binding upon the Parties and will not be subject to appeal, absent manifest error. The Draft Working Capital Statement will become the "**Closing Working Capital Statement**" on the next Business Day following the end of such twenty (20) Business Day period.

(f) If the Vendor sends a notice of objection in accordance with Section 3.3(c), the Parties will revise the Draft Working Capital Statement to reflect the final resolution or final determination of such objections under Section 3.3(d) within two (2) Business Days following such final resolution or determination. Such revised Draft Working Capital Statement will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Working Capital Statement will become the **"Closing Working Capital Statement**" on the next Business Day following revision of the Draft Working Capital Statement under this Section 3.3(f).

(g) The Purchaser and the Vendor will each bear their own fees and expenses, including the fees and expenses of their respective auditors, in reviewing the Estimated Working Capital Statement and the Draft Working Capital Statement. In the case of a dispute and the retention of a firm of chartered accountants to determine such dispute, the costs and expenses of such firm of chartered accountants shall be borne equally by the Purchaser and the Vendor. However, the Purchaser and the Vendor will each bear their own costs in presenting their respective cases to such firm of chartered accountants.

(h) The Parties agree that the procedure set forth in this Section 3.3 for resolving disputes with respect to the Draft Working Capital Statement is the sole and exclusive method of resolving such disputes, absent manifest error.

(i) For greater clarity, Working Capital as set out in each of the Estimated Working Capital Statement, the Draft Working Capital Statement and the Closing Working Capital Statement shall be calculated in accordance with the same accounting principles and on a consistent basis with the calculation of the Working Capital as set out in Section 1.1(V) of the Disclosure Letter.

3.4 Preparation of Final Asset Replacement Costs Statement

Within one hundred and twenty (120) days from the Closing Date, the Purchaser shall deliver to the Vendor a final statement (the "**Final Asset Replacement Costs Statement**") detailing all

Asset Replacement Costs incurred by the Purchaser and not accounted for in the calculation and payment of the Cash Consideration at Closing (the "**Post Closing Asset Replacement Costs**").

3.5 Purchase Price Adjustments

(a) The Purchase Price shall be (i) increased or decreased, as the case may be, dollar-for-dollar, to the extent that the Working Capital as determined from the Closing Working Capital Statement is more or less than the Estimated Working Capital, and (ii) decreased, dollar-for-dollar, for the aggregate Post Closing Asset Replacement Costs.

(b) If the Working Capital, as determined from the Closing Working Capital Statement, is more than the Estimated Working Capital, the Purchaser will pay to the Vendor the amount of such difference as an increase to the Purchase Price. If the Working Capital as determined from the Closing Working Capital Statement is less than the Estimated Working Capital, the Vendor will pay to the Purchaser the amount of such difference as a decrease to the Purchase Price.

(c) The Vendor will pay to the Purchaser the aggregate Post Closing Asset Replacement Costs as a decrease to the Purchase Price.

(d) Any amounts to be paid under this Section 3.5 will be paid by bank draft or wire transfer of immediately available funds within three (3) Business Days after (i) the Draft Working Capital Statement becomes the Closing Working Capital Statement in accordance with Section 3.3(e) or Section 3.3(e), as the case may be, or (ii) delivery of the Final Asset Replacement Costs Statement, as applicable.

(e) Any payments required to be made by the Vendor or the Purchaser pursuant to this Section 3.4 shall bear interest from the Closing Date through the date of payment at the interest rate per annum equal to the prime rate as published by The Toronto-Dominion Bank on the last Business Day of the week before such payment is to be made.

3.6 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets in accordance with the provisions of Section 3.6 of the Disclosure Letter. If the value of any item noted in Section 3.6 of the Disclosure Letter changes materially, including if any item in the Closing Working Capital Statement differs materially from its corresponding value in the Draft Working Capital Statement, or if any material amounts are included in the Final Asset Replacement Costs Statement, the Purchaser and the Vendor agree to adjust the allocation of the Purchase Price on a basis consistent with the original allocation specified in Section 3.6 of the Disclosure Letter. Each of the Vendor and the Purchaser hereby undertake to execute and file all Tax Returns in a manner consistent with such allocation. If such allocation is disputed by any taxation or other Governmental Authority, the party receiving notice of such dispute will promptly notify the other Party and the Parties will use their reasonable best efforts to sustain the final allocation. The

Parties will share information and cooperate to the extent reasonably necessary to permit the transactions contemplated by this Agreement to be properly, timely and consistently reported.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE VENDOR

The Vendor represents and warrants to the Purchaser Entities, as of the date hereof, the matters set out below and acknowledges the Purchaser Entities are relying upon all such representations and warranties for the purpose of the transactions contemplated in this Agreement and the Ancillary Agreements and the issuance of the Purchaser Units and EnerCare Shares.

4.1 Incorporation, Corporate Power and Registration

The Vendor is a corporation duly amalgamated and validly existing under the laws of the jurisdiction of its amalgamation. The Vendor has all necessary corporate power, authority and capacity to own its property and assets and to carry on the Business as presently conducted. Neither the nature of the Business nor the location or character of the property owned or leased by the Vendor relating to the Business requires it to be registered, licensed or otherwise qualified as an extra-provincial or foreign corporation in any jurisdiction other than in the Province of Ontario where it is duly registered, licensed or otherwise qualified for such purpose and other than jurisdictions where the failure to be so registered, licensed or otherwise qualified would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

4.2 Subsidiaries

Except as set forth in Section 4.2 of the Disclosure Letter, the Vendor does not have any Subsidiary that is engaged in the Business and does not hold any shares, securities, or other ownership, equity or proprietary interest in any other such Person.

4.3 Due Authorization and Enforceability

The Vendor has all necessary corporate power, authority and capacity to enter into this Agreement and the Ancillary Agreements, to carry out its obligations under this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action on the part of the Vendor. This Agreement constitutes, and each of the Ancillary Agreements to be executed or delivered by the Vendor at the Closing will constitute, a valid and binding obligation of the Vendor enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting creditors' rights generally and general principles of equity.

4.4 No Conflicts

Except for those Contracts which require Third Party Consents in connection with the transactions contemplated under this Agreement and the necessary consent in connection with the Competition Act Approval, the execution and delivery by the Vendor of this Agreement and

the Ancillary Agreements and the performance by the Vendor of any of its obligations under this Agreement and the Ancillary Agreements, do not and will not (a) result in the creation or imposition of any Encumbrances on the Purchased Assets that will not be discharged prior to Closing (other than Permitted Encumbrances or Encumbrances created by or through the Purchaser or any of its Affiliates), (b) conflict with or result in a violation or breach of, or default (or event which with the giving of notice or lapse of time, or both, would reasonably be expected to, individually or in the aggregate, result in a violation, breach of, or default) under, any provision of the articles of incorporation, by-laws or other organizational documents of the Vendor, (c) conflict with or result in a violation or breach of, or default (or event which with the giving of notice or lapse of time, or both, would reasonably be expected to, individually or in the aggregate, result in a violation, breach of, or default) under, or change in any of the material terms of, or result in the termination, acceleration or cancellation of, any Material Contract, or (d) conflict with or result in a violation nor breach of any provision of any Law applicable to the Vendor, the Business or the Purchased Assets.

4.5 Regulatory Approvals and Third Party Consents

(a) Except for (i) the requirement to obtain the Competition Act Approval and (ii) the requirement for regulatory approval of the pension asset transfer contemplated in the Pension Asset Transfer Agreement (which approval is not, for greater certainty, anticipated by the Parties prior to the Closing Date), no material consent, approval, authorization or other order or declaration of, action by, filing with, notification to or permit from, any Governmental Authority is required on the part of the Vendor in connection with the execution and delivery by the Vendor of this Agreement or the Ancillary Agreements or the performance by the Vendor of its obligations pursuant to this Agreement or the Ancillary Agreements, except as may be necessary as a result of any facts or circumstances relating solely to the Purchaser Entities or any of their Affiliates.

(b) Section 4.5(b) of the Disclosure Letter sets forth a list of all Third Party Consents required under the Material Contracts in connection with the execution, delivery or performance of this Agreement and the Ancillary Agreements.

4.6 Financial Statements

True and complete copies of the Financial Statements have been made available by the Vendor to the Purchaser. The Financial Statements (i) were prepared in accordance with IFRS applied on a consistent basis throughout the period involved and in accordance with the Books and Records, (ii) fairly present in all material respects the financial condition and results of operations and cash flows of the Business including the Purchased Assets, Joint Assets and the Assumed Liabilities, as of the dates thereof or for the periods covered thereby, subject, in the case of any unaudited interim financial statements to normal year end audit adjustments, and (iii) the Vendor's auditors have not withdrawn any audit opinion with respect to any Financial Statements.

4.7 Absence of Changes and Unusual Transactions

Since the Reference Balance Sheet Date, except as disclosed in the Q1 2014 Financial Statements or the Disclosure Letter, and other than in the ordinary course of the Business consistent with the Vendor's past practice:

(a) Except as set forth in Section 4.7(a) of the Disclosure Letter, there has not been any change, development, event, fact, occurrence, circumstance or omission that has had or is reasonably expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) the Vendor has conducted the Business in the ordinary course consistent with past practice;

(c) the Vendor has not incurred, assumed or guaranteed any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the ordinary course of the Business consistent with past practice;

(d) Except as disclosed in Section 4.22 (c) of the Disclosure Letter, there has not been any material damage or destruction to, or loss of, any material Purchased Assets (whether or not covered by insurance) and there has not been any strike or work stoppage or to the knowledge of the Vendor, any organizing drive or application for certification in respect of any Trade Union;

(e) the Vendor has not transferred, assigned, sold or otherwise disposed of any of the Purchased Assets, or cancelled or settled any debts, claims or entitlements, except in the ordinary course of the Business consistent with past practice;

(f) except as set forth in Section 4.7(f) of the Disclosure Letter, the Vendor has not changed the term of any bonus or commission, granted any bonuses, whether monetary or otherwise, made any wage or salary increases in respect of any Transferred Employees, increased the benefits of or changed the terms of employment for any Transferred Employee or entered into any severance or termination agreement with any Transferred Employee, except (i) as provided for in the Collective Agreements, or (ii) increases in compensation based on merit or resulting from promotions and discretionary bonuses, in each case awarded in the ordinary course of the Business and consistent with the Vendor's past practice with respect to the Business;

(g) the Vendor has not, with respect to the Business or the Purchased Assets, directly or indirectly, engaged in any transaction, made any loan or entered into any arrangement with any officer, director, partner, shareholder, Employee (whether current or former or retired), consultant, independent contractor, franchisee or agent of the Vendor, except for compensation and benefit arrangements made in the ordinary course of the Business and consistent with the Vendor's past practice with respect to the Business;

(h) the Vendor has not changed its accounting principles, practices, methods or procedures or made any material change or election with respect to Taxes regarding the Business, the Purchased Assets or the Assumed Liabilities, except as required pursuant to any change in IFRS applicable to the Vendor which has taken effect on or after the Reference Balance Sheet Date;

(i) except as set forth in Section 4.7(i) of the Disclosure Letter or as contemplated in Section 9.9, the Vendor has not entered into any new, or terminated, or amended any existing, Collective Agreement;

(j) except as set forth in Section 4.7(j) of the Disclosure Letter, the Vendor has not amended or terminated any Material Contract;

(k) the Vendor has not failed to pay or otherwise satisfy (except if being contested in good faith) any material Accounts Payable or material Liabilities when due and payable except in the ordinary course of the Business consistent with the Vendor's past practice with respect to the Business, nor otherwise altered in any material respect its practices and policies relating to the payment and collection of Accounts Payable and Accounts Receivable; and

(l) the Vendor has not authorized, agreed or otherwise become committed to do any of the foregoing.

4.8 Certain Transactions

No director or officer, former director or officer, shareholder or Employee or any other Person not dealing at arm's length with the Vendor is engaged in any transaction or arrangement with or has any Liability to the Vendor with respect to the Business which would be material to the Business, and the Vendor is not indebted, liable or otherwise obligated to any such Person with respect to the Business, except for employment arrangements with Employees disclosed to the Purchaser prior to the date hereof and services provided on commercially reasonable terms in the Vendor's ordinary course of the Business.

4.9 No Joint Venture

Except as disclosed in Section 4.9 of the Disclosure Letter, other than its relationship with EnerCare, the Vendor (i) is not a partner, beneficiary, trustee, co-tenant, joint-venturer or otherwise a participant in any partnership, trust, joint venture, co-tenancy or similar jointly owned business undertaking, and (ii) does not have any investment interests (whether equity or debt) in any business owned or controlled by any third party, which carries on in whole or in part the Business.

4.10 Major Suppliers and Customers

Section 4.10 of the Disclosure Letter sets forth a comprehensive listing, as of the date hereof, of each supplier of goods and services to the Business to whom or by whom the Vendor paid or was billed in excess of five hundred thousand dollars ($500,000) in the aggregate during the twelve-month period ending December 31, 2013. The Vendor has not received written notice that any

such supplier has any intention to change its relationship or the terms upon which it conducts business with the Business. No single customer of the Business was billed in excess of five hundred thousand dollars ($500,000) by the Vendor during the year ended December 31, 2013.

4.11 Title to Purchased Assets, Joint Assets and Non-Transferred Trademarks

The Vendor is the sole legal and beneficial owner and, where its interests are registrable, the sole owner of record, of the Purchased Assets, the Joint Assets and the Governmental Authorizations, with good and valid title thereto, which, as of the Closing Date, will be free and clear of any Encumbrances other than Permitted Encumbrances, and the Vendor is exclusively entitled to possess, use, occupy and dispose of same (subject only, in the case of Contracts or Governmental Authorizations, to the necessity of obtaining consents to their assignment or otherwise to the transactions contemplated hereunder). There has been no assignment, subletting or granting of any license (of occupation or otherwise) of or in respect of any of the Purchased Assets, the Joint Assets, the Contracts and the Governmental Authorizations, or any granting of any agreement or right capable of becoming an agreement or option for the purchase, license or assignment of any of the Purchased Assets, the Joint Assets and the Governmental Authorizations other than pursuant to Franchise Agreements entered into and purchase orders accepted by the Vendor in the ordinary course of the Business consistent with past practice. As at the Effective Time, the Vendor will be the sole beneficial owner of the Non-Transferred Trademarks as set forth on Section 4.11 of the Disclosure Letter with good and valid title thereto, free and clear of any Encumbrances other than the Permitted Encumbrances.

4.12 No Rights to Acquire Purchased Assets or Joint Assets

There are no agreements, options or other rights pursuant to which the Vendor is, or may become, obligated to sell any of the Purchased Assets or Joint Assets other than pursuant to purchase orders accepted, and commitments made under Franchise Agreements, by the Vendor in the ordinary course of the Business consistent with past practices.

4.13 Condition and Sufficiency of Purchased Assets

Except as set out in Section 4.13 of the Disclosure Letter, the Fixed Assets included in the Purchased Assets are in all material respects (i) structurally sound, (ii) in good operating condition, repair and working order having regard to their use and age and (iii) adequate for the uses to which they are being put, and none of the such Fixed Assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs. Other than the Benefit Plans provided to the Transferred Employees and the Excluded Assets, and the Non-Transferred Purchased Assets, the Purchased Assets, together with (i) the Shared Assets, (ii) the Joint Assets, (iii) the Non-Transferred Trademarks, (iv) the Governmental Authorizations, and (v) the services contemplated by the Ancillary Agreements, are sufficient to enable the Purchaser to carry on the Business in all material respects consistent with past practices and constitute all of the assets, properties, rights, undertakings and goodwill used by the Vendor to conduct the Business immediately prior to Closing.

4.14 Business in Compliance with Law

Except as disclosed in Section 4.14 of the Disclosure Letter, since July 24, 2011, the Vendor has complied, and is now complying, in all material respects, with (A) all Laws, and (B) all internal and posted policies with respect to privacy, personal information and/or data or system security, in each case as applicable to (i) the conduct of the Business as currently conducted, and (ii) the ownership and use of the Purchased Assets, and the Vendor has not received, within the previous three (3) years, any written notice of any alleged violation of any such Laws or material violation of internal and posted policies other than the Competition Bureau Notice of Application and any Customer complaints received in the ordinary course of the Business. To the best of the Vendor's knowledge, marketing agents and dealers as a group acting on behalf of the Vendor are, and in the last three (3) years have been, in compliance in all material respects, with all Laws relating to marketing Water Heaters, HVAC Equipment and Protection Plans.

4.15 Governmental Authorizations

Except as disclosed in Section 4.15 of the Disclosure Letter, no material Governmental Authorizations are required by the Vendor to enable it to carry on the Business and possess the Purchased Assets in compliance with all Laws.

4.16 Business Intellectual Property; Technology

(a) Rights in the Business Intellectual Property

(i) All registrations and applications for registration (including domain names) with respect to the Business Intellectual Property that are owned by the Vendor are included in the Purchased Assets and are listed in Section 4.16(a)(i) of the Disclosure Letter.

(ii) The Business Intellectual Property, the Shared IT Assets, the Vendor Domain Names, the Common Law Trademarks, the Non-Transferred Trademarks and the Joint Assets together constitute all of the Intellectual Property necessary or material to the operation of the Business.

(iii) There are no patents or industrial designs used in the operation of the Business or that are necessary to the ownership or use of the Purchased Assets, nor are there any patent or design applications pending in respect thereof.

(iv) Except for the Vendor Domain Names and the domain names listed in Section 4.16(a)(i) of the Disclosure Letter, there are no copyright or domain name registrations or applications pending that are used in or necessary to the operation of the Business, or that are necessary to the ownership or use of the Purchased Assets.

(v) The Business Intellectual Property purported to be owned by the Vendor are owned solely by the Vendor free and clear of all Encumbrances other

than Permitted Encumbrances. The Business Intellectual Property, the material Common Law Trademarks, the Non-Transferred Trademarks and the Joint Assets used in the Business are either owned by the Vendor or the Vendor otherwise possesses adequate rights for use of same in the Business.

(b) **Validity** — Except as set forth in Section 4.16(b) of the Disclosure Letter (i) all registrations of the Business Intellectual Property are in full force and effect and have not been expunged, cancelled or withdrawn, (ii) there are no Actions or Orders pending or, to the knowledge of the Vendor, threatened that challenge the ownership, use, validity or enforceability of any Business Intellectual Property or the Common Law Trademarks, and the Vendor has not taken, or failed to take, any actions that, individually or in the aggregate, would reasonably be expected to result in such Business Intellectual Property failing to be in full force and effect, and (iii) to the knowledge of the Vendor, there are no facts upon which it can reasonably be claimed that any of the Business Intellectual Property or the material Common Law Trademarks is, as applicable, invalid or unenforceable.

(c) **Infringements by the Vendor** — To the knowledge of the Vendor, the conduct of the Business does not breach, violate, infringe, misappropriate or interfere with any Intellectual Property or other rights, including patent rights, of any Person. There are no Actions or Orders against the Vendor pending or, the knowledge of the Vendor, threatened, alleging that the use by the Vendor of any of the Business Intellectual Property, the Common Law Trademarks or Technology included in the Purchased Assets breaches, violates, infringes, misappropriates or interferes with any Intellectual Property or other rights, including patent rights, of any other Person, nor to the knowledge of the Vendor are there any facts upon which such an allegation can reasonably be made.

(d) **Third Party Infringements** — To the knowledge of the Vendor, except as set forth in Section 4.16(d) of the Disclosure Letter, no Person is breaching, violating, infringing, misappropriating or interfering with the material Common Law Trademarks or the Business Intellectual Property. There are no Claims in progress by the Vendor relating to any breach, violation, infringement or misappropriation of or interference with any of the Common Law Trademarks or the Business Intellectual Property by any other Person, nor to the knowledge of the Vendor are there any facts upon which such a Claim can reasonably be made.

(e) **Technology and Confidential Information** — The Vendor has taken reasonable measures to protect and maintain its trade secrets and confidential information. The Vendor has taken the measures specified in Section 4.16(e) of the Disclosure Letter to protect and maintain the integrity, continuous operation and security of its material Technology (and all data stored therein or transmitted thereby). To the knowledge of the Vendor, and except as disclosed in Section 4.16(e) of the Disclosure Letter, there have been no material breaches, outages, interruptions, corruptions, unauthorized uses or accesses, or violations of same during the immediately preceding twelve-month period. To the knowledge of the Vendor,

and except as disclosed in Section 4.16(e) of the Disclosure Letter, no material software owned by the Vendor or used in the Business is subject to any "open source" or similar license requiring access, conveyance, licensing or distribution of any proprietary source code upon the access to conveyance, licensing or distribution of such software to others.

4.17 Equipment Contracts

Except as disclosed in Section 4.17 of the Disclosure Letter, all of the Equipment Contracts which are, individually or in the aggregate, material to the operations of the Business or the ownership and use of the Purchased Assets are in full force and effect and no material default exists on the part of the Vendor, or to the knowledge of the Vendor, on the part of any of the other parties thereto. The interest of the Vendor under each of the Equipment Contracts which are, individually or in the aggregate, material to the operations of the Business or the ownership and use of the Purchased Assets, is held by it free and clear of any Encumbrance, other than Permitted Encumbrances, and all payments due under the Equipment Contracts which are material to the operations of the Business or the ownership and use of the Purchased Assets, individually or in the aggregate, have been duly and punctually paid.

4.18 Owned Real Property

The Vendor does not own or have any rights to or interests in, nor does it have any rights whatsoever to purchase, any real property related to the operation of the Business or the use of the Purchased Assets.

4.19 Leased Premises

(a) Except as set out in Section 4.19(a) of the Disclosure Letter, the Leased Premises are the sole premises used for the purposes of the operations of the Business other than Direct Energy locations from which corporate level support is provided to the Business.

(b) The Vendor enjoys peaceful and undisturbed possession of the Leased Premises.

(c) The Vendor has delivered to the Purchaser a true and complete copy of the Premises Leases. Each Premises Lease is valid, binding and enforceable, has not been altered or amended except as set out in Section 4.19(c) of the Disclosure Letter and is in full force and effect. To the knowledge of the Vendor, the Vendor is not in breach or default under such Premises Leases, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and the Vendor has paid all rent due and payable under such Premises Leases.

(d) There are no agreements or understandings between the landlords of the Leased Premises and Vendor as tenant, other than as contained in the Premises Leases, pertaining to the rights and obligations of the parties thereto or relating to the use and occupation of the Leased Premises.

(e) All payments required to be made by the Vendor pursuant to the Premises Leases have been paid and the Vendor is not in default in meeting any of its material obligations under any of the Premises Leases.

(f) To the knowledge of the Vendor, the landlord under each Premises Lease is not in default in meeting any of its obligations under such Premises Lease.

(g) The Vendor has no option, right of first refusal or other contractual right relating to the Leased Premises other than as set out in the Premises Leases.

(h) To the knowledge of the Vendor, no event exists which, but for the passing of time or the giving of notice, or both, would constitute a material default by any party to the Premises Leases and the Vendor has not received notice that any party to the Premises Leases is claiming any such default or taking any action purportedly based upon any such default.

(i) Except as set out in Section 4.19(j) of the Disclosure Letter, the Vendor has not waived, or omitted or take any action in respect of any substantial rights under the Premises Leases.

(j) The Vendor has good and valid leasehold interest in the Leased Premises.

(k) To the knowledge of the Vendor, the Vendor has satisfied all capital maintenance, repair, and replacement obligations under the High Meadow Lease.

4.20 Environmental Matters

(a) The Business, the Purchased Assets and the Leased Premises are and have for the past two years been in compliance in all material respects with Environmental Laws and Environmental Approvals.

(b) There is no pending or, to the knowledge of the Vendor, threatened Action or Order with respect to any Hazardous Substance or Environmental Laws relating to any of the Business, the Purchased Assets or the Leased Premises.

(c) To the knowledge of the Vendor, there is no Hazardous Substance in, on, under, or coming from the Leased Premises or any other Purchased Asset that, individually or in the aggregate, could reasonably be expected to result in a material liability under Environmental Laws.

(d) The Vendor has not Released, generated or transferred any Hazardous Substance at, from, on or under the Leased Premises, except in compliance in all material respects with Environmental Laws.

(e) The Vendor has provided to the Purchaser all material assessments, reports, audits, results and other records with respect to environmental matters, including with respect to Environmental Laws and Hazardous Substances, prepared or

commissioned within the past five (5) years relating to the Business, the Purchased Assets and the Leased Premises.

4.21 Employment Matters

(a) Section 4.21(a) of the Disclosure Letter accurately reflects the following information in respect of each employee listed therein:

(i) the employee number of each employee;

(ii) the position (including whether such employee is unionized and with which union) of each employee together with the location of their employment;

(iii) the date each employee was hired;

(iv) which employees are subject to a written employment contract (other than simple offer letters) with the Vendor or any Affiliate of the Vendor;

(v) the annual wage of each employee, any bonuses paid to each employee since the end of the Vendor's last completed financial year and prior to the date of such list and all other bonuses, incentive schemes, benefits, commissions and other material compensation to which such employee is entitled;

(vi) the vacation entitlement of each employee; and

(vii) the status of such employees as either active or not actively working on the date of this Agreement due to short-term disability leave, parental leave or other approved absence other than long-term disability leave.

(b) Section 4.21(b) of the Disclosure Letter lists all individuals employed by the Vendor as of the date of this Agreement whose employment and services rendered include services for the Business and who are not listed in Section 4.21(a) of the Disclosure Letter, and also indicates:

(i) the employee number of each such employee;

(ii) the position (including whether such employee is unionized and with which union) of each employee together with the location of their employment; and

(iii) which employees would be Employees but for the fact that they are on long-term disability leave.

(c) The employees listed in Sections 4.21(a) and 4.21(b) of the Disclosure Letter, the independent contractors listed in Section 4.21(f) of the Disclosure Letter and the individuals to be involved in delivery of the services to be contemplated by the

Transition Services Agreement would be sufficient to enable the Purchaser to carry on the Business consistent with past practices and constitute all individuals employed or under contract as independent contractors by the Vendor as of the date of this Agreement whose employment and/or services rendered include services for the Business.

(d) Except as disclosed in Section 4.21(d) of the Disclosure Letter, (i) there are no Employment Contracts which limit the Vendor's ability to discharge any Transferred Employee with the giving of reasonable notice in accordance with applicable Law, and (ii) there are no agreements, oral or written, obligating the Vendor to provide any salary, wages, bonuses, incentive pay or compensation, performance compensation, deferred compensation, profit-sharing or deferred profit-sharing, share purchase, share option, stock appreciation, vacation or vacation pay, sick pay, severance or termination pay, employee loans or any termination or severance compensation (other than as required by applicable Law), or obligating the Vendor to provide cash or other compensation or benefits upon the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

(e) the Vendor is in compliance with all terms and conditions of employment of the Employees and all Laws respecting employment of the Employees and there are no outstanding claims, investigations or orders under any such Laws.

(f) Section 4.21(f) of the Disclosure Letter lists (i) all Persons who are currently performing services for the Business as independent contractors and (ii) the current rate of compensation or total fees paid during the 12-month period beginning on April 1, 2013 and ending on March 31, 2014 of each such Person.

(g) To the knowledge of the Vendor, none of the Transferred Employees is subject to any restrictions, including pursuant to any non-competition agreements with the Vendor, which would prevent any such Transferred Employee from (i) entering into an employment agreement with the Purchaser on terms and conditions of employment substantially similar in the aggregate to the terms and conditions relating to the Transferred Employee's employment with the Vendor immediately prior to the Closing Date, or (ii) carrying on employment with the Purchaser in substantially the same capacity as the Transferred Employee carries on employment with the Vendor immediately prior to the Closing Date.

(h) All employee data that has been provided to the Purchaser during the due diligence process is complete and accurate in all respects, except inconsequential respects, and fully reflects each Transferred Employee's standing in each of the Benefit Plans.

4.22 Collective Agreements

(a) A complete and up-to-date list of the Collective Agreements is set forth in Section 4.22(a) of the Disclosure Letter. True and complete copies of all Collective Agreements have been provided to the Purchaser.

(b) Except as set out in Section 4.22(b) of the Disclosure Letter, there are no outstanding or, to the knowledge of the Vendor, threatened unfair labour practices or complaints or applications of any kind in respect of the Employees, the Business or the Purchased Assets.

(c) Except as set out in Section 4.22(c) of the Disclosure Letter, there has been no strike or lock-out relating to the Business since January 1, 2010.

(d) There is no strike or lockout occurring, or to the knowledge of the Vendor, threatened affecting the Business.

(e) Except as set out in Section 4.22(b) of the Disclosure Letter, there are no grievances under any Collective Agreement or arbitration cases outstanding or, to the knowledge of the Vendor, threatened against the Vendor in respect of the Employees, the Business or the Purchased Assets that would reasonably be expected to, individually or in the aggregate, have a material impact on the Business.

(f) Other than as set forth in Section 4.22(b) of the Disclosure Letter, there are no outstanding Claims or complaints against the Vendor in respect of the Employees or the Business before any tribunal, arbitrator, board of arbitration, court or other Governmental Authority dealing with employment or labour related issues with respect to any of the Employees in any jurisdiction or dealing with any clauses of the Collective Agreements in any jurisdiction, or, to the knowledge of the Vendor, threatened employment or labour related Claims or complaints of any kind with respect to any of the Employees in any jurisdiction or dealing with any clauses of the Collective Agreements in any jurisdiction, that would reasonably be expected to, individually or in the aggregate, have a material impact on the Business.

4.23 Benefit Plans

(a) A complete and up-to-date list of the Benefit Plans is set out in Section 4.23(a) of the Disclosure Letter.

(b) Except in respect of any Benefit Plans maintained by a union or other third party to which the Vendor contributes pursuant to one or more Collective Agreements, true and complete copies of all written Benefit Plans and summaries of all oral Benefit Plans have been provided to the Purchaser together with current and complete copies of all material booklets or summaries distributed to any Employees concerning any Benefit Plan. With respect to the Vendor Pension Plan and any supplemental pension plan maintained for Employees, Vendor has also

provided Purchaser with copies of the applicable plan texts, as well as all funding documents and material regulatory correspondence related thereto.

(c) The Vendor has paid in full all contributions and paid all premiums in respect of any Benefit Plan (including any multi-employer pension plan (as defined in applicable pension benefits standards legislation)) maintained by a union or third party to which the Vendor contributes to one or more Collective Agreements for the period up to the Closing Date in a timely fashion in accordance with the terms of each such Benefit Plan, the Collective Agreements and all applicable Law.

(d) The Vendor Pension Plan has been established, registered and, as it relates to Employees, administered in all material respects in compliance with (i) its terms, (ii) all Laws and (iii) the Collective Agreements, and it is the only Benefit Plan which is required to be registered under pension benefits standards legislation.

(e) All material obligations to or under the Vendor Pension Plan (whether pursuant to the terms thereof or any Laws) in respect of the Employees have been satisfied, and there are, in all material respects, no outstanding defaults or violations thereunder in respect of any Employees by the Vendor.

(f) There have been no promised improvements, increases or material changes to the benefits provided under any Benefit Plan in respect of any Employees.

(g) Except as disclosed in Section 4.23(g) of the Disclosure Letter and except as otherwise contemplated in the Pension Asset Transfer Agreement, there are no multi-employer pension plans (as defined in applicable pension benefits standards legislation) in which the Employees participate.

(h) None of the Employees participates in a Benefit Plan that provides supplemental pension benefits.

(i) No Vendor Benefit Plan provides post-retirement benefits to or in respect of any Employees or former Employees or to or in respect of the dependents or beneficiaries of such Employees or former Employees.

(j) Except as disclosed in Section 4.23(j) of the Disclosure Letter, the execution of this Agreement and the completion of the transactions contemplated herein will not (either alone or in conjunction with any additional or subsequent events) constitute an event under any Benefit Plan that will or may result in any material payment, acceleration of any material payment or vesting of benefits or compensation or increased benefits.

(k) The Vendor Pension Plan (including any related trust or funding medium thereunder), solely as it relates to Employees, is not the subject of any pending, threatened or, to the knowledge of the Vendor, anticipated Claims, investigations, examinations or other legal proceedings (other than routine Claims for benefits).

4.24 Insurance

The Vendor or its Affiliates maintain such policies of insurance, as are appropriate for the Business and the Purchased Assets, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses, properties and assets. Such policies of insurance are in full force and effect and all premiums due thereon have been paid. As of the date of this Agreement, none of the insurers in respect of the Purchased Assets or the Business has provided any notice to the Vendor or any Affiliate of the Vendor that it will not cover any material claim reported by the Vendor or any Affiliate of the Vendor after January 1, 2013 under any such insurance policy. The Vendor is not aware of (i) any material claims by the Vendor or any Affiliate of the Vendor after January 1, 2013 in respect of the Purchased Assets or the Business for which insurers have denied coverage or reserved their rights, (ii) any current insurers providing coverage in respect of the Purchased Assets or the Business, which insurers have become insolvent, or (iii) any liability limits that have been eroded or materially impaired by claims. No policies of insurance maintained by the Vendor or any of its Affiliates in respect of the Purchased Assets or the Business will terminate as a result of the transactions contemplated by this Agreement and the Ancillary Agreements.

4.25 Material Contracts

(a) Section 4.25(a) of the Disclosure Letter sets forth a complete list of the Material Contracts. True and complete copies of the Material Contracts have been made available to the Purchaser. All obligations of the Vendor thereunder have been performed in all material respects and the Vendor is entitled to all material benefits under, and to the knowledge of the Vendor is not alleged to be in material default of, any Material Contract.

(b) Except as disclosed in Section 4.25(b) of the Disclosure Letter, each Material Contract is in full force and effect, and except as specified in Section 4.25(a) of the Disclosure Letter, unamended as of the date hereof and upon consummation of the transactions contemplated by this Agreement, except to the extent any Third Party Consents are not obtained, shall continue in full force and effect without penalty or other adverse consequence.

(c) Except as disclosed in Section 4.25(c) of the Disclosure Letter, there has not been, (i) within the last three (3) years, nor (ii) is there currently, any outstanding material default, event of default or violation (or event which with the giving of notice or lapse of time, or both, would reasonably be expected to, individually or in the aggregate, result in a material default, event of default or violation) under any Material Contract on the part of the Vendor or on the part of the other party (or parties) to such Material Contract.

(d) The information set forth in Section 4.25(d) of the Disclosure Letter regarding the number of Customers with Protection Plan Contracts as at July 18, 2014 and the current pricing of the Protection Plan Contracts, in each case as at the date of this Agreement, is true and correct in all material respects.

(e) The Vendor is a party to each of the Customer Contracts (including any Arrangement) and no Affiliate of the Vendor is a party to any Customer Contract. No default by the Vendor or, to the knowledge of the Vendor, by the other parties thereto exists under any Customer Contract except, in the latter case, as has been provided for in the Financial Statements and payment defaults incurring thereafter in the ordinary course of the Business. To the knowledge of the Vendor, substantially all of the Customer Contracts (other than any Arrangement) have been properly executed by the Customer. Each properly executed Customer Contract is a valid and legally binding agreement of the Customer enforceable in accordance with its terms. Except as disclosed in Section 4.25(e) of the Disclosure Letter, each Customer Contract conforms to all applicable Law in all material respects and is consistent in all material respects with the advertising and publicity material of the Vendor provided to the applicable Customer. No deposit or prepayment has been made by a Customer under its Customer Contract or accepted by the Vendor except as disclosed in Section 4.25(e) of the Disclosure Letter. To the knowledge of the Vendor, there are no material setoffs, counterclaims or defences on part of any Customer which would impair or otherwise affect the ability of the Purchaser to enforce such Customer Contract in full.

(f) Set forth in Section 4.25(f) of the Disclosure Letter is a true and complete list of all current forms of Customer Contracts, including with respect to servicing of Water Heaters and HVAC Equipment and Protection Plans. There are no material terms to any of the Customer Contracts, except for those contained in such forms and as disclosed at Section 4.25(f) of the Disclosure Letter.

4.26 Franchise Matters

(a) Section 4.26(a) of the Disclosure Letter accurately sets forth the following particulars in respect of each of the Franchise Agreements: (i) the names of all of the parties thereto; (ii) the address, fax number and email address of the franchisee(s) thereunder; and (iii) the commencement date of the term thereof, and such Section 4.26(a) of the Disclosure Letter also discloses the amounts, if any, received by the franchisor thereunder as deposits or refundable monies from the franchisees under the Franchise Agreements. In addition, all Franchise Agreements have been provided to the Purchaser.

(b) Except as otherwise expressly set forth in Section 4.26(b) of the Disclosure Letter:

(i) each of the Franchise Agreements is in good standing and in full force and effect and binding on, and enforceable against, the respective parties thereto and the Vendor (as the franchisor thereunder) is entitled to all of the benefits thereunder and all of the franchisees thereunder are current in all payments required to have been made by them to the Vendor pursuant thereto;

(ii) the Vendor is not in default of any of its obligations arising pursuant to the Franchise Agreements and there exists no state of facts which, after notice or lapse of time or both, would constitute a default by the Vendor of any of its obligations arising pursuant to the Franchise Agreements and, to the knowledge of the Vendor, none of the other parties to the Franchise Agreements are in default of any of their respective obligations thereunder;

(iii) except as set forth in Section 4.26(b)(iii) of the Disclosure Letter, all offers and sales of franchises made by the Vendor were properly made in accordance with the requirements of all then-applicable Laws (including disclosure Laws);

(iv) the Vendor has provided to each franchisee under the Franchise Agreements a disclosure document and any applicable statement of material change as required by, and in accordance with, applicable Laws (including as to the content and the time for the delivery thereof), and no franchisee under the Franchise Agreements has the right to terminate or rescind its Franchise Agreement or make a claim for misrepresentation pursuant to applicable Laws as a result of such disclosure document or any amendment thereto failing to comply with applicable Laws;

(v) there are no overlapping exclusive territorial rights held by any of the franchisees under the Franchise Agreements;

(vi) no notification has been received by the Vendor from any of the franchisees under the Franchise Agreements indicating that any of such franchisees wishes, either currently or at a future time, to: (A) breach its Franchise Agreement; (B) terminate or rescind its Franchise Agreement or cease or terminate the business being operated by it pursuant thereto other than upon the expiry of the term of its Franchise Agreement; (C) obtain a reduction of the royalties or other amounts which are payable by it pursuant to its Franchise Agreement; or (D) not renew the term of its Franchise Agreement upon the expiration thereof pursuant to any renewal right which it may have pursuant thereto; and

(vii) there have not occurred any events nor are there any outstanding circumstances which would lead the Vendor to believe that any of the franchisees under the Franchise Agreements wishes, either currently or at a future time, to do any of the things described in paragraph (vi), immediately above.

(c) As of the Effective Time, the Vendor will be current in its funding obligations in respect of the advertising fund contemplated under each of the Franchise Agreements, and the Vendor has at all times met or exceeded its financial obligations to contribute thereto and its obligations in respect of the disbursement thereof.

4.27 Occupational Health and Safety

All material audits and reports in respect of occupational health and safety matters relating to the Business, the Leased Premises or the Purchased Assets, including any inspection reports received by the Vendor or any Affiliate of the Vendor within the last 24 months pursuant to Occupational Health and Safety Laws, have been made available to the Purchaser. Except as set forth in Section 4.27 of the Disclosure Letter, there are no pending or, to the knowledge of the Vendor, threatened Actions or Orders under any Occupational Health and Safety Laws relating to the Business, the Leased Premises or the Purchased Assets, and there have been no fatal or critical accidents within the last three (3) years that could reasonably be expected to result in any material liability under Occupational Health and Safety Laws in respect of the Business, the Purchased Assets or the Leased Premises. The Business, the Purchased Assets and the Leased Premises are and have been in compliance in all material respects, with Occupational Health and Safety Laws.

4.28 Workers' Compensation

There are no notices of assessment, provisional assessment, reassessment, supplementary assessment, penalty assessment or increased assessment (collectively, "**assessments**") which the Vendor or any Affiliate of the Vendor has received prior to the date of this Agreement during the past three (3) years from any workers' compensation or workplace safety and insurance board or similar authorities in any jurisdictions where the Business is carried on which are unpaid.

4.29 Litigation

(a) Except as set forth in Section 4.29 of the Disclosure Letter, there are no material Claims, complaints, grievances or proceedings, including appeals and applications for review, in progress, pending or, to the knowledge of the Vendor, threatened, or to the knowledge of the Vendor, investigations against or relating to the Vendor or any of its Affiliates pertaining to the Business or the Purchased Assets before any Governmental Authority. Neither the Business, the Purchased Assets, nor the Vendor in respect of the Business or the Purchased Assets is subject to any outstanding material judgment, order, decree or injunction entered in any lawsuit or proceeding. For the purposes of the disclosure set forth in Section 4.29 of the Disclosure Letter, Claims for twenty-five thousand ($25,000) or less are not considered to be material.

(b) The amount paid in respect of settled Claims arising from customer complaints in the ordinary course of the Business in the 2013 calendar year, other than any settled Claims in respect of Water Heater and HVAC Equipment rentals pursuant to the Co-Ownership Agreement, the HVAC Agreement and the Toronto Hydro Services Agreement (including any and all subcontracts (including with franchisees) related thereto), and exclusive of gift cards and free services, does not exceed in the aggregate an amount of one million dollars ($1,000,000).

4.30 Tax Matters

(a) The Vendor is not a non-resident of Canada for the purposes of the ITA.

(b) The Purchased Assets are not subject to any Encumbrance (other than Permitted Encumbrances) with respect to Taxes.

(c) There has been no failure on the part of the Vendor to duly and timely file all material Tax Returns and pay or remit all Taxes, including all instalments on account thereof for the current year, that are due and payable by it, which would result in an Encumbrance (other than Permitted Encumbrances) on the Purchased Assets.

(d) There are no proceedings, investigations, audits or Claims now pending, or threatened in writing against the Vendor in respect of any Taxes, which would result in an Encumbrance (other than Permitted Encumbrances) on the Purchased Assets.

(e) The Vendor has duly and timely withheld all material Taxes required by Laws to be withheld by it in respect of all employees, officers or directors, and has duly and timely remitted to the appropriate Governmental Authority such Taxes.

(f) The Vendor is a registrant for purposes of the tax imposed under Part IX of the ETA and its GST/HST registration number is [redacted]**[registration number redacted]**.

4.31 Books and Records

(a) The Books and Records fairly and correctly set out and disclose in all material respects the Purchased Assets and all material financial transactions relating to the Business. The Purchased Assets and the Assumed Liabilities have been accurately recorded in such Books and Records in all material respects.

(b) The Books and Records contain all information of the sort included in the definition of Books and Records that a prospective purchaser of the Business would reasonably require in order to operate the Business immediately after Closing in the same manner as operated by the Vendor as of the date hereof.

4.32 Securities Laws Matters

As of the date hereof and upon the issuance (i) by Purchaser of the Purchaser Units, and (ii) by EnerCare of the EnerCare Shares:

(a) The Vendor is and will be:

(i) subject to applicable Securities Laws of the Provinces of Ontario;

(ii) an "accredited investor" as defined in Section 1.1 of NI 45-106; and

(iii) purchasing the EnerCare Shares as principal.

(b) With the exception of the Purchaser Units and the EnerCare Shares, neither the Vendor nor any of its Affiliates beneficially owns any securities of the Purchaser or EnerCare.

(c) The Vendor is purchasing the Purchaser Units and will be purchasing the EnerCare Shares for investment purposes only, and not in a transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution.

(d) The Vendor has not been provided with an offering memorandum or prospectus (each as defined under applicable Securities Laws) or any similar document in connection with the issue of the Purchaser Units and the EnerCare Shares, and the decisions to execute this Agreement and to purchase the Purchaser Units and to execute the Unit Transfer Agreement and purchase the EnerCare Shares have not been based on any verbal or written representations as to fact or otherwise made by or on behalf of the Vendor, other than such written representations as are expressly contained in this Agreement or in the Unit Transfer Agreement.

(e) The Vendor is not a "U.S. Person" (as such term is defined in Rule 902 of Regulation S under the United States Securities Act of 1933, as amended) and is not purchasing the EnerCare Shares on behalf of, or for the account or benefit of, a person in the United States or a U.S. Person.

4.33 No Brokers

Except for the services of Scotia Capital Inc., which have been employed by the Vendor or one of its Affiliates, the Vendor has carried on all negotiations relating to this Agreement and the transactions contemplated by this Agreement or the Ancillary Agreements directly and without the intervention on its behalf of any other party in such manner as to give rise to any valid claim for a brokerage commission, finder's fee or other like payment. The Vendor acknowledges that all costs, expenses and fees related to the services of Scotia Capital Inc. shall be paid by the Vendor or an Affiliate of the Vendor.

4.34 No Other Representations or Warranties

The Vendor acknowledges that, except for the representations and warranties specifically set forth in the Transaction Documents, neither the Purchaser Entities nor any of their Affiliates nor any other Person makes any express or implied representation or warranty with respect to the Purchaser Entities, any of their Affiliates or any Person or otherwise, or with respect to any information provided to the Vendor or any of its Affiliates or representatives, whether on behalf of the Purchaser Entities, any of their Affiliates or such other Persons. Except as specifically set forth in the Transaction Documents, none of the Purchaser Entities and their Affiliates nor any other Person will have, or be subject to, any Liability or indemnification obligation to the Vendor or any Affiliate thereof or any other Person with respect to the purchase of the Business and the Purchased Assets resulting from the distribution to the Purchaser Entities of any information

document, or other materials made available to the Purchaser Entities in any form in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER ENTITIES

The Purchaser Entities hereby jointly and severally represent and warrant to the Vendor, as of the date hereof, the matters set out below.

5.1 Formation

The Purchaser Entities are each duly formed and validly existing under the laws of their respective jurisdiction of formation.

5.2 Due Authorization and Enforceability

The Purchaser Entities have all necessary corporate power, authority and capacity to enter into this Agreement and the Ancillary Agreements, to issue and deliver the Purchaser Units and the EnerCare Shares, as applicable, in accordance with this Agreement and the Unit Transfer Agreement, to carry out their respective obligations under this Agreement and the Ancillary Agreements, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Agreements and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action on the part of the Purchaser Entities. This Agreement constitutes, and each of the Ancillary Agreements to be executed or delivered by the Purchaser Entities at the Closing will constitute, valid and binding obligations of the Purchaser Entities enforceable against each in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting creditors' rights generally and general principles of equity.

5.3 Purchaser Units and EnerCare Shares

The Purchaser Units and the EnerCare Shares, when delivered under this Agreement, or the Unit Transfer Agreement, as applicable, shall have been duly and validly authorized and issued as fully-paid and non-assessable units or shares (as applicable) in accordance with applicable Law. The issuance of the Purchaser Units and EnerCare Shares are not subject to any pre-emptive right, right of first refusal or similar right. The issuance of the Purchaser Units and EnerCare Shares will be exempt from the registration and prospectus requirements of applicable Securities Laws.

5.4 Regulatory Approvals

Except for (i) the requirement to obtain the Competition Act Approval and (ii) consent and listing approval of the Toronto Stock Exchange with respect to the issuance of the EnerCare Shares, no material consent, approval, authorization or other order or declaration of, action by, filing with, notification to or permit from, any Governmental Authority is required on the part of the Purchaser Entities in connection with the execution and delivery by the Purchaser Entities of

this Agreement or the Ancillary Agreements or the performance by the Purchaser Entities of their respective obligations pursuant to this Agreement or the Ancillary Agreements.

5.5 No Conflicts

The execution and delivery by the Purchaser Entities of this Agreement and the Ancillary Agreements or the performance by the Purchaser Entities of any of their respective obligations under this Agreement and the Ancillary Agreements, do not and will not (a) conflict with or result in a violation or breach of, or default (or event which with the giving of notice or lapse of time, or both, would reasonably be expected to, individually or in the aggregate, result in a violation, breach of, or default) under, any provision of the articles of incorporation, by-laws or other organizational documents of the Purchaser Entities, (b) conflict with or result in a violation or breach of, or default (or with or without notice or lapse of time or both, constitute a default) under, or change in any of the material terms of, or result in the termination, acceleration or cancellation of, any material Contract, or (c) conflict with or result in a violation nor breach of any provision of any Law applicable to the Purchaser Entities.

5.6 Securities Laws & Toronto Stock Exchange Matters

(a) EnerCare is a reporting issuer or the equivalent in each jurisdiction of Canada and is not in default in any material respect in the performance of its obligations under the Securities Laws of such jurisdictions and is in compliance, in all material respects, with the applicable rules, policies and regulations of the Toronto Stock Exchange. EnerCare has taken no action designed to, or likely to have the effect of, revoking its reporting issuer status in any jurisdiction where it has such status nor has EnerCare received any notification that any Canadian securities regulatory authority is contemplating revoking EnerCare's reporting issuer status.

(b) No order, agreement or memorandum of understanding that contemplates ceasing or suspending trading in the securities of EnerCare is outstanding or in effect and no proceedings or agreement for this purpose have been instituted or, to the knowledge of EnerCare, are pending, contemplated or threatened.

(c) EnerCare has prepared and filed all documents required to be filed by it with applicable Governmental Authorities under applicable Securities Laws. All of the EnerCare Public Disclosure Documents were, as of their respective dates, in compliance in all material respects with applicable Securities Laws and did not, as of their respective dates, contain a misrepresentation.

5.7 Authorized and Issued Capital of the Purchaser Entities

(a) The authorized capital of the Purchaser consists of limited partnership units and general partnership units and, as of July 24, 2014, 4483588 Canada Inc. holds one (1) limited partnership unit of the Purchaser, representing all of the issued and outstanding limited partnership units of the Purchaser and 8960593 Canada Inc. holds one (1) general partnership unit of the Purchaser, representing all of the issued and outstanding general partnership units of the Purchaser. No securities

exchangeable or exercisable for or convertible into units or other securities of the Purchaser are issued and outstanding and no person (other than the Vendor with respect to the Purchaser Units pursuant to this Agreement) has any agreement or option, or right or privilege (whether pre-emptive or contractual) capable of becoming an agreement or option for the purchase of any securities of the Purchaser. The Purchaser has no subsidiaries, and no person has any agreement or option, or right or privilege (whether pre-emptive or contractual) capable of becoming an agreement or option for the purchase, transfer or disposition of any units of the Purchaser.

(b) The authorized capital of EnerCare consists of an unlimited number of common shares and 10,000,000 preferred shares and, as of July 21, 2014, 58,518,455 common shares and no preferred shares are validly issued and outstanding as fully-paid and non-assessable shares of the Purchaser. Other than the EnerCare Convertible Debentures and awards under the incentive plans of EnerCare described in the EnerCare Public Disclosure Documents, no securities exchangeable or exercisable for or convertible into common shares or other securities of EnerCare are issued and outstanding and no person (other than the Vendor with respect to the EnerCare Shares pursuant to this Agreement) has any agreement or option, or right or privilege (whether pre-emptive or contractual) capable of becoming an agreement or option for the purchase of any securities of EnerCare. EnerCare is the beneficial owner, directly or indirectly, of all of the outstanding shares or other equity securities of its subsidiaries, and no securities exchangeable or exercisable for or convertible into equity securities of any subsidiaries of EnerCare are issued and outstanding and no person has any agreement or option, or right or privilege (whether pre-emptive or contractual) capable of becoming an agreement or option for the purchase, transfer or disposition of any equity securities of such entities. To the knowledge of EnerCare, the EnerCare Public Disclosure Documents correctly disclose the names of all persons who beneficially own or exercise control or direction over 10% or more of the outstanding common shares of EnerCare.

(c) Each of 4483588 Canada Inc. and 8960593 Canada Inc. is an indirect wholly-owned subsidiary of EnerCare.

5.8 Financial Statements

Except as disclosed in the EnerCare Public Disclosure Documents, the financial statements contained in the EnerCare Public Disclosure Documents (i) were prepared in accordance with IFRS in each case consistently applied and in accordance in all material respects with applicable Securities Laws and (ii) present fairly the financial condition and results of operations and cash flows of EnerCare, as of the dates thereof or for the periods covered thereby, subject, in the case of any unaudited financial statements, to normal year end audit adjustments.

5.9 Financing

(a) **Debt Financing** — An Affiliate of EnerCare has entered into the Debt Commitment Letter, a copy of which Debt Commitment Letter has been provided to the Vendor for its review, redacted with respect to the amount of fees payable and certain other financial terms. The Debt Commitment Letter has not been amended or modified prior to the date of this Agreement, and, as of the date hereof, the commitments of the Lenders contained in the Debt Commitment Letter have not been withdrawn, terminated, rescinded or reduced in any respect by any of the Lenders. As of the date hereof, there are no other agreements, side letters or arrangements to which EnerCare or any of its Affiliates is a party relating to the Debt Financing that could reasonably be expected to adversely affect the availability of the Debt Financing or otherwise directly or indirectly materially reduce the amount of the Debt Financing in whole or in part, other than any agreement, side letter or arrangement pursuant to which EnerCare or any of its Affiliates obtains alternative financing from any additional source. As of the date hereof, the Debt Commitment Letter is in full force and effect and constitutes a legally valid and binding obligation of an Affiliate of EnerCare and, to the knowledge of EnerCare, the Lenders. As of the date hereof, no event has occurred that would result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) by an Affiliate of EnerCare under the Debt Commitment Letter. An Affiliate of EnerCare has fully paid all fees required to be paid to the Lenders on or prior to the date hereof pursuant to the Debt Commitment Letter.

(b) **Equity Financing** — EnerCare has entered into the Bought Deal Letter, a copy of which Bought Deal Letter has been provided to the Vendor for its review. The Bought Deal Letter has not been amended or modified prior to the date of this Agreement, and, as of the date hereof, the commitments of the Equity Underwriters contained in the Bought Deal Letter have not been withdrawn, terminated, rescinded or reduced in any respect. As of the date hereof, there are no other agreements, side letters or arrangements to which EnerCare or any of its Affiliates is a party relating to the Equity Financing that could reasonably be expected to adversely affect the availability of the Equity Financing or otherwise directly or indirectly reduce the amount of the Equity Financing in whole or in part. As of the date hereof, the Bought Deal Letter is in full force and effect and constitutes a legally valid and binding obligation of EnerCare and, to the knowledge of EnerCare, the Equity Underwriters. As of the date hereof, no event has occurred that would result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) by EnerCare under the Bought Deal Letter.

5.10 Litigation

There are no Claims, investigations, complaints, grievances or proceedings, including appeals and applications for review, in progress, pending or, to the knowledge of EnerCare, threatened, or to the knowledge of EnerCare, investigations against or relating to the Purchaser Entities or

any of their Affiliates before any Governmental Authority, which, if determined adversely to a Purchaser Entity, would reasonably be expected to materially impair or delay the consummation of the transactions contemplated by this Agreement, and EnerCare has no knowledge of any existing ground on which any action, suit, litigation or proceeding might be commenced with any reasonable likelihood of success.

5.11 No Other Representations or Warranties

The Purchaser Entities acknowledge that, except for the representations and warranties specifically set forth in the Transaction Documents, none of the Vendor or any of its Affiliates nor any other Person makes any express or implied representation or warranty with respect to the Business, the Purchased Assets, the Vendor or any of its Affiliates or any Persons or otherwise, or with respect to any other information provided to the Purchaser or any of any Affiliates or representatives, whether on behalf of the Vendor or any of its Affiliates or such other Persons, including as to: (a) merchantability or fitness for any particular use or purposes; (b) the use of the Purchased Assets and the operation of the Business by the Purchaser after the Closing; or (c) the probable success or profitability of the ownership, use or operation of the Business, or the Purchased Assets by the Purchaser after the Closing. Except as specifically set forth in the Transaction Documents, none of the Vendor or any of its Affiliates nor any other Person will have, or be subject to, any liability or indemnification obligation to the Purchaser or any other Person with respect to the sale and transfer of the Business and the Purchased Assets resulting from the distribution to the Purchaser, or its Affiliates' or representatives' use of, any information related to the Business (including the Books and Records) or the Parties, including any information document, or other materials provided or made available by the Vendor to the Purchaser in any form in connection with the transactions contemplated by this Agreement.

5.12 Canadian Partnership

The Purchaser is and will on Closing be a "Canadian partnership" as defined in subsection 102(1) of the ITA.

5.13 GST/HST Registration

The Purchaser, shall be registered for purposes of the GST/HST under Part IX of the ETA prior to the Closing Date and shall provide its GST/HST registration number to the Vendor prior to the Closing Date.

ARTICLE 6
NON-WAIVER; SURVIVAL

6.1 Non-Waiver

No waiver of any condition or other provisions, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

6.2 Nature and Survival

(a) Subject to Section 6.2(b), all representations and warranties contained in this Agreement on the part of each of the Parties shall survive the execution and delivery of this Agreement but shall terminate upon the earlier of (x) the termination of this Agreement or (y) eighteen (18) months after the Closing Date.

(b) Notwithstanding the limitations set out in Section 6.2(a),

(i) any Claim which is based on (A) a breach of the representations and warranties set forth in Sections 4.1 (Incorporation, Corporate Power and Registration), 4.2 (Subsidiaries), 4.3 (Due Authorization and Enforceability), 4.4 (No Conflict), 4.11 (Title to Purchased Assets, Joint Assets and Non-Transferred Trademarks), 4.12 (No Right to Acquire Purchased Assets), 4.23(c) (Benefit Plans), 4.32 (Securities Laws Matters), 4.33 (No Brokers), 5.1 (Formation), 5.2 (Due Authorization and Enforceability), 5.3 (Purchaser Units and EnerCare Shares), 5.5 (No Conflicts) or 5.7 (Authorized and Issued Capital of the Purchaser) (collectively, "**Fundamental Representations**"), (B) an intentional misrepresentation or (C) fraud, may be brought at any time;

(ii) any Claim which is based on a breach of the representations and warranties set out in Section 4.20 (Environmental Matters) may be brought within five (5) years after the Closing Date; and

(iii) the representations and warranties set out in Section 4.30 (Tax Matters) shall terminate ninety (90) days following the expiration of the applicable Tax Reassessment Period.

(c) Except as otherwise expressly provided in this Agreement, all covenants and agreements of the Vendor contained in this Agreement or any Transaction Document shall survive the Closing and continue without time limit.

ARTICLE 7
PURCHASER'S CONDITIONS PRECEDENT

The obligation of the Purchaser to complete the purchase of the Purchased Assets and assume the Assumed Liabilities under this Agreement is 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 provided for the exclusive benefit of the Purchaser and may be waived by it in whole or in part). If any of the following conditions enumerated in this Article 7 has not been fulfilled by Closing, the Purchaser may terminate this Agreement by notice in writing to the Vendor, in which event the Purchaser Entities are released from all obligations under this Agreement, except for the obligations set forth in Section 11.2 and unless the Purchaser could show that the condition relied upon could reasonably have been performed by the Vendor, the Vendor is also released from all obligations under this Agreement except as provided in Section 11.2. 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-fulfillment of any other condition in whole or to its rights to recover damages for the breach of any other condition in whole or in part or to its rights to recover damages for the breach of any other representation, warranty, covenant, obligation or condition contained in this Agreement.

7.1 Truth and Accuracy of Representations at the Closing Time

All the representations and warranties of the Vendor contained in Article 4 of this Agreement qualified by materiality (or Material Adverse Effect or similar qualifications) shall be true and correct at the Closing Time and all representations and warranties contained in Article 4 of this Agreement not so qualified shall be true and correct in all material respects at the Closing Time, both with the same effect as if made at and as of the Closing Time and the Purchaser shall have received a certificate signed by a senior officer of the Vendor confirming the foregoing. Upon the delivery of such certificate, the representations and warranties of the Vendor contained herein shall be deemed to have been made on and as of the Closing Time with the same force and effect as if made on and as of such date.

7.2 Performance of Obligations

The Vendor shall have performed or complied with, in all material respects, all of its obligations, covenants and agreements under this Agreement, and the Purchaser shall have received a certificate to such effect on the Closing Date signed by a senior officer of the Vendor.

7.3 Vendor Deliveries

The Vendor shall have delivered or caused to be delivered to the Purchaser, the following in form and substance satisfactory to the Purchaser acting reasonably:

(a) copies of all such documentation or other evidence as it may reasonably request in order to establish the transfer of the Purchased Assets to the Purchaser in accordance with Section 2.1(a), the consummation of the other transactions contemplated by this Agreement and the taking of all corporate proceedings required to duly authorize the transactions contemplated by the Transaction Documents;

(b) an executed release in accordance with Section 9.12, if applicable;

(c) a clearance letter from the Ontario Workplace Safety and Insurance Board confirming that the Vendor has made all payments and contributions required to be made in respect of workers' compensation and insurance for the Business up to and including the Closing Date; and

(d) certified copies of all such documentation or other evidence as it may reasonably request in order to establish the consummation by the Vendor of the transactions contemplated by this Agreement and the taking of all corporate proceedings required to duly authorize the transactions contemplated by this Agreement.

7.4 Ancillary Agreements

Each of the Ancillary Agreements (other than the Transition Services Agreement) shall have been executed and delivered by the parties thereto (other than by any Purchaser Entity).

7.5 Transition Services Agreement

The Transition Services Agreement, in a mutually agreed form, shall have been executed and delivered by the Vendor.

7.6 Assignment of Certain Existing Business Agreements

Except as otherwise agreed to by the Parties, the Vendor shall have assigned its interest under each Existing Business Agreement (other than the Existing Nomination Agreement and the Existing Non-Competition Agreement) to the Purchaser at the Effective Time.

7.7 Transferred Employees

At least [redacted]% **[percentage redacted]** of the Non-Unionized Employees shall have executed an employment agreement with the Purchaser in respect of an offer of employment made by the Purchaser pursuant to Section 9.8.

7.8 Receipt of Required Governmental Consents

Except as otherwise provided in the Pension Asset Transfer Agreement, all Required Governmental Consents shall have been obtained at or before the Closing Time and shall be in full force and effect on terms acceptable to the Purchaser, acting reasonably, and true and complete copies thereof shall be delivered to the Purchaser as and when such Required Governmental Consents shall be obtained and they shall be tabled by the Vendor at the Closing.

7.9 Receipt of Required Third Party Consents

All Required Third Party Consents shall have been obtained at or before the Closing Time and shall be in full force and effect on terms acceptable to the Purchaser, acting reasonably, and true and complete copies thereof shall be delivered to the Purchaser as and when such Required Third Party Consents shall be obtained and they shall be tabled by the Vendor at the Closing.

7.10 No Proceedings

There shall be no injunction or restraining order issued preventing the consummation of the transactions contemplated in this Agreement (including the transfer of all or any part of the Purchased Assets, other than any immaterial or obsolete assets) or otherwise preventing the Vendor from fulfilling any of its material obligations under this Agreement and the Ancillary Agreements.

7.11 No Material Adverse Effect

There shall not have occurred or developed any Material Adverse Effect since the date hereof.

ARTICLE 8
VENDOR'S CONDITIONS PRECEDENT

The obligations of the Vendor to complete the sale of 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 provided for the exclusive benefit of the Vendor and may be waived by it in whole or in part). If any of the following conditions enumerated in this Article 8 has not been fulfilled by Closing, the Vendor may terminate this Agreement by notice in writing to the Purchaser, in which event the Vendor is released from all obligations under this Agreement, except as provided in Section 11.2, and unless the Vendor could show that the condition relied upon could reasonably have been performed by the Purchaser, the Purchaser is also released from all obligations under this Agreement except as provided in Section 11.2. However, the Vendor 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-fulfillment of any other condition in whole or in part or to its rights to recover damages for the breach of any other representation, warranty, covenant, obligation or condition contained in this Agreement.

8.1 Truth and Accuracy of Representations of the Purchaser Entities at Closing Time

All the representations and warranties of the Purchaser Entities contained in Article 5 of this Agreement qualified by materiality shall be true and correct at the Closing Time and all representations and warranties contained in Article 5 of this Agreement not so qualified shall be true and correct in all material respects at the Closing Time, both with the same effect as if made at and as of the Closing Time and the Vendor shall have received a certificate signed by a senior officer of each of the Purchaser Entities confirming the foregoing. Upon the delivery of such certificate, the representations and warranties of the Purchaser Entities contained herein shall be deemed to have been made on and as of the Closing Time with the same force and effect as if made on and as of such date.

8.2 Performance of Obligations

The Purchaser Entities shall have performed or complied with, in all respects, all its obligations, covenants and agreements under this Agreement, and the Vendor shall have received a certificate signed by a senior officer of each of the Purchaser Entities to such effect on the Closing Date.

8.3 Purchaser Deliveries

The Purchaser shall have delivered or caused to be delivered to the Vendor, the following in form and substance satisfactory to the Vendor acting reasonably:

(a) unit certificates representing the Purchaser Units in accordance with Section 3.2(b), which shall have been duly and validly authorized and issued as fully-paid and non-assessable units in accordance with applicable Law;

(b) the Cash Consideration, in accordance with Section 3.2(a);

(c) certified copies of all such documentation or other evidence as it may reasonably request in order to establish the consummation by Purchaser Entities of the transactions contemplated by this Agreement and the taking of all partnership and/or corporate proceedings required to duly authorize the transactions contemplated by this Agreement; and

(d) an executed release in accordance with Section 9.12, if applicable.

8.4 Ancillary Agreements

Subject to Section 8.6, each of the Ancillary Agreements (other than the Transition Services Agreement) shall have been executed and delivered by the parties thereto (other than by the Vendor or any Affiliate of the Vendor).

8.5 Transition Services Agreement

The Transition Services Agreement, in a mutually agreed form, shall have been executed and delivered by the Purchaser.

8.6 Limited Partnership Agreement

The Limited Partnership Agreement shall be in form and substance satisfactory to the Vendor, acting reasonably.

8.7 Receipt of Required Governmental Consents

All Required Governmental Consents shall have been obtained at or before the Closing Time and shall be in full force and effect on terms acceptable to the Vendor, acting reasonably.

8.8 No Proceedings

There shall be no injunction or restraining order issued preventing the consummation of the transactions contemplated in this Agreement (including the transfer of all or any part of the Purchased Assets, other than any immaterial or obsolete assets) or otherwise preventing the Purchaser Entities from fulfilling any of their material obligations under this Agreement and the Ancillary Agreements.

8.9 Certain Existing Business Agreements

Except as otherwise agreed to by the Parties, each existing Business Agreement shall have been terminated or assigned to the Purchaser, in each case without prejudice to the Vendor's rights to pursue any Claims thereunder to the extent such Claims are not released pursuant to Section 9.12.

ARTICLE 9
OTHER COVENANTS OF THE PARTIES

9.1 Conduct of Business Prior to Closing

During the period from the date of this Agreement to the Closing Time, the Vendor:

(a) **Conduct Business in the Ordinary Course** — shall (i) conduct the Business in the ordinary and normal course, consistent with past practice and regular customer service and business policies, and (ii) use commercially reasonable efforts to preserve intact in all material respects the Business and the Purchased Assets.

(b) **Prohibited Activities** — shall not and shall not agree or undertake to, without the prior written consent of the Purchaser not to be unreasonably withheld:

(i) enter into any transaction which, had it been effected before the date of this Agreement, would have constituted a material breach of the representations, warranties or agreements contained in Article 4 of this Agreement;

(ii) change its practices regarding the billing of Accounts Receivable to customers of the Business;

(iii) except as set forth in Section 9.1(b)(iii) of the Disclosure Letter, hire any manager or executive level Employee or any other Employee at annual salary in excess of one hundred thousand dollars ($100,000);

(iv) delay or extend the payment or performance by it of any amount or obligation under an Account Payable or under a Material Contract to a date that would be later than the date that such payment or obligation would otherwise have been payable under such Account Payable or Material Contract in the ordinary course of the Business;

(v) enter into, renew or sign any Contract with any Person involving aggregate annual payments to or by the Vendor or any of its Affiliates relating to the Business or the Purchased Assets in excess of five hundred thousand dollars ($500,000), or [redacted] **[prohibited activity redacted]**, except as set forth in Section 9.1(b)(v) of the Disclosure Letter; or

(vi) enter into any compromise or settlement in respect of any material litigation in respect of the Purchased Assets or the Business, except that [redacted] **[details of excluded litigation redacted]**.

(c) **Competition Bureau Notice of Application** – The Vendor shall not enter into any compromise or settlement in respect of the Competition Bureau Notice of Application without the consent of the Purchaser, which consent shall not be unreasonably withheld;

(d) **Maintain Good Relations** — use all reasonable efforts to maintain good relations consistent with past practice with the Employees, Trade Unions, its customers, suppliers, creditors, franchisees, distributors and other Persons having business relationships with the Vendor in respect of the Business or the Purchased Assets, including preserving Goodwill;

(e) **Continue Insurance** — continue in force all policies of insurance maintained by the Vendor and its Affiliates in respect of the Business and the Purchased Assets, and give all notices and present claims under all insurance policies in a timely fashion;

(f) **Perform Obligations** — comply in all material respects with all Laws affecting:

(i) the operation of the Business;

(ii) the Purchased Assets; and

(iii) the Transferred Employees;

(g) **Officers** — not terminate any officers of the Vendor employed in the operation of the Business without the consent of the Purchaser, which consent will not be unreasonably withheld or delayed;

(h) **Collective Agreements** — consult with the Purchaser with respect to collective bargaining strategy and any outstanding matter with any Trade Union that is material prior to engaging in any such discussions or negotiations and, when appropriate, involve the Purchaser in any such discussions or negotiations; and

(i) **Prevent Certain Changes** — not, without the prior written consent of the Purchaser, take any of the actions, do any of the things or perform any of the acts described in Section 4.7.

(j) **Consultation** — not, without consulting the Purchaser, enter into an agreement with [redacted] **[details of prospective commercial agreement redacted]**.

9.2 Access for Investigation

(a) The Vendor shall permit the Purchaser and its representatives, between the date of this Agreement and the Closing Time, without interference to the ordinary conduct of the Business, to have reasonable access during normal business hours to:

(i) the Purchased Assets and the Leased Premises; and

(ii) those individuals including relevant directors and senior officers of the Vendor, the auditors and counsel of the Vendor with knowledge of or information related to the Business, the Purchased Assets and the Assumed Liabilities, and such other employees and franchisees as the

Purchaser may request, provided that such access does not unreasonably interfere with such directors', senior officers', auditors', counsels' and employees' responsibilities or the ordinary conduct of the Business consistent with past practice or the business of the Vendor and such Affiliates.

Such access shall be for the principal purpose of transitioning the Purchased Assets and the Business to the Purchaser on the Closing Date and such other purposes reasonably required by the Purchaser in connection with any of the transactions contemplated by this Agreement and the Ancillary Agreements. The Vendor shall provide the Purchaser and its representatives with copies of Books and Records (subject to any confidentiality agreements or covenants relating to any such Books and Records) and other financial, operating data, environmental and other information with respect to the Purchased Assets and the Business as the Purchaser or its representatives shall from time to time reasonably request.

(b) Notwithstanding Section 9.2(a), the Vendor and its Affiliates shall not be required to disclose any information, records, files or other data to the Purchaser where prohibited by any Laws (including applicable competition Laws) or pursuant to any arrangements with a third party. If any consent of any Person or Governmental Authority is required to permit the Vendor or its Affiliates to release any information to the Purchaser, the Vendor shall make, or shall cause to be made, all commercially reasonable efforts to obtain such consent as soon as possible.

(c) The Vendor shall forthwith, upon request by the Purchaser or Purchaser's counsel, execute and deliver, or shall cause to be executed and delivered, to the Purchaser all necessary consents to permit the Purchaser to have inspections made and have existing records released to the Purchaser by the municipal building and zoning department, fire department, public works, environmental agencies, the elevator inspections branch of the provincial department of labour and other appropriate authorities as the Purchaser may reasonably consider advisable between the date of this Agreement and the Closing. Such consents shall authorize and direct the release of information to the Purchaser.

9.3 Confidentiality

(a) The confidentiality provisions of the Confidentiality Agreement shall continue to apply notwithstanding the execution of this Agreement.

(b) In furtherance of paragraph 9.3(a) above, the Parties shall, and shall cause their Affiliates to, maintain the confidentiality of all information of a confidential nature relating to the Business, the Purchased Assets and the Assumed Liabilities under the confidentiality provisions of the Confidentiality Agreement as though such provisions applied to all of the Parties and their respective Affiliates.

(c) Notwithstanding paragraph 9.3(a) above, effective upon, and only upon, the Closing, the confidentiality obligations of EnerCare contained in Section 9.3(a) and the Confidentiality Agreement shall terminate with respect to information held by EnerCare and its Affiliates relating solely to the Business, the Purchased Assets and the Assumed Liabilities, but only to the extent reasonably necessary to operate the Business.

(d) Upon Closing, the benefit of all confidentiality agreements, non-competition agreements and non-solicitation agreements that the Vendor or any Affiliate of the Vendor has entered into with any third party which are principally with respect to the Purchased Assets or the Business (but in respect of any employee of the Vendor only the Transferred Employees) shall be assigned, in all respects, to the Purchaser and, for greater clarity, such Contracts are included in the Purchased Assets, provided that the assignment is not prohibited by such Contracts, in which case the Vendor shall use its commercially reasonable efforts to enforce such agreements as requested by, and at the cost of the Purchaser and shall hold such agreements in trust for the benefit of the Purchaser.

(e) Subject to Section 11.1, and except as otherwise provided in the Pension Asset Transfer Agreement, each of the Parties agrees and undertakes that it shall not file copies of this Agreement or the Ancillary and Operating Agreements with any Governmental Authority, including any of the Canadian securities regulatory authorities, unless, upon advice of their respective legal counsel, it is determined that such filing must be effected in order to comply with applicable Laws, in which event (i) the Party having determined that it is so required to file such agreements must forthwith advise the other Parties hereto of such required filing and (ii) the Parties hereby agree and undertake to work together to effect such filing in the most commercially reasonable and efficient manner with a view to protecting, to the extent legally permitted, any commercially sensitive information contained therein.

9.4 Cooperation

Each of the Parties shall, and shall cause their respective Affiliates to, use commercially reasonable efforts to take, or cause to be taken, all actions necessary, proper and advisable to cause each of the conditions and covenants set forth in Article 7, Article 8 and Article 9 to be satisfied and to consummate the transactions contemplated herein as promptly as practicable following the date hereof. In furtherance of the foregoing, the Vendor shall request, or shall cause to be satisfied, all consents required to satisfy the conditions set forth in Section 7.8, and it shall use all commercially reasonable efforts to obtain such consents and the Purchaser shall assist and cooperate with the Vendor in connection therewith. For the purposes hereof, except as provided in Section 9.5 and Article 2, the Vendor shall be responsible for all costs and expenses required to be incurred in order to obtain any consent or approval, including payments in respect of reasonable legal fees incurred by third parties in connection with a request for a consent or approval and the expenses of the Purchaser in obtaining such consents and approvals.

9.5 Competition Act Approval Process

(a) Within fifteen (15) Business Days following the execution of this Agreement, or within such other period of time as the Parties may agree, the Purchaser and, to the extent required by Law, the Vendor, as applicable, will

(i) submit a request for an ARC pursuant to section 102 of the Competition Act or, in the alternative, a no-action letter;

(ii) if deemed advisable by the Purchaser and the Vendor, notify the Commissioner of the proposed transaction pursuant to section 114 of the Competition Act ; and

(iii) take further actions and make further filings that may be reasonably necessary, proper, or advisable in order to obtain Competition Act Approval.

(b) In connection with obtaining Competition Act Approval, each Party will:

(i) cooperate and provide assistance to the other Party in respect of any filings, notices, responses to information requests or submissions related to the Competition Act Approval;

(ii) promptly notify the other Party in writing of any communication received by that Party from any Governmental Authority and, subject to applicable Laws, provide the other Party with a copy of any such written communication (or written summary of any oral communication);

(iii) respond promptly to any requests for information or requests for meetings by a Governmental Authority (including in respect of any supplementary filings or submissions or a supplementary information request) in respect of the Competition Act Approval;

(iv) provide the other Party with a reasonable opportunity to review and comment on any filing, submission, response to an information request or other (verbal or written) communication to be submitted or made to a Governmental Authority (with competitively sensitive information to be shared on an external counsel only basis) and such receiving Party shall consider any such received comments in good faith; and

(v) refrain from participating in any substantive meeting or discussion with any Governmental Authority in respect of any filing, investigation or inquiry concerning the transaction contemplated hereunder, unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Authority, give the other Party the opportunity to attend and participate thereat.

(c) Neither Party, however, shall be required to accept any remedy either requested or imposed by a Governmental Authority in order to secure satisfaction of any conditions or covenants set out herein and the Purchaser shall have no obligation to oppose, lift, or rescind any injunction or restraining or other order seeking to prevent or delay consummation of the transactions contemplated by this Agreement.

(d) The Parties shall bear their own costs of the Competition Act Approval process and shall each pay half of the filing fee relating to the Competition Act Approval.

9.6 Preparation and Delivery of Interim Financial Statements

The Vendor shall prepare and make available to the Purchaser within forty-five (45) days true and complete copies of Interim Financial Statements in respect of the six-month period ending June 30, 2014, if required by EnerCare pursuant to applicable Securities Laws, including in connection with the Equity Financing. The Vendor shall also co-operate fully with the Purchaser to assist the Purchaser with the preparation after the Closing Date of Interim Financial Statements for the most recently completed quarter prior to the Closing Date. Without limiting the foregoing sentence, the Vendor shall cause its employees reasonably requested by the Purchaser to assist with the preparation of such statements and to the extent required by the Purchaser, the Vendor shall provide and cause its accountants to provide to the Purchaser all financial records and systems of the Business reasonably necessary in order for the Purchaser to prepare such statements, and shall permit the Purchaser to review the Vendor's accounting books and records and other documents and information necessary in the opinion of the Purchaser, acting reasonably, for the preparation of, or as relevant to, such statements.

9.7 Financing

(a) The Vendor shall provide and shall cause each of its employees and auditors to provide such cooperation and assistance with the Financings as is reasonably requested, from time to time, by the Purchaser or any Affiliate of the Purchaser. Such assistance shall include the following: (i) timely delivery to the Purchaser, its Affiliates and their respective financing sources of Financial Statements and Interim Financial Statements and to the extent reasonably necessary, comfort letters and auditor consents as required by applicable Securities Laws, including in connection with the Equity Financing or refinancing of the Debt Financing and as are customary for transactions such as the Equity Financing, each in the customary form and including, in all cases, all translations into French as required, (ii) making commercially reasonable efforts to cause the auditors of the Vendor and its respective Subsidiaries to (A) cooperate with EnerCare and its Affiliates with respect to the preparation of the Financial Statements required in connection with the Equity Financing (including the filing of preliminary and final prospectuses related thereto) or refinancing of the Debt Financing, (B) participate in a reasonable number of due diligence sessions in connection with the underwriting of the Equity Financing, and (C) provide such assistance as reasonably requested by the Lenders pursuant to their due diligence investigations in connection with the Debt Financing, (iii) assisting the Purchaser and EnerCare

and their Affiliates and their respective financing sources in the preparation of offering documents for any portion of the Financings or refinancing of the Debt Financing, (iv) reviewing the description of the Business included in any offering document or other continuous disclosure document of EnerCare or any Affiliate of EnerCare, including any marketing materials related thereto, (v) providing and executing customary closing documents (which shall be effective upon the Closing) as may be reasonably requested by the Equity Underwriters or Lenders, if any, and (vi) arranging for the delivery of signed acknowledgements and consents from the independent auditor of the Vendor for use of its reports in any materials related to the Financings (including preliminary and final prospectuses in respect of the Equity Financing) or refinancing of the Debt Financing. The Vendor hereby consents to the display of any logos included in the Non-Transferred Trademarks in connection with the Financings, provided that the Vendor is given an opportunity to review and, to the extent practicable, approve samples of the materials featuring such logos prior to any publication or display thereof.

(b) In the event all or any portion of the Financings becomes unavailable on the terms and conditions contemplated in the Debt Commitment Letter or Bought Deal Letter for any reason, and the Purchaser obtains financing from alternative sources, or if the Purchaser determines to obtain financing from any additional sources (each, an "**Alternative Financing**"), the Parties shall comply with the covenants in Section 9.7(a) with respect to such Alternative Financing *mutatis mutandis*. The Purchaser shall keep the Vendor informed on a current basis in reasonable detail of the status of its efforts to obtain and consummate any Alternative Financing.

9.8 Employees

(a) Except in respect of Non-Unionized Employees required by the Vendor to deliver the IT Decoupling Activities (the "**IT Decoupling Employees**"), the terms of which are set out in Section 9.8(a)(i) of the Disclosure Letter, the Purchaser shall, before the Closing Date, but conditional upon the Closing, offer to employ, on and after the Effective Time, the Non-Unionized Employees (provided that with respect to the Non-Unionized Employees set out in Section 9.8(a)(ii) of the Disclosure Letter under the heading "Option Employees", such offers of employment will not be made, and such employees shall not be solicited or hired by the Purchaser, prior to the time indicated next to the name of each such employee). The Vendor shall confirm to the Purchaser the list of Non-Unionized Employees not less than ten (10) Business Days before the Closing Date. Offers of employment shall be made not less than five (5) days before the Closing Date and shall be on terms and conditions of employment which are substantially similar in the aggregate to such Non-Unionized Employees as those in effect on the date hereof, shall recognize each Non-Unionized Employee's service with the Vendor as service with the Purchaser for the purposes of any required statutory or common law notice or pay in lieu of notice of termination, termination pay or

severance pay and shall recognize each such Non-Unionized Employee's annual vacation entitlement. For greater certainty, the Purchaser will not be making offers to, or otherwise accept any responsibility for any independent contractors of the Vendor. The terms and conditions of employment of the Employees at the date hereof and particulars as to the length of time that they have been employed by the Vendor are set out in Section 4.21 of the Disclosure Letter. From the date hereof to the Effective Time, the Vendor shall not take any action to offer any Transferred Employee alternate employment with the Vendor or otherwise interfere with the continuance of the employment of any Transferred Employee with the Purchaser (except as may be reasonably necessary to terminate a Transferred Employee for just cause), except for actions required under the Collective Agreements, and shall not make any changes to the terms of any Collective Agreements. The Purchaser shall provide the Vendor with copies of all such offers of employment, and shall provide the Vendor with an opportunity to review and comment on any template offers of employment at least five (5) Business Days before offers of employment are made. The IT Decoupling Employees shall be offered employment by the Purchaser in the same manner and at the same time as the offers are made to the other Non-Unionized Employees; provided, however, that the IT Decoupling Employees will not commence employment with the Purchaser until completion of the IT Decoupling Activities which the Vendor will be responsible for under the Decoupling Plan (the "**IT Decoupling Employees Transfer Date**"). For all purposes of this Agreement, the IT Decoupling Employees will become Transferred Employees immediately upon the IT Decoupling Employees Transfer Date. The Purchaser shall be solely responsible for the regular employment compensation of the IT Decoupling Employees through the IT Decoupling Employees Transfer Date. The Purchaser shall reimburse the Vendor on a monthly basis upon receipt of such amounts. The Purchaser shall be entitled to deduct $500,000 in the aggregate from such monthly invoices.

(b) The Vendor shall be responsible for all retention payments accrued by the Vendor in respect of all Employees' employment or retention by the Vendor for any and all periods ending as of the Effective Time even if payable after the Effective Time, and, in each case, the Vendor shall indemnify and save harmless the Purchaser in respect of all such obligations.

(c) The Vendor shall reimburse the Purchaser and EnerCare for all reasonable costs incurred after the Effective Time in connection with any Claim against the Purchaser or EnerCare brought by an Employee who is not a Transferred Employee with respect to the termination of such Employee, including termination pay, severance pay and other Liabilities and obligations under statute, common law or otherwise, including entitlement to benefit coverage, stock options or incentive compensation, but excluding, for avoidance of doubt, Liabilities and obligations under the Vendor Pension Plan. In the event of any Claim brought against the Purchaser or EnerCare relating to the termination of an Employee who is not a Transferred Employee, the Purchaser or EnerCare, as

applicable, shall follow the direction of the Vendor with respect to the negotiation and defence of such Claim. The Purchaser or EnerCare, as applicable, shall keep the Vendor informed of the progression of all material developments pertaining to any liabilities in Section (xi) of the definition of Excluded Liabilities, and shall follow the direction of the Vendor with respect to the negotiation, defence and settlement of these specific Excluded Liabilities. Any settlement of these specific Excluded Liabilities requires the consent of the Vendor, not to be unreasonably withheld or delayed. To the extent any such Claim is covered by an insurance policy of the Vendor, the Purchaser and EnerCare shall have no involvement in the carriage of the Claim.

(d) After the Effective Time, the Purchaser shall be responsible for all notices of termination, termination pay, severance pay and other Liabilities and obligations under statute, common law or otherwise to all Transferred Employees and shall be responsible for, in addition to the Assumed Liabilities, entitlement to benefit coverage, bonuses or sales commissions to the Transferred Employees in respect of periods from and after the Effective Time (subject to Section 9.8(b)) and the Purchaser shall indemnify and save harmless the Vendor and its Affiliates in respect of all such obligation. Neither the Vendor nor any of its Affiliates shall be liable for any costs related to the termination of any of the Transferred Employees following the Effective Time.

(e) Effective as at the Closing, the Purchaser will establish a wholly-owned Subsidiary of the Purchaser which will employ all of the Unionized Employees. The Purchaser agrees to require that this Subsidiary be required to be bound by the Collective Agreements applicable to the Transferred Employees, and will continue the employment of such Transferred Employees in accordance with the terms of such Collective Agreements.

9.9 Employee Benefits

(a) *Vendor Benefit Plans.*

(i) All Transferred Employees shall cease to participate in and accrue benefits under the Vendor Benefit Plans immediately prior to becoming employees of the Purchaser, and the Purchaser shall either (i) establish or (ii) designate one or more of its pre-existing employee benefit plans (the "**Purchaser Benefit Plans**") to provide benefits in respect of service with the Purchaser on and after the Effective Time to Transferred Employees which (subject to the Purchaser's obligations to comply with all Collective Agreements applicable to Transferred Employees) are substantially similar in the aggregate as those benefits provided under the Vendor Benefit Plans immediately prior to becoming employees of the Purchaser, except with respect to supplemental pension benefits, which shall not be offered by the Purchaser to the Transferred Employees. The Purchaser shall, on a commercially reasonable effort basis, ensure that each applicable Purchaser Benefit Plan waives any pre-existing condition limitations on

coverage for the Transferred Employees. Where service with the Purchaser is a requirement for eligibility for benefits and participation under the Purchaser Benefit Plans but not for the purposes of benefit accruals thereunder, the Purchaser shall recognize the service of each Transferred Employee with the Vendor or an Affiliate thereof for such purpose, to the extent such service is required to be recognized by the Vendor under the terms of the Vendor Benefit Plans.

(ii) Except as contemplated by Section 9.8(c), the Vendor shall be responsible, in accordance with and subject to the terms of the Vendor Benefit Plans, for any and all Claims Incurred by the Employees under the Vendor Benefit Plans prior to the Effective Time and by all Employees, other than the Transferred Employees, on and after the Effective Time. The Purchaser shall be responsible, in accordance with the terms of the Purchaser Benefit Plans, for any and all Claims Incurred by the Transferred Employees for benefits provided under the Purchaser Benefit Plans. Notwithstanding anything else in this Section 9.9, the Purchaser and neither the Vendor nor any Vendor Benefit Plan, shall be responsible for all benefits, including benefits under the Vendor Benefit Plans, that are (X) Assumed Liabilities; (Y) post-employment benefit obligations related to Transferred Employees, excluding pension obligations other than as contemplated in clause (X) of this paragraph, and irrespective of whether such post-employment benefit obligations are attributable, in whole or in part, to such Transferred Employees' service with the Vendor or under a Vendor Benefit Plan; and (Z) short-term disability benefits payable to Transferred Employees on and after the Effective Time, including reimbursement to the Vendor of the Vendor's out-of-pocket costs and expenses (including GST/HST that is not recoverable by the Vendor) relating to such short-term disability benefits if paid from a Vendor Benefit Plan.

(iii) Where the benefits provided under the Vendor Benefit Plans and/or the Purchaser Benefit Plans are subject to a deductible in respect of the benefits provided to an individual during a certain period of time, the Purchaser shall take into account the amount of the deductible which has already been paid in the current calendar year by the applicable Transferred Employee prior to the Effective Time for the purpose of determining the amount of the deductible to be paid by the Transferred Employee under the Purchaser Benefit Plans for the remainder of that calendar year on and after the Effective Time.

(iv) Notwithstanding Section 9.9(a)(i), at the written request of the Purchaser, the Vendor shall use its commercially reasonable efforts to extend continued coverage to the Transferred Employees under the Vendor Benefit Plans up to a date no later than December 31, 2014, but only to the extent permitted or reasonably practicable under such Vendor Benefit Plans. The Purchaser shall reimburse the Vendor on a monthly basis for all

of the Vendor's out-of-pocket costs and expenses (including GST/HST that is not recoverable by the Vendor) associated with maintaining such continued coverage.

(b) *Vendor Pension Plan.*

The terms and conditions of this Agreement relating to the treatment of the Transferred Employees with respect to the Vendor Pension Plan and all Assumed Liabilities in respect thereof, are as set out in the Pension Asset Transfer Agreement.

(c) *Transition.*

The Vendor will use commercially reasonable efforts to assist Purchaser with provisioning and establishing programs and processes that permit the Purchaser to provide payroll services and benefits programs (including the Purchaser Benefit Plans) and related services in respect of Transferred Employees. The Purchaser shall reimburse the Vendor for the Vendor's reasonable and approved out-of-pocket costs and expenses (including GST/HST that is not recoverable by the Vendor) associated with providing such assistance.

9.10 Filings

EnerCare shall, in accordance with applicable Securities Laws, prepare and make any filings and pay any associated fees required by applicable Securities Laws in respect of the EnerCare Shares.

9.11 Restrictions on Transfer of EnerCare Shares

(a) *Post-Closing Hold Periods*.

(i) The Vendor shall not, directly or indirectly, transfer, sell, assign, gift, pledge, encumber, hypothecate, mortgage, exchange or otherwise dispose of (including through the sale or purchase of options or other derivative instruments with respect to the EnerCare Shares) (any such occurrence a "**disposition**"), all or any portion of the EnerCare Shares received pursuant to Section 3.2(b), or its economic interest therein, after the date hereof during the Initial Hold Period without the prior written consent of EnerCare.

(ii) The Vendor shall not dispose of more than half of the EnerCare Shares received pursuant to Section 3.2(b), or its economic interest therein during the Second Hold Period without the prior written consent of EnerCare.

(iii) The certificates representing the EnerCare Shares (and any replacement certificates issued prior to the expiration of the applicable hold periods) shall bear the following legend:

"THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE **<INSERT DATE THAT IS A DAY AFTER THE END OF THE INITIAL HOLD PERIOD / SECOND HOLD PERIOD.>**

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE ("TSX"); HOWEVER, THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF TSX SINCE THEY ARE NOT FREELY TRANSFERABLE, AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON TSX."

(b) Notwithstanding the foregoing restrictions in this Section 9.11, the Vendor shall be permitted to (i) transfer the EnerCare Shares to a wholly-owned Subsidiary of the Vendor, provided that (A) the transferee agrees in writing in favour of EnerCare and in form and substance reasonably satisfactory to EnerCare to be bound by the terms and conditions of this Agreement applicable to the Vendor, (B) the Vendor shall remain bound and subject to its obligations hereunder and shall be responsible for ensuring such wholly-owned Subsidiary complies with its obligations under this Agreement, and (C) if the transferee ceases at any time to be a wholly-owned Subsidiary of the Vendor, the Vendor shall cause the transferee to transfer the EnerCare Shares to the Vendor or one of its wholly-owned subsidiaries, provided that the transferee complies with (A) above; and (ii) grant a security interest over the EnerCare Shares to the secured lenders of the Vendor that are regulated financial institutions, provided that such lenders agree in writing in favour of EnerCare and in form and substance reasonably satisfactory to the Purchaser to be bound by all terms and conditions of the Agreement applicable to the Vendor.

9.12 Settlement of Disputed Amounts

Within thirty (30) days of the date hereof, the Purchaser Entities on one hand, and the Vendor on the other hand, hereby agree to provide each other with a list of any and all outstanding Claims or other disputed amounts which exist between the Purchaser Entities and the Vendor as at such date which are unrelated to this Agreement. The Purchaser Entities and the Vendor hereby agree to work diligently and in good faith towards resolving any and all such outstanding Claims or other disputed amounts. Each of the Purchaser Entities and the Vendor hereby agree, if, at the Effective Time, the aggregate value of such outstanding Claims is less than one million five hundred thousand dollars ($1,500,000), to execute and deliver, at the Closing Time, a full and final mutual release in respect of any such outstanding Claims between the Parties. In any event, at the Closing Time, each of the Purchaser Entities and the Vendor hereby agree to execute and deliver a full and final mutual release in respect of any outstanding Claims or amounts unrelated to this Agreement that are not disclosed on the lists to be delivered to the other pursuant to this Section 9.12.

9.13 Settlement of Ordinary Course Amounts

Except with respect to restricted cash, all amounts owing between the Purchaser Entities on one hand, and the Vendor on the other hand, which are incurred in the ordinary course under any Existing Business Agreement and which are not in dispute between the Parties shall be settled in full between the Parties at the Effective Time, irrespective of when such applicable Existing Business Agreement otherwise provides a deadline for payment of such ordinary course amounts. The Parties shall provide each other with statements of such amounts that are outstanding not less than ten (10) Business Days before the Closing Date.

9.14 Transition Services Agreement

The Parties agree to negotiate the terms of the Transition Services Agreement prior to Closing in good faith and having regard to the draft agreement attached as Exhibit G. Each of the Parties agrees not to allege in any future legal proceeding that such Party is not obligated to negotiate the Transition Services Agreement in good faith.

9.15 Enbridge OBA Agreement Matters

(a) *Assignment of Enbridge OBA Agreement and Implementation of the Billing Services*

The Vendor and the Purchaser shall, on or prior to the Effective Time, enter into a customary assignment, assumption and consent agreement with Enbridge Gas Distribution Inc. (the "**Enbridge OBA Assignment Agreement**") which shall (i) provide for the assignment of the Vendor's interest in the Enbridge OBA Agreement to the Purchaser at the Effective Time, and (ii) set forth the arrangements governing the transition of the billing and collection service arrangements under the Enbridge OBA Agreement on and after the Effective Time. The Vendor and the Purchaser shall make commercially reasonable efforts to assist the other Party and Enbridge Gas Distribution Inc. in connection with the foregoing as reasonably required.

The Vendor and the Purchaser shall co-operate and make commercially reasonable efforts to ensure that Enbridge Gas Distribution Inc. provides the Billing Services (as defined in the Enbridge OBA Agreement) to the Purchaser and in the name of the Purchaser for the first complete Billing Period (as defined in the Enbridge OBA Agreement) following the Effective Time.

(b) *Delivery of Settlement Amounts and Biller Receivables*

For greater certainty, and in accordance with the terms and conditions of the Enbridge OBA Assignment Agreement, the Vendor shall be entitled to any Settlement Amounts (as defined in the Enbridge OBA Agreement) related to Biller Receivables (as defined in the Enbridge OBA Agreement) arising prior to the Effective Time and the Purchaser shall be entitled to any Settlement Amounts relating to the Biller Receivables arising from and after the Effective Time,

subject to Section 9.15(d). The Vendor agrees to promptly deliver to the Purchaser that portion of any Settlement Amount received to which the Purchaser is entitled, and the Purchaser agrees to promptly deliver to the Vendor that portion of any Settlement Amount received to which the Vendor is entitled.

In the event any Adjustment is made to any Settlement Amount to which the Purchaser is entitled pursuant to this Section 9.15(b), the Vendor shall further promptly deliver to the Purchaser such additional Adjustment amount. For purposes of this Section 9.15(b), "**Adjustment**" means any adjustment to a Settlement Amount made (i) in accordance with Section 7.6(c)(iii) of the Enbridge OBA Agreement to account for any At-Issue Amount (as defined in the Enbridge OBA Agreement), (ii) to account for any Deemed Proceeds (as defined in the Enbridge OBA Agreement) allocated to the Biller Receivables of the Vendor, (iii) to account for any amounts owing by the Vendor pursuant to Section 4.6 of the Enbridge OBA Agreement, in respect of the period or existing at or before the Effective Time, or (iv) any other deduction or set off of overpayment made against such Settlement Amount which is properly attributable to the Vendor.

(c) *Use of Vendor OBA Intellectual Property during any transition period*

In the event that Enbridge Gas Distribution Inc. is not able to provide the Billing Services to and in the name of the Purchaser for the first Billing Period (as defined in the Enbridge OBA Agreement) which ends after the Effective Time, the Vendor hereby grants the Purchaser a royalty-free, non-exclusive license and right to use the Vendor OBA Intellectual Property for the limited purposes of billing and collection services and other related customer care activities of the Purchaser pursuant to the Enbridge OBA Agreement. The Vendor shall retain all right, title and interest in and to the Vendor OBA Intellectual Property, including all rights in Intellectual Property relating thereto. The Purchaser agrees that it shall not at any time apply for any registration of any copyright or trade-mark or other registration for the Vendor OBA Intellectual Property, or dispute or contest the ownership, validity or enforceability of the Vendor OBA Intellectual Property. All use by the Purchaser of the Vendor OBA Intellectual Property shall be (i) in compliance with all Applicable Laws and all codes and industry standards relevant to the operation of the Business, (ii) at least consistent in quality as the uses by the Vendor in the operation of the Business as conducted immediately prior to the Closing Date, and (iii) in accordance with any reasonable quality control procedures, use guidelines, and policies of the Vendor of which the Purchaser is given reasonable notice by the Vendor regarding the use of the Vendor OBA Intellectual Property, it being agreed between the Parties that the use of the Vendor OBA Intellectual Property immediately prior to the Closing Date by the Vendor is compliant with all such quality control procedures, use guidelines, and policies. The Purchaser shall be permitted to sublicense the license and right granted under this Section 9.15(c) to the Vendor OBA Intellectual Property to Enbridge Gas Distribution Inc. (or any Affiliate of Enbridge Gas Distribution Inc. or the Vendor) as necessary in connection with

foregoing. The license granted to the Purchaser pursuant to this Section 9.15(c), and any sublicenses granted by the Purchaser pursuant to this Section 9.15(c), shall terminate six (6) months after the Closing Date.

(d) *Invoices during any transition period*

In the event that Enbridge Gas Distribution Inc. is not able to provide the Billing Services to and in the name of the Purchaser for the first Billing Period (as defined in the Enbridge OBA Agreement) which ends after the Effective Time, it may be necessary for the Vendor's name and GST/HST registration number, [redacted]**[registration number redacted]**, to continue to appear on the invoices to Customers (as defined in the Enbridge OBA Agreement) for a period of up to six (6) months after the Closing Date for purposes of Enbridge Gas Distribution Inc. billing Customers (as defined in the Enbridge OBA Agreement) under the Enbridge OBA Agreement as assigned to the Purchaser. Accordingly, the Vendor hereby agrees for a six (6) month transition period, on a no-fee basis, that its name and GST/HST registration number may continue to appear on such invoices for a 6 month transition period (the "**Transition Billing Services**"), provided that (i) the Purchaser will make commercially reasonable efforts to update the invoices to reflect the Purchaser's name and GST/HST registration number as soon as is commercially feasible, and (ii) the invoices will reflect the Vendor's GST/HST registration number only where it is not commercially feasible for the invoices to reflect the Purchaser's GST/HST registration number. The Purchaser shall direct that the Taxes collected by Enbridge Gas Distribution Inc. on the Actual Billed Amount (as defined in the Enbridge OBA Agreement) in respect of which the Vendor has provided Transition Billing Services shall, for the six (6) month transition period, be paid directly to the Vendor and not to the Purchaser. If Enbridge Gas Distribution Inc. does not pay the Taxes directly to the Vendor but pays the Settlement Amount to the Purchaser, the Purchaser shall hold the Taxes in trust for the Vendor and shall pay the Taxes (determined based on the Purchaser's good faith calculation of such Taxes in respect of Settlement Amount(s) received from Enbridge Gas Distribution Inc. in the month) to the Vendor on the last Business Day of the month in which the Settlement Amount(s) was received from Enbridge Gas Distribution Inc., which shall be adjusted accordingly by payments made between the Vendor and the Purchaser within two (2) Business Days of receipt by the Purchaser and the Vendor of the Monthly Statement (as defined in the Enbridge OBA Agreement). The Vendor shall report and remit to the CRA, as and when required by the ETA, under its own GST/HST account, such Taxes collectible by the Purchaser, on behalf of the Purchaser. The Purchaser shall also provide the Vendor with a copy of the Monthly Statement and/or Reconciliation (as defined in the Enbridge OBA Agreement) that relates to the Transition Billing Services within two (2) Business Days of receipt from Enbridge Gas Distribution Inc., during the six (6) month transition period. The Vendor shall notify and advise the Purchaser of the amount of any Taxes paid directly to the Vendor by Enbridge Gas Distribution Inc. and reported and remitted by the Vendor within ten (10) Business Days following the end of the

Vendor's GST/HST reporting period in respect of which the remittance is made, which amount shall, for greater certainty, be based on the Reconciliation. For greater certainty, if the Vendor provides the Transition Billing Services, the Purchaser shall, during that time, only be entitled to receive the Settlement Amounts less the Taxes collectible on the Actual Billed Amount in respect of which the Vendor has provided Transition Billing Services.

The Vendor hereby indemnifies the Purchaser against all Losses which the Purchaser may incur as a result of the Vendor failing to timely report and remit to the CRA, as and when required by the ETA, any Taxes paid directly to the Vendor by Enbridge Gas Distribution Inc. or by the Purchaser in respect of which the Vendor has provided Transition Billing Services pursuant to this section 9.15(d). The Purchaser hereby indemnifies the Vendor against all Losses (other than any Losses arising from or in connection with the Vendor's obligation to indemnify the Purchaser described in the immediately preceding sentence) which the Vendor may incur as a result of the Vendor's name and GST/HST registration number continuing to appear on the invoices for the six (6) month transition period as described in this Section 9.15(d) or otherwise arising in connection with a breach by the Purchaser of this Section 9.15(d).

9.16 Bulk Sales Compliance

The Purchaser hereby waives compliance by the Vendor on Closing with the provisions of the *Bulk Sales Act* (Ontario) and the equivalent provisions of similar Laws in any other province or territory of Canada and in consideration thereof, the Vendor shall indemnify and save the Purchaser Entities harmless for and against all Claims arising out of or resulting from any failure to comply with such Laws.

9.17 Taxes

(a) The Purchaser shall be liable for and pay all applicable transfer taxes, sales taxes, GST/HST, value added taxes, registration fees, duties or other like charges payable upon and in connection with the sale, assignment, conveyance and transfer of the Purchased Assets from the Vendor to the Purchaser.

(b) The Vendor and the Purchaser shall cooperate reasonably with each other and make available to each other in a timely fashion such data and other information as may reasonably be required for the preparation of any Tax Return for a period ending at or, prior to the Effective Time, for the preparation of any audit, and for the prosecution or defence of any Claim relating to any adjustment or proposed adjustment with respect to Taxes and shall preserve such data and other information until the expiration of any applicable limitation period under any applicable Law with respect to Taxes.

(c) The Vendor and the Purchaser shall jointly elect in prescribed form and within the prescribed time under subsection 97(2) of the ITA and the corresponding provisions of applicable provincial income tax statutes as to the amount which

shall be deemed to be the Vendor's proceeds of disposition of the Purchased Assets and the Purchaser's cost thereof. The agreed amount for the purposes of such elections shall be determined by the Vendor so as to ensure a tax deferred rollover transaction to the maximum extent possible with respect to the Purchased Assets, which agreed amount shall comply with the limits set out in the ITA and the corresponding provisions of applicable income tax statutes. Each of the Vendor and the Purchaser agree to execute and file all necessary documents and instruments to give effect to the elections referred to in this Section 9.17(c).

(d) Provided that the Purchaser is GST/HST registered prior to the Closing Date, the Vendor and the Purchaser shall jointly elect in prescribed form and within the prescribed time under section 167 of the ETA so that no GST/HST is payable by the Purchaser with respect to the purchase of the Purchased Assets and the Business hereunder. The Purchaser shall file such election(s) within the time and manner specified in the ETA. Each of the Vendor and the Purchaser agree to execute and file all necessary documents and instruments to give effect to the elections referred to in this Section 9.17(d). Notwithstanding any election pursuant to this Section 9.17(d), in the event that it is determined by the CRA that there is a liability of the Purchaser to pay GST/HST or the Vendor to collect GST/HST in respect of all or part of the transactions hereunder, the Purchaser shall indemnify and hold the Vendor harmless in respect of any GST/HST (including penalties and interest) which may be assessed against the Vendor as a result of the transaction under this Agreement not being eligible for the election or the failure of the Purchaser to file such election in the manner and in the time specified by the ETA.

(e) The Vendor and the Purchaser shall jointly elect in prescribed form and within the prescribed time under section 22 of the ITA and the corresponding provisions of applicable provincial tax statutes in respect of the transfer of the Accounts Receivable. Each of the Vendor and the Purchaser agrees to execute and file all necessary documents and instruments to give effect to the elections referred to in this Section 9.17(e).

(f) The Vendor and the Purchaser acknowledge that the Vendor is transferring a portion of the Purchased Assets to the Purchaser in consideration for the Purchaser assuming prepaid obligations of the Vendor to deliver goods or provide services in the future. The Vendor and the Purchaser shall jointly elect in prescribed form and within the prescribed time under section 20(24) of the ITA and the corresponding provisions of applicable provincial tax statutes as to such assumption hereunder. Each of the Vendor and the Purchaser agrees to execute and file all necessary documents and instruments to give effect to the elections referred to in this Section 9.17(f).

(g) The Vendor and the Purchaser shall jointly elect in the required manner and using a form reasonably acceptable to their respective counsel, and on the prescribed form (if and when available), and within the prescribed time to have paragraph 56.4(7)(g) of the ITA apply on the basis that no part of the consideration paid to

the Vendor is attributable to the restrictive covenant granted pursuant to the Non-Competition and Non-Solicitation Agreement and the Vendor and the Purchaser hereby acknowledge that such restrictive covenant can reasonably be regarded as having been granted to maintain or preserve the value of the Goodwill. Each of the Vendor and the Purchaser agrees to execute and file all necessary documents and instruments to give effect to the election referred to in this Section 9.17(g).

(h) The Purchaser agrees to cause each of its partners (either directly or through the rights granted pursuant to the Limited Partnership Agreement) to prepare, execute and/or file such documents, Tax Returns, or other forms as may be required to more fully effect the Tax elections described in this Section 9.17.

9.18 Bank Accounts

Section 9.18 of the Disclosure Letter sets forth a list of the name and city of each bank or other depository in which the Vendor or any Affiliate of the Vendor maintains bank accounts, trust accounts or safety deposit boxes through which funds of the Business are transferred to the Vendor or its Affiliates or from which the Vendor or its Affiliates has any right to draw funds of the Business, along with the (i) the account number of each such account, (ii) the names of all persons authorized to draw thereon, (iii) all authorized signatories with respect to such accounts, and (iv) whether such bank account, trust account or safety deposit box is to be transferred to the Purchaser. The Vendor will ensure that, effective immediately upon Closing, (A) the registration of all such bank accounts, trust accounts and safety deposit boxes to be transferred to the Purchaser shall be duly transferred to the Purchaser, and all arrangements and rights of the Vendor in respect of such bank accounts, trust accounts and safety deposit boxes shall be cancelled, (B) sufficient cash balances shall remain in each such bank account to satisfy any uncashed cheques outstanding, (C) after the Closing, the Vendor and its Affiliates shall not take any action to withdraw or transfer funds from such transferred bank accounts, trust accounts or safety deposit boxes and (D) the bank accounts specified in Section 9.18 of the Disclosure Letter into which restricted cash is deposited in the ordinary course will contain all of such restricted cash to which EnerCare is entitled pursuant to the Co-Ownership Agreement. Following the Closing Date, the Vendor and EnerCare shall co-operate to reconcile the restricted cash contained in such bank accounts as of the Closing Date pursuant to the Co-Ownership Agreement to determine if any such restricted cash belongs to the Vendor. The Parties shall use commercially reasonable efforts to cause such reconciliation to be completed within thirty (30) days following the Closing Date. Any restricted cash determined to belong to the Vendor shall be paid to the Vendor within ten (10) days after such reconciliation is completed.

9.19 Books and Records

The Vendor shall cause Iron Mountain Canada Corporation (and any of its Affiliates, including Iron Mountain Information Management, LLC) to transfer any of the Books and Records within the possession of Iron Mountain Corporation (and its Affiliates) to the Purchaser's account with Iron Mountain Canada Corporation as soon as practicable and in any event within ninety (90) days of the Closing.

9.20 Cooperation with Ongoing Claims

The Purchaser shall, at the reasonable expense of the Vendor, provide reasonable cooperation in the Vendor's defence of the Claims set forth in Section 4.29 of the Disclosure Letter which are not Assumed Liabilities, including the Competition Act Application, which cooperation shall continue after Closing, including pursuant to Section 9.21.

9.21 Retention and Maintenance of Books and Records

(a) The Vendor shall be entitled to retain copies of all Books and Records required for purposes of defending the Claims set forth in Section 4.29 of the Disclosure Letter which are not Assumed Liabilities, including the Competition Act Application.

(b) The Vendor and the Purchaser shall each preserve until the seventh anniversary of the Closing Date all records possessed or to be possessed by such party relating to the Business as existing or conducted prior to the Effective Time, provided, however, that all such records relating to tax matters shall be retained until the expiry of all Tax Reassessment Periods. After the Closing Date, where there is a legitimate purpose (including in connection with defence of third party litigation, tax audit, insurance claims or governmental investigations), such party shall provide the other party with reasonable assistance and access, upon prior reasonable written request specifying the need therefor, during regular business hours, to (a) authorized personnel or representatives of such party and (b) the books and records of such party, but, in each case, only to the extent relating to the Business prior to the Effective Time, and the other party and its representatives shall have the right to make copies of such books and records; provided, however, that the foregoing right to assistance and access shall not be exercised in such a manner as to interfere unreasonably with the normal operations and business of such party; and further provided, that, as to so much of such information as constitutes trade secrets or confidential business information of such party, the requesting party and its authorized personnel and representatives will use due care to not disclose such information to any third Person, except (i) as required by applicable Law or Order, (ii) with the prior written consent of such party, which consent shall not be unreasonably withheld or delayed, or (iii) where such information becomes available to the public generally, or becomes generally known to competitors of such party, through sources other than the requesting party, its Affiliates or its personnel or representatives. Such records may nevertheless be destroyed by a party if such party sends to the other party a Notice of its intent to destroy records, specifying with particularity the contents of the records to be destroyed. Such records may then be destroyed after the 90th day after such Notice is given unless the other party objects to the destruction, in which case the party seeking to destroy the records shall deliver such records to the objecting party at the expense of the objecting party within 180 days after the date of such Notice.

9.22 Subsidiary Contracts

Section 9.22 of the Disclosure Letter sets forth a list of all Contracts to which Direct Energy Business Services Limited, a wholly-owned subsidiary of the Vendor, and Direct Energy Limited Partnership, an Affiliate of the Vendor, are a party instead of the Vendor, all of which are included in Purchased Assets for all purposes of this Agreement. The Vendor shall cause such Subsidiaries to assign such Contracts to the Purchaser at Closing.

9.23 Development of Decoupling Plan

(a) Prior to the Closing, the Vendor will prepare and provide to the Purchaser a high-level plan describing or identifying, as the case may be, the IT Decoupling Activities required to separate systems, data network, voice networks information technology systems and related data networks associated with the Business from the other business operations of the Vendor and to set up a new stand-alone operating environment, which shall include, which Party is responsible for undertaking which activities (the "**High Level Decoupling Plan**"). The Vendor will share the contents of the High-Level Decoupling Plan with the Purchaser and will not unreasonably refuse to incorporate into the Decoupling Plan any reasonable comments made by the Purchaser. The Parties will use the High-Level Decoupling Plan as the basis for finalizing the definitive plan for the IT Decoupling Activities (the **"Decoupling Plan"**) under, and in accordance with, the Transition Services Agreement.

(b) The Vendor will, acting cooperatively and in good faith, work together with the Purchaser to help facilitate the Purchaser's entering into of such data centre lease arrangements as the Purchaser reasonably requires as part of the High-Level Decoupling Plan and the activities contemplated thereunder.

9.24 Joint Assets

(a) Upon the Closing the Vendor shall sell, transfer, assign, convey and deliver to the Purchaser, and the Purchaser shall purchase and receive from the Vendor, an equal and undivided right, title and interest in the Joint Assets such that effective as of the Closing, the Joint Assets shall be jointly owned by the Vendor and the Purchaser as tenants-in-common with each party having an undivided and equal interest in and to the Joint Assets. To the extent the Joint Assets include any trade, product, service or software application names or any logos (collectively, the "**JA Names**" and individually "**JA Name**"), the Parties agree that as between them each Party may continue to use the JA Names without notice to, permission of or consent of the other Party; provided however that if any JA Name includes the trademark "Direct Energy", in whole or in part, or any Non-Transferred Trademarks or any marks confusingly similar therewith, then (i) the Purchaser shall only use such JA Name in accordance with the IP License Agreement, (ii) the Parties acknowledge and agree that this provision does not sell, transfer, assign or convey any right, title or interest in any Non-Transferred Trademarks to the Purchaser and (iii) in respect of any Joint Asset that is software, the Purchaser

shall amend, within twelve (12) months of the Closing Date, any such JA Name in any user or customer facing interface of such software to show a different name that does not include a Non-Transferred Trademark and is not confusingly similar to a Non-Transferred Trademark.

(b) All Intellectual Property derived, based on or constituting improvements upon the Joint Assets, and that is conceived, discovered, invented or first reduced to practice by one of the Parties shall be exclusively owned by that Party.

(c) Each Party may, without notice to, permission of or consent of the other Party, use, license, sub-license, sell, assign, transfer, dispose of or otherwise use or exploit the Joint Assets or such Party's right, title and interest in the Joint Assets, in whole or in part, without any obligations (including accounting of profits) to the other Party.

9.25 Exclusivity

Until the Closing, the Purchaser and EnerCare will not, directly or indirectly, (a) enter into any legally binding agreement, except non-disclosure agreements in relation to, an Additional Purchase Transaction, (b) have, or permit any proposed transaction counterparty to have, any discussions with the Competition Bureau regarding any Additional Purchase Transaction, or (c) make any public announcement in relation to any proposed Additional Purchase Transaction.

9.26 Access to Allstate Property

Notwithstanding the assignment of the lease in respect of the Allstate Property by the Vendor to the Purchaser, after the Effective Time, the Purchaser shall provide access to the Allstate Property to the employees of the Vendor set forth in Section 9.26 of the Disclosure Letter in the same manner as such employees had access immediately prior to the Effective Time. Such access shall be provided for the period of time set forth in Section 9.26 of the Disclosure Letter, and the Vendor shall pay to the Purchaser an amount per employee as set forth in Section 9.26 of the Disclosure Letter. The Vendor hereby indemnifies the Purchaser against all Losses which the Purchaser may incur in connection with the foregoing.

9.27 High Meadow Lease

(a) Before the Closing Date, the Vendor shall use commercially reasonable efforts to:

(i) enter into an amendment with the landlord of the High Meadow Premises (the "**HM Landlord**") of the High Meadows Lease which shall provide that the date by which the Vendor, as tenant under the High Meadow Lease, may exercise its option to renew the term of the High Meadow Lease pursuant to Schedule "C" thereof, shall be the second Business Day after the Closing Date (the "**HM Amendment**"); or

(ii) obtain the consent of the HM Landlord to the assignment of the High Meadow Lease to the Purchaser which consent shall include that upon such assignment the term of the High Meadows Lease shall be renewed

pursuant to Schedule "C" of the High Meadows Lease until May 31, 2017 (the "**HM Consent**").

(b) In the event the Vendor is unable to enter into the HM Amendment or obtain the HM Consent as provided in Sections 9.27(a)(i) and (ii) respectively, the Vendor, as sublandlord and the Purchaser, as subtenant, shall enter into a sublease at Closing substantially in the form set forth in Exhibit A hereto, whereby such Parties shall occupy such portions of the High Meadows Premises as currently provided therein save and except the term of the sublease shall expire on April 30, 2015.

(c) In the event the High Meadow Lease is assigned to the Purchaser, at the Closing Time, the Vendor shall pay to the Purchaser the Vendor High Meadow Restoration Amount.

(d) In the event the High Meadow Lease is not assigned to the Purchaser, the Vendor shall be solely responsible for the restoration costs required under the High Meadow Lease.

9.28 Purchaser Right of First Offer

If the Vendor at any time during the term of the Transition Services Agreement proposes to divest itself of all or part of the business used by the Vendor to provide services thereunder (the "**Transition Services Business**") to a competitor of the Vendor operating in the Province of Ontario, the Vendor shall first offer such interest in the Transition Services Business to the Purchaser (or at the Purchaser's direction, an Affiliate of the Purchaser) in accordance with this Section 9.28.

(a) *Offer Notice*

The Vendor shall give notice (the "**Offer Notice**") to the Purchaser, stating (i) its bona fide intention to divest itself of all or a material part of its interest in the Transition Services Business, and (ii) the price and terms upon which it proposes to divest itself of such interest in the Transition Services Business.

(b) *Rights of the Purchaser upon receipt of the Offer Notice*

The Purchaser shall have the right, exercisable by notice given to the Vendor, within forty five (45) days after receipt of the Offer Notice (i) to accept the terms of the Offer Notice and agree that the Purchaser, or any Person designated by the Purchaser shall purchase or otherwise acquire the Vendor's interest in the Transition Services Business, or (ii) reject the Offer Notice and agree that the Vendor may divest of such interest in the Transition Services Business at a price not less than, and upon terms no more favourable in the aggregate to the purchaser than, those specified in the Offer Notice, provided such a definitive and binding agreement in respect of such divestiture shall be entered into within one hundred and twenty (120) days of the date of such rejection (or deemed rejection)

by the Purchaser. If the Purchaser does not respond to the Offer Notice within the forty five (45) day period specified in this Section 9.28(b), the Purchaser shall be deemed to have rejected the Offer Notice. If the Vendor does not enter into a definitive and binding agreement with a third party for the sale of such interest in the Transition Services Business within such one hundred and twenty (120) day period, or if such agreement is not consummated by the later of (A) ninety (90) days from the execution thereof, or (B) 30 days from the date all regulatory approvals are obtained, the right provided hereunder shall be deemed to be revived and such interest in the Transition Services Business shall not be divested unless first reoffered to the Purchaser in accordance with this Section 9.28. The closing of any sale to the Purchaser pursuant to this Section 9.28 shall occur within the ninety (90) days of the date that the Offer Notice is accepted, subject to receipt any required regulatory approvals, failing which, the Vendor shall be entitled to follow the process set out in part (ii) of this Section 9.28(b).

9.29 EnerCare Guarantee

EnerCare unconditionally and irrevocably guarantees, and covenants and agrees to be jointly and severally liable with the Purchaser for, the due and punctual payment of each and every financial obligation of the Purchaser arising under this Agreement and each Ancillary Agreement including, without limitation, satisfying any amounts required to be paid by the Purchaser under Article 3, Sections 9.17(a) and (d), and Article 10 and in connection with the transactions contemplated by this Agreement and any amount of any judgment or award made against the Purchaser for the benefit of the Vendor. The obligations set out in this Section 9.29 shall survive termination of this Agreement and cannot be transferred or assigned by EnerCare.

9.30 Naming Sponsorship Agreement

The Vendor shall apply for and use all commercially reasonable efforts to obtain such consents or approvals as are required pursuant to the Naming Sponsorship Agreement to permit the assignment of such agreement to the Purchaser, such consent to be in a form satisfactory to the Purchaser acting reasonably.

ARTICLE 10
INDEMNIFICATION

10.1 Indemnification by the Vendor

(a) The Vendor shall indemnify and save harmless the Purchaser, its Affiliates, their respective successors and permitted assigns and their respective directors, officers, agents, employees (in this Section 10.1 collectively referred to as the "**Indemnified Parties**"), from and against all Losses arising from Claims which may be made or brought against the Indemnified Parties, or Losses which they may suffer or incur, directly or indirectly as a result of or in connection with:

(i) any non-fulfillment of any covenant, undertaking, obligation or agreement on the part of the Vendor under this Agreement;

(ii) any incorrectness in or breach of any representation or warranty contained in Article 4 of this Agreement or in any certificate furnished by the Vendor pursuant to this Agreement; or

(iii) the Purchaser owing, having or being under any Liability to any Person related to or arising from the Vendor's operation of the Business or the ownership or use of the Purchased Assets where the factual or legal basis for such obligation existed or arose prior to the Effective Time, even where same only materializes after the Effective Time, other than the Assumed Liabilities;

(iv) Excluded Liabilities; or

(v) any non-compliance with section 6 of the *Retail Sales Tax Act* (Ontario) and any corresponding provisions of any other applicable legislation.

(b) The obligation of indemnification set out in Section 10.1(a)(ii) above shall be subject to:

(i) the limitation contained in Section 6.2 respecting the survival of the representations and warranties; and

(ii) the limitation that the Vendor shall not be required to pay any such amount:

A. in respect of any individual Claim, occurrence or any series of related Claims or occurrences (including any class action) or any series of Claims arising from similar facts, until the Losses in respect of such individual or related or series of Claims, facts or occurrences are greater than seventy five thousand dollars ($75,000);

B. unless and until the aggregate of all Losses exceeds five million dollars ($5,000,000) (the "**Threshold**") in which event the Vendor shall be responsible for the aggregate amount of all Losses (and not just the amount by which the Threshold is exceeded); and

C. be required to pay any amount in excess of one hundred and ten million dollars ($110,000,000) in respect of all such Claims.

provided that the limitations in subparagraph (ii) above shall not apply to a breach or inaccuracy of a Fundamental Representation, or any representation or warranty made in Section 4.30 (Tax Matters) or wilful breaches of this Agreement.

(c) For purposes of calculating the amount of the obligation of indemnification set out in Section 10.1(a) with respect to an inaccuracy in, misrepresentation of, or breach of any representation or warranty contained in this Agreement, the terms "material", "materiality", Material Adverse Effect" or similar qualifications

contained in such representations and warranties will be disregarded. Notwithstanding the foregoing, for purposes of determining whether such indemnification obligations arise, regard will be had to "materiality", "Material Adverse Effect" or similar qualifications.

(d) Any liability of the Vendor to indemnify the Purchaser pursuant to this Section 10.1 shall be satisfied by the Vendor directly.

(e) Notwithstanding the provisions of this Section 10.1, the Vendor shall have no liability for, or obligation with respect to:

(i) any special, exemplary, indirect, consequential (including loss of profit), punitive or aggravated damages of any kind or nature (other than as actually paid to a third party in connection with a Claim brought against an Indemnified Party under this Section 10.1);

(ii) any amount received pursuant to Section 3.5(b) by the Indemnified Party as a result of the matter giving rise to such Claims; or

(iii) any Claims against the Purchaser made in or arising out of the subject matter of the Competition Bureau Notice of Application, including any claims for administrative monetary penalties or costs, other than any Claims which are Excluded Liabilities.

(f) In no event shall the aggregate amount indemnifiable by the Vendor pursuant to this Agreement exceed the Purchase Price.

10.2 Indemnification by the Purchaser

(a) The Purchaser shall indemnify and save harmless the Vendor and its Affiliates and their respective successors and permitted assigns and their respective directors, officers, employees and agents (in this Section collectively referred to as the "**Indemnified Parties**"), from and against all Losses arising from Claims which may be made or brought against the Indemnified Parties, or which they may suffer or incur, directly or indirectly, as a result of or in connection with:

(i) any non-fulfillment of any covenant, undertaking, obligation or agreement on the part of the Purchaser under this Agreement;

(ii) any incorrectness in or breach of any representation or warranty of the Purchaser contained in this Agreement, or in any certificate furnished by the Purchaser pursuant to this Agreement;

(iii) the Assumed Liabilities; and

(iv) any Claim by a Governmental Authority that the election(s) filed pursuant to Section 9.17(c) are not effective.

(b) For purposes of the obligation of indemnification set out in Section 10.2(a) above, any inaccuracy in any representation or warranty shall be determined without regard to any materiality or similar qualification.

(c) Notwithstanding the provisions of this Section 10.2, the Purchaser shall have no liability for, or obligation with respect to:

(i) any special, exemplary, indirect, consequential (including loss of profits), punitive or aggravated damages of any kind or nature (other than as actually paid to a third party in connection with a Claim brought against an Indemnified Party under this Section 10.2); or

(ii) any amount received pursuant to Section 3.5(b) by the Indemnified Party as a result of the matter giving rise to such Claims.

10.3 Indemnification Procedures

(a) In the event that any Indemnified Party shall incur or suffer any claim in respect of which indemnification is sought hereunder against the Purchaser, on the one hand, or the Vendor, on the other hand, the Indemnified Party may assert a claim for indemnification by written notice to the Indemnifying Party stating the nature and basis for such claim.

(b) In the case of claims made by a third party with respect to which indemnification is sought, the Party seeking indemnification (in this Section, the "**Indemnified Party**") shall give prompt notice, and in any event within twenty (20) days, to the other Party (in this Section, the "**Indemnifying Party**") of any such claims made upon it. If the Indemnified Party fails to give such notice, such failure shall not preclude the Indemnified Party from obtaining such indemnification but its right to indemnification may be reduced to the extent that such delay materially prejudiced the defence of the claim or materially increased the amount of liability or cost of defence and provided that no claim for indemnity in respect of the breach of any representation or warranty contained in this Agreement may be made unless notice of such claim has been given prior to the expiry of the survival period applicable to such representation and warranty pursuant to Section 6.2.

(c) The Indemnifying Party shall have the right, by notice to the Indemnified Party given not later than thirty (30) days after receipt of the notice described in Section 10.3(a), to assume the control of the defence, compromise or settlement of the claim, provided that such assumption shall, by its terms, be without cost to the Indemnified Party and provided the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in accordance with the terms contained in this Section in respect of that claim. The Indemnifying Party shall thereafter keep each Indemnified Party reasonably informed with respect to the status of such claim.

(d) Upon the assumption of control of any claim by the Indemnifying Party as set out in Section 10.3(c), the Indemnifying Party shall diligently proceed with the defence, compromise or settlement of the claim at its sole expense, including, if necessary, employment of counsel reasonably satisfactory to the Indemnified Party and, in connection therewith, the Indemnified Party shall cooperate fully, but at the expense of the Indemnifying Party with respect to any reasonable out-of-pocket expenses incurred, to make available to the Indemnifying Party all pertinent information and witnesses under the Indemnified Party's control, make such assignments and take such other steps as in the opinion of counsel for the Indemnifying Party are reasonably necessary to enable the Indemnifying Party to conduct such defence. The Indemnifying Party shall not settle such claim unless such settlement includes as an unconditional term thereof the giving by the claimant or plaintiff of a full and complete unconditional release of the Indemnified Party from any and all liability with respect to such claim. As long as the Indemnifying Party is contesting any such claim in good faith and on a timely basis, the Indemnified Party shall not pay or settle any such claim without the consent of the Indemnifying Party. Notwithstanding the assumption by the Indemnifying Party of the defence of such claim as provided in this Section 10.3(d), the Indemnified Party shall also have the right to participate in the negotiation, settlement or the defence of any claim at its own expense; provided, however, that if the defendants in any such claim shall include both an Indemnified Party and an Indemnifying Party and such Indemnified Party shall have reasonably concluded that counsel selected by the Indemnifying Party has a conflict of interest because of the availability of different or additional defences to such Indemnified Party, such Indemnified Party shall have the right to select separate counsel to participate in the defence of such claim on its behalf, at the expense of the Indemnifying Party; and provided further that the Indemnifying Party shall not be obligated to pay the expenses of more than one separate counsel for all Indemnified Parties.

(e) The final, non-appealable determination of any claim pursuant to this Section, including all related costs and expenses, shall be binding and conclusive upon the Parties as to the validity or invalidity, as the case may be of such claim against the Indemnifying Party.

(f) If the Indemnifying Party does not assume control of a claim as set out in Section 10.3(c), the Indemnified Party shall be entitled to assume the defence of the claim, but any settlement of the claim shall be subject to the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld.

(g) The Parties expressly agree that, notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement the indemnities contained in this Agreement and the Ancillary Agreement shall be mutually exclusive and that none of the indemnities contained in this Agreement shall be available to any Indemnified Party for any claim for which an indemnity is contemplated (whether paid or not) under any other Ancillary Agreement and vice versa.

10.4 Nature of Indemnification Payments

Any payment made by the Vendor as an Indemnifying Party pursuant to this Article 10 shall be made to the Purchaser and shall constitute a reduction of the Purchase Price and any payment made by the Purchaser as an Indemnifying Party pursuant to this Article 10 shall be made to the Vendor and shall constitute an increase in the Purchase Price.

10.5 Exclusive Remedy; Equitable Relief

(a) From and after the completion of the sale and purchase of the Purchased Assets herein contemplated, the rights of indemnity set forth in this Article 10 are the sole and exclusive remedies of each Party in respect of any inaccuracy or misrepresentation in any representation or warranty or breach of covenant or other obligation by another party under this Agreement, in each case other than (i) a Claim for specific performance or injunctive relief by the Vendor, (ii) in the case of a breach of Section 9.3, (iii) as expressly provided for in Section 9.8, 9.15, 9.16**,** 9.17, 9.26 and (iv) where arising with respect to any fraud or fraudulent misrepresentation.

(b) The Parties agree that irreparable damage to the other party for which monetary damages, even if available, would not be an adequate remedy would occur in the event that any of the provisions of this Agreement (including the failure by any party to take such actions as are required of it hereunder to consummate the transactions contemplated by this Agreement) was not performed in accordance with its specified terms or was otherwise breached. It is accordingly agreed that the Purchaser and the Vendor shall be entitled to an injunction or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which the Purchaser or the Vendor are entitled at Law or in equity, and any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable is hereby waived.

10.6 Mitigation

Nothing in this Agreement shall in any way restrict or limit the general obligations at law of an Indemnified Party to mitigate any Loss which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty or covenant of the Indemnifying Party hereunder. An Indemnified Party shall take reasonable steps to mitigate any Losses and shall respond to a claim or liability that may provide a basis for indemnification in the same manner (but in any event in a reasonable manner) it would respond in the absence of the indemnification provided in this Agreement. In the event that the Indemnified Party fails to make reasonable efforts to mitigate any Losses, or resolve any claim or liability, the Indemnified Party shall not be indemnified to the extent that any Losses could reasonably be expected to have been avoided if the Indemnified Party had made such efforts.

ARTICLE 11
GENERAL

11.1 Public Notices; Communications

(a) Subject to applicable Law, no Party shall make or cause to be made, any public statement or public announcement or issue any press release or otherwise communicate with any news media concerning this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other Party, and the Parties shall co-operate as to the timing and content of any such press release, public announcement or communication. Notwithstanding the foregoing, the Vendor acknowledges that EnerCare is a reporting issuer under applicable Securities Laws and is obligated to make immediate public disclosure of the entering into of this Agreement and the material terms hereof and will be required to file a copy of this Agreement on SEDAR and the Vendor consents to the making of such disclosure and such filing and any related communications (including in connection with analyst conference calls) and shall co-operate in the content of such disclosure provided, however, that the Vendor has a reasonable opportunity to comment on the disclosure related to such filing (including as to any parts of the Agreement that may be redacted on the basis that it contains confidential information of the Vendor).

(b) The Parties shall coordinate with respect to communication plans for the period from the date hereof up to the Effective Time for each Party's respective customers, partners, creditors, suppliers, franchisees and distributors, and the Vendor's Trade Unions and Employees and such other Persons having business relationships with the Vendor in respect of the Business or the Purchased Assets, with respect to the transactions contemplated by this Agreement and the Ancillary Agreements and the transition of the Business and the Purchased Assets from the Vendor to Purchaser.

11.2 Expenses

Except as otherwise provided herein, each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the purchase and sale of the Business and the Purchased Assets and the preparation, execution and delivery of this Agreement and the Ancillary Agreements and all documents and instruments executed hereunder and thereunder. In particular, the Vendor shall be responsible for paying all fees and expenses of any broker or investment advisor, including Scotia Capital Inc., retained by the Vendor or its Affiliates in connection with the sale of the Business and the Purchased Assets and such fees and expenses shall not constitute an obligation of the Business or the Purchaser.

11.3 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a "Notice") shall be in writing and shall be sufficiently

given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

(a) in the case of a Notice to the Vendor:

Direct Energy Marketing Limited
c/o Direct Energy Services
Plaza Five Points
50 Central Avenue, Suite 920
Sarasota, Florida 34236

Attention: President
Fax: (941) 296-7509
Email: [redacted] **[Personal email address redacted]**

With a copy to:

Direct Energy
12 Greenway Plaza, Suite 250
Houston, Texas 77046

Attention: General Counsel
Fax: (713) 877-3955
Email: [redacted] **[Personal email address redacted]**

With a copy to:

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Attention: David E. Woollcombe
Fax: (416) 868-0673
Email: dwoollcombe@mccarthy.ca

(b) in the case of a Notice to the Purchaser or EnerCare at:

EnerCare Inc.
4000 Victoria Park Avenue
North York, Ontario M2H 3P4

Attention: John Toffoletto, Senior Vice President, General Counsel and Corporate Secretary
Fax: (416) 649-1964
Email: jtoffoletto@enercare.ca

With a copy to:

Torys LLP
Suite 3000
79 Wellington Street West
Box 270, TD Centre
Toronto, Ontario M5K 1N2

Attention: Matthew W. Cockburn
Fax: (416) 865-7380
Email: mcockburn@torys.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 Parties in accordance with the provisions of this Section.

11.4 Assignment; Enurement

No Party hereto shall assign its rights or delegate its obligations hereunder without the prior written consent of the other Parties hereto. Notwithstanding the foregoing, the Vendor may, at any time prior to the Closing Time, transfer the Purchased Assets and the Assumed Liabilities to any of its Affiliates without the prior consent of the Purchaser if such Affiliate delivers an instrument in writing executed by the Affiliate confirming that it is bound by and shall perform all of the obligations of the Vendor under this Agreement as if it were an original signatory and provided further that the Vendor shall not be relieved of its obligations hereunder. In the event of an assignment contemplated above, any reference in this Agreement to "Vendor" or "Purchaser" shall be deemed to include the assignee. 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.

11.5 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

11.6 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing.

11.7 Execution and Counterparts

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or electronic mail in PDF format and all such counterparts and facsimiles/electronic copies shall together constitute one and the same agreement.

11.8 No Third-Party Beneficiaries; No Recourse

(a) This Agreement, other than as provided in Section 11.4 and in the provisions of Article 10 relating to indemnification, is not intended to confer upon any Person other than the Parties any rights or remedies.

(b) Notwithstanding anything that may be expressed or implied in this Agreement, except as provided in Section 11.4, each Party covenants, agrees and acknowledges that no recourse under this Agreement shall be held against any current or future Affiliates, shareholders or agents of any Party, as such, or any current or former director, officer, employee, member, general or limited partner or shareholder of any of the foregoing, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of applicable Law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed, on or otherwise be incurred by, any current or future Affiliate, shareholder or agent of any Party, as such, or any current or future director, officer, employee member, general or limited partner or shareholder of any of the foregoing, as such, for any obligation of the Parties under this Agreement.

11.9 Governing Law

This Agreement shall be governed by, and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein. Each Party hereby agrees (a) that any action or proceeding relating to this Agreement shall be brought in any court of competent jurisdiction in the Province of Ontario, and for that purpose now irrevocably and unconditionally attorns and submits to the exclusive jurisdiction of such Ontario court; (b) that it irrevocably waives any right to, and will not, oppose any such Ontario action or proceeding on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any order duly obtained form an Ontario court as contemplated by this Section 11.9.

11.10 Waiver of Jury Trial

EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

[Signatures follow on next page]

IN WITNESS OF WHICH the Parties have executed this Agreement.

ENERCARE ACQUISITION LIMITED PARTNERSHIP, by its general partner, **8960593 CANADA INC.**

By: *"John Macdonald"*

Name: John Macdonald
Title: President and Chief Executive Officer

By: *"John Toffoletto"*

Name: John Toffoletto
Title: Senior Vice President, General Counsel and Corporate Secretary

ENERCARE INC.

By: *"John Macdonald"*

Name: John Macdonald
Title: President and Chief Executive Officer

By: *"John Toffoletto"*

Name: John Toffoletto
Title: Senior Vice President, General Counsel and Corporate Secretary

DIRECT ENERGY MARKETING LIMITED

By: *"Leonard Diplock"*

Name: Leonard Diplock
Title: Vice President, Corporate Development

TAB D

(REDACTED)

ENERCARE INC.

- and –

ENERCARE HOME AND COMMERCIAL SERVICES LIMITED PARTNERSHIP

- and -

DIRECT ENERGY MARKETING LIMITED

- and -

CENTRICA PLC

NON-COMPETITION AND NON-SOLICITATION AGREEMENT

OCTOBER 20, 2014

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NON-COMPETITION AND NON-SOLICITATION AGREEMENT

THIS AGREEMENT is made the 20th day of October, 2014.

BETWEEN:

ENERCARE INC., a corporation incorporated under the laws of Canada

(hereinafter called "**EnerCare**")

- and –

ENERCARE HOME AND COMMERCIAL SERVICES LIMITED PARTNERSHIP, a limited partnership formed under the laws of the Province of Ontario

(hereinafter called "**EnerCare LP**")

- and -

DIRECT ENERGY MARKETING LIMITED, a corporation amalgamated under the laws of the Province of Ontario

(hereinafter called "**Direct Energy**")

- and -

CENTRICA PLC, a company existing under the laws of England and Wales

(hereinafter called "**Centrica**")

RECITALS:

WHEREAS EnerCare, Direct Energy and Centrica Canada Limited (now Direct Energy) are parties to a non-competition agreement dated as of December 17, 2002, as amended January 1, 2005 and December 29, 2006 (the "**Existing Non-Competition Agreement**");

AND WHEREAS EnerCare, EnerCare LP and Direct Energy have entered into an asset purchase agreement dated July 24, 2014 (the "**Purchase Agreement**") pursuant to which it was agreed, among other things, to terminate the Existing Non-Competition Agreement effective as of the date hereof and execute and deliver this Agreement, which terminates, replaces and supersedes the Existing Non-Competition Agreement;

AND WHEREAS the obligation of EnerCare LP to close the transactions contemplated by the Purchase Agreement is subject to the condition that Direct Energy and Centrica execute and deliver this Agreement;

AND WHEREAS Direct Energy, Centrica, EnerCare and EnerCare LP agree that this Agreement is necessary in order (i) that EnerCare LP receives the full benefit of the goodwill of the Business (as defined in the Purchase Agreement) and (ii) to maintain or preserve the fair market value of all of the Purchased Assets (as defined in the Purchase Agreement) and, accordingly, Direct Energy and Centrica are willing to enter into this Agreement;

AND WHEREAS Direct Energy and Centrica acknowledge that this Agreement is an integral part of the transactions contemplated by the Purchase Agreement under which Direct Energy and Centrica have received significant benefit and that EnerCare LP is relying on the covenants and acknowledgements given herein by Direct Energy and Centrica in connection with its purchase of the Purchased Assets;

NOW THEREFORE in consideration of the foregoing, and other good and valuable consideration now given by EnerCare and EnerCare LP to Direct Energy and Centrica and by Direct Energy and Centrica to EnerCare and EnerCare LP (the receipt and sufficiency of which are hereby acknowledged), Direct Energy and Centrica agree with EnerCare and EnerCare LP, and EnerCare and EnerCare LP agree with Direct Energy and Centrica, as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions

For the purposes of this Agreement, the following capitalized terms used in this Agreement have the following meanings:

"**Agreement**" means the agreement arising from the execution hereof by the parties hereto, as amended, modified, supplemented, restated or replaced from time to time;

"**hereof**", "**hereto**" and "**hereunder**" and similar expressions refer to this Agreement and not any particular section of this Agreement; "**Article**", "**Section**", "**subsection**" and "**paragraph**" mean and refer to the specified article, section, subsection or paragraph of this Agreement;

"**Business**" means the businesses carried on and conducted by Direct Energy in Ontario, Canada as at the date of this Agreement under the business unit name "Ontario Home Services", including Direct Energy's Water Heater and Protection Plan services business, HVAC Equipment, plumbing, loan book, duct cleaning and energy audits businesses, Direct Energy's franchise system related to the aforementioned businesses and the small commercial services business under the business unit name "Mass Markets Commercial", but excluding Direct Energy's Clockwork Business, Alberta home services businesses and the Airtron branded business services business;

"**Clockwork Business**" means the retail business and franchises of Direct Energy and Centrica and their Affiliates as presently conducted in Ontario, Canada under one or more of the names "Clockwork", "One Hour Heating and Air Conditioning", or any similar name;

"**Clockwork Business Service Territories**" means the service territories of each of the franchisees of the Clockwork Business as at June 5, 2014 as set forth in Schedule A hereto;

"**Competing Business**" has the meaning set out in Section 3.2(b) hereof;

"**Existing Non-Competition Agreement**" has the meaning set out in the recitals hereof;

"**Home Services Business**" means the home services businesses carried on and conducted by Direct Energy, Centrica and their Affiliates in North America as at the date of this Agreement;

"**Offer Notice**" has the meaning set out in Section 3.3.1 hereof;

"**Restrictive Covenants**" has the meaning set out in Section 5.2 hereof;

"**Right of First Offer**" has the meaning set out in Section 3.2(b) hereof; and

"**Tax Act**" has the meaning set out in Section 5.2 hereof.

Other capitalized terms used but not defined herein have the meanings ascribed to them in the Purchase Agreement.

ARTICLE 2

EXISTING NON-COMPETITION AGREEMENT

2.1 Termination of Existing Non-Competition Agreement

Direct Energy and EnerCare hereby terminate the Existing Non-Competition Agreement. This Agreement shall supersede in full the terms and conditions of the Existing Non-Competition Agreement, which shall be of no further force or effect.

ARTICLE 3

RESTRICTIONS ON THE ACTIVITIES OF DIRECT ENERGY AND CENTRICA

3.1 Restricted Activities

3.1.1 Non-Competition

Subject to Section 3.2 hereof, Direct Energy and Centrica severally covenant and agree in favour of EnerCare LP and EnerCare that they shall not (and shall cause their Affiliates not to), for a period of eight (8) years from the date hereof, individually or collectively, directly or indirectly, in any manner whatsoever including, without limitation, either individually, in partnership, jointly or in conjunction with any other Person, or as principal, agent or shareholder:

(a) carry on or be engaged in any undertaking or activity;

(b) have any financial or other interest (including an interest by way of royalty or other compensation arrangements) in or in respect of the business of any Person which carries on a business; or

(c) advise, lend money to, guarantee the debts or obligations of or permit the use of the corporate names or trade names or any part thereof of Direct Energy or Centrica or any Affiliate thereof by any Person which carries on a business;

in Ontario, Canada which is the same as or substantially similar to or which competes with or would compete with the Business as presently carried on as of the date hereof; provided, however, [redacted]

Direct Energy or one or more of its Affiliates have retail and franchise operations in North America under the Clockwork brand "Mister Sparky". For the avoidance of doubt, this Agreement in no way restricts Centrica, Direct Energy or one or more of their Affiliates from franchising "Mister Sparky" (or any equivalent thereof) in Ontario, Canada, so long as such franchising does not compete with the Business, and such franchising may include the right for such franchisee to use the Direct Energy name in connection with providing services and selling protection plans, among other things.

3.1.2 Non-Solicitation

Subject to Section 3.2 hereof, Direct Energy and Centrica severally covenant and agree in favour of EnerCare LP and EnerCare that they shall not (and shall cause their Affiliates not to), for a period of three (3) years from the date hereof, directly or indirectly solicit for employment or the services of, or aid in the solicitation, of any employee employed by EnerCare LP or EnerCare or an Affiliate of EnerCare LP or EnerCare in the Business; provided, however, that nothing in this Section 3.1.2 shall prohibit Direct Energy or Centrica or any Affiliate of Direct Energy or Centrica from making offers of employment and/or hiring any Person (i) who is terminated by EnerCare LP or EnerCare or an Affiliate of EnerCare LP or EnerCare prior to their commencement of employment discussions with Direct Energy or Centrica or any Affiliate of Direct Energy or Centrica, as applicable, or (ii) who responds to general solicitation advertisements that are not targeted at any employee of EnerCare LP or EnerCare or any Affiliate of EnerCare LP or EnerCare.

3.2 Exceptions to the Restricted Activities

Nothing in this Article 3 shall preclude either Direct Energy or Centrica or their respective affiliates from:

(a) owning up to 10% of the voting securities of any Person that would otherwise be a prohibited investment pursuant hereto; or

(b) purchasing, merging or amalgamating with or otherwise acquiring all or part of an interest in a Person which, as part of its operations, includes a business or undertaking in Ontario, Canada which is the same as or substantially similar to or which competes with or would compete with the

Business as presently carried on as of the date hereof (the "**Competing Business**") where the total revenues derived from the Competing Business are no more than 20% of the total gross revenues of the Person so acquired (except as specified in section 3.2 of the Disclosure Letter), provided that Direct Energy or Centrica, as the case may be, (i) divests itself of the Competing Business within 24 months, and (ii) in connection therewith, grants EnerCare (or at EnerCare's direction, an Affiliate of EnerCare) a right of first offer to acquire such Competing Business (the "**Right of First Offer**") in accordance with Section 3.3 hereof. For greater certainty, Direct Energy or Centrica, as the case may be, is permitted to divest such Competing Business to new or existing franchisees of the Clockwork Business, subject to the foregoing Right of First Offer.

3.3 EnerCare Right of First Offer

If Direct Energy or Centrica purchases, merges or amalgamates with or otherwise acquires all or part of an interest in a Competing Business and proposes to divest itself of all or part of the Competing Business as required by Section 3.2(b) hereof, Direct Energy or Centrica, as the case may be, shall first offer such interest in the Competing Business to EnerCare (or at EnerCare's direction, an Affiliate of EnerCare) in accordance with this Section 3.3.

3.3.1 Offer Notice

Direct Energy or Centrica, as the case may be, shall give notice (the "**Offer Notice**") to EnerCare, stating (a) its bona fide intention to divest itself of all or part of its interest in the Competing Business, and (b) the price and terms upon which it proposes to divest itself of such interest in the Competing Business.

3.3.2 Rights of EnerCare upon receipt of Offer Notice

EnerCare shall have the right, exercisable by notice given to Direct Energy or Centrica, as the case may be, within forty five (45) days after receipt of the Offer Notice (a) to accept the terms of the Offer Notice and agree that EnerCare, or any Person designated by EnerCare shall purchase or otherwise acquire Direct Energy or Centrica's interest in the Competing Business, or (b) reject the Offer Notice and agree that Direct Energy or Centrica, as the case may be, may divest of such interest in the Competing Business at a price not less than, and upon terms no more favourable in the aggregate to the purchaser than, those specified in the Offer Notice, provided such a definitive and binding agreement in respect of such divestiture shall be entered into within one hundred and twenty (120) days of the date of such rejection (or deemed rejection) by EnerCare. If EnerCare does not respond to the Offer Notice within the forty five (45) day period specified in this Section 3.3.2, EnerCare shall be deemed to have rejected the Offer Notice. If Direct Energy or Centrica, as the case may be, does not enter into a definitive and binding agreement with a third party for the sale of such interest in the Competing Business within such one hundred and twenty (120) day period, or if such agreement is not consummated by the later of (i) ninety (90) days from the execution thereof, or (ii) 30 days from the date all regulatory approvals are obtained, the right provided hereunder shall be deemed to be revived and such interest in the Competing Business shall not be divested unless first reoffered to

EnerCare in accordance with this Section 3.3. The closing of any sale to EnerCare pursuant to this Section 3.3 shall occur within the ninety (90) days of the date that the Offer Notice is accepted, subject to receipt any required regulatory approvals, failing which, Direct Energy shall be entitled to follow the process set out in part (b) of this Section 3.3.2.

ARTICLE 4

RESTRICTIONS ON THE ACTIVITIES OF ENERCARE LP AND ENERCARE

4.1 Restricted Activities

4.1.1 Non-Solicitation

EnerCare LP and EnerCare shall not (and shall cause their Affiliates not to) for a period of three (3) years from the date hereof, directly or indirectly solicit for employment, or the services of, or aid in the solicitation of any employee of Direct Energy or its Affiliates at the level of Vice-President or higher who is currently employed or retained by Direct Energy as of the date hereof whose employment and services rendered include services for the Home Services Business; provided, however, that nothing in this Section 4.1.1 shall prohibit EnerCare LP or EnerCare from making offers of employment and/or hiring any Person who (i) is an Employee to whom an offer of employment was made by EnerCare LP or EnerCare pursuant to and in accordance with the terms of the Purchase Agreement, (ii) is terminated by Direct Energy prior to their commencement of employment discussions with EnerCare or EnerCare LP, or (iii) responds to general solicitation advertisements that are not targeted at any employee of Direct Energy.

ARTICLE 5

GENERAL MATTERS

5.1 Acknowledgements of the Parties

Each of the parties hereto acknowledges and agrees that:

(a) the covenants and restrictions contained in this Agreement relating to them are necessary and reasonable, valid consideration has been received therefor and each party hereto has assisted in the drafting of same; and

(b) EnerCare and Direct Energy are relying on the terms of this Agreement in entering into the Purchase Agreement.

5.2 Restrictive Covenant

The parties hereto intend that the conditions set forth in subsection 56.4(7) of the *Income Tax Act* (Canada) (the "**Tax Act**") have been met such that subsection 56.4(5) of the Tax Act applies to any "restrictive covenants" (as defined in subsection 56.4(1) of the Tax Act) granted by Direct Energy and Centrica pursuant to this Agreement (the "**Restrictive Covenants**"). For greater certainty, the parties hereto agree and acknowledge that: (i) for the

purposes of paragraph 56.4(7)(d) of the Tax Act, no proceeds shall be received or receivable by Direct Energy or Centrica for granting the Restrictive Covenants; and (ii) the Restrictive Covenants are integral to the Purchase Agreement and have been granted to maintain or preserve the fair market value of the Purchased Assets.

5.3 Remedies

Each of the parties hereto acknowledges that a breach or threatened breach by it of any provision of this Agreement will result in irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, each of the parties hereto agrees that, in addition to any other relief to which each party hereto may become entitled, each party hereto shall be entitled to interim and permanent injunctive relief, specific performance and other equitable remedies and no party hereto shall make any objection or raise any opposition to any application by a party hereto for such relief.

5.4 Assignment; Binding Effect

Neither this Agreement, nor any right, interest or obligation hereunder, may be assigned by any party hereto, including by operation of law, without the prior written consent of the other party hereto and any attempt to do so will be void; provided, however, EnerCare and/or EnerCare LP may assign this Agreement to any successor in interest to EnerCare and/or EnerCare LP, as applicable, whether by operation of law, acquisition, business combination or the sale or other transfer of all or substantially all of the assets of EnerCare or EnerCare LP, as applicable, without the approval of either Direct Energy or Centrica. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and permitted assigns and legal representatives.

5.5 Notices

All notices, consents, requests, instructions, approvals and other communications provided for herein and all legal process in regard hereto shall be in writing and shall be deemed validly given, made or served, when actually received during normal business hours at the address specified in this subsection:

If to EnerCare or EnerCare LP:

EnerCare Inc.
4000 Victoria Park Avenue
North York, Ontario M2H 3P4

Attention: John Toffoletto, Senior Vice President, General Counsel and Corporate Secretary
Email: jtoffoletto@enercare.ca

If to Direct Energy:

Direct Energy Marketing Limited
c/o Direct Energy Services

Plaza Five Points
50 Central Avenue, Suite 920
Sarasota, Florida 34236

Attention: President
Email: [redacted]

With a copy to:

Direct Energy
12 Greenway Plaza, Suite 250
Houston, Texas 77046

Attention: General Counsel
Email: [redacted]

If to Centrica:

Centrica plc
Millstream
Maidenhead Road
Windsor
Berkshire
SL4 5GD

Attention: General Counsel and Company Secretary
Email: secretariat@centrica.com

5.6 Headings

The headings used in this Agreement have been inserted for convenience only and do not define or limit the provisions hereof.

5.7 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

5.8 Time

Time shall be of the essence in this Agreement.

5.9 Number and Gender

In this Agreement, unless the context otherwise requires, the singular shall include the plural and vice versa and words imparting gender include all genders.

5.10 Further Assurances

Each party hereto shall do and perform all acts and things and execute and deliver all instruments, documents and writings and give all further assurances as may be reasonably necessary to give full effect to the provisions hereof.

5.11 Entire Agreement; Amendments; Waiver

This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and may be amended only by an agreement in writing executed by each of the parties hereto. Any term or condition of this Agreement may be waived at any time by the party hereto that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party hereto waiving such term or condition. No waiver by any party hereto of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

5.12 Severability

If any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon the legality or enforceability of any other provision of this Agreement.

5.13 Counterparts

This Agreement may be executed in any number of counterparts, including by facsimile, which together shall constitute one and the same agreement.

<Remainder of page intentionally blank>

DATED at Toronto this 20th day of October, 2014.

ENERCARE HOME AND COMMERCIAL SERVICES LIMITED PARTNERSHIP, by its general partner, **ENERCARE HOME AND COMMERCIAL SERVICES INC.**

By: *"John Toffoletto"*

Name: John Toffoletto
Title: Senior Vice President, General Counsel & Corporate Secretary

ENERCARE INC.

By: *"John Toffoletto"*

Name: John Toffoletto
Title: Senior Vice President, General Counsel & Corporate Secretary

DIRECT ENERGY MARKETING LIMITED

By: *"Leonard Diplock"*

Name: Leonard Diplock
Title: Vice-President, Corporate Development

CENTRICA PLC

By: *"Grant Dawson"*

Name: Grant Dawson
Title: General Counsel & Company Secretary

Schedule A
Clockwork Business Service Territories

OHC002 (Kingston, ON)

- Postal Codes: K0H, K7K, K7L, K7M, K7N, K7P

OHC009 (Trenton, ON)

- Postal Codes: K0K, K7R, K8N, K8P, K8R, K8V, K9A, L1A

OHC010 (Brockville, ON)

- Postal Codes: K0E, K0G, K6T, K6V, K7A, K7G

OHC011 (Peterborough, ON)

- Postal Codes: K0L, K9H, K9J, K9K, K9L

TAB E

(REDACTED)

PUBLIC

CT-2012-003

COMPETITION TRIBUNAL

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

-and-

DIRECT ENERGY MARKETING LIMITED

Respondents

-and-

NATIONAL ENERGY CORPORATION

Intervenor

STATEMENT OF AGREED FACTS

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau Québec K1A 0C9

Jonathan Hood
Tel: (416) 954-5925
Fax: (416) 973-5131
Jonathan.Hood@cb-bc.gc.ca

Antonio Di Domenico
Tel: (819) 997-2837
Fax: (819) 953-9267
Antonio.DiDomenico@cb-bc.gc.ca

Counsel to the Commissioner of Competition