Court File No. BK-25-3165297-0031
Estate File No. 31-3165297

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KOGNITIV CORPORATION OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

MOTION RECORD (VOLUME 2 OF 2)
(Returnable February 17, 2026)

February 9, 2026

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TO: SERVICE LIST

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This is Exhibit "V" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Ataliah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Kognitiv US LLC,	Case No. 25-10648 (BLS)
Debtor.[1]	**Ref. D.I. 30**

ORDER (I) AUTHORIZING THE PRIVATE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (II) APPROVING THE ASSET PURCHASE AGREEMENT, (III) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, (IV) APPROVING THE REJECTION OF CERTAIN EXECUTORY CONTRACTS, AND (V)GRANTING RELATED RELIEF

Upon consideration of the Debtor's *Motion for Entry of an Order (I) Authorizing the Private Sale of Substantially all of the Debtor's Assets, (II) Approving the Asset Purchase Agreement, (III) Approving the Assumption and Assignment of Certain Executory Contracts, (IV) Approving the Rejection of Certain Executory Contracts, and (V) Granting Related Relief [*(the "Motion")[2] filed by the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case; and the Court having reviewed the Motion; and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors, and the Debtor having demonstrated good, sufficient, and sound business justifications for the relief granted herein;

[1] The last four digits of the Debtor's federal tax identification number are 4765. The Debtor's mailing address is 121 Washington Ave. N, 4th Floor, Minneapolis, MN 55401.

[2] Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Bankruptcy Petition**. On April 2, 2025 (the "Petition Date"), the Debtor filed with the Court a voluntary petition for relief (the "Chapter 11 Case") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code").

B. **Jurisdiction and Venue**. The Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Final Order**. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Time is of the essence in closing the Sale (the "Closing," as defined in the Asset Purchase Agreement). The Debtor and Buyer intend to close the Sale as soon as practicable, and there is no just reason for delay in the implementation of this Sale Order. Specifically, the Sale must be approved and consummated promptly to avoid the Debtor's breach of the Asset Purchase Agreement, preserve the viability of the business in the hands of Buyer as a going concern, and to maximize the value to the Debtor, its estate, its creditors, and all other parties in interest. Accordingly, there is cause to lift the stays contemplated by Rules 6004(h) and 6006(d) of Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and, to any extent necessary, to treat this Sale Order as a final judgment for purposes of Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054.

D. **Statutory Predicates**. The statutory predicates for the relief sought in the Motion are sections 105, 363, 365, and 503 of the Bankruptcy Code; Bankruptcy Rules 2002, 6004, 6006, and 9014; and Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

E. **Notice**. As evidenced by the certification(s) of service previously filed with the Court and based on the representations of counsel at the Sale Hearing, proper, timely, adequate, and sufficient notice of the Motion, the assumption and assignment of the Purchased Contracts and proposed Cure Amounts related thereto, the rejection of the Rejected Contracts, this Sale Order, and the Sale Hearing have been given in accordance with sections 102(1), 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014; and Local Rules 2002-1, 6004-1, and 9006-1. Such notice was sufficient under the particular circumstances, and all known creditors of the Debtor and other parties in interest in the Chapter 11 Case were afforded a reasonable opportunity to object and be heard. No other or further notice of the aforementioned filings and the Sale Hearing was or is necessary or shall be required.

F. The *Notice of Potential Assumption and Assignment of Executory Contracts in Connection with the Sale* [D.I. 30, Ex. 2] (the "Assumption and Assignment Notice") has been provided to each of the non-Debtor counterparties to the contracts identified thereon that are being assumed and assigned to Buyer pursuant to the Asset Purchase Agreement and this Sale Order (the "Purchased Contracts").

G. The service of the Assumption and Assignment Notice was sufficient under the circumstances, and no further notice need be given in respect of assumption and assignment of the Purchased Contracts, or the proposed Cure Amounts related thereto, if any. The non-Debtor counterparties to the Purchased Contracts have had a reasonable opportunity to object to the assignment and assumption of the Purchased Contracts and the associated Cure Amounts.

H. Exhibit 3 to the Motion identifies the contracts that are being rejected pursuant to this Sale Order (the "Rejected Contracts"). Service of the Motion on the non-Debtor counterparties to the Rejected Contracts was sufficient notice of such rejection under the circumstances, and no

further notice need be given in respect of such rejection. The non-Debtor counterparties to the Rejected Contracts have had a reasonable opportunity to object to the rejection of the Rejected Contracts.

I. The disclosures made by the Debtor concerning the Motion, the Asset Purchase Agreement, the Sale, Buyer, and the Sale Hearing were good, complete, and adequate.

J. **Opportunity to Object**. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all creditors of the Debtor and other parties in interest in the Chapter 11 Case, including, without limitation, the following: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtor's twenty largest unsecured creditors; (iii) counsel to the DIP Lenders; (iv) counsel to the Buyer; (v) the non-Debtor counterparties to the Purchased Contract and Rejected Contracts; and (vi) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

K. **Title in the Purchased Assets**. The Purchased Assets constitute property of the Debtor's estate and title thereto is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor is the sole and lawful owner of the Purchased Assets.

L. **Extensive Marketing Efforts**. Prior to commencement of the Chapter 11 Case, the Debtor and its affiliates worked with their advisors to evaluate options for and guide a sale transaction to maximize value of the Purchased Assets. The Sale that is the subject of this Sale Order is the result of the Debtor's and its affiliates' extensive efforts seeking to maximize recoveries to the Debtor's estate for the benefit of its creditors.

M. **Business Justification**. The Debtor has demonstrated a sufficient basis and compelling circumstances to sell the Purchased Assets to Buyer, including to assume and assign

the Purchased Contracts to Buyer, and to reject the Rejected Contracts pursuant to the terms and conditions of the Asset Purchase Agreement. Such action is an appropriate exercise of the Debtor's business judgment and in the best interest of the Debtor, its estate, and its creditors. Such business reasons include, but are not limited to, the facts that (i) there is substantial risk of deterioration of the value of the Purchased Assets if the Sale is not consummated quickly given, among other reasons, there will be an "Event of Default" under the *Interim Order (I) Authorizing the Debtor to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Status; (III) Authorizing the Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VII) Granting Related Relief* [D.I. 24] (together with any related final order that may be granted by the Court, the "DIP Order") if the Sale is not consummated by May 3, 2025; (ii) the Purchase Price in the Asset Purchase Agreement constitutes the highest and best offer for the Purchased Assets; and (iii) the Asset Purchase Agreement presents the best opportunity to realize the value of the Debtor's business on a going concern basis and to avoid a decline in value of the Debtor's business. Entry of this Sale Order (and all provisions hereof) is a condition precedent to Buyer consummating its obligations under the Asset Purchase Agreement.

N. **Good Faith Purchaser**. The Asset Purchase Agreement and the Sale have been negotiated by the Debtor and Buyer, and their respective agents and representatives, in good faith, at arm's length, and without collusion or fraud. The terms and conditions of the Asset Purchase Agreement, including the consideration to be paid by Buyer to the Debtor pursuant to the Asset Purchase Agreement for the Purchased Assets are fair and reasonable, and the Sale is in the best interest of the Debtor, its estate, and its creditors.

O. Buyer is "good faith purchaser" entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code and any other applicable bankruptcy or non-bankruptcy law with respect to the sale and assignment of the Purchased Assets and Purchased Contracts that Buyer is acquiring pursuant to the Asset Purchase Agreement.

P. The Asset Purchase Agreement was not controlled by an agreement between or among potential or actual bidders within the meaning of section 363(n) of the Bankruptcy Code. The Debtor and Buyer have not engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. Buyer is entitled to all the protections and immunities of section 363(n) of the Bankruptcy Code. Buyer is not an "affiliate" or "insider" of the Debtor as defined in section 101 of the Bankruptcy Code, and no common identity of incorporation, director, or stockholder existed or will exist between Buyer, on the one hand, and the Debtor, on the other hand, immediately prior to or after the "Closing Date," as defined in the Asset Purchase Agreement.

Q. **Corporate Power and Authority**. Subject to the entry of this Sale Order, the Debtor has full corporate power and authority to perform all of its obligations under the Asset Purchase Agreement, and the sale of the Purchased Assets and assumption and assignment of the Purchased Contracts have been duly and validly authorized by all corporate authority necessary to consummate the Sale. No consents or approvals, other than as expressly provided for in the Asset Purchase Agreement, and the entry of this Sale Order, are required by the Debtor to consummate the Sale.

R. **Transfer and Sale of Assumed Liabilities; Assumption and Assignment in Best Interest**. The transfer and sale of the "Assumed Liabilities" (as defined in the Asset Purchase Agreement) and this Sale Order and the assumption of the Purchased Contracts by the Debtor and

the assignment thereof to Buyer pursuant to the terms of the Asset Purchase Agreement and this Sale Order are integral to the Asset Purchase Agreement and in the best interest of the Debtor, its estate, and its creditors, and represent the reasonable exercise of sound and prudent business judgment by the Debtor. Accordingly, such transfer and sale to Buyer and the assumption and assignment are reasonable, enhance the value of the Debtor's estate, and do not constitute unfair discrimination. As among the Debtor and Buyer, nothing in this Sale Order shall enlarge or restrict any obligations of the Debtor or Buyer under the Asset Purchase Agreement with respect to the Assumed Liabilities or the Purchased Contracts. No provision of any Purchased Contract that purports to prohibit, restrict, or condition the assignment of any such Purchased Contract in connection with the Sale shall have any force or effect to the extent provided in section 365 of the Bankruptcy Code.

S. **Cure/Adequate Assurance**. The Debtor has met all of the requirements of section 365(b) of the Bankruptcy Code for each of the Purchased Contracts. The Debtor has provided (i) adequate assurance of cure of any default existing prior to the Closing Date under any of the Purchased Contracts within the meaning of section 365(b)(1)(A) of the Bankruptcy Code and (ii) adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from such default under any of the Purchased Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Pursuant to the provisions of the Asset Purchase Agreement, the Debtor is obligated to pay any and all Cure Amounts with respect to the Purchased Contracts in the amount specified on the schedule attached to the Assumption and Assignment Notice (the "Cure Schedule") as of the Closing Date. Buyer has provided adequate assurance of its future performance of and under the Purchased Contracts, within the meaning of sections 365(b)(1)(C) and 365(b)(3) (to the extent applicable) of the Bankruptcy Code. The non-Debtor

counterparties to the Purchased Contracts were each given adequate notice and the opportunity to object to the Assumption and Assignment Notice and are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code; any such objection filed by a non-Debtor counterparty to a Purchased Contract that has not been withdrawn is hereby overruled.

T. **Free and Clear**. Buyer would not have entered into the Asset Purchase Agreement to acquire the Purchased Assets, and would exercise its right to terminate the Asset Purchase Agreement, if the sale of the Purchased Assets were to be transferred to it other than free and clear of all "Liens" (as defined in the Asset Purchase Agreement) and "Excluded Liabilities" (as defined in the Asset Purchase Agreement), or if Buyer would, or in the future could, be liable for any such Liens and Excluded Liabilities. A sale of the Purchased Assets other than one free and clear of all Liens and Excluded Liabilities would adversely impact the Debtor's estate and would yield substantially less value for the Debtor's estate.

U. **Satisfaction of 363(f) Standards**. The Debtor may sell and assign the Purchased Assets free and clear of all Liens and Excluded Liabilities, as applicable, because, with respect to each creditor asserting a Lien or Excluded Liability, one or more of the standards set forth in sections 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Liens or Excluded Liabilities who did not object or who withdrew their objections to this Sale Order are deemed to have consented to the Motion and the sale and assignment of the Purchased Assets to Buyer pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens or Excluded Liabilities who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens or Excluded Liabilities, if any, attach to the proceeds of the Sale ultimately attributable to the Purchased Assets in which such holders allege a Lien or Excluded Liability in the same order of priority, with the same

validity, force and effect that such holder had prior to such Sale, and subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

V. **No Successor Liability**. The transactions contemplated under the Asset Purchase Agreement do not amount to a consolidation, merger, or *de facto* merger of Buyer with the Debtor or the Debtor's estate; there is not substantial continuity between the Debtor and Buyer; there is no common identity between the Debtor and Buyer; there is no continuity of enterprise between the Debtor and Buyer; Buyer is not a mere continuation of the Debtor and its estate; and Buyer does not constitute a successor to the Debtor or its estate in any way. Buyer would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" or similar theories.

W. **No Fraudulent Transfer**. The Sale is not for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession or the District of Columbia. Neither the Debtor nor Buyer has entered into the Asset Purchase Agreement or is consummating the Sale with any fraudulent or otherwise improper purpose.

X. **Fair Consideration**. The consideration to be provided by Buyer for the Purchased Assets as indicated in the Purchase Agreement constitutes reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, section 548 of the Bankruptcy Code, or any similar state or federal law, as applicable), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession or the District of Columbia.

Y. **Compliance with Bankruptcy Code**. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including without limitation sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been or will be complied with in respect to the Sale as of the Closing Date.

Z. The Sale contemplated by the Asset Purchase Agreement is in the best interest of the Debtor, its estate, its creditors, interest holders, and all other parties in interest in the Chapter 11 Case; and it is therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. **Relief Granted**. The relief requested in the Motion is hereby granted in its entirety.

2. **Objections Overruled**. All objections and responses to the Motion, this Sale Order, or the relief granted herein that have not been overruled, withdrawn, waived, settled, or otherwise resolved, are hereby overruled and denied on the merits, with prejudice.

3. **Notice**. Notice of the Motion, the assumption and assignment of the Purchased Contracts (including proposed Cure Amounts related thereto), the rejection of the Rejected Contracts, the Sale Hearing, and the Sale was fair and equitable under the circumstances and complied in all respects with sections 102(1), 105(a), 363, and 365 of the Bankruptcy Code; Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014; and Local Rules 2002-1, 6004-1, and 9006-1.

4. **Approval**. The Asset Purchase Agreement and all ancillary documents related thereto are hereby approved and authorized in all respects and shall be deemed in full force and effect, and the Debtor and Buyer are hereby authorized and empowered to fully perform under, consummate, and implement the terms of the Asset Purchase Agreement and to execute, deliver, and perform under, any and all additional instruments and documents that may be reasonably

necessary or desirable to implement and effectuate the terms of the Asset Purchase Agreement and this Sale Order, including, without limitation, deeds, assignments, patents, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Debtor or Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to Buyer or reducing to possession any or all of the Purchased Assets, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Asset Purchase Agreement, without any further corporate action or orders of the Court. Notwithstanding anything set forth in this Sale Order to the contrary, Buyer may designate one or more nominees to take title in and to the Purchased Assets in accordance with the Asset Purchase Agreement, *provided* that Buyer is, and shall remain, primarily and irrevocably responsible for the full performance of Buyer's duties and obligations under the Asset Purchase Agreement notwithstanding any such designation or the terms thereof.

5. **Good Faith**. Buyer is a good faith purchaser of the Purchased Assets set forth in the Asset Purchase Agreement and is hereby granted and entitled to all of the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Sale Order are hereafter reversed, modified, or vacated by a subsequent order of the Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer, or assignment under the Asset Purchase Agreement or obligation or right granted pursuant to the terms of this Sale Order (unless stayed pending appeal prior to the Closing Date), and notwithstanding any reversal, modification, or vacatur, any sale, transfer, or assignment shall be governed in all respects by the original provisions of this Sale Order and the Asset Purchase Agreement, as the case may be.

6. **Section 363(n) of the Bankruptcy Code**. The Sale approved by this Sale Order is not subject to avoidance or any recovery or damages pursuant to section 363(n) or any other section of the Bankruptcy Code.

7. **Documentation**. The Debtor is authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Sale contemplated by the Asset Purchase Agreement, any related agreements and this Sale Order, including amended and restated certificates or articles of incorporation, by-laws, or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtor may determine are necessary or appropriate, and all such officials are hereby authorized to accept the foregoing. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

8. **Cooperation**. The Debtor is hereby authorized to take all actions and execute all documents that Buyer reasonably and in good faith determines is necessary or desirable to ensure that the Sale related to Buyer is consummated in accordance with the Asset Purchase Agreement, and the Debtor is authorized to make such modifications or supplements reasonably acceptable to the Debtor and Buyer to any bill of sale or other document or instrument executed or to be executed in connection with the Closing to Buyer to facilitate such consummation as contemplated by the Asset Purchase Agreement.

9. **Valid Transfer**. Effective as of the Closing of the Sale and with respect to the Sale, (i) the sale and assignment of the Purchased Assets, including the Purchased Contracts, by

the Debtor to Buyer pursuant to the terms of the Asset Purchase Agreement shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any person, and shall vest Buyer with all right, title, and interest of the Debtor in and to the Purchased Assets, free and clear of all Liens and Excluded Liabilities, as applicable, pursuant to section 363(f) of the Bankruptcy Code, and (ii) the assumption of the Purchased Contracts and all Assumed Liabilities by Buyer constitutes a legal, valid, and effective assignment and delegation of any and all obligations, liabilities, and claims in respect thereof to Buyer and, other than to the extent expressly provided in this Sale Order or constituting Excluded Liabilities under the Asset Purchase Agreement, as applicable, divests the Debtor of all right, title and interest in, and all obligations and liability with respect to, the Purchased Contracts and such Assumed Liabilities. Upon the occurrence of the Closing, this Sale Order shall be considered and constitute, for any and all purposes, a full and complete general assignment, conveyance, and transfer of the Purchased Assets (including the Purchased Contracts) to Buyer pursuant to the Asset Purchase Agreement or a bill of sale or assignment transferring indefeasible right, title and interest in the Purchased Assets set forth in the Asset Purchase Agreement, and all other rights and interests associated with or appurtenant to the Purchased Assets, including, without limitation, warranty rights, intellectual property rights (including, without limitation, rights to all associated patents, regulatory approvals, permits, and registrations) and other non-executory contract rights, to Buyer all to the extent set forth in the Asset Purchase Agreement.

10. **Free and Clear**. Except to the extent specifically provided in the Asset Purchase Agreement or this Sale Order, upon the occurrence of the Closing under the Asset Purchase Agreement, the Debtor shall be, and hereby are, authorized and empowered, pursuant to sections 105, 363(b) and 363(f) of the Bankruptcy Code, to sell, assign, convey, and transfer the Purchased

Assets, including the Purchased Contracts, to Buyer. Except to the extent specifically provided in the Asset Purchase Agreement or this Sale Order, the sale and assignment of the Purchased Assets, including the Purchased Contracts, to Buyer pursuant to the Asset Purchase Agreement vests Buyer with all right, title and interest of the Debtor in and to its Purchased Assets, free and clear of any and all Liens and Excluded Liabilities, as applicable, and other liabilities of any kind or nature whatsoever (except for Assumed Liabilities, as applicable), whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise, with all such Liens (including the DIP Liens (as defined in the DIP Order)) and Excluded Liabilities, as applicable, to attach only to the proceeds of the sale and assignment of the Purchased Assets with the same priority, validity, force, and effect as they now have in or against the Purchased Assets. The Motion shall be deemed to have provided sufficient notice as to the sale and assignment of the Purchased Assets free and clear of all Liens and Excluded Liabilities in accordance with sections 102(1), 105(a), 363, and 365 of the Bankruptcy Code; Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014; and Local Rules 2002-1, 6004-1, and 9006-1. Following the Closing, no holder of any Lien on any of the Purchased Assets subject to such Closing may interfere with Buyer's enjoyment of the Purchased Assets based on or related to such Lien, or any actions that the Debtor may take or fail to take in the Chapter 11 Case and no interested party may take any action to prevent, interfere with, or otherwise enjoin consummation of the Sale.

11. The provisions of this Sale Order authorizing the sale and assignment of the Purchased Assets free and clear of Liens and Excluded Liabilities, as applicable, shall be self-executing, and neither the Debtor nor Buyer shall be required to execute or file releases,

termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order.

12. With regard to the forms of, timing, and other terms concerning the consideration to be provided by Buyer to the Debtor as set forth in the Asset Purchase Agreement, Buyer is required to comply with its respective obligations thereunder, and the Debtor, any liquidating trustee appointed in the Chapter 11 Case, and their successors and assigns, are hereby authorized to enforce all such provisions.

13. **Authorization to Creditors**. On and after the Closing Date, each of the Debtor's applicable creditors are authorized to execute such documents and take all other actions as may be reasonably necessary to formalize the release of Liens, if any, in the Purchased Assets. If any person or entity that has filed financing statements, mortgages, mechanics liens, *lis pendens*, or other documents, instruments, notices or agreements evidencing any Lien against or in the Purchased Assets shall not have delivered to the Debtor before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, releases or instruments of satisfaction (the effectiveness of which may be subject to the occurrence of the Closing) that the person or entity has with respect to the Purchased Assets, then with regard to the Purchased Assets, (i) the Debtor and Buyer are authorized to execute and file such termination statements, releases, instruments of satisfaction or other documents on behalf of the person or entity with respect to the Purchased Assets and (ii) the Debtor or Buyer, as applicable, are authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens against the Purchased Assets.

14. **Authorization to Government Agencies**. Each and every "Governmental Authority" (as defined in the Asset Purchase Agreement), filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state, and local official, and any other persons and entity who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets, is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale contemplated by the Asset Purchase Agreement or this Sale Order. All such entities described above in this paragraph are authorized to strike all recorded Liens against the Purchased Assets from their records, official and otherwise.

15. **Direction to Surrender Possession or Control**. All persons or entities in possession or control of any of the Purchased Assets are directed to surrender possession or control of such Purchased Assets to Buyer on the Closing Date of the Sale or at such time thereafter as Buyer may request.

16. **Licenses and Permits**. To the extent provided in the Asset Purchase Agreement and available under applicable law, Buyer shall be authorized, as of the applicable Closing Date, to operate under any authorization granted by any Governmental Authority, rights granted in respect of any license, permit, registration, and any other governmental approval of the Debtor with respect to the Purchased Assets, and all such licenses, permits, registrations, and authorizations granted by a Governmental Authority, and any other approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing Date.

17. To the fullest extent provided by section 525 of the Bankruptcy Code, Governmental Authorities are prohibited from revoking or suspending any Governmental

Authorization or other approval, permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to Buyer on account of the filing or pendency of the Chapter 11 Case, the consummation of the Sale, or the Debtor's non-payment of any debt.

18. **No Successor Liability**. Buyer and its affiliates, predecessors, successors, assigns, members, partners, directors, managers, officers, principals and equity holders are not and shall not be (i) deemed a "successor" in any respect to the Debtor or its estate as a result of the consummation of the Sale contemplated by the Asset Purchase Agreement (other than with respect to Assumed Liabilities assumed by Buyer under the Asset Purchase Agreement) or any other event occurring in the Chapter 11 Case under any theory of law or equity, (ii) deemed to have, *de facto* or otherwise, merged, or consolidated with or into the Debtor or its estate, (iii) deemed to have a common identity with the Debtor, (iv) deemed to have a continuity of enterprise with the Debtor, or (v) deemed to be a continuation or substantial continuation of the Debtor or any enterprise of the Debtor. Except for the Assumed Liabilities, as applicable, or as otherwise expressly provided in this Sale Order or the Asset Purchase Agreement, the transfer of the Purchased Assets to Buyer pursuant to the Asset Purchase Agreement shall not result in Buyer or its affiliates, predecessors, successors, assigns, members, partners, directors, managers officers, or principals and equity holders (i) having any liability or responsibility for any claim against the Debtor or against an insider of the Debtor (including, without limitation, for any Excluded Liabilities), (ii) having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Lien or Excluded Liability, or (iii) having any liability or responsibility to the Debtor except as is expressly set forth in the Asset Purchase Agreement or this Sale Order. Buyer shall not assume, be deemed to assume, or in any other way be responsible for any liability or obligation described in the foregoing

sentence (other than with respect to Assumed Liabilities), and the Motion shall be deemed to have provided sufficient notice as to the Sale and assignment of the applicable Purchased Assets free and clear of all such liabilities and obligations in accordance with sections 102(1), 105(a), 363, and 365 of the Bankruptcy Code; Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014; and Local Rules 2002-1, 6004-1, and 9006-1.

19. **Prohibition of Actions Against Buyer**. Except to the extent expressly included in the Assumed Liabilities, all persons and entities, including, but not limited to, the Debtor, employees, former employees, all debt security holders, equity holders, licensors, administrative agencies, governmental units (as defined in section 101(27) of the Bankruptcy Code), tax and regulatory authorities, secretaries of state, federal, state, and local officials, lenders, contract parties, bidders, lessors, other parties in possession of any of the Purchased Assets at any time, trade creditors and all other creditors holding any Liens or Excluded Liabilities of any kind or nature whatsoever against or in the Debtor or in the Debtor's interests in the Purchased Assets (whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtor, the Purchased Asset, the operation of the Debtor's business, on or prior to the Closing Date, the Sale (other than Buyer's obligations under this Sale Order and the Asset Purchase Agreement, and all other ancillary agreements, documents or instruments entered into in connection with the Asset Purchase Agreement), or the transfer of the Purchased Assets to Buyer shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, commencing, continuing, or otherwise pursuing in any manner any action, claim or other proceeding of any kind, directly or indirectly, against Buyer or

any of their respective affiliates, predecessors, successors, or assigns or any of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, principals, affiliates, shareholders (or equivalent), financial advisors and representatives (each of the foregoing in its individual capacity), their property or the applicable Purchased Assets. Following the Closing Date, no Person that was the holder of a Lien on, in or against any of Purchased Assets prior to the Closing Date shall interfere with Buyer's title to, license of, or use and enjoyment of the Purchased Assets based on or related to such Lien, or any actions that the Debtor may take in the Chapter 11 Case.

20. **No Bulk Sales; No Brokers**. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale or the other transactions contemplated by the Asset Purchase Agreement or this Sale Order. Buyer is not and will not become obligated to pay any fee or commission or like payment to any broker, finder, or financial advisor as a result of the consummation of the Sale or the other transactions based upon any arrangement made by or on behalf of the Debtor.

21. **Assumption and Assignment of Purchased Contracts**. Under sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Debtor's assumption of the Purchased Contracts and assignment thereof to Buyer, free and clear of all Liens (other than Assumed Liabilities) and Excluded Liabilities pursuant to the terms set forth in the Asset Purchase Agreement is hereby approved, and the requirements of sections 365(b)(1) and 365(f)(2) (including section 365(b)(3) to the extent applicable) of the Bankruptcy Code with respect thereto are hereby deemed satisfied. Each of the non-Debtor counterparties to the Purchased Contracts is hereby forever barred, estopped, and permanently enjoined from raising or asserting against the Debtor or the property of any such parties, any assignment fee, default,

breach, claim, pecuniary loss, liability, or obligation (whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise) arising under or out of, in connection with, or in any way related to the Purchased Contracts existing as of the Closing Date or arising by reason of the assumption or assignment of such Purchased Contracts or the Closing, except to the extent constituting an Excluded Liability under the Asset Purchase Agreement. Notwithstanding the foregoing, pursuant to the terms of the Asset Purchase Agreement and section 365(k) of the Bankruptcy Code, as applicable, Buyer shall be liable for all obligations and liabilities arising after and relating to the period following the Closing Date under the Purchased Contracts, all of which shall constitute Assumed Liabilities, and the Debtor shall not be liable for any such obligations or liabilities.

22. Each of the Purchased Contracts shall be deemed to be valid and binding and in full force and effect and enforceable in accordance with its terms as of the date of this Sale Order. Upon Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtor under the applicable Purchased Contracts. The assignment of each of the Purchased Contracts is deemed to be made in good faith under, and is entitled to the protections of, section 363(m) of the Bankruptcy Code.

23. **Adequate Assurance**. Buyer has provided adequate assurance of its future performance under the Purchased Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code (including section 365(b)(3) to the extent applicable). All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to Buyer of the Purchased Contracts have been satisfied.

24. **Anti-Assignment Provisions Unenforceable**. No sections or provisions of the Purchased Contracts that purport to (i) prohibit, restrict, or condition the Debtor's assignment of the Purchased Contracts, including, but not limited to, the conditioning of such assignment on the consent of the non-Debtor counterparty to such Purchased Contract; (ii) authorize the termination, cancellation, or modification of the Purchased Contracts based on the filing of a bankruptcy case, the financial condition of the Debtor or similar circumstances; (iii) declare a breach or default as a result of a change in control in respect of the Debtor; or (iv) provide for additional payments, penalties, conditions, renewals, extensions, charges, other financial accommodations in favor of the non-Debtor counterparties to the Purchased Contracts, or modification of any term or condition upon the assignment of a Purchased Contract or the occurrence of the conditions set forth in subsection (ii) above, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions to the extent provided under section 365(f) of the Bankruptcy Code or are otherwise unenforceable to the extent provided under section 365(e). The entry of this Sale Order constitutes the consent of the non-Debtor counterparties to the Purchased Contracts who did not object to the assumption and assignment of such agreements without the necessity of obtaining such party's consent, written or otherwise, to such assumption or assignment. All Purchased Contracts shall remain in full force and effect, without existing default(s), subject only to payment of the applicable Cure Amounts by the Debtor.

25. **No Fees for Assumption and Assignment**. Other than Assumed Liabilities, there shall be no rent accelerations, penalties, assignment fees, increases or any other fees charged to Buyer, its successors or assigns, or the Debtor as a result of the assumption and assignment of the Purchased Contracts.

26. **Cure Amount**. Payment of the Cure Amounts by the Debtor as set forth on the Cure Schedule in accordance with the Asset Purchase Agreement is hereby authorized and directed. All defaults or other obligations shall be deemed cured and shall no longer exist upon the payment or other satisfaction by the Debtor of such Cure Amounts against which no timely objections have been properly filed and served (or if filed and served, overruled) in accordance with the Assumption and Assignment Notice and, for the avoidance of doubt, no non-Debtor counterparty to a Purchased Contract shall be entitled to a claim against the Debtor or the Debtor's estate for any such default. Except for the Cure Amount for Purchased Contracts set forth on the Assumption and Assignment Notice, there are no defaults existing under the Purchased Contracts, nor shall there exist any event or condition existing on the Closing Date that, with the passage of time or giving of notice, or both, would constitute such a default.

27. **Notice of Assumption and Assignment**. The Debtor has served the Assumption and Assignment Notice on all of the non-Debtor counterparties to the Purchased Contracts. The schedule to the Assumption and Assignment Notice included (i) the title of the Purchased Contract, (ii) the name of the non-Debtor counterparty to the Purchased Contract, (iii) any applicable Cure Amount, (iv) a notice that each Purchased Contract would be assumed by the Debtor and assigned to Buyer, and (v) the deadline by which any non-Debtor counterparty to a Purchased Contract must file an objection to the proposed assumption and assignment. No other or further notice is required.

28. Any non-Debtor counterparties to a Purchased Contract who have not timely filed and served an objection in accordance with the Assumption and Assignment Notice shall be barred from objecting, or asserting monetary or non-monetary defaults, with respect to any such Purchased Contract, and such Purchased Contract shall be deemed assumed by the Debtor and assigned to Buyer on the Closing Date pursuant to this Sale Order. All Claims (as defined in

section 101(5) of the Bankruptcy Code) of a non-Debtor counterparty to a Purchased Contract that is assumed by Buyer that arise from or are related to such non-Debtor counterparty's Purchased Contract shall be void, and all proofs of claim filed by such non-Debtor counterparty, whether filed prior to or after the date of entry of this Sale Order, asserting a claim that arises from or is related to such non-Debtor counterparty's Purchased Contract, shall be deemed automatically expunged from the Debtor's registry of claims without the need for any further action.

29. **Direction to Purchased Contract Non-Debtor Counterparties**. All non-Debtor counterparties to Purchased Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable request of the Debtor, and shall not charge the Debtor or Buyer for, any instruments, applications, consents, or other documents that may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale involving Buyer.

30. Nothing in this Sale Order, the Motion, the Assumption and Assignment Notices (as amended from time to time), or any notice or any other document is or shall be deemed an admission by the Debtor that any contract is an executory contract or, unless otherwise specified in the Asset Purchase Agreement, must be assumed and assigned pursuant to the Asset Purchase Agreement, in order to consummate the Sale.

31. **Rejection of Rejected Contracts.** Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, the Rejected Contracts, including, to the extent applicable, all exhibits, appendices, supplements, documents, and agreements ancillary thereto, in each case as amended, modified, or supplemented from time to time, are hereby rejected by the Debtor.

32. Claims relating to the rejection of the Rejected Contracts shall be filed in accordance with any bar date order entered in the Chapter 11 Case.

33. Nothing in the Motion, the Rejection Notice, or this Sale Order shall be deemed, with respect to any Rejected Contract: : (i) an admission as to the amount of, basis for, or validity of any claim against the Debtor; (ii) a waiver of the Debtor's or any other party's right to dispute any claim; (iii) a promise or requirement to pay any particular claim; (iv) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estates; or (vi) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

34. The Motion and Rejection Notice complies with the requirements of Bankruptcy Rule 6006(f).

35. **Failure to Specify Provisions**. The failure specifically to include any particular provisions of the Asset Purchase Agreement or any related agreements in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtor and Buyer that the Asset Purchase Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

36. **Failure to Enforce Purchased Contracts**. The failure of the Debtor or Buyer at any time to enforce one or more terms or conditions of any Purchased Contract shall not constitute a waiver of any such terms or conditions, or of the Debtor's or Buyer's rights to enforce every term and condition of the Purchased Contracts.

37. **No Waiver of Rights.** Nothing in this Sale Order shall be deemed to waive, release, extinguish, or estop the Debtor, its estate, or its creditors from asserting, or impairing or diminishing such rights to assert, any right (including any right of recoupment), claim, cause of

action, defense, offset or counterclaim in respect of any Excluded Asset or other assets of the Debtor remaining after the completion of the Closing.

38. **Binding Order**. This Sale Order shall be binding upon and govern the acts of all persons and entities, including, without limitation, the Debtor, Buyer, and their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in a chapter 7 case if the Chapter 11 Case is converted from chapter 11, all creditors of the Debtor (whether known or unknown), all non-Debtor counterparties to any Purchased Contracts, all Governmental Authorities, filing agents, filing officers, title agents, recording agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets. The Asset Purchase Agreement and the Sale shall not be subject to rejection or avoidance under any circumstances. This Sale Order and the Asset Purchase Agreement shall inure to the benefit of the Debtor, its estate, its creditors, Buyer and their respective successors and assigns.

39. **No Stay of Order**. The provisions of Bankruptcy Rules 6004 and 6006 staying the effectiveness of this Sale Order for fourteen (14) days are hereby waived, and this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Any party desiring to appeal this Sale Order must exercise due diligence in filing an appeal, pursuing a stay and obtaining a stay prior to the Closing, or risk its appeal being foreclosed as moot.

40. **Modification of Automatic Stay**. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtor and the Purchased Assets to the extent necessary, without further order of the Court, to allow Buyer to deliver any notice provided for in the Asset Purchase Agreement and allow Buyer to take any and all actions as and when permitted under the Asset Purchase Agreement, as applicable.

41. **Retention of Jurisdiction**. The Court shall retain jurisdiction to (i) interpret, implement and enforce the terms and provisions of this Sale Order and the Asset Purchase Agreement, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, in all respects, (ii) decide any disputes concerning this Sale Order, the Asset Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Asset Purchase Agreement and this Sale Order, including, but not limited to, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Purchased Assets and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, and (iii) enforce the injunctions set forth herein.

42. **Subsequent Plan Provisions**. Unless otherwise provided herein, nothing contained in any chapter 11 plan confirmed in the Chapter 11 Case or any order confirming any such plan or any other order in the Chapter 11 Case (including any order entered after any conversion of the Chapter 11 Case into a case under chapter 7 of the Bankruptcy Code or as part of any subsequent chapter 7 or chapter 11 proceeding of the Debtor) shall alter, conflict with, or derogate from, the provisions of the Asset Purchase Agreement or this Sale Order and, to the extent of any such conflict, subject to this paragraph, the terms of this Sale Order and the Asset Purchase Agreement shall control.

43. **No 1146(a) Exemption**. For the avoidance of doubt, nothing in this Sale Order shall constitute, pursuant to section 1146(a) of the Bankruptcy Code, the grant of a tax exemption under a plan confirmed under section 1129 or 1191.

44. **Further Assurances**. From time to time, as and when requested by the other, the Debtor and Buyer, as the case may be, shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale with respect to Buyer, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in Buyer its right, title and interest in and to the Purchased Assets, subject to the provisions of the Asset Purchase Agreement.

45. **Governing Terms**. Unless otherwise provided herein, to the extent this Sale Order is inconsistent with the terms of the Asset Purchase Agreement (including all ancillary documents executed in connection with the Asset Purchase Agreement), this Sale Order shall govern.

46. **Headings**. The headings in this Sale Order are for purposes of reference only and shall not limit or otherwise affect the meaning of the Sale Order.

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Dated: April 29th, 2025
Wilmington, Delaware

Exhibit A

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of March 31, 2025

BETWEEN:

KOGNITIV US LLC, a limited liability company existing under the laws of the State of Delaware (the "**Vendor**")

- and -

CAPILLARY TECHNOLOGIES LLC., a limited liability company existing under the laws of the State of Delaware (the "**Purchaser**")

RECITALS

WHEREAS:

A. On December 12, 2024, Kognitiv Corporation (the "**Parent**"), the sole indirect owner of Vendor, filed a Notice of Intention to Make a Proposal pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* (Canada), bearing Court File No. BK-25-03165297-0031 (the "**Proposal Proceedings**"), and BDO Canada Limited ("**BDO**") consented to act as trustee under the Proposal Proceedings.

B. As part of the Proposal Proceedings, Vendor, with the assistance of the BDO, solicited offers over a period of approximately 90 days for the sale of the Parent's operating business which it holds indirectly through its wholly-owned subsidiary Loyalty Solutions Holdings US Inc. (the "**Loyalty Solutions**"), a corporation existing under the laws of the State of Delaware, which itself holds certain intellectual property assets, and holds all of the outstanding shares of each of Vendor and Kognitiv Solutions Inc. ("**Kognitiv Solutions**", and collectively with Vendor, the "**Subsidiaries**").

C. On March 7, 2025, the Parent and Capillary Pte. Ltd. ("**Capillary'**), an Affiliate of the Purchaser, entered into a share purchase agreement under which Parent would sell all of the outstanding securities of Vendor, comprising the entire business operation of the Parent (the "**Initial Agreement**").

D. Following the execution of the Initial Agreement, Capillary and the Parent agreed to restructure the transactions contemplated under the Initial Agreement and terminate the Initial Agreement.

E. Concurrently with the termination of the Initial Agreement, and concurrently with and as a condition to the execution of this Agreement, Purchaser entered into a purchase and sale agreement with Loyalty Solutions pursuant to which Purchaser agreed to acquire certain assets of Loyalty Solutions, including all of the issued and outstanding shares of Kognitiv Solutions held by Loyalty Solutions (the "**Loyalty PSA**").

F. Vendor intends to file a voluntary petition for relief (the "**Chapter 11 Case**") pursuant to chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), with the intention of having the Transaction (as defined below) approved by the Bankruptcy Court.

G. Pursuant to the Bankruptcy Code, Vendor intends to, *inter alia*, sell, convey, and transfer the Purchased Assets to Purchaser outside of the ordinary course of business.

H. Subject to the approval of the Bankruptcy Court, Vendor desires to sell, and Purchaser desires to purchase, the Purchased Assets, on and subject to the terms and conditions of this Agreement and the Sale Order.

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

Article 1 - INTERPRETATION

1.01 Definitions

In this Agreement, (including in the recitals above) unless something in the subject matter or context is inconsistent therewith:

"**Acquired Accounts Receivable**" has the meaning set out in the definition of *Purchased Assets*.

"**Affiliate**" of a specified Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. As used in this definition, "control", "controlled by" and "under common control with" means possession, directly or indirectly, of power to direct or cause the direction of management or policies of such Person (whether through ownership of securities or other partnership or ownership interests, by contract or otherwise); 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.

"**Aged Accounts Receivable**" means (a) any accounts receivable aged greater than 60 days, (b) any amounts owing by customers of Vendor that have terminated their contracting relationship with Vendor and which are not recoverable, and (c) such amounts as more particularly set out in Schedule 1.01 hereto.

"**Agreement**" means this purchase agreement, including its recitals, schedules and exhibits attached hereto, as same may be amended, restated or replaced from time to time in accordance with the terms hereof.

"**Applicable Law**" means, in respect of any Person, property, transaction or event, any domestic or foreign statute, Laws (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event.

"**Assumed Liabilities**" means (a) the Pre-Closing Assumed Liabilities, and (b) all liabilities and obligations arising out of or related to the Purchaser's ownership or operation of the Purchased Assets after the Closing.

"**Authorizations**" means any authorizations, registrations, permits, certificates of approval, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to Intellectual Property) issued or granted by any Governmental Authority.

"**Avoidance Actions**" means any and all claims and rights of Vendor under chapter 5 of the Bankruptcy Code.

"**Bankruptcy Code**" has the meaning set forth in the preamble.

"**Bankruptcy Court**" has the meaning set forth in the preamble.

"**BDO**" has the meaning set forth in the preamble.

"**Business**" means, as applicable the business conducted by Vendor, being the provision of loyalty technology and services.

"**Business Day**" means a day other than a Saturday, Sunday or any day on which banking institutions in the State of Delaware, USA or New York City, NY, USA are not open for business.

"**Capillary**" has the meaning ascribed in the recitals hereto.

"**Closing**" means the successful completion of the Transaction.

"**Closing Date**" means the tenth (10^{th}) calendar day following the date on which the Sale Order is issued, or such other date as agreed upon in writing by Vendor and Purchaser.

"**Closing Time**" means 12:01 a.m. (Eastern Time) on the Closing Date, or such other time on or after the Closing Date as may be mutually agreed to by Purchaser and Vendor; provided that the Closing Date shall be no later than the Outside Date.

"**Confidential Information**" means any information with respect to Purchaser or the Business, including the terms of any Contract to which any of the foregoing is a party, and other information regarding any customer or supplier, including methods of operation, customer lists, products, prices, fees, costs, technology, inventions, trade secrets, know-how, Software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters; provided, that "Confidential Information" does not include any information that: (a) is generally available to the public on the date of this Agreement other than as a result of a disclosure by Vendor or its Affiliates; or (b) becomes available to Vendor or its Affiliates on a non-confidential basis other than as a result of a disclosure that is prohibited hereunder or from a source other than Purchaser which is not known by Vendor, following reasonable inquiry, to be bound by a confidentiality agreement with Purchaser or otherwise prohibited from disclosing the information to Vendor.

"**Contingent Assets**" means any and all amounts, awards, gains or assets becoming due or otherwise accrued to Vendor originating, directly or indirectly, from the Cora Transaction.

"**Contract**" means any contract, agreement, license, franchise, lease, loan, or rental permit, arrangement, commitment or other right or obligation to which a Person is a party or by which such Person is bound or affected or has actual or contingent entitlements or obligations.

"**Cora Transaction**" means the sale of Kognitiv Corporation's Enterprise Loyalty Platform pursuant to an asset purchase agreement dated July 5, 2024 and entered into between by Loyalty Solutions Canada Inc., Kognitiv Australia Pty Ltd., Kognitiv US LLC, AIMIA Middle East Free Zone LLC, Kognitiv Singapore Pte Ltd., and Kognitiv Corporation as vendors, and Gary Jonas Computing Ltd., CORA Group Australia Pty Ltd., Jonas Computing (UK) Limited, Jonas Food Holdco Inc. as purchasers.

"**Cure Costs**" means monetary amounts that must be paid and obligations that otherwise must be satisfied under sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption or assignment of any Purchased Contract, as agreed upon by the necessary parties or determined by the

Bankruptcy Court.

"**Excluded Assets**" means all assets of Vendor other than the Purchased Assets, including for greater certainty, the Contingent Assets and the Aged Accounts Receivable.

"**Excluded Liabilities**" means any liabilities and obligations of Vendor other than the Assumed Liabilities, including for greater certainty any liabilities relating to the Cora Transaction.

"**Final Order**" means with respect to any order or judgment of the Bankruptcy Court, or any other court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to Vendor and Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

"**General Conveyance**" has the meaning set out in Section 6.01(3).

"**Governmental Authority**" means any domestic, foreign or multi-national, national, state, provincial, territorial or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau or entity, or any arbitrator with authority to bind a Party at law.

"**Initial Agreement**" has the meaning set forth in the preamble.

"**Intellectual Property**" means any and all intellectual property or proprietary rights of every kind and description anywhere in the world, whether registered or unregistered, including the following (a) patents, patent applications, patent disclosures, invention disclosures and inventions (whether or not patentable and whether or not reduced to practice) and any reissue, continuation, continuation-in-part, divisional, revision, extension or reexamination thereof, (b) industrial designs, industrial design applications, industrial design disclosures, and any reissue, continuation-in-part, divisional, revision, extension or reexamination thereof, (b) Internet domain names, internet protocol addresses, trademarks, service marks, trade dress, logos, slogans, company names, trade names, corporate names, social media handles and phone numbers containing any of the foregoing, (and all translations, adaptations, derivations and combinations of the foregoing), and registrations, applications for registration and renewals thereof together with all of the goodwill associated therewith, (d) copyrights (registered or unregistered) and copyrightable works, moral rights (and other similar rights) and registrations, applications for registration and renewals thereof, (e) rights in Software (in both source code and object code form) and documentation thereof, (f) rights in technology and documentation thereof, and (g) trade secrets and other information of a confidential nature (including ideas, formulas, recipes, compositions, know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, data and databases, algorithms, information, financial and marketing plans and customer and supplier/vendor lists and information).

"**knowledge**" means the actual knowledge after reviewing all relevant records and making reasonable inquiries regarding the relevant matter, including consulting with appropriate Persons responsible for the relevant subject matter.

"**Kognitiv Solutions**" has the meaning set forth in the preamble.

"**Laws**" means all laws, statutes, codes, ordinances, decrees, rules, standards, orders-in-council, regulations, by-laws, statutory rules, principles of law, published policies and guidelines (whether or not having the force of law), judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and terms and conditions of any grant of approval, permission, authority or license of any Governmental Authority, statutory body, or self-regulatory authority (including stock exchanges or markets), and the term "**applicable**" with respect to such Laws and in the context that refers to one or more Persons, means that such Laws apply to such Person or Persons or its or their business, undertaking, property or securities and emanate from a Person having jurisdiction over the Person or Persons or its or their business, undertaking, property or securities.

"**Liens**" means any claim, encumbrance, right or interest against or in the Purchased Assets, their related business operations or any other related assets of any kind whatsoever and includes a security interest, mortgage, lien, hypothec, pledge, assignment, charge, title retention agreement, non-disposal undertaking, option, trust or deemed trust (whether contractual, statutory or otherwise arising), licence and any covenant or other agreement, restriction or limitation (including any covenants contained in the asset purchase agreement for the Cora Transaction) relating to the Purchased Assets, their related business operations, or other related assets or the transfer of the Purchased Assets to Purchaser pursuant to this Agreement.

"**Loyalty PSA**" has the meaning set forth in the preamble.

"**Loyalty Solutions**" has the meaning set forth in the preamble.

"**Made Available**" means available in the *Firmex* virtual data room titled "Project Coppola" organized by the BDO or otherwise provided in writing to Purchaser by the Parent.

"**Material Adverse Effect**" means any result, fact, change, occurrence, event or development that, individually or in the aggregate, materially and adversely affects, or could reasonably be expected to (a) materially and adversely affect, the ability of Vendor to consummate the Transaction in a timely manner or to perform their respective obligations hereunder, or (b) have a material adverse effect on the business, properties, assets, results of operations or financial condition of Vendor. Notwithstanding the foregoing, solely for the purposes of the foregoing clause (b), none of the following, either alone or in combination, shall be deemed to constitute, or be taken into account in determining whether there has been, such a material adverse effect: any change, occurrence, event or development: (i) arising from general economic, political, financial, banking, credit or securities market conditions, including any disruption thereof and any interest or exchange rate fluctuations; (ii) arising from the announcement or performance of, or compliance with, or the public or industry knowledge of, this Agreement or the Transaction; (iii)(A) arising from any changes or changes in interpretation of accounting rules or (B) arising out of, resulting from or attributable to any action required to be taken under any Applicable Law; (iv) arising from natural disasters, acts of terrorism or war (whether or not declared) or epidemics or pandemics or orders relating thereto; provided, however, that any change, occurrence, event or development referred to in clauses (i), (iii) or (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent and only to the extent that such change, occurrence, event or development has a disproportionate effect on Vendor compared to other participants in the industries in which Vendor conducts its Business.

"**Material Contracts**" has the meaning set out in Section 3.01(6).

"**Non-Solicitation Agreement**" means the Non-Solicitation and Non-Circumvention Agreement entered

into between the Parent and the Purchaser on February 25, 2025, as amended March 31, 2025.

"**Offered Employees**" means those individuals set out in Schedule 1.02 hereto.

"**Order**" means any order, judgment, writ, injunction, stipulation, award or decree.

"**Outside Date**" means May 31, 2025 or such later date agreed to by each of Vendor and Purchaser in writing.

"**Parties**" means, collectively, Vendor and Purchaser and "**Party**" means any one of them.

"**Person**" means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, limited liability company, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or entity however designated or constituted.

"**Personal Information**" means information in the possession or under the control of Vendor about an identifiable individual.

"**Pre-Closing Assumed Liabilities**" means all accounts payable arising out of the Purchased Assets outstanding as at Closing, other than those accounts payable arising out of or relating to the Excluded Assets.

"**Pre-Closing Period**" has the meaning set forth in Section 5.01(2).

"**Proposal Proceedings**" has the meaning set forth in the preamble.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchase Price**" has the meaning set out in Section 2.04.

"**Purchased Assets**" means all rights, title and interest in and to all of the assets, property and undertaking of Vendor including the following assets but excluding the Excluded Assets:

(a) all accounts receivable, trade accounts receivable, notes receivable, book debts and other debts owing, due or accruing due to Vendor in connection with the Purchased Contracts (the "**Acquired Accounts Receivable**") and the full benefit of all security for the Acquired Accounts Receivable;

(b) all books (other than minute books), ledgers, files, lists, reports, logs, deeds, surveys, correspondence, operating records, marketing plans, and other data and information, including all data and information stored on computer-related or other electronic media maintained in connection with the Business;

(c) the Purchased Contracts;

(d) Avoidance Actions; and

(e) all office equipment and computer equipment of, and used by, the Transferred Employees that is owned by Vendor.

"**Purchased Contracts**" means those Contracts set out in Schedule 1.03 hereto.

"**Rejected Contracts**" means those Contracts set out in Schedule 1.03 hereto.

"**Remedies Exception**" means such limitations as may be imposed by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors 'rights generally, and by laws related to the availability of specific performance, injunctive relief or other equitable remedies.

"**Sale Order**" means an order issued by the Bankruptcy Court in a form approved in writing by the Purchaser (acting reasonably) authorizing (i) the sale, transfer, assignment, conveyance and delivery of the Purchased Assets to Purchaser (or its nominee, successors or permitted assigns) free and clear of all Liens, (ii) the assumption and assignment to Purchaser of the Purchased Contracts; (iii) the assumption by Purchaser of the Assumed Liabilities; and (iv) the rejection of the Rejected Contracts. The Sale Order shall contain, among others, the following provisions:

(a) Vendor is authorized to proceed with the Transaction pursuant to section 363(b), (f), and (m) of the Bankruptcy Code;

(b) Any objections with respect to this Transaction are withdrawn, waived or overruled;

(c) The Purchase Price represents the fair value of the Purchased Assets and Purchased Contracts;

(d) The Sale is in the best interests of Vendor's estate and its creditors;

(e) A finding that the Purchaser has acted in good faith and is entitled to the protections afforded by section 363(m) of the Bankruptcy Code;

(f) The Bankruptcy Court shall retain jurisdiction for the purpose of enforcing the provisions of the Sale Order and to determine disputes thereunder;

(g) The Purchased Contracts shall be assumed and assigned to Purchaser in accordance with section 365 of the Bankruptcy Code effective as of the Closing Date and Vendor shall be responsible to pay all Cure Costs pursuant to section 365(b) of the Bankruptcy Code to counterparties to the Purchased Contracts;

(h) the Rejected Contracts shall be rejected in accordance with section 365 of the Bankruptcy Code upon entry of the Sale Order;

(i) a finding that none of the Parent, Vendor or Purchaser have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code

(j) Vendor and Purchaser shall be authorized to close this transaction immediately upon entry of the Sale Order;

(k) The sale to Purchaser of the Purchased Assets shall be free and clear of any and all Liens and related claims;

(l) That all persons holding Liens of any kind or nature whatsoever in, to or against the Purchased Assets or Purchased Contracts or the operation of the Purchased Assets or Purchased Contracts shall be forever barred, estopped, and permanently enjoined from asserting against the Purchaser,

its business operations and employees or any of its successors, assigns or property (including the Purchased Assets), any Liens or rights existing, accrued or arising prior to the Closing

(m) A finding that Purchaser is not a successor in interest to or continuation of the Parent, Vendor, their affiliates or their respective estates and shall have no successor liability under any theory for the obligations of any Parent, Vendor or their affiliates.

(n) Provide for the waiver of the requirements under the Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d);

(o) Proper and adequate notice and an opportunity to be heard in accordance with all applicable law were given to all necessary parties in the Chapter 11 Case; and

(p) The Transaction does not include personally identifiable information under section 363(b)(1)(B) and, thus, the appointment of a consumer privacy ombudsman is not required under Bankruptcy Rule 6004(g).

"**Software**" means software, including all versions thereof, whether installed locally, on a local area network or delivered through the internet, and all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, including any and all modifications, changes, release, versions, upgrades, updates or patches of any of the foregoing, and all other material related to such software.

"**Statutory Plans**" means benefit plans that Vendor is required by domestic or foreign statutes to participate in or contribute to in respect of an employee, director or officer or any beneficiary or dependent thereof, including plans administered pursuant to applicable health, tax, workplace safety insurance, federal or provincial pension plan, workers' compensation and employment insurance legislation.

"**Subsidiaries**" has the meaning set forth in the preamble.

"**Tax Returns**" means all returns, declarations, designations, forms, schedules, reports, elections, notices, filings, statements (including withholding tax returns and reports, and information tax returns and reports) and other documents of every nature whatsoever filed or required to be filed with any Taxing Authority with respect to any Taxes, together with all amendments and supplements thereto.

"**Taxes**" means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, value added, consumption, sales, use, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and other government pension plan premiums or contributions, and "**Tax**" means any one of the Taxes.

"**Taxing Authorities**" means any Governmental Authorities responsible for the administration, imposition or collection of any Tax, and "**Taxing Authority**" means any one of the Taxing Authorities.

"**Transaction**" means the sale of the Purchased Assets by Vendor to Purchaser, including the assumption and assignment of the Purchased Contracts to Purchaser, the assumption of the Assumed Liabilities by Purchaser, and Vendor's rejection of the Rejected Contracts.

"**Transfer Taxes**" has the meaning set forth in Section 2.05.

"**Transferred Employees**" means those Offered Employees who accept the offer of employment or engagement made by Purchaser effective on or before the Closing Date.

"**Vendor**" has the meaning set out in the preamble.

1.02 Headings, etc.

The division of this Agreement into Articles and Sections is for convenience of reference only and does not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules to this Agreement.

1.03 Extended Meanings

In this Agreement, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings and the term "third party" means any other person other than Vendor or Purchaser, or any Affiliates thereof.

1.04 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 Currency

All references to currency herein are to lawful money of Canada unless otherwise expressly provided.

1.06 Schedules

All Schedules shall form part of this Agreement.

1.07 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

1.08 Time Periods

Unless otherwise specified, time periods shall be calculated by excluding the day on which the period commences and including the day on which the period ends.

1.09 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to any Party. Upon such a determination of invalidity or unenforceability, the Parties shall negotiate to modify this Agreement in good faith so as to affect the original intent of the Parties as closely as possible in an acceptable manner so that the Transaction be consummated as originally contemplated to the fullest extent possible.

Article 2 – PURCHASE AND SALE

2.01 Purchase and Sale

Subject to the terms and conditions of this Agreement, Vendor hereby agrees to sell, assign and transfer to Purchaser, and Purchaser hereby agrees to purchase from Vendor on the Closing Date, effective as of the Closing Time, the Purchased Assets, free and clear of all Liens pursuant to the Sale Order.

2.02 Assumed Liabilities

Subject to the terms and conditions of this Agreement, at Closing, effective as of the Closing Time, Purchaser shall assume the Assumed Liabilities.

2.03 Excluded Assets & Liabilities

The Parties acknowledge and agree that Purchaser is not acquiring the right or benefit to the Excluded Assets and hereby expressly disclaims any interest therein. Accordingly, and notwithstanding any representation or warranty in this Agreement to the contrary, Purchaser acknowledges and agrees that:

(1) Purchaser shall use best efforts in co-operation with Vendor or its nominee, to take all necessary action and do all such things as are necessary in order to pay, deliver, or otherwise convey to Vendor all right, title and interest in and to the Excluded Assets; and

(2) pending the effective transfer of the Excluded Assets, Purchaser shall hold all rights or entitlements that Purchaser has in those Excluded Assets in trust for the exclusive benefit of Vendor.

Purchaser does not assume any of the Excluded Liabilities and, as between the Parties, the Excluded Liabilities will remain the sole responsibility of Vendor and will not form part of the Assumed Liabilities.

2.04 Purchase Price

On the Closing Date, the purchase price payable by Purchaser to Vendor for the Purchased Assets shall be an amount equal to $17,280,000 (the "**Purchase Price**"), as may be adjusted by the Vendor and the Purchaser in writing.

2.05 Transfer Taxes

The Purchase Price is inclusive of any applicable sales, value-added, use, transfer, land transfer or other similar Taxes ("**Transfer Taxes**"). Vendor shall be responsible for paying any Transfer Taxes applicable to the purchase and sale of the Purchased Assets under this Agreement.

2.06 Closing

The Closing shall take place on the Closing Date, effective as of the Closing Time electronically by exchange of executed pdf documents.

Article 3 - REPRESENTATIONS AND WARRANTIES

3.01 Representations and Warranties of Vendor

Vendor represents and warrants to Purchaser and acknowledges that Purchaser is relying upon the following representations and warranties in connection with the Transaction:

(1) *Organization* – Vendor is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

(2) *Due Authorization and Enforceability* – Subject to the issuance of the Sale Order: (i) Vendor has the power, authority and right to enter into and deliver this Agreement and to perform its obligations hereunder; (ii) the execution, delivery and performance by Vendor of its obligations under this Agreement, and the consummation by Vendor of the Transaction, has been duly authorized and approved by all required action on the part of Vendor; and (iii) this Agreement constitutes a valid and legally binding obligation of Vendor, enforceable against it in accordance with its terms.

(3) *Title to Purchased Assets* - Subject to the Sale Order, Vendor has good and valid tittle to the Purchased Assets. None of the Purchased Assets are leased or licensed from any Person.

(4) *No Conflict* - The execution by Vendor of this Agreement and the consummation of the Transaction:

(i) does not and will not (or would not with the giving of notice, the lapse of time or both, or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with, or allow any Person to exercise any rights under, any of the terms or provisions of the organizational documents of Vendor;

(ii) does not and will not (or would not with the giving of notice, the lapse of time or both, or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with, or allow any Person to exercise any rights under, or give any Person a basis for accelerated or increased rights of termination or non-performance under, any Purchased Contract;

(iii) does not and will not result in the violation of any Law or Order;

(iv) does not and will not result in a breach of, or cause the termination or revocation of, any permit forming part of the Purchased Assets; and

(v) does not and will not result in the creation or imposition of any Liens upon the Purchased Assets.

(5) *Recitals* - The recitals set forth at the beginning of this Agreement are accurate and complete in all material respects as of the date of this Agreement and fairly describe the facts and circumstances leading to the execution of this Agreement.

(6) *Contracts* - Vendor has Made Available to Purchaser true and correct copies of the

Purchased Contracts (the "**Material Contracts**"). Each of the Material Contracts (1) sets forth the entire agreement and understanding between Vendor and the other parties thereto, (2) subject to requisite Bankruptcy Court approvals, and assumption by Purchaser of the applicable Purchased Contract in accordance with Applicable Law (including satisfaction of any applicable Cure Costs) and except as a result of the commencement of the Chapter 11 Case, is valid, binding, and in full force and effect, subject to the Remedies Exception, enforceable in accordance with its terms. Except for the Chapter 11 Case, there is no event or condition that occurred or exists that constitutes or that, with or without notice, the happening of any event and/or the passage of time, would reasonably be expected to constitute a material default or breach under any such Purchased Contract by Vendor, or could cause the acceleration of any obligation or loss of any rights of any party thereto or give rise to any right of termination or cancellation thereof, and, no written allegation of any such event or condition has been made to Vendor. Vendor has not waived any material rights under any Material Contract. No Material Contracts contain any restrictive covenants.

(7) *Labour and Employment Matters*

(i) Vendor has Made Available to Purchaser a true, correct and complete list of the names, salaries, wage rates, commissions, bonus arrangements, benefits, positions, status as full-time or part-time employees, location of employment, cumulative length of service with Vendor of the Offered Employees. Vendor has Made Available to Purchaser all information regarding the Offered Employees' annual vacation entitlement and their accrued and unused vacation days, including end-of-service and defined benefit obligations that have accrued to the Offered Employees through the Closing Date in connection with their employment prior to Closing pursuant to Statutory Plans. Vendor has Made Available to Purchaser all current employment agreements in respect of the Offered Employees.

(ii) To the knowledge of Vendor, no Offered Employee is in violation of any term of any employment contract, contract of engagement, services agreement, proprietary information agreement or any other agreement relating to the right of that individual to be employed, engaged or retained by Purchaser, and, to the knowledge of Vendor, the continued employment or engagement of the Transferred Employees will not result in any violation and Vendor has not received any notice alleging that any such violation has occurred.

(8) *No Intellectual Property* – The Vendor does not own, purport to own or license any Intellectual Property, other than Intellectual Property licensed from Loyalty Solutions.

(9) *No Authorizations* – The Vendor does not own and has not been issued any Authorizations in connection with the Business.

(10) *Disclosure* – To the knowledge of Vendor, no information, representation, warranty or statement by Vendor in this Agreement or in any statement or certificate furnished to Purchaser pursuant to this Agreement and the due diligence, or in any document provided by Vendor, the Parent or any of their respective Affiliates contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made herein, in light of the circumstances under which they were made and with respect to the date as of which they are made, not misleading.

3.02 Representations and Warranties of Purchaser

Purchaser represents and warrants to Vendor and acknowledges that Vendor is relying upon the following representations and warranties in connection with the Transaction:

(1) *Organization* – Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

(2) *Due Authorization and Enforceability of Obligations* – (i) Purchaser has the power, authority and right to enter into and deliver this Agreement and to perform its obligations hereunder; (ii) the execution, delivery and performance by Purchaser of its obligations under this Agreement, and the consummation by Purchaser of the Transaction, has been duly authorized and approved by all required action on the part of Purchaser; and (iii) this Agreement constitutes a valid and legally binding obligation of Purchaser, enforceable against it in accordance with its terms.

(3) *Consents* – No consent, approval, order or authorization of, or declaration or filing with, any Governmental Authority or any other Person is required to be obtained by Purchaser in connection with the execution and delivery of this Agreement by Purchaser or the consummation by Purchaser of the Transaction, other than those consents, approvals, orders, authorizations, declarations or filings which would not reasonably be expected to materially impede or delay the consummation by Purchaser of the Transaction.

(4) *Finder's Fees* – No broker, finder or investment banker is entitled to any fee or commission from Purchaser for services rendered on behalf of Purchaser in connection with the Transaction for which Vendor may be liable.

3.03 "As Is, where Is"

PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF VENDOR EXPRESSLY AND SPECIFICALLY SET FORTH IN SECTION 3.01: (A) PURCHASER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS AS THEY EXIST ON THE CLOSING DATE; AND (B) NONE OF THE VENDOR OR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF VENDOR, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY) IS MAKING, AND PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE PURCHASED ASSETS, THIS AGREEMENT OR THE TRANSACTION, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) PURCHASER, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAWS IN ANY JURISDICTION, WHICH PURCHASER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY PURCHASER.

Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to Title 6 of the Delaware Code or similar legislation do not apply hereto and have been waived by Purchaser.

This Section 3.03 shall not merge on Closing and is deemed incorporated by reference in all closing documents and deliveries.

3.04 Purchaser's Acknowledgement

Purchaser acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Business and the Purchased Assets and has consulted with and been advised by its own financial, legal and other advisors before entering into this Agreement, has read same and knows the contents thereof, and has determined to proceed with the Transaction. Purchaser has relied solely on the results of its own independent investigation and verification and, except for the representations and warranties of Vendor expressly set forth in Sections 3.01, Purchaser understands, acknowledges and agrees that all other representations, warranties, conditions and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of Vendor or the Business) are specifically disclaimed by Vendor, and its financial and/or legal advisors.

Article 4 – CONDITIONS

4.01 Conditions for the Benefit of Purchaser and Vendor

The respective obligations of Purchaser and Vendor to consummate the Transaction are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

(1) *No Law* – No provision of any Applicable Law and no judgment, injunction or Order shall have been enacted, announced, issued or entered by any Governmental Authority of competent jurisdiction that prevents, restrains, enjoins, renders illegal or otherwise prohibits the consummation of the Transaction; and

(2) *Sale Order* – The Sale Order shall have been issued and entered by the Bankruptcy Court.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of Purchaser and Vendor.

4.02 Conditions for the Benefit of Purchaser

The obligation of Purchaser to consummate the Transaction is subject to the satisfaction of, or compliance with, or waiver by Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Purchaser):

(1) *Performance of Covenants* – The covenants contained in this Agreement required to be performed or complied with by Vendor at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;

(2) *Truth of Representations and Warranties* – The representations and warranties of Vendor contained in Section 3.01 shall be true and correct in all material respects as of the date hereof and as of the Closing Date, as if made at and as of such date;

(3) *Vendor's Deliverables* – Vendor shall have delivered to Purchaser all of the deliverables contained in Section 6.01 in form and substance reasonably satisfactory to Purchaser;

(4) *No Material Adverse Effect* - From the date of this Agreement until the Closing Time, there shall not have occurred any Material Adverse Effect, nor shall any event or events have

occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect;

(5) *Claims* – Except with respect to the Cora Transaction, there is no pending or threatened Claim against Vendor that has had or that may be reasonably expected to have a Material Adverse Effect;

(6) *No Orders, Decisions, Etc*. No final and non-appealable order, decision or ruling of any court, tribunal or regulatory authority having jurisdiction shall have been made or proceeding commenced that would specifically prohibit the Transaction;

(7) *Permits* - No Governmental Authority has communicated to any Party that it intends to revoke, suspend or adversely change any permit of Vendor generally or specifically as a result of the Transaction, the revocation, suspension or change of which may be reasonably expected to have, a Material Adverse Effect; and

(8) *Sale Order* – the entry of the Sale Order, that is in a form approved in writing by the Purchaser (acting reasonably).

4.03 Conditions for the Benefit of Vendor

The obligation of Vendor to consummate the Transaction is subject to the satisfaction of, or compliance with, or waiver by Vendor of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Vendor):

(1) *Performance of Covenants* – The covenants contained in this Agreement required to be performed or complied with by Purchaser at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time; and

(2) *Truth of Representations and Warranties* – The representations and warranties of Purchaser contained in Section 3.02 shall be true and correct in all material respects as of the date hereof and as of the Closing Date, as if made at and as of such date.

4.04 Waiver of Conditions

Any condition in Sections 4.01, 4.02 and 4.03 may be waived by Purchaser or Vendor, as applicable, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on Purchaser or Vendor, as applicable, only if made in writing.

4.05 Non-Completion of Conditions Precedent

Upon either Party becoming aware that any condition precedent set forth in this Article 4 will be or is likely to be delayed in fulfilment or has become incapable of fulfilment, such Party shall immediately notify the other Party of the same and shall provide an explanation in reasonable detail along with supporting documents.

Article 5 – COVENANTS

5.01 Covenants of Vendor

(1) Upon payment of the Purchase Price by Purchaser at the Closing Time, and subject to the terms of this Agreement, Vendor will transfer and assign to Purchaser all of Vendor's right, title and interest in and to the Purchased Assets, free and clear of all Liens, in accordance with the terms of this Agreement and the Sale Order.

(2) From the date of this Agreement until the earlier to occur of the valid termination of this Agreement under Section 7.01 and the Closing Time (such period, the "**Pre-Closing Period**"), Vendor will remain in possession of the Purchased Assets and Purchaser will take possession of the Purchased Assets at the Closing Time.

(3) Subject to the terms of this Agreement, Vendor shall use all commercially reasonable efforts to take or cause to be taken all other actions and do or cause to be done all other things, reasonably necessary or appropriate to consummate the Transaction.

5.02 Covenants of Purchaser

(1) At Closing, subject to the terms of this Agreement, Purchaser shall assume and thereafter perform all obligations and liabilities arising from and in connection with the Purchased Assets that accrue from and after the Closing.

(2) Subject to the terms of this Agreement, Purchaser shall use all commercially reasonable efforts to take or cause to be taken all other actions and do or cause to be done all other things, reasonably necessary or appropriate to consummate the Transaction.

5.03 Offer of Employment

(1) A minimum of ten (10) days prior to Closing, Purchaser will make offers of employment to the Offered Employees prior to the Closing Date, on terms satisfactory to the Purchaser, at its sole discretion, with such offers becoming effective, subject to acceptance by such Offered Employees, at the Closing Time.

(2) Vendor will render all reasonable assistance to encourage Offered Employees to accept the offers of employment or engagement in accordance with their terms and conditions.

(3) Purchaser will not be obligated to any Offered Employee who refuses Purchaser's offer, regardless of the reason for refusal, or who does not sign and return Purchaser's offer of employment prior to the Closing Date.

(4) This Section 5.03 is not intended to, and does not, confer any rights or remedies on any Person other than the Parties (and their respective successors).

5.04 Confidential Information

After the Closing Time, Vendor shall and shall cause its Affiliates to maintain the confidentiality of all Confidential Information, except any disclosure of such information and records as may be required by Applicable Law or permitted by Purchaser in writing. If Vendor, its Affiliate, or any of their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena,

civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall provide Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with Purchaser, at Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, Vendor shall, or shall cause its Affiliate or representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such Affiliate or representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. Vendor shall instruct its Affiliates and representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 7.03 by any of its Affiliate or representatives. At Closing Time, Vendor shall handover all Confidential Information to Purchaser or destroy such Confidential Information in its possession at Purchaser's request. Vendor shall not make or retain copies or excerpts of or from the Confidential Information or in any way re-create the substance or contents of the Confidential Information at any time on or after Closing.

5.05 Personal Information

Purchaser shall at all times comply with all Applicable Laws governing the protection of Personal Information with respect to Personal Information disclosed or otherwise provided to Purchaser by Vendor under this Agreement. Purchaser shall only collect, use or disclose such Personal Information for the purposes of investigating the Business as contemplated by this Agreement and completing the Transaction. Purchaser shall safeguard all Personal Information collected from Vendor in a manner consistent with the degree of sensitivity of the Personal Information and maintain at all times the security and integrity of the Personal Information. Purchaser shall not make copies or excerpts of or from the Personal Information or in any way re-create the substance or contents of the Personal Information if the Transaction is not completed for any reason and shall return all Personal Information to Vendor or destroy such Personal Information at Vendor's request.

5.06 Bankruptcy Court Matters

(1) The Parties acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval. The Parties acknowledge that they are aware of the relevant legal requirements and will proceed in good faith to satisfy such requirements.

(2) Vendor shall (i) provide Purchaser with drafts of any and all other pleadings and proposed orders to be filed or submitted in connection with this Agreement and the Transactions at least three (3) Business Days prior to filing or submitting such pleadings and proposed orders, and such pleadings and proposed orders shall be in form and substance reasonably acceptable to Purchaser and (ii) make best efforts to consult and cooperate with Purchaser regarding any discovery taken in connection with seeking entry of the Sale Order (including any depositions).

(3) Vendor shall use its commercially reasonable efforts to: (i) obtain entry by the Bankruptcy Court of the Sale Order as soon as reasonably practicable under Fed. R. Bank. P. 2002 and any applicable Local Bankruptcy Rules but in no event later than April 30, 2025, subject to the availability of the Bankruptcy Court to conduct a hearing to consider the entry of the Sale Order, and (ii) subject to the satisfaction of the conditions precedent contained in this Agreement, consummate the Closing as soon as reasonably practicable after the entry by the Bankruptcy Court of the Sale Order.

(4) The Sale Order, including any exhibits thereto and any notices or other materials in connection therewith, must be in form and substance satisfactory to Purchaser.

(5) In the event that the entry of a Sale Order is appealed or a stay pending appeal is sought, Sellers shall use their reasonable best efforts to defend such appeal or the stay pending appeal (including a petition for certiorari, motion for rehearing, re-argument, reconsideration or revocation).

(6) During the Bankruptcy Case, Vendor shall not commence, assign, convey or abandon any Avoidance Actions against any of Vendor's ordinary course vendors, contract counterparties, contractors and other suppliers of services related to the Business without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned, or delayed.

5.07 Covenants Relating to this Agreement

(1) The Parties acknowledge and agree that Schedule 1.03 hereto includes a complete and accurate list of all Purchased Contracts with clients of the Vendor, but does not include a complete and accurate list of the Purchased Contracts with suppliers and vendors of the Vendor. During the Pre-Closing Period, the Parties will cooperate on a best efforts basis in order to finalize a complete and accurate list of Purchased Contracts with suppliers and vendors of the Vendor.

(2) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Party in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and prior to the Outside Date, the Transaction and, without limiting the generality of the foregoing, from the date hereof until the Closing Time, each Party shall and, where appropriate, shall cause each of its Affiliates to:

(i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder, and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the Transaction; and

(ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the Transaction.

(3) From the date hereof until the Closing Date, subject to Applicable Laws, each Party hereby agrees, and hereby agrees to cause its representatives to, keep the other Party informed on a reasonably current basis, and as reasonably requested by the other Party as to such Party's progress in terms of the satisfaction of the conditions precedent contained herein.

(4) Each Party agrees to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement the Transaction, as soon as reasonably practicable and in accordance with the terms of this Agreement.

5.08 Further Assurances

After the Closing, the Parties will execute such further documents, and perform such further acts, as may be necessary or reasonably required to transfer and convey the Purchased Assets and the Assumed Liabilities to Purchaser, on the terms set forth herein, and to otherwise comply with this Agreement and consummate the Transaction.

Article 6 - CLOSING DELIVERIES

6.01 Closing Deliveries of Vendor

At Closing, Vendor will deliver, or cause to be delivered, to Purchaser the following, in each case, in form and substance satisfactory to Purchaser, acting reasonably:

(1) a true copy of the Sale Order;

(2) a certificate effective as of the Closing Date, duly executed by Vendor, confirming that the conditions set forth in Sections 4.02(1) and 4.02(2) have been satisfied;

(3) a general conveyance and assumption agreement respecting the Purchased Assets, duly executed by Vendor (the "**General Conveyance**");

(4) such other documents, certificates or instruments as Purchaser may reasonably request in order to affect the Transaction or to vest in Purchaser good and valid title to the Purchased Assets.

6.02 Closing Deliveries of Purchaser

(1) At Closing, Purchaser will deliver, or cause to be delivered, the Purchase Price to Vendor.

(2) At Closing, Purchaser will deliver, or cause to be delivered, to Vendor the following, in each case, in form and substance satisfactory to Vendor, acting reasonably:

(i) a certificate effective as of the Closing Date, duly executed by Purchaser, confirming that the conditions set forth in Sections 4.03(1) and 4.03(2) have been satisfied; and

(ii) the General Conveyance, duly executed by Purchaser.

Article 7 – TERMINATION

7.01 Termination

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

(1) automatically, upon due termination of the Loyalty PSA in accordance with its terms;

(2) by mutual written consent of each of Vendor and Purchaser;

(3) by Purchaser or Vendor, if Closing has not occurred on or before the Outside Date, provided that the terminating Party has not breached of any representation, warranty, covenant or other agreement in this Agreement which prevent the satisfaction of the conditions in Article 4 or the completion of

Closing by the Outside Date;

(4) by Vendor, upon denial of the Sale Order (or if such order is stayed, vacated or varied without the consent of Vendor);

(5) by Purchaser, upon denial of the Sale Order;

(6) by Purchaser or Vendor, if a court of competent jurisdiction, including the Bankruptcy Court or other Governmental Authority, has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such Order or action has become a Final Order.

The Party desiring to terminate this Agreement pursuant to this Section 7.01 (other than pursuant to Section 7.01(1)) shall give written notice of such termination to the other Party specifying in reasonable detail the basis for such Party's exercise of its termination rights.

7.02 Effect of Termination

Each Party's right of termination under Article 7 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Article 7 limits or affects any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement. If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfillment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

Article 8 - GENERAL

8.01 Survival

The representations and warranties and covenants of the Parties contained in this Agreement to be performed after the Closing or termination of this Agreement shall survive Closing or termination, as applicable, and remain in full force and effect.

8.02 Specific Performance

Each Party acknowledges that the Parties will be irreparably harmed and that there will be no adequate remedy at law for any violation by any Party of any of the covenants or agreements contained in this Agreement. It is accordingly agreed that, in addition to any other remedies which may be available upon the breach of any such covenants or agreements, each Party shall be entitled to equitable relief, without proof of actual damages, including an injunction or injunctions or Orders for specific performance to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which they are entitled at Law or in equity as a remedy for any such breach or threatened breach. Each Party further agrees that no other Party or any other Person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.02, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each Party further agrees that the only permitted objection that it may raise in response to any action for equitable relief is that it contests the existence of a breach or threatened breach of this Agreement.

8.03 Further Assurances

Each Party will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Parties may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

8.04 Time of the Essence

Time is of the essence of this Agreement.

8.05 Fees and Commissions

Each Party will pay its respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred.

8.06 Benefit of the Agreement

This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, other legal representatives, successors and permitted assigns of the Parties.

8.07 Public Announcements

During the Pre-Closing Period, no public announcement or press release concerning any of the Transaction shall be made by any Party, or any of their respective Affiliates, without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 8.07, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Proposal Proceedings) or by any stock exchange on which any of the securities of such Party or any of its Affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Nothing in this Section 8.07 will be deemed to prohibit Purchaser or any of their Affiliates from making disclosures to their respective, or their Affiliates' respective, officers, employees, directors, managers, shareholders, investors or lenders or prospective investors or lenders, on a need-to-know and confidential basis. Notwithstanding the foregoing: (a) this Agreement may be filed by Vendor with the Bankruptcy Court; and (b) the Transaction may be disclosed by Vendor to the Bankruptcy Court. The Parties further agree that:

(1) Vendor may prepare and file reports and other documents with the Bankruptcy Court containing references to the Transaction and the terms of the Transaction; and

(2) Vendor, Purchaser and their respective professional advisors may prepare and file such reports and other documents with the Bankruptcy Court containing references to the Transaction and the terms of such Transaction as may reasonably be necessary to complete the Transaction or to comply with their obligations in connection therewith.

The Parties shall be afforded an opportunity to review and comment on such materials prior to their filing.

8.08 Entire Agreement

This Agreement and the Non-Solicitation Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties with respect thereto, including the offer for the purchase of the Purchased Assets submitted by Purchaser on February 14, 2025, and the Bidding Procedures prepared by the BDO. Without limiting the foregoing sentence, there are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement.

8.09 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

8.10 Amendments and Waivers

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the Parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

8.11 Independent Legal Advice

The Parties acknowledge having obtained independent legal advice from their respective solicitors, or having been given the opportunity to obtain independent legal advice, with respect to the terms of this Agreement prior to its execution, and each of the Parties further acknowledges and agrees that it understands the terms, and its rights and obligations under this Agreement.

8.12 Assignment

This Agreement may not be assigned by any Party without the written consent of the other Party, which consent may be arbitrarily withheld, provided that Purchaser may designate one or more nominees to take title in and to the Purchased Assets, or any part thereof, by giving Vendor written notice of such assignment at least two (2) Business Days prior to the date of the hearing of the application for the Sale Order.

8.13 Notices

Any notice or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if: (i) delivered personally; (ii) sent by prepaid courier service; or (iii) sent by email or other similar means of electronic communication, in each case to the applicable address set out below:

(a) in the case of Vendor as follows:

Kognitiv Corporation
161 Bay St., Suite 2700
Toronto, ON M5J 2S1

Attention: Grant McLeod
Email: grant.mcleod@kognitiv.com

with a copy to Vendor's counsel at:

Faegre Drinker Biddle & Reath LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036, USA

Attention: Richard Bernard
Email: richard.bernard@faegredrinker.com

And to:

Aird & Berlis LLP
Brookfield Place,
181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9

Attention: Kyle Plunkett and Marek Lorenc
Email: kplunkett@airdberlis.com and mlorenc@airdberlis.com

(b) in the case of Purchaser, as follows:

Capillary Technologies
#360, bearing PID No:101/360,
15th Cross Rd, Sector 4,
HSR Layout, Bengaluru,
Karnataka-560102

Attention: Aneesh Reddy Boddu
Email: aneesh@capillarytech.com

with a copy to Purchaser's counsel at:

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, Ontario M5H 4E3

Attention: Stefan Timms and Sam Babe
Email: stimms@blg.com and sbabe@blg.com

or to such other street address, individual or electronic communication number or address as may be designated by notice given by the applicable Party to the other Party. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient(s) and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

8.14 Governing Law

This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state.

8.15 Jurisdiction

Each Party hereto irrevocably submits to the exclusive jurisdiction of (a) the Supreme Court of the State of Delaware, (b) the United States District Court for the District of Delaware, and (c) to the extent applicable, the United States Bankruptcy Court for the District of Delaware for the purposes of any action, suit or other proceeding arising out of or related to this Agreement, or any transaction contemplated hereby but for no other purpose. Each Party hereto agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the District of Delaware or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of Delaware or, to the extent applicable, the United States Bankruptcy Court for the District of Delaware. Each Party hereto further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth above shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction in this Section 8.15. Each Party hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of Delaware, (ii) the United States District Court for the District of Delaware or (iii) to the extent applicable, the United States Bankruptcy Court for the District of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

8.16 Waiver of Jury Trial

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY OTHER DOCUMENT REFERRED TO HEREIN OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

8.17 Counterparts and Electronic Signatures

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by any of the Parties and the receiving Parties may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

[***Remainder of page intentionally left blank.***]

IN WITNESS WHEREOF the Parties have executed this Share Purchase Agreement.

KOGNITIV US LLC

Per: Signed by: Tim Sullivan AB2D7353DDDD484...

Name: Tim Sullivan

Title: Authorized Signatory

CAPILLARY TECHNOLOGIES LLC

Per: anant.choubey

Name: Anant Choubey
Title: Chief Operating Officer

SCHEDULE 1.01

Aged Accounts Receivables

Procter & Gamble Company approximately in the amount of $61,881.66

Sam Houston Race Park, LLC approximately in the amount of $39,562.60

SCHEDULE 1.02

Offered Employees

[redacted] VP, Strategy & Consulting

[redacted], VP, Product Engineering

[redacted], Sr. Director, Platform Service Delivery

[redacted], Sr. Director, Platform Service Delivery

[redacted], Account Director

[redacted], Principal, Technical Service Delivery

[redacted], Director, Strategy & Planning

[redacted], Manager, Application Management Services

[redacted], Manager, Application Management Services

[redacted], Senior Manager, Partnerships

[redacted], Campaign Developer

[redacted], Consumer Marketing Strategy & Planning Manager

[redacted], Chief Customer Officer

SCHEDULE 1.03

Purchased Contracts and Rejected Contracts

Purchased Contracts:

Clients

1. Master Subscription Agreement between Kognitiv US LLC (formerly known as Aimia US LLC and former names if applicable) and **The Aldo Group, Inc**. dated May 13, 2016 and all related agreements and amendments

2. Order form effective 29 Jan 2024 executed between Kognitiv US LLC and **Churchill Down Incorporated** and all related agreements and amendments

3. PaaS Subscription service agreement dated 3rd Sep 2021 between Kognitiv US LLC (formerly known as Aimia US LLC and former names if applicable) and **Curaleaf Inc** and all other related agreements and amendments

4. SaaS agreement dated 1st April 2020 between Kognitiv US LLC (formerly known as Aimia US LLC and former names if applicable) and **Daytona Beach Canal Club Inc** and all other related agreements and amendments

5. SaaS agreement dated 1st Dec 2020 between Kognitiv US LLC (formerly known as Aimia US LLC and former names if applicable) and **Emerald Downs Racing LLC** and all other related agreements and amendments

6. SaaS agreement dated 1st Aug 2021 between Kognitiv US LLC (formerly known as Aimia US LLC and former names if applicable) and **Gateway Casinos & Entertainment Limited** and all other related agreements and amendments

7. SaaS agreement dated 1st Jan 2016 between Kognitive US LLC (f/k/a Aimia US LLC, Aimia US Inc.) and **Hallmark Cards Inc. (f/k/a Hallmark Marketing Company)** and all other related agreements and amendments

8. Smart Button Associates Master Subscription Agreement dated 5th March 2013 between Kognitiv US LLC (assigned by Smart Button Associates LLC) and **Kirkland's Inc,** Professional Services Agreement dated 15th Nov 2016 between Kognitiv US LLC (formerly known as Aimia US LLC) and **Kirkland's Inc** all other related agreements and amendments

9. Order Form and MSA dated 15th Jan 2017 between Kognitiv US LLC (formerly known as Aimia US LLC and former names if applicable) and **The Leading Hotels of the World, Ltd.** and all other related agreements and amendments

10. Master Subscription Agreement and Order Form between **MEC Lone Star, LP** and Kognitiv US LLC (assigned by Smart Button Associates LLC) .dated February 15, 2011 and other related agreements and amendments

11. Subscription Agreement between **Magna Entertainment Corporation** and Kognitiv US LLC (assigned by Smart Button Associates LLC) dated August 14, 2006 and other related agreements

This is Exhibit "W" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 28, 2026.

ACKNOWLEDGEMENT & AMENDMENT AGREEMENT

THIS ACKNOWLEDGEMENT & AMENDMENT AGREEMENT (this "**Agreement**") is entered into as of May 1, 2025 between Loyalty Solutions Holdings US Inc. ("**Loyalty**"), a Delaware corporation, Kognitiv US LLC ("**Kognitiv**"), a Delaware limited liability company, and Capillary Technologies LLC ("**Capillary**"), a Minnesota limited liability company.

Reference is made to (i) a Purchase and Sale Agreement dated March 31, 2025 (the "**Loyalty PSA**") between Loyalty and Capillary and (ii) an Asset Purchase Agreement dated March 31, 2025 (the "**Kognitiv APA**") between Kognitiv and Capillary.

WHEREAS pursuant to a payment direction dated as of May 1, 2025 (the "**Original Payment Direction**"), Loyalty irrevocably and unconditionally authorized and directed Capillary to pay the Estimated Closing Purchase Price, less the Deposit, plus 50% of the Escrow Fee, for and on behalf of Loyalty, to the persons, in the amounts and in accordance with the wire transfer instructions in Schedule A thereto;

AND WHEREAS pursuant to the Original Payment Direction, Kognitiv irrevocably and unconditionally authorized and directed Capillary to pay the Adjusted Kognitiv APA Purchase Price amount of $16,458,480 for and on behalf of Kognitiv, to the persons, in the amounts and in accordance with the wire transfer instructions in Schedule B thereto;

AND WHEREAS the Original Payment Direction included incorrect payment amounts and wire instructions;

AND WHEREAS in light of the above, the parties hereto desire to amend the Original Payment Direction on the terms and subject to the conditions set forth in this acknowledgement agreement (this "**Agreement**");

AND WHEREAS capitalized terms used in this Agreement but not otherwise defined herein have the meanings ascribed to them in the Original Payment Direction.

NOW, THEREFORE:

A. Schedule "A" and Schedule "B" of the Original Payment Direction are hereby deleted in their entirety and replaced with the new Schedule "A", Schedule "B" and Schedule "C" set out in Exhibit A to this Agreement.

B. The following is hereby added in Section 1 of the Original Payment Direction after: "The fees payable to the Escrow Agent are $4,500 (the "Escrow Fee"), which amount shall be shared 50/50 between Loyalty and Capillary":

> "*Loyalty shall pay the amount of $2,250, representing its portion of the Escrow Fee, directly to the Escrow Agent , in accordance with the wire transfer instructions in Schedule C. Capillary shall pay the amount of $2,250, representing its portion of the Escrow Fee,*

to the Escrow Agent as an addition to the amount of the Indemnification Escrow Amount, in accordance with the wire transfer instructions in Schedule A."

C. The paragraph at the end of Section 1 of the Original Payment Direction is hereby deleted and replaced with the following:

"*Loyalty hereby irrevocably and unconditionally authorizes and directs Capillary to pay the Estimated Closing Purchase Price, less the Deposit, for and on behalf of Loyalty, to the persons, in the amounts and in accordance with the wire transfer instructions in Schedule A, and this shall be your good, sufficient, irrevocable, unconditional and lawful authority for making the payments as directed herein.*"

D. Each of the parties hereto acknowledges and agrees that, notwithstanding the terms of the Loyalty PSA, the Kognitiv APA, the Original Payment Direction and this Agreement, the transactions contemplated under each of the Loyalty PSA and the Kognitiv APA shall be deemed to have been completed effective as of May 1, 2025 upon receipt by each applicable payee of all amounts payable under the Original Payment Direction, as amended by this Agreement.

E. The terms and provisions of the Original Payment Direction, except as expressly modified by this Agreement, shall continue and remain in full force and effect and be a binding and valid agreement and shall constitute good, sufficient, irrevocable, unconditional and lawful authority for Capillary to make the payments set out in the Original Payment Direction, except as expressly modified by this Agreement.

F. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Original Payment Direction, the provisions of this Agreement will prevail to the extent of such conflict.

G. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and this Agreement shall be treated, in all respects, as an Ontario contract.

H. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to be an original duly and validly delivered and be valid and effective as of the date hereof for all purposes.

[Signature page follows]

LOYALTY SOLUTIONS HOLDINGS US INC.

Per: Griffin Rotman
Name: Griffin Rotman
Title: Director

KOGNITIV US LLC

Per: _____
Name: Tim Sullivan
Title: Chief Executive Officer

LOYALTY SOLUTIONS HOLDINGS US INC.

Per: _____
Name: Griffin Rotman
Title: Director

KOGNITIV US LLC

Per: Tim Sullivan
Name: Tim Sullivan
Title: Chief Executive Officer

CAPILLARY TECHNOLOGIES LLC

Per: Anant Choubey

Name: Anant Choubey
Title: Chief Operating Officer

EXHIBIT A

SCHEDULE "A"

Payee	*Payment Instructions*	*Amount (CAD$)* *Notes*
JPMorgan Chase Bank N.A., Toronto Branch	Beneficiary Name: [redacted] Beneficiary Address: [redacted] Beneficiary Account No: [redacted] Beneficiary Bank Name: [redacted] Beneficiary Bank Address: [redacted] Swift Code: [redacted] Bank ID: [redacted] Transit : [redacted] Clearing Code: [redacted]	$250,000 For payment of the Adjustment Escrow Amount
JPMorgan Chase Bank N.A., Toronto Branch	Beneficiary Name: [redacted] Beneficiary Address: [redacted] Beneficiary Account No: [redacted] Beneficiary Bank Name: [redacted] Beneficiary Bank Address: [redacted] Swift Code: [redacted]	$502,250 For payment of the Indemnification Escrow Amount ($500,000) and 50% of the Escrow Fee ($2,250)

Payee	*Payment Instructions*	*Amount (CAD$)* *Notes*
	Bank ID: [redacted] Transit : [redacted] Clearing Code: [redacted]	
JPMorgan Chase Bank N.A., Toronto Branch	Beneficiary Name: [redacted] Beneficiary Address: [redacted] Beneficiary Account No: [redacted] Beneficiary Bank Name: [redacted] Beneficiary Bank Address: [redacted] Swift Code: [redacted] Bank ID: [redacted] Transit : [redacted] Clearing Code: [redacted]	$3,650,000 For payment of the Churn Escrow Amount
Kognitiv US LLC	To the parties and in the amounts as set out in Schedule B	$16,458,480 Representing the Adjusted Kognitiv APA Purchase Price (as such term is defined in Section 2)
Loyalty Solutions Holdings US Inc.	Bank Name: [redacted] Bank Branch Address: [redacted]	$750,510

Payee	*Payment Instructions*	*Amount (CAD$)* *Notes*
	Transit No.: [redacted] Bank ID: [redacted] Designation: [redacted] CAD Account No.: [redacted] SWIFT CODE: [redacted] ABA #: [redacted]	Balance of Remaining Estimated Closing Purchase Price after having made the payments set out above in this Schedule A (excluding the 50% of the Escrow Fee paid as an addition to the amount of the Indemnification Escrow Amount), less the Deposit
Total:		**$**21,611,240 Representing the Estimated Closing Purchase Price, less the Deposit, plus 50% of the Escrow Fee

SCHEDULE "B"

Payee	*Payment Instructions*	*Amount (CAD$)* *Notes*
Faegre Drinker Biddle & Reath LLP	Bank Name: [redacted] Wire Instruction: [redacted] Account Number: [redacted] ACH Routing Number: [redacted] Wire Routing Number: [redacted] Swift Code: [redacted]	$532,718.60 (CAD conversion at 1.3801 WSJ rate) For payment of the carve-out under the DIP financing order
Guines, LLC	All Deliveries Must Include the [redacted] Account Number and Client Name M&T/WT Account #: [redacted] M&T/WT Account Name: [redacted] Attention: [redacted] **Wires** [redacted] **Foreign Wires** [redacted]	$2,031,507 (CAD conversion at 1.3801 WSJ rate) For repayment of its portion of the DIP loan

Payee	*Payment Instructions*	*Amount (CAD$)* *Notes*
	[redacted]	
Haynes and Boone, LLP	[redacted]	$34,502.50 For payment of fees
Ravin Greenberg, LLC	[redacted]	$20,701.50 For payment of fees
McCarthy Tetrault, LLP	McCarthy Tetrault, LLP	$5,910.63

Payee	*Payment Instructions*	*Amount (CAD$)* *Notes*
	1000 De La Gauchetière Street West Suite MZ400 Montréal, Québec Canada H3B 0A2 [redacted] [redacted]	
Aimia Inc.	Bank Name: [redacted] Bank Branch Address: [redacted] Bank Number: [redacted] Transit Number: [redacted] Beneficiary bank account: [redacted] Currency: [redacted] SWIFT code: [redacted] IBAN: [redacted]	$507,877 For repayment of its portion of the DIP loan

Payee	***Payment Instructions***	***Amount (CAD$)*** ***Notes***
Kognitiv US LLC	Bank Name: [redacted] Bank Branch Address: [redacted] SWIFT CODE: [redacted] ABA #: [redacted] Account Name: [redacted] Account #: [redacted]	$13,325,262.77 Remaining amount of the Adjusted Kognitiv APA Purchase Price after having made the payments set out above in this Schedule B
Total:		$16,458,480

SCHEDULE "C"

Payee	***Payment Instructions***	***Amount (CAD$)*** ***Notes***
JPMorgan Chase Bank N.A., Toronto Branch	Pay to (Intermediary Bank): (SWIFT field 56A) [redacted] Beneficiary Bank: Recommended: (SWIFT field 57A) [redacted] Alternative: (SWIFT field 57D) [redacted] Beneficiary: (SWIFT field 59) [redacted] [*Provide only if requested by the remitting bank Teller:*] [redacted]	$2,250 For payment of 50% of the Escrow Fee

Payee	*Payment Instructions*	*Amount (CAD$)* *Notes*
	[redacted]	

This is Exhibit "X" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Kognitiv US LLC,	Case No. 25-10648 (BLS)
Debtor.[1]	**Ref: D.I. 63**

ORDER (I) APPROVING THE PROCEDURES FOR DISMISSAL OF THE DEBTOR'S CHAPTER 11 CASE, (II) APPROVING THE PROCESS FOR FINAL PROFESSIONAL FEES, AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] of the above-captioned debtor and debtor in possession (the "Debtor") for the entry of an order (i) dismissing the Chapter 11 Case; (ii) authorizing the Debtor to satisfy the Professional Fee Claims and the Prepetition Secured Claims; (iii) authorizing, but not directing, the Debtor to abandon and destroy the Retained Books and Records; (iv) approving procedures for the filing and approval of Final Fee Applications; (v) waiving the requirement for the Debtor to file the Schedules and Statement; and (vi) granting related relief, all as more fully set forth in the Motion; and upon consideration of the record of the Chapter 11 Case; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Standing Order; and this Court having found that venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that

[1] The last four digits of the Debtor's federal tax identification number are 4765. The Debtor's mailing address is 121 Washington Ave. N, 4th Floor, Minneapolis, MN 55401.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and the Court having found and determined that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, its creditors, and all other parties-in-interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Debtor is authorized to remit the Customer Receivables, and any Accounts Receivable subsequently received thereby, to the Purchaser.

3. The Debtor shall file a final monthly operating report, that covers the period through the entry of this Order.

4. Pursuant to sections 105(a) and 554 of the Bankruptcy Code and the Bankruptcy Rule 6007, the Debtor is authorized, but not directed, to abandon or destroy, or cause to be abandoned and destroyed, any Retained Books and Records in their possession; *provided*, that any hard copy documents containing personally identifiable information must be shredded, and any electronic documents containing personally identifiable information must be destroyed.

5. All Professionals that have not obtained a final order approving their fees (the "Final Fee Order") shall file any Final Fee Application on or before June 25, 2025. Any objections or responses to a Final Fee Application shall be filed on or before 4:00 p.m. (ET) on the day that is fourteen days following the filing of each Final Fee Application (the "Objection Deadline"), and shall be served on (a) counsel to the Debtor, Faegre Drinker Biddle & Reath LLP, Attn: Richard J. Bernard (richard.bernard@faegredrinker.com), Patrick A. Jackson (patrick.jackson@faegredrinker.com), Sarah E. Silveira (sarah.silveira@faegredrinker.com); (b)

counsel to the Prepetition Lenders, (i) Ravin Greenberg LLC, Attn: Chad Friedman (cfriedman@chapter11law.com); and (ii) Cross & Simon, LLC, Attn: Kevin S. Mann (kmann@crosslaw.com); (c) counsel to Capillary Technologies LLC, Barnes & Thornburg, Attn: Gregory Plotko (gplotko@btlaw.com) and Amy E. Tryon (amy.tryon@btlaw.com); and (d) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), Attn: Jane M. Leamy, Esq. (jane.m.leamy@usdoj.gov). The Court will hold a hearing, if necessary, to consider the Final Fee Applications, and resolve any objections thereto, on July 30, 2025, at 10:30 a.m. (ET). If no objections or responses are filed by the Objection Deadline, the Court may approve the Final Fee Applications without any further notice or a hearing.

6. Without further notice to any party or order of the Court, the Debtor is authorized to distribute to the Prepetition Lenders, in partial satisfaction of the Prepetition Secured Claims, (i) any remaining Cash, and (ii) the residual amount, if any, in the Carve-Out Account after payment of all U.S. Trustee fees and allowed Professional Fee Claims.

7. As soon as reasonably practicable following entry of the Final Fee Order, the filing of the monthly operating reports, as set forth in paragraph 3, and payment of the amounts authorized hereby, as set forth in paragraph 2, the Debtor shall file a certification (the "Certification") requesting entry of an order, in the form attached hereto as **Exhibit A**, dismissing the Chapter 11 Case. The Certification will verify that all quarterly fees of the U.S. Trustee have been paid in full and all monthly operating reports have been filed.

8. The Certification shall be served on the U.S. Trustee and all entities that have requested notice pursuant to Bankruptcy Rule 2002.

9. Notwithstanding anything to the contrary, including, without limitation, section 349 of the Bankruptcy Code, all prior orders, releases, stipulations, settlements, rulings, orders,

and judgments of this Court made during the course of the Chapter 11 Case of the Debtor, including, without limitation, the Sale Order and the Final DIP Order, shall remain in full force and effect, shall be unaffected by the dismissal of the Chapter 11 Case, and are specifically preserved for purposes of finality of judgment and *res judicata* unless expressly amended or overruled by a subsequent stipulation, settlement, order, or judgment of this Court, as applicable.

10. To the extent applicable, Bankruptcy Rules 6004(h) and 6006(d) are waived and this Order shall be effective and enforceable immediately upon entry.

11. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted pursuant to this Order.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order or any other Order of this Court entered in the Chapter 11 Case.

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Dated: June 11th, 2025
Wilmington, Delaware

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Kognitiv US LLC,	Case No. 25-10648 (BLS)
Debtor.[3]	**Ref: D.I. ___**

ORDER (I) DISMISSING THE DEBTOR'S CHAPTER 11 CASE AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Dismissal Motion")[4] of the above-captioned debtor and debtor in possession (the "Debtor") for the entry of an order (i) dismissing the Chapter 11 Case; (ii) authorizing the Debtor to satisfy the Professional Fee Claims and the Prepetition Secured Claims; (iii) authorizing, but not directing, the Debtor to abandon and destroy the Retained Books and Records; (iv) approving procedures for the filing and approval of Final Fee Applications; (v) waiving the requirement for the Debtor to file the Schedules and Statement; and (vi) granting related relief, all as more fully set forth in the Dismissal Motion; and upon consideration of the record of the Chapter 11 Case; and upon the *Order (I) Approving the Procedures for Dismissal of the Debtor's Chapter 11 Case, (II) Approving the Process for Final Professional Fees, and (III) Granting Related Relief* [D.I. __]; and upon the certification of counsel requesting entry of an order dismissing the Chapter 11 Case [D.I. __]; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Standing Order; and this Court having found that venue of the Chapter 11 Case and the

[3] The last four digits of the Debtor's federal tax identification number are 4765. The Debtor's mailing address is 121 Washington Ave. N, 4th Floor, Minneapolis, MN 55401.

[4] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Dismissal Motion.

Dismissal Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that notice of the Dismissal Motion has been given as set forth in the Dismissal Motion and that such notice is adequate and no other or further notice need be given; and the Court having found and determined that the relief requested in the Dismissal Motion and provided for herein is in the best interest of the Debtor, its estate, its creditors, and all other parties-in-interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

13. The Dismissal Motion is GRANTED as set forth herein.

14. Pursuant to sections 1112(b) and 305(a) of the Bankruptcy Code, the Debtor's Chapter 11 Case is dismissed, effective immediately.

15. The Debtor shall serve this Order on all entities that have requested notice pursuant to Bankruptcy Rule 2002, and the Debtor's known creditors and equity holders. No further notice regarding the dismissal of the Chapter 11 Case shall be required.

16. Notwithstanding anything to the contrary, including, without limitation, section 349 of the Bankruptcy Code, all prior orders, releases, stipulations, settlements, rulings, orders, and judgments of this Court made during the course of the Chapter 11 Case of the Debtor, including, without limitation, the Sale Order and the Final DIP Order, shall remain in full force and effect, shall be unaffected by the dismissal of the Chapter 11 Case, and are specifically preserved for purposes of finality of judgment and *res judicata* unless expressly amended or overruled by a subsequent stipulation, settlement, order, or judgment of this Court, as applicable.

17. To the extent applicable, Bankruptcy Rules 6004(h) and 6006(d) are waived and this Order shall be effective and enforceable immediately upon entry.

18. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted pursuant to this Order.

19. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order or any other Order of this Court entered in the Chapter 11 Case.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Kognitiv US LLC,	Case No. 25-10648 (BLS)
Debtor.[1]	**Ref: D.I. 63 & 70**

ORDER (I) DISMISSING THE DEBTOR'S CHAPTER 11 CASE AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Dismissal Motion")[2] of the above-captioned debtor and debtor in possession (the "Debtor") for the entry of an order (i) dismissing the Chapter 11 Case; (ii) authorizing the Debtor to satisfy the Professional Fee Claims and the Prepetition Secured Claims; (iii) authorizing, but not directing, the Debtor to abandon and destroy the Retained Books and Records; (iv) approving procedures for the filing and approval of Final Fee Applications; (v) waiving the requirement for the Debtor to file the Schedules and Statement; and (vi) granting related relief, all as more fully set forth in the Dismissal Motion; and upon consideration of the record of the Chapter 11 Case; and upon the *Order (I) Approving the Procedures for Dismissal of the Debtor's Chapter 11 Case, (II) Approving the Process for Final Professional Fees, and (III) Granting Related Relief* [D.I. 70]; and upon the certification of counsel requesting entry of an order dismissing the Chapter 11 Case [D.I. __]; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Standing Order; and this Court having found that venue of the Chapter 11 Case and the Dismissal Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core

[1] The last four digits of the Debtor's federal tax identification number are 4765. The Debtor's mailing address is 121 Washington Ave. N, 4th Floor, Minneapolis, MN 55401.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Dismissal Motion.

proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that notice of the Dismissal Motion has been given as set forth in the Dismissal Motion and that such notice is adequate and no other or further notice need be given; and the Court having found and determined that the relief requested in the Dismissal Motion and provided for herein is in the best interest of the Debtor, its estate, its creditors, and all other parties-in-interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Dismissal Motion is GRANTED as set forth herein.

2. Pursuant to sections 1112(b) and 305(a) of the Bankruptcy Code, the Debtor's Chapter 11 Case is dismissed, effective immediately.

3. The Debtor shall serve this Order on all entities that have requested notice pursuant to Bankruptcy Rule 2002, and the Debtor's known creditors and equity holders. No further notice regarding the dismissal of the Chapter 11 Case shall be required.

4. Notwithstanding anything to the contrary, including, without limitation, section 349 of the Bankruptcy Code, all prior orders, releases, stipulations, settlements, rulings, orders, and judgments of this Court made during the course of the Chapter 11 Case of the Debtor, including, without limitation, the Sale Order and the Final DIP Order, shall remain in full force and effect, shall be unaffected by the dismissal of the Chapter 11 Case, and are specifically preserved for purposes of finality of judgment and *res judicata* unless expressly amended or overruled by a subsequent stipulation, settlement, order, or judgment of this Court, as applicable.

5. To the extent applicable, Bankruptcy Rules 6004(h) and 6006(d) are waived and this Order shall be effective and enforceable immediately upon entry.

6. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted pursuant to this Order.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order or any other Order of this Court entered in the Chapter 11 Case.

Dated: July 24th, 2025
Wilmington, Delaware

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit "Y" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of July 5, 2024 by and among **GARY JONAS COMPUTING LTD.**, a corporation incorporated under the laws of the Province of Ontario, **CORA GROUP AUSTRALIA PTY LTD.**,an Australian proprietary company, **JONAS COMPUTING (UK) LIMITED,** a United Kingdom company ("**Jonas UK**"), **JONAS FOOD HOLDCO INC.**, a Delaware corporation (each a "**Purchaser**", and collectively the "**Purchasers**") and **LOYALTY SOLUTIONS CANADA INC.**, a corporation incorporated under the laws of Canada, **KOGNITIV AUSTRALIA PTY LTD.**, an Australian proprietary company, **KOGNITIV US LLC**, a Delaware limited liability company, **AIMIA MIDDLE EAST FREE ZONE LLC**, a United Arab Emirates limited liability company ("**Kognitiv AIMIA**"), **KOGNITIV SINGAPORE PTE LTD.** (formerly known as AIMIA Proprietary Loyalty Singapore Pte. Ltd.), a Singapore private limited company with registration number 199406130H ("**Kognitiv Singapore**"), and **KOGNITIV CORPORATION**, a corporation incorporated under the laws of Ontario (each a "**Seller**", and collectively the "**Sellers**") and the Assignors (and collectively with the Sellers, the "**Seller Parties**", and each, a "**Seller Party**").

1. INTERPRETATION

1.1 Definitions.

(a) "**Agreement**" means this asset purchase agreement and all schedules hereto, and all amendments to the extent such amendments are made pursuant to a written agreement between the Parties;

(b) "**Assets**" means the assets and undertakings referred to or described in Sections 2.1 and 2.2;

(c) "**Assignors**" means Kognitiv UK Limited, Kognitiv Hong Kong Limited, AIMIA Proprietary Loyalty Sendirian Berhad, Extreme Innovations Technosys India Private Limited, and Noetic Marketing Technologies (PVT) Ltd.

(d) "**Business**" means the business of licensing the Software and the provision of ancillary services;

(e) "**Business Contract**" means any Contract listed in Schedule C;

(f) "**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario, Canada, Singapore, the United Arab Emirates, Australia, and the United Kingdom;

(g) "**Closing**" means the closing of the transactions contemplated by this Agreement, including the sale and purchase of the Assets;

(h) "**Closing Date**" means the date hereof;

(i) "**Closing Date Balance Sheets**" means each distinct balance sheet of each of the Sellers as at the Closing Date prepared in accordance with IFRS (except as otherwise expressly set out in Schedule D attached hereto) consisting of the Tangible Assets and the Liabilities for each respective Seller;

(j) "**Closing Payment**" has the meaning set out in Section 2.5(a);

(k) "**Contract**" means any agreement, contract, lease, sublease, guarantee, license or other arrangement, understanding, instrument or commitment, of any nature or kind whatsoever, whether written or oral;

(l) "**Contract Requiring Consent**" has the meaning set out in Section 2.9.

(m) "**Customer Consent Agreements**" means those fully executed consent to assignment agreements between the Purchaser, on one hand, and the applicable customer, on the other hand, where the parties agree to the assignment of the applicable Contract Requiring Consent(s).

(n) "**Disclosure Schedule**" means the disclosure schedule attached as Schedule B;

(o) "**Dispute**" has the meaning set out in Section 7.1;

(p) **"Dispute Notice**" has the meaning set out in Section 7.2

(q) "**Final Closing Statement**" has the meaning set out in Section 2.7(c);

(r) "**Final NTA Amount**" has the meaning set out in Section 2.7(a);

(s) "**Financial Institution Client Holdback Amount**" has the meaning set out in Section 2.5(c);

(t) "**Financial Institution Clients**" has the meaning set out in Section 2.5(c)(i);

(u) "**Financial Statement Date**" means December 31, 2023;

(v) "**Financial Statements**" means, collectively, the Sellers pro forma profit and loss statement for the years ended December 31, 2022 and December 31, 2023, unaudited pro forma balance sheet as at December 31, 2023, as they relate to the Business, complete and correct copies of which are attached hereto as Section 1.1(v) of Schedule B;

(w) "**Fundamental Representations**" has the meaning set out in Section 3.2(a)(i);

(x) "**Governmental Authority**" means any (i) domestic or foreign legislative, executive, judicial or administrative body or Person having jurisdiction in the relevant circumstances, including, but not limited to, any subdivision, agent, commission, board, authority or official of any of the foregoing and (ii) any governmental, quasigovernmental or private body exercising any regulatory, legislative, expropriation or Tax Authority under, or for the account of, any of the foregoing, including a recognized stock exchange;

(y) "**Gross Recurring Revenue**" means all recurring revenue earned by the Sellers in the normal course of business operations including subscription, support, maintenance and enhancements for the Software as well as payment processing fees and hosting, all calculated in accordance with IFRS. Recurring revenue does not include variable commerce revenue, professional services specific to the performance of a particular for-fee service such as training, custom development, project management, installation or any onetime or ad-hoc service or time and materials services;

(z) "**Holdback Amount**" has the meaning set out in Section 2.5(b);

(aa) "**Holdback Release Date**" means the date which is twelve (12) months after the Closing Date;

(bb) "**IFRS**" has the meaning set out in Section 1.7;

(cc) "**Intellectual Property**" means intellectual property listed in Schedule A attached hereto, including all versions thereof, and all related documentation;

(dd) "**Intellectual Property Representations**" has the meaning set out in Section 3.2(a)(iii);

(ee) **"Jonas Singapore"** means a private company limited by shares to be incorporated in Singapore following the Closing Date;

(ff) "**Jonas UAE**" means a legal entity to be incorporated in the United Arab Emirates following the Closing Date;

(gg) "**Key Employee**" means Mark Laws;

(hh) "**Laws**" means, collectively, all:

(i) domestic or foreign laws, including statutes, subordinate legislation or treaties; and

(ii) guidelines, directives, rules, standards, requirements, policies, orders, judgments, injunctions, awards or decrees of a Governmental Authority having the force of law;

(ii) "**Leased Premises**" means Office 204, Building 15, Dubai Internet City, UAE, P.O. Box 33818

(jj) "**Leases**" means the leases for the Leased Premises;

(kk) "**Liabilities**" means the aggregate book value of only the following liabilities of the Sellers to the extent relating to the Business, each as at the Closing Date, calculated in accordance with the provisions of Section 2.7:

(i) accounts payable;
(ii) outstanding passthrough redemption costs / credit cards payables;
(iii) advanced billings / deferred revenue / customer deposits;
(iv) income taxes, sales taxes and other taxes payable;
(v) deferred compensation;
(vi) employee-related payables (e.g. accrued payroll, commissions, benefits, vacation, pension, payroll taxes); and
(vii) accrued expenses, accrued vacation pay, and other liabilities.

For greater certainty, the Liabilities will exclude any indebtedness (or related accrued interest) of the Business owing to its banks, its Employees, and related parties;

(ll) "**Lien**" means any encumbrance or title defect of any nature or kind;

(mm) "**Longstop Date**" means the first Business Day one hundred and eighty (180) days following the Closing Date;

(nn) "**Losses**" means all losses, damages, expenses, fines, penalties, obligations, or liabilities whether or not foreseeable, including all related reasonable legal fees, expenses and costs, provided that Losses shall specifically exclude any and all punitive damages except as actually awarded by a court of competent jurisdiction;

(oo) "**Middle East Trademarks** " means the trademarks registered in the name of Kognitiv AIMIA, listed in Schedule A;

(pp) "**NTA Amount**" means the difference between (i) the value of the Tangible Assets and (ii) the value of the Liabilities;

(qq) "**NTA Excess**" has the meaning set out in Section 2.7(d);

(rr) "**NTA Expected Amount**" means $950,000;

(ss) "**NTA Shortfall**" has the meaning set out in Section 2.7(e);

(tt) "**Ordinary Course**" means, in respect of the Business, an action that is taken that is consistent with the past practices of the Sellers in respect of the Business and that is taken in the ordinary course of the normal day-to-day operations of the Business;

(uu) "**Parties**" means the Purchasers and the Seller Parties;

(vv) "**Person**" means an individual, partnership, limited partnership, association, joint venture, trustee, trust, corporation, company, unlimited liability company, unincorporated organization or other entity;

(ww) "**Proposed Final Closing Statement**" has the meaning set out in Section 2.7(a);

(xx) "**Purchase Price**" has the meaning set out in Section 2.5;

(yy) "**Purchasers' Indemnitees**" has the meaning set out in Section 4.1(a);

(zz) "**Review Period**" has the meaning set out in Section 2.7(a);

(aaa) "**Reviewing Accountant**" means a senior partner in the Toronto office of BDO LLP, chosen by the managing partner of such office;

(bbb) "**Seller Parties**" has the meaning set out in the preamble to this Agreement;

(ccc) "**Sellers**" has the meaning ascribed to such term in the opening paragraph of this Agreement;

(ddd) "**Sellers' Objection**" has the meaning set out in Section 2.7(b);

(eee) "**Sellers' Representative**" means Julia Wehmeyer;

(fff) "**Singapore Employee Transfer Date**" has the meaning set out in Section 5.6(c)(i);

(ggg) "**Software**" means, collectively, the computer programs owned by the Sellers and used by the Sellers in the activities of the Business, known by the names listed in Schedule A attached hereto, including all versions thereof, and all related documentation;

(hhh) "**Tangible Assets**" means the aggregate book value of only the following assets of the Sellers to the extent relating to the Business, each as at the Closing Date, calculated in accordance with the provisions of Section 2.4:

(i) customer cash and cash equivalents (i.e. restricted cash);
(ii) accounts receivable ("**A/R**") (limited for the purposes of the adjustment(s) contemplated under Section 2.7 to the A/R collected within 180 days after the Closing Date);
(iii) inventory;
(iv) prepaid expenses relating to the Business; and
(v) deposits relating to the Business for credit cards relating to the HSBC program, Helix deposit for the TD (MBNA) program, NAB deposits, and Digital Glue floats for the Exxon program; and
(vi) net fixed assets (net of accumulated depreciation and excluding any capitalized development expenses)

For greater certainty, the Tangible Assets will exclude any deferred tax assets, and any intangible assets such as goodwill and capitalized software development costs.

(iii) "**Tax**" means (a) all taxes, charges, fees, duties, customs, tariffs, imposts, payments in lieu, levies or other assessments or charges in the nature of a tax or any other similar payment imposed by any Tax Authority, including, but not limited to, income, sales, gross receipts, use, license, recording, occupation, environmental, customs duties, single business, margin, unemployment, disability, mortgage, inventory, alternative or add-on minimum, profits, receipts, premium, excise, property, transfer, franchise, payroll, withholding, social security, estimated or other taxes or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever in any jurisdiction and (b) any interest, penalty, fine or addition to any of the foregoing, whether disputed or not;

(jjj) "**Tax Authority**" means any Governmental Authority or subdivision, agency, commission or authority thereof, or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or other imposition of Taxes;

(kkk) "**Tax Representations**" has the meaning set out in Section 3.2(a)(ii);

(lll) "**Tax Returns**" means any federal, provincial, state, local or foreign Tax report, return (including information return), claim for refund, election, notice, estimated Tax filing, declaration, statement, schedule, form, request or other document (including any related or supporting information or any amendment to any of the foregoing) supplied to, required to be filed with or required to be maintained by any Tax Authority with respect to Taxes, including any return or filing made on a consolidated, group, combined, unified or affiliated basis;

(mmm) "**Time of Closing**" means 5:00 p.m. (Eastern Standard Time) on the Closing Date;

(nnn) "**Transaction Personal Information"** means any personal information in the possession, custody or control of the Sellers at or before the Closing, including personal information about employees, suppliers, customers, directors, officers or shareholders that is disclosed to the Purchasers or any representative of the Purchasers;

(ooo) "**Transferred Employees**" means the employees and contractors listed in Schedule E attached hereto;

(ppp) "**Transferring Singapore Employees**" means the individuals identified as being employed by Kognitiv Singapore on the Closing Date and whose details are set out in Schedule E attached hereto;

(qqq) "**Transferring UAE Employees**" means the individuals identified as being employed by Kognitiv AIMIA on the Closing Date and whose details are set out in Schedule E attached hereto.

(rrr) "**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*) and any predecessor regulations including the Transfer of Undertakings (Protection of Employment) Regulations 1981 (*SI 1981/1794*);

(sss) "**UK Employee**s" means the individuals identified as being employed by Kognitiv UK Limited on the Closing Date and whose details are set out in Schedule E attached hereto.

1.2 **Knowledge.** Where any representation or warranty contained in this Agreement is expressly qualified by reference to the "knowledge of the Sellers" or to any similar expression, it will be deemed to refer to the knowledge of the Chief Executive Officer, Chief Financial Officer, SVP, Global Head of Customer Operations, and Chief Information Officer of ParentCo, after reasonable internal investigation.

1.3 **Currency.** All references to currency herein are to lawful money of Canada.

1.4 **Headings.** The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto.

1.5 **Extended Meanings.** In this Agreement, (i) words importing any gender will include all genders, (ii) words importing the singular will include the plural and *vice versa*, (iii) words importing the masculine gender will include the feminine and neuter genders and *vice versa* and (iv) the word "including", when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific statements, items or matters set forth immediately following such word or to similar statements, items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather is to be construed to refer to all other terms or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

1.6 **Construction.** The Parties agree that this Agreement is the product of negotiation between sophisticated Persons, each of whom was represented by counsel, and each of whom had an opportunity to participate in, and did participate in, the drafting of the provisions of this Agreement.

1.7 **Accounting Principles**. Wherever in this Agreement reference is made to a calculation to be made or an action to be taken in accordance with the International Financial Reporting Standards ("**IFRS**"), such reference will be deemed to be to International Financial Reporting Standards in Canada from time to time adopted by the CPA Canada, or any successor thereof, applied in a consistent manner and applicable as at the date on which such calculation or action is made or taken or required to be made or taken in accordance with IFRS.

1.8 **Calculating Periods of Time**. When calculating the period of time before which, within which or following which a delivery is to be made under this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

1.9 **Date of any Action**. In the event that any date on which any action is required to be taken hereunder by any Party is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

1.10 **Schedules**. The following schedules are attached hereto and are incorporated by reference and deemed to be part hereof:

Schedule A -	Software and Intellectual Property
Schedule B -	Disclosure Schedule
Schedule C -	Business Contracts
Schedule D -	NTA Calculation Methodology
Schedule E -	List of Transferred Employees
Schedule F -	Form of Employment Agreement for Transferred Employees
Schedule G -	Transitional Service Agreement
Schedule H -	Purchase Price Allocation
Schedule I -	Partnership Agreement
Schedule J -	Contract Amounts

2. SALE AND PURCHASE OF ASSETS

2.1 **Purchase and Sale of Software and Intellectual Property**. Upon the terms and subject to the conditions hereof, the Seller Parties agree to sell, as a going concern, and transfer in perpetuity to the Purchasers free and clear of all Liens, and the Purchasers agree to purchase, as a going concern, as of and with effect from the opening of business on the Closing Date, the following assets:

(a) the Software and all of Seller Parties' intellectual property rights worldwide in the Software, including, without limitation, the exclusive world-wide right to develop, modify, market, sell, distribute and install the current and future releases of the Software; and

(b) all of the Intellectual Property owned by the Seller Parties and used in the Business, worldwide, whether registered or unregistered, including:

(i) **Copyrights** – the copyrights used by the Sellers in the activities of the Business listed in Schedule A attached hereto;

(ii) **Trademarks; Domain Names** – the trademarks, tradenames, service marks, brand names, logos, domain names or the like used by the Sellers in the activities of the Business, listed in Schedule A attached hereto

(iii) **Patents** – the patents, patent applications and other patent rights of the Seller Parties used by the Sellers in the activities of the Business listed in Schedule A attached hereto and all applications, registrations and renewals of such patents;

(iv) **Technology** – all technology created, developed or acquired by the Seller Parties and used by the Seller Parties in the activities of the Business including all inventions, know

how, techniques, processes, procedures, methods, trade secrets, research and technical data, records, formulae, designs, databases, specifications, algorithms, instructions, guides, and manuals; and

(v) **Licenses** – all licenses, sub-licenses and franchises in which the Seller Parties is a licensee of Intellectual Property of a nature described in sub-paragraphs (i) - (c) above.

2.2 **Purchase and Sale of Other Assets**. Upon the terms and subject to the conditions hereof, Seller Parties agree to sell, convey, assign and transfer in perpetuity to Purchasers free and clear of all Liens, and Purchasers agree to purchase from Seller Parties, as of and with effect from the Time of Closing, the following assets:

(a) all computer and other equipment and accessories and supplies of all kinds owned by the Seller Parties used in the Business;

(b) all right, title and interest of the Seller Parties in, to and under the Business Contracts listed in Schedule C;

(c) prepaid expenses relating to the Business;

(d) deposits relating to the Business for credit cards relating to the HSBC program, Helix deposit for the TD (MBNA) program, NAB deposits, and Digital Glue floats for the Exxon program;

(e) the inventory relating to the Business, if any;

(f) all loans and advances made by Seller Parties to suppliers relating to the Business;

(g) all books, records or files of Seller Parties relating to the Business, with Seller Parties retaining such copies as required to meet any ongoing legal and contractual obligations;

(h) all accounts receivable, trade accounts, notes receivable, book debts and other debts due or accruing due to Seller Parties relating to the Business;

(i) all right, title and interest of Seller Parties in all claims and judgments relating to the Assets or the Business;

(j) all certifications, franchises, approvals, licenses, orders, registrations, certificates, and other similar rights of Seller Parties related to the Business, and all pending applications therefor;

(k) all rights of Seller Parties in and to customer and supplier lists relating to the Business; and

(l) all other rights of the Seller Parties related to the Business or the Assets.

2.3 **Assumption of Certain Obligations, Commitments and Liabilities.**

(a) Except as otherwise expressly provided herein, each of the Purchasers will assume only the Liabilities and those obligations, commitments and liabilities of the respective Sellers under the Business Contracts to the extent arising after the Closing Date, and no other liabilities of the Sellers of any nature.

(b) Each of the Purchasers will only be responsible for the Liabilities and the liabilities, commitments and obligations arising out of or based upon the Purchasers' ownership and operation of the respective Assets from and after the Closing Date.

(c) All liabilities, commitments or obligations not expressly assumed by the Purchasers hereunder are being retained by the Seller Parties (the "**Retained Liabilities**"). The Seller Parties hereby irrevocably and unconditionally waive and release the Purchasers from all claims in respect of the Retained Liabilities.

2.4 **Risk and Delivery.** Upon the terms and subject to the conditions hereof, as of and with effect from the Time of Closing:

(a) property and risk in the Assets (including, for the avoidance of doubt, all rights under the Business Contracts capable of being transferred) shall pass to the Purchasers; and

(b) every Asset which is then in the possession of the Seller Parties, legal title to which is capable of passing to the Purchasers by delivery, shall be constructively delivered to the Purchasers.

2.5 **Payment of Purchase Price**. Subject to adjustments, if any, pursuant to the terms of Sections 2.7, (*Determination of NTA Amount*) and any claims by the Purchasers under the representations, warranties and covenants set out in this Agreement, the aggregate consideration (the "**Purchase Price**") payable by the Purchasers to the Sellers for the Assets shall be paid as follows:

(a) Three million dollars ($3,000,000) (the "**Closing Payment**") will be paid by the Purchasers to the Sellers at the Time of Closing by wire transfer of immediately available funds in accordance with the written instructions provided by the Sellers to the Purchasers no later than two Business Days prior to the Closing Date; and

(b) Two million dollars ($2,000,000) ("**Holdback Amount**") will be retained by the Purchasers and, subject to terms of this Agreement, will be paid by the Purchasers to the Sellers on the Holdback Release Date in accordance with the written instructions provided by the Sellers to the Purchasers no later than two (2) Business Days prior to the Holdback Release Date; and

(c) Twelve million ($12,000,000) ("**Financial Institution Client Holdback Amount**") subject to terms of this Agreement, will be paid:

(i) by the Purchasers to the Sellers upon receipt of all Customer Consent Agreements for those clients set out in Schedule J ("**Financial Institution Clients**") prior to the Longstop Date, in accordance with the written instructions provided by the Sellers to the Purchasers no later than two (2) Business Days after the date in which the last of all Financial Institution Client Customer Consent Agreement is received; and

(ii) in the event a Financial Institution Client has not provided a Customer Consent Agreement by the Longstop Date then the value of such consent as set out in Schedule J hereto shall be deducted from the Financial Institution Client Holdback Amount, and the Purchasers shall not be required to pay any additional amounts to the Sellers in the event such Customer Consent Agreements are received following the Longstop Date.

For greater certainty, if, at anytime before or after the Longstop Date, a Financial Institution Client explicitly declines in writing to provide a Customer Consent Agreement, then the Seller

Parties and the Purchaser agree the ownership of the underlying Financial Institution Client will remain with the Seller, and the Purchaser will provide the support required to service any such Financial Institution Client under a third-party service provider agreement, such agreement to include a limited license to Seller as required to satisfy the requirements of such client agreement for all the revenue from such Financial Institution Client contract being directed to the Purchasers so that the Purchasers receives all benefits and responsibilities of ownership of the contract.

(d) One million dollars ($1,000,000) (the "**TSA Holdback Amount**") will be paid by the Purchasers to the Sellers as follows:

(i) Five hundred thousand dollars ($500,000) to be paid sixty (60) days following the Closing Date; and

(ii) Five hundred thousand dollars ($500,000) upon the earlier of:

(A) one hundred twenty (120) days following the Closing Date provided all of the Seller Parties' obligations under the Transitional Services Agreement have been successfully met or completed, as determined by the Purchasers; and

(B) upon termination by the Purchasers of the Transitional Services Agreement in accordance with its terms,

by wire transfer of immediately available funds in accordance with the written instructions provided by the Sellers to the Purchasers no later than two (2) Business Days prior to the expected payment of an installment of the TSA Holdback Amount; and

(e) One million four hundred thousand dollars ($1,400,000) ("**Special Holdback Amount**") will be retained by the Purchasers and, subject to terms of this Agreement, will be paid by the Purchasers to the Sellers within 30 days of the full execution of a definitive agreement of no less than 2-years in duration, on terms satisfactory to the Purchaser or its affiliates, with Nordstrom, Inc. or any of its affiliates, prior to the conclusion of the existing Master Services Agreement, in accordance with the written instructions provided by the Sellers to the Purchasers. For clarity, any definitive agreements fully executed of less than 2-years duration, and the duration of any extension of the current Master Services Agreement, shall be aggregated when determining the duration of the definitive agreement for purposes of this section.

2.6 The Sellers and the Purchasers covenant and agree with each other that the Purchase Price shall be allocated among the Assets as set forth in Schedule H attached hereto The Sellers and the Purchasers agree to cooperate in the filing of such elections under applicable Tax codes or statutes as may be necessary or desirable to give effect to such allocation for Tax purposes. The Sellers and the Purchasers agree to prepare and file their respective tax returns in a manner consistent with the aforesaid allocations and elections. If either party fails to file its Tax Returns as aforesaid, it shall indemnify and save harmless the other of them in respect of any additional Tax, interest, penalty and legal and/or accounting costs paid or incurred by the other of them as a result of the failure to file as aforesaid.

2.7 **Determination of NTA Amount; Post-Closing Adjustment.**

(a) *Proposed Final Closing Statement.* Within two hundred (200) days following the Closing Date, the Purchasers shall prepare, or cause to be prepared, and deliver to the Sellers' Representative, an unaudited statement (the "**Proposed Final Closing Statement**"), which shall set forth the proposed definitive Closing Date Balance Sheet and the NTA Amount as of the Closing Date (the "**Final NTA Amount**"), and such Proposed Final Closing Statement shall be prepared in accordance with IFRS, except to the extent necessary to comply with the principles expressly set out in Schedule D attached hereto. During the thirty (30) day period following the date of the delivery of the Proposed Final Closing Statement (the "**Review Period**"), the Purchasers will provide the Sellers with reasonable access to the books and records related to the preparation of the Proposed Final Closing Statement, and will make the Purchasers' employees reasonably available to respond to the Sellers' enquiries, in order to enable the Sellers to verify the Purchasers' calculation of the Proposed Final Closing Statement.

(b) *Disputes Regarding the Proposed Final Closing Statement*. The Purchasers' calculation of the Proposed Final Closing Statement will be deemed final and binding upon the Parties unless the Sellers' Representative delivers written notice (the "**Sellers' Objection**") to the Purchasers that the Sellers dispute such calculation prior to the end of the Review Period. If the Sellers and the Purchasers have not been able to agree upon a resolution of any dispute within thirty (30) days of the delivery of the Proposed Final Closing Statement, then, absent any agreement between the Purchasers and the Sellers to extend the time to resolve such dispute between the Parties, any such dispute will be resolved by the Reviewing Accountant. The Reviewing Accountant will be instructed to resolve any matters in dispute as promptly as practicable but in no event more than thirty (30) days after submission. The fees of the Reviewing Accountant will be borne equally by the Sellers and the Purchasers, unless the Reviewing Accountant determines that either of the Sellers or the Purchasers was unreasonable in its approach to calculating the Final NTA Amount in which case the Reviewing Accountant, in its sole discretion, may apportion such fees as it sees fit. Any such matters in dispute will be determined resolved fully, finally and exclusively by the Reviewing Accountant and such determination will be final and binding on the Parties and shall not be subject to recourse or appeal regarding the Reviewing Accountant's position. The Reviewing Accountant (i) shall consider only the disputed matters, (ii) shall act promptly to resolve all such matters, (iii) shall comply with the provisions of this Section 2.7(b), (iv) shall refraining from assigning a dollar value to any item in dispute greater than the highest amount or less than the lowest amount claimed by the Parties, and (v) be empowered to act as an expert only to the extent strictly required to resolve the disputed matters. Upon resolution by the Reviewing Accountant of all disputed matters, the Reviewing Accountant shall prepare and deliver to the Parties, as soon as possible following its acceptance of the appointment, the Final NTA Amount calculation adjusted to reflect any determinations of the Reviewing Accountant with respect to any disputed matters. In the event that the accounting firm specified as the Reviewing Accountant is unwilling or unable to serve as the Reviewing Accountant, the Sellers and the Purchasers shall jointly select an independent accounting firm to serve as the Reviewing Accountant. If these Parties cannot agree on a Reviewing Accountant within ten (10) days, either of them may apply to the President and CEO of CPA Ontario to have one appointed by such organization. In the event that CPA Ontario is unwilling or unable to appoint a Reviewing Accountant, either Party may apply to the arbitrator, appointed pursuant to Section 7.4, to have the arbitrator appoint the Reviewing Accountant.

(c) *Final Closing Statement.* The "**Final Closing Statement**" shall be (i) the Proposed Final Closing Statement in the event that no Sellers' Objection is delivered to the Purchasers during

the thirty (30) day period specified in Section 2.7(b) above, or (ii) the Proposed Final Closing Statement, as adjusted by either (x) the written agreement of the Sellers and the Purchasers, or (y) the Reviewing Accountant.

(d) *Adjustments in Favour of Sellers*. In the event that the Final NTA Amount, as finally determined from the Final Closing Statement, is greater than the NTA Expected Amount (any such excess being the "**NTA Excess**"), then on the Holdback Release Date, the Purchaser will pay to the Seller the Holdback Amount plus the amount of the NTA Excess; and the Purchase Price will be increased by an amount equal to the NTA Excess.

(e) *Adjustments in Favour of the Purchaser*. If the Closing Date Balance Sheet as finally determined in accordance with Section 2.7(c), shows the NTA Amount to be less than the NTA Expected Amount (the amount of the difference, expressed as a positive number, being the "**NTA Shortfall**") and

(i) the NTA Shortfall is less than the Holdback Amount, then on the Holdback Release Date, the Purchasers will pay to the Sellers the Holdback Amount less the amount of the NTA Shortfall, and the Purchase Price will be reduced by an amount equal to the NTA Shortfall; or

(ii) the NTA Shortfall is greater than (or equal to) the Holdback Amount, then (A) the Purchasers will retain the entire Holdback Amount, (B) the Sellers will pay to the Purchasers by wire transfer on the Holdback Release Date an amount equal to the difference between the NTA Shortfall and the Holdback Amount (if any), and (C) the Purchase Price will be reduced by an amount equal to the NTA Shortfall.

(f) *Right of Set-off.* Notwithstanding the provisions of Sections 2.7(d) and 2.7(e), the Purchasers will be entitled to withhold from any payment of the NTA Excess or the Holdback Amount:

(i) an amount in respect of any claim of the Purchasers in accordance with the provisions of Section 2.8; and

(ii) an amount in respect of any dispute in accordance with the provisions of Section 2.7(b), which shall be released at the later of (a) the date which is five (5) days from the date the Purchasers and the Sellers agree on a resolution of any dispute with respect to the Final NTA Amount pursuant to Section 2.6, and (ii) the date which is five (5) days from the date of the decision of the Reviewing Accountant resolving any dispute with respect to the Final NTA Amount;

2.8 **Setoff of Claims**. In addition to any other rights the Purchasers may have pursuant to this Agreement, the Purchasers shall have the right, but not the obligation, subject to the terms of this Section 2.8 and the applicable claim mechanism under Article 4, to withhold from the Financial Institution Client Holdback Amount, the Holdback Amount, and the NTA Excess, if any, an amount equal to the amount of any reasonably asserted yet unresolved Loss and to set off such withheld amount against amounts for which the Purchaser has not been fully paid or compensated in respect of such Loss and for which Loss the Purchaser, or a Purchaser Indemnitee, is otherwise entitled to be indemnified by the Seller Parties under this Agreement (the "**Claimed Setoff**") in accordance with and subject to the following provisions and subject to the limitations set out in this Agreement:

(a) If prior to the Longstop Date or Holdback Release Date, as applicable, such Loss has not been

agreed or determined, then if the Purchasers have a reasonable basis for asserting such Loss for indemnification under Article 4 of this Agreement, the Purchasers may, by providing written notice, with evidence of such basis for the claim, of such election to the Seller Parties, withhold from the applicable payments of any of the Financial Institution Client Holdback Amount, the Holdback Amount, and/or the NTA Excess, if any, the reasonably anticipated amount of such Loss, as agreed upon by the Parties, pending the resolution of such claim. Such notice will include the amount of the Claimed Setoff and the basis for same, with reference to the specific provision of indemnification under Article 4 of this Agreement.

(b) If (and when) any such Loss is agreed or determined to be a Loss for which the Seller Parties must indemnify the Purchasers or a Purchaser Indemnitee pursuant to Article 4, the amount of such finally determined Loss will be withheld from, and will setoff and reduce (in each case to the extent then outstanding), the amount(s) due in relation to the Financial Institution Client Holdback Amount, the Holdback Amount, and the NTA Excess, if any, as applicable. If all or any portion of any such Loss remains to be paid by the Seller Parties after giving effect to this Section 2.8(b), such amount(s) will be paid by the Seller Parties.

(c) If (and when) such a Loss is agreed or determined to be a Loss for which the Seller Parties are not obligated to indemnify the Purchaser pursuant to Article 4, then (i) if the applicable payment date of the Financial Institution Client Holdback Amount, the Holdback Amount, or the NTA Excess, if any, has passed, the amount of such claim that was withheld will promptly, and in any event within five (5) Business Days of such agreement or determination, be paid to the Seller Parties; and (ii) if the applicable payment date of the Financial Institution Client Holdback Amount, the Holdback Amount, or the NTA Excess, if any, has not yet passed, then the amount of such claim will no longer be held in reserve against payment of the Financial Institution Client Holdback Amount, the Holdback Amount, or the NTA Excess, if any, as applicable.

2.9 **Consents of Third Parties.** Nothing in this Agreement will be interpreted as an attempt to assign any Contract which is, by its terms or by Law, not assignable without the consent of the other party or parties thereto (each such contract is referred to as a "**Contract Requiring Consent**") unless such consent will have been given. In order, however, to provide the Purchasers with full realization and value of any Contract Requiring Consent, the Sellers agree that on and after the Closing Date, it will, at the request and under the direction of the Purchasers, acting reasonably, take such actions, (including the appointment of the Purchasers as a subcontractor to the Sellers) which, in the reasonable opinion of the Purchasers, are necessary or proper (a) to provide to the Purchasers the material benefits of each Contract Requiring Consent; (b) to assure that the rights of the Sellers under each Contract Requiring Consent will be preserved for the benefit of the Purchasers; and (c) to facilitate receipt of the consideration to be received by the Sellers under each Contract Requiring Consent, which consideration will be held for the benefit of, and will be promptly delivered by the Sellers to the Purchasers. When a consent or approval for the assignment of any Contract Requiring Consent is obtained, the Sellers will promptly assign such Contract Requiring Consent to the Purchasers, and the Purchasers will assume the Sellers' obligations under such Contract Requiring Consent.

3. REPRESENTATIONS AND WARRANTIES

3.1 **Representations and Warranties of the Seller Parties**. Knowing that the Purchasers rely thereon, the Seller Parties, jointly and severally (except with respect to the representations and warranties provided under Sections 3.1(a), 3.1(b), 3.1(c) and 3.1(o), which representations and warranties are

made by each Seller Party individually, as to such Seller Party only, and not as to any other Seller Party), represent and warrant to the Purchasers as of the Closing Date, and the Seller Parties acknowledge that the Purchaser is relying upon the following representations and warranties in connection with its purchase of the Assets.

(a) **Corporate**. (i) Each of the Seller Parties is a duly organized, validly existing and in good standing under the applicable Laws of its jurisdiction of formation with the power to own its assets and to carry on its business and has made all necessary filings under all applicable Laws. (ii) Each of the Seller Parties is in good standing in its jurisdiction of organization. Each of the Seller Parties is duly registered or qualified to carry on business in all jurisdictions in which it is required to so register or qualify as a result of the conduct of its business or the ownership of its property or assets;

(b) **Authority**. Each of the Seller Parties has the power, authority and right to enter into this Agreement. Each of the Sellers has the power, authority and right to transfer the legal and beneficial title and ownership of the Assets to the Purchasers free and clear of all Liens. The execution and performance of this Agreement and the consummation of the transactions contemplated under this Agreement have been validly authorized and approved by all necessary action on the part of each of the Seller Parties.

(c) **Binding Agreement**. This Agreement and all other agreements, documents and instruments to be executed by the Seller Parties constitute a valid and legally binding obligation of the Seller Parties, enforceable against the Seller Parties in accordance with its terms.

(d) **No Options**. Except as set out in Section 3.1(d) of Schedule B, there is no contract, option or any other right of a third party binding upon the Seller or which at any time in the future may become binding upon the Seller, to sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber any of the Assets, other than pursuant to the provisions of this Agreement.

(e) **No Conflict**. Neither the entering into of this Agreement nor the completion of the transactions contemplated hereby by the Sellers will conflict with, result in the violation of or default under, or give rise to a right of termination, cancellation or acceleration of any obligation to repay or loss of any benefit under:

(i) any of the provisions of the articles of incorporation, constitution, operating agreement, or by-laws of the Sellers,

(ii) except for any Contract Requiring Consent, any Business Contract to which any of the Sellers are a party or by which any of the Sellers is bound, or

(iii) any applicable Law, rule or regulation.

(f) **Financial Statements.** The Financial Statements:

(i) are in accordance with the books and accounts of the Sellers as at the Financial Statement Date;

(ii) are true and correct and present fairly the financial position of the Sellers in respect of the Business as at the Financial Statement Date;

(iii) have been prepared in accordance with IFRS, consistently applied; and

(iv) present fairly all of the assets and liabilities of the Sellers in respect of the Business as at the Financial Statement Date.

(g) **Financial Position**. Since the Financial Statement Date and as of the Closing Date:

(i) the Business has been carried on in its Ordinary Course and none of the Seller Parties have entered into any transaction (including any transfer or sale of assets) out of the Ordinary Course of the Business;

(ii) there has been no material adverse change to the Business;

(iii) the Seller Parties have not materially changed the Business' price lists, manner of pricing or billing;

(iv) except as set out in Section 3.1(g)(iv) of Schedule B, there are no outstanding material liabilities in the Business (whether known or unknown, absolute, accrued, contingent or otherwise) except trade debts incurred in the Ordinary Course of business;

(v) except as set out in Section 3.1(g)(v) of Schedule B, the Business has not experienced a loss of, or reduction in, (A) annual Gross Recurring Revenue from any customer, it being understood and agreed that a customer operating under the same banner or brand shall be aggregated across its sites in making the determination as to whether it is a customer, or (B) any material source of supply; and

(vi) no customer has notified any of the Seller Parties that it plans to terminate its relationship with any of the Seller Parties or the Business.

(h) **Intellectual Property.**

(i) *Owned Intellectual Property.*

(A) Other than the Licensed Third Party Software, each of the Seller Parties exclusively owns all right, title and interest in and to the Intellectual Property that is used by that Seller Party in connection with the Business (collectively, the "**Owned Intellectual Property**"). No Seller Party is contractually obligated to pay any compensation, royalty or fee (license, management or otherwise) to any third party in respect of the ownership for the use of the Owned Intellectual Property or material covered by the Owned Intellectual Property in connection with the services or products in respect of where the Owned Intellectual Property is being used. Schedule A attached hereto sets forth a complete and accurate list all of the Owned Intellectual Property of each Seller Party and specifies the jurisdictions in which such Owned Intellectual Property has been issued or registered or in which an application for such issuance and registration has been filed, including the respective registration or application numbers. Schedule A also sets forth a complete and accurate list of the Software, which constitutes all of the Seller Parties' currently marketed software products as it relates to the Business, and indicates which (if any) software products have been registered for copyright protection with the Canadian, United States', Australian or any other

relevant copyright office and any foreign offices and by whom such items have been registered. To the extent any of the Owned Intellectual Property has been registered, such registration is active and not subject to any claim, dispute or other controversy. The Seller Parties have not transferred any ownership rights in the Owned Intellectual Property to any other Person.

(B) All applications, registrations, filings, renewals and payments necessary to preserve the rights of the Seller Parties in and to the Software and the Owned Intellectual Property have been duly filed, made, prosecuted, maintained, are in good standing and are recorded in the name of the applicable and appropriate Seller Party.

(C) The Owned Intellectual Property together with the Licensed Third Party Software collectively constitutes all of the intellectual property rights necessary to enable the Seller Parties to license and distribute the current software products offered by the Seller Parties in the Business. Other than with respect to the Licensed Third Party Software, the Seller Parties are not a licensee of any Intellectual Property owned by any third party. To the knowledge of the Sellers, there is no and has not been any unauthorized use, infringement or misappropriation of any of the Software or the Owned Intellectual Property by any Person, former employee or other third party.

(ii) *Licensed Third Party Software*.

(A) Section 3.1(h)(ii) of Schedule B attached hereto lists all third party software licensed to the Sellers by third parties and which the Seller Parties have the right to use in the activities of the Business (such software being the "**Licensed Third Party Software**").

(B) Each of the Seller Parties is using or holding the Licensed Third Party Software pursuant to a Business Contract to which it is a party, in respect of which all necessary license terms have been obtained, and all applicable license or related fees have been paid.

(C) Each of the Seller Parties has, and as a result of the transactions contemplated hereby the Purchasers will have, the right to use, pursuant to valid licenses, all Licensed Third Party Software, including any such software used in the creation, modification, compilation, operation or support of the Software.

(i) **Software**.

(i) *Developers*. All developers, at the time they wrote the Software, were either full-time employees of one of the Seller Parties employed as software programmers, or they were contractors who assigned their intellectual property rights in the Software to the applicable Seller Party pursuant to written agreements.

(ii) *Third Party Software*. Except for the Licensed Third Party Software which is listed in Section 3.1(h)(ii) 3.1(i)(ii)of Schedule B attached hereto, the Software neither contains nor incorporates nor uses nor requires any third party software, except as otherwise disclosed in Section 3.1(i) of Schedule B. The Software, together with the Licensed

Third Party Software, contains all materials necessary for the continued maintenance and development of the Software as presently maintained and developed by the Seller Parties. To the extent that any open source software was or is used in, incorporated into, integrated or bundled with any of the Software, none of such open source software is compiled together with, or is otherwise used by or incorporated into the Software in a manner that would require any portion of the Software to be (A) disclosed or distributed in source code form, (B) licensed for the purpose of making derivative works or (C) redistributable at no charge.

(iii) *Object Code*. Only object code versions of the Software have been provided to the licensed customers of the Sellers, and no Person except for such licensees have been provided with a copy of, or access to, the object code of the Software.

(iv) *Source Code*. The source code for the Software has not been delivered or made available to any Person and none of the Seller Parties has agreed to or undertaken to or in any other way promised to provide such source code to any Person. The sale of the Assets resulting from the transactions contemplated by this Agreement will not entitle any customer to obtain a copy of the source code for the Software, nor will it result in any third party being granted any right with respect to the Software or the Owned Intellectual Property.

(v) *Customer Licenses*. All users of the Software have non-transferable, non-exclusive, single-site licenses to use only object code versions of the Software.

(vi) *Software Defects*. 3.1(i)(vi)There are no known material problems or defects in the Software, or failures of the Software to operate as described in their related documentation or specifications, and the Software operates in material accordance with its documentation and specifications; and

(vii) *Distributors*. There are no distributors, joint venturers, partners, sales agents, representatives or any other Persons, including VARs, OEMs or resellers, who have rights to market, distribute or license the Software.

(j) **Contracts**. Other than as set out in Section 3.1(j) of Schedule B and Schedule G attached hereto, the Business Contracts listed in Schedule D attached hereto are all of the Business Contracts by which any of the Seller Parties is bound in connection with the activities of the Business. The rights of the respective Sellers under the Business Contracts to which they are a party and Schedule G – TSA, are all of the contractual rights needed by the Seller Parties to operate the Business consistent with past practice. Other than as set out in Section 3.1(j) of Schedule B, no Business Contract is in default or has been breached by any of the Seller Parties or, to the knowledge of the Sellers, any other Person, and, there exists no condition, event or act that, with the giving of notice or lapse of time or both, could constitute a default or breach. Other than as set out in Section 3.1(j) of Schedule B, to the Sellers' knowledge, no customer of any of the Seller Parties has any intention of making any claims in respect of any Business Contract. None of the Seller Parties has made any commitments to release or develop any updates, versions or releases of the Software except as may be expressly provided in the Business Contracts. None of the Seller Parties is in breach of any material term of any license, sublicense or other agreement relating to the Owned Intellectual Property or the Software.

(k) **Infringement**. None of the Seller Parties, the Software or any of the Owned Intellectual Property is infringing, misappropriating or making unlawful use of any Intellectual Property owned by any third party. None of the Seller Parties has received any notice of any actual, alleged, possible or potential infringement, misappropriation or unlawful use by the Seller Parties, the Software or any of the Owned Intellectual Property of any Intellectual Property owned by any third party.

(l) **Confidential Information**. Each of the Seller Parties has taken reasonable steps to protect its respective rights in its confidential information and trade secrets.

(m) **Litigation**. Other than as set out in Section 3.1(m) of Schedule B, there are no actions, suits, claims in progress or proceedings (whether or not purportedly on behalf of the Seller Parties) pending, materially adversely affecting, which could materially adversely affect, or, to the knowledge of the Sellers, threatened, against any Seller Parties, the Owned Intellectual Property, the Software, the Business or the Assets.

(n) **No Encumbrances**. Each of the Seller Parties is the exclusive owner of its respective Owned Intellectual Property and the other Assets with good and marketable title, free and clear of all Liens.

(o) **Solvency**. Each of the Seller Parties is solvent and no Seller Party has: (i) other than as set out in Section 3.1(o) of Schedule B, proposed a compromise or arrangement to any of its creditors generally, (ii) had any petition or receiving order in bankruptcy filed against it, (iii) taken any proceeding with respect to a compromise or arrangement or become subject to such proceeding, (iv) taken or become subject to any proceeding to have it liquidated, dissolved, declared bankrupt or wound-up, (v) taken any proceeding or become subject to any proceeding to have a receiver appointed over any part of its assets, (vi) had any encumbrancer take possession of any of its property or (vii) had any execution or distress become enforceable or become levied upon any of its property.

(p) **Sufficiency of Assets**. Other than as set out in Section 3.1(p) of Schedule B and Schedule G attached hereto, as of the Closing Date, the Assets comprise all of the assets used in the operation of the Business and are sufficient for the Purchasers to continue to fulfill their obligations under the Business Contracts consistent with past practice.

(q) **No Subsidiaries.** Other than as set out in Section 3.1(q) of Schedule B, the Seller Parties have no subsidiaries or any agreements, options or commitments to acquire any securities of any third party. The Sellers are not a party to any partnership, joint venture or other agreement of a similar nature.

(r) **No Royalties**. No Seller Party is a party to or bound by any contract or commitment related to the Business to pay any royalty, licence fee or management fee.

(s) **Employees and Independent Contractors.**

(i) No Seller Party has any employment contract with any person providing services related to the Business (an "**Employee**") except such contracts as are listed in 3.1(s)Schedule E - List of Transferred Employees. 3.1(s)Schedule E also includes each Employee's most recent salary with the respective Seller Party (including particulars of all profit sharing, incentive and bonus arrangements applicable to the Employee). Section

3.1(s)(i) of Schedule B also sets out a complete list of the contracts between the Seller Parties and independent contractors used in the Business.

(ii) All benefit plans for Employees of the Seller Parties are listed in Section 3.1(s)(ii) of Schedule B (the "**Benefit Plans**"), and have been duly registered where required, and are in compliance with and in good standing under all applicable Laws and all required employer contributions under any such plans have been made. There is no pending or, to the Seller's knowledge, threatened claim against or otherwise involving any Benefit Plan by or on behalf of any participant or beneficiary under any Benefit Plan (other than routine claims for benefits). The Seller Parties have withheld from any amount paid or credited by it to or for the account or benefit of any Employee, the amount of all taxes and other deductions required by any applicable Laws to be withheld from any such amount and has remitted the same to the appropriate authority. The Seller Parties have provided all Employees with all wages, benefits, relocation benefits, stock options, bonuses and incentives, and all other compensation that became due and payable through to the date of this Agreement, and all sums due for employee compensation and benefits, including any pension or severance benefits and all vacation time owing to any Employees of the Seller Parties, have been duly and adequately accrued in the accounting records of the Seller Parties.

(iii) To the knowledge of the Seller Parties, the execution of this Agreement nor the performance of any transaction contemplated hereby will (a) obligate any Seller Party to pay any separation, severance, termination, or similar benefit to, or accelerate the time of vesting for, change the time of payment to, or increase the amount of compensation due to, any director, Employee, officer, former Employee, or former officer of the Seller Parties, or (b) result in an amendment, modification, or termination of any Benefit Plan. No written or oral representation has been made to any Employee or former Employee of the Seller Parties promising or guaranteeing any employer payment or funding for the continuation of medical, dental, life, or disability coverage for any period of time beyond the end of the current plan year (except to the extent of coverage which is required under applicable Law).

(iv) No Seller Party is a party, either directly or by operation of Law, to any collective agreement. No trade union, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any Employees of the Sellers.

(v) The Seller Parties have provided the Purchasers with the information required under regulation 11 of TUPE in relation to the Transferred Employees located in the United Kingdom.

(vi) The Seller Parties have fully complied with their obligations under regulation 13 and regulation 13A of TUPE in relation to the Transferred Employees located in the United Kingdom.

(vii) The Seller Parties have not offered, promised or agreed to any future variation in any contract of employment of any one of the Transferred Employees located in the United Kingdom in respect of whom liability is deemed by TUPE to pass to the Purchasers, and no negotiations for an increase in the remuneration or benefits of any the Transferred

Employees located in the United Kingdom are current.

(viii) In the period of three (3) years preceding the date of this agreement, and to the knowledge of the Seller Parties for the seven (7) years preceding the Seller Parties' operation of the Business, the Sellers Parties have not (nor has any predecessor or owner of any part of the Business) been a party to any relevant transfer for the purposes of TUPE affecting any of the Transferred Employees located in the United Kingdom (or former employee) or any other persons engaged (or formerly engaged) in the Business and no event has occurred which may involve such persons in the future being a party to such a transfer. No such persons have had their terms of employment varied (or purported to be varied) for any reason as a result of or connected with such a transfer.

(t) **Environmental Matters.** No facts, circumstances or conditions exist that would reasonably be expected to result in the Seller incurring liability (in connection with the Business) under any environmental Law and there have been no releases of any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to applicable Laws on properties, including the Leased Premises, since they were owned, operated or leased by the Seller or used by the Business (or, to the knowledge of the Seller, previously). The Seller has obtained and currently maintains all permits necessary under environmental Laws for the operations of the Business.

(u) **Leases**. There are no arrears in rent payment, service charges, insurance premiums or other moneys due under the Leases, except those that are due and payable in the ordinary course. To the knowledge of the Sellers, there are no pending or threatened condemnations, planned public improvements, or other adverse claims or conditions affecting the Leased Premises.

(v) **Compliance with Law**. In connection with the Business, each of the Seller Parties is and has at all times been, in compliance with all applicable Laws.

(w) **Taxes**.

(i) No claim has ever been made by any governmental body in a jurisdiction where any of the Seller Parties do not file tax returns that the Seller Parties are or could be subject to taxation by that jurisdiction, nor is there any reasonable basis for such a claim.

(ii) Other then as disclosed in Schedule 3.1(w)(ii) of Schedule B, there are no pending audits by any Governmental Authority of any tax payment, return or report made or filed by any of the Seller Parties nor has there been any claimed failure to pay or report any kind of tax which may be assessed by any such Governmental Authority against any of the Seller Parties. No Seller Party will be required to recognize after the Closing Date any taxable income with respect to the period prior to the Closing Date in respect of any accounting method adjustments required to be made under any Law imposing tax on the Seller Parties. Any accrual for taxes reflected in the Financial Statements will be adequate to pay all tax liabilities of the Seller Parties, and the Seller Parties are entitled to the entire amount of and has made proper claim for any refund of taxes included in the Financial Statements, whether as a receivable, a prepaid expense or as a reduction of a liability. To the knowledge of the Seller Parties, there are no pending reassessments of any Seller Parties' taxes that have been previously conducted and there are no outstanding issues in respect of taxes which have been raised and communicated to the Sellers by any Governmental Authority.

(x) **No Brokers**. Except as set out in Section 3.1(x) of Schedule B, no Seller Party has engaged any broker or finder in connection with the transactions contemplated by this Agreement.

(y) **Anti-Corruption Compliance.** In connection with the Business, (i) no Seller Party nor any representative of any Seller Party in its capacity as such has violated the anti-corruption Laws of any jurisdiction where such Seller Party does business, and (ii) each Seller Party has at all times complied with all applicable Laws relating to export control and trade sanctions or embargoes.

3.2 **Survival of Representations, Warranties and Covenants of the Sellers**.

(a) The representations and warranties of the Seller Parties set forth in Section 3.1 will survive the completion of the transactions contemplated by this Agreement and, notwithstanding such completion, will continue in full force and effect for the benefit of the Purchasers until the conclusion of the applicable period set forth below:

(i) the case of representations and warranties set forth in Section 3.1(a) (*Corporate*), Section 3.1(b) (*Authority*) and Section 3.1(c) (*Binding Agreement*)(collectively, the "**Fundamental Representations**") for a period of eight (8) years from the Closing Date and shall thereupon expire together with any right to indemnification for breach thereof unless a claim for indemnification has been made prior to such expiry date in accordance with Section 3.2(c) hereof;

(ii) in the case of representations and warranties set forth in Section 3.1(w) (*Taxes*) (the "**Tax Representations**"), for a period of thirty (30) days following expiration of all applicable statute of limitations or prescription periods (taking into account any extensions under applicable Laws) and will thereupon expire together with the right to indemnification for breach thereof unless a claim for indemnification has been made prior to such expiry date in accordance with Section 3.2(c) hereof;

(iii) in the case of the representations and warranties regarding the Owned Intellectual Property and the Software (i.e. those set forth in Sections 3.1(h) (*Intellectual Property*), 3.1(i) (*Software*)) and in the case of those other representations and warranties to the extent that they relate to the Owned Intellectual Property and the Software, including, without limiting the generality of the foregoing, those set forth in Sections 3.1(j) (*Contracts*), and 3.1(k) (*Infringement*), (the "**Intellectual Property Representations**"), for a period of three (3) years from the Closing Date and shall thereupon expire together with any right to indemnification for breach thereof unless a claim for indemnification has been made prior to such expiry date in accordance with Section 3.2(c) hereof;

(iv) in the case of all other representations and warranties other than those referred to in Section 3.2(a)(i), Section 3.2(a)(ii), and Section 3.2(a)(iii), for a period of eighteen (18) months from the Closing Date, and will thereupon expire together with any right to indemnification for breach thereof unless a claim for indemnification has been made prior to such expiry date in accordance with Section 3.2(c) hereof.

(b) The covenants of the Seller Parties set forth in this Agreement will survive the completion of the sale and purchase of the Assets and, notwithstanding such completion, will continue in full force and effect for the benefit of the Purchasers.

(c) Any representation or warranty will survive the time it would otherwise terminate pursuant to this Section 3.2 to the extent that the Purchasers will have delivered to the other parties written notice setting out the good faith and commercially reasonable basis of its claim prior to the expiration of such time pursuant to this Section 3.2, provided, that after the delivery of any such notice, the Purchasers must expeditiously pursue the resolution of such claim.

3.3 **Purchasers' Representations and Warranties**. The Purchasers represent and warrant to the Sellers as of the Closing Date, and the Purchasers acknowledge that the Seller Parties are relying upon the following representations and warranties in connection with the sale of the Assets, that:

(a) Each of the Purchasers represents and warrants that it is duly organized, validly existing and in good standing under the applicable Laws of its jurisdiction of incorporation.

(b) Each of the Purchasers has good and sufficient power, authority and right to enter into and deliver this Agreement and to complete the transactions to be completed by the Purchasers contemplated hereunder, and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated under this Agreement have been duly and validly authorized and approved by all necessary corporate action on the part of the Purchasers.

(c) The Purchasers, collectively, have sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Closing Payment and the Holdback Amount.

(d) This Agreement and all other agreements, documents and instruments to be executed by the Purchasers constitute a valid and legally binding obligation of the Purchasers, enforceable against the Purchasers in accordance with its terms.

3.4 **Survival of Purchasers' Representations, Warranties and Covenants.**

(a) The representations and warranties of the Purchasers set forth in Section 3.3 will survive the completion of the transactions contemplated by this Agreement and, notwithstanding such completion, will continue in full force and effect for the benefit of the Sellers for a period of eight (8) years from the Closing Date.

(b) The covenants of the Purchasers set forth in this Agreement will survive the completion of the sale and purchase of the Assets herein provided for and, notwithstanding such completion, will continue in full force and effect for the benefit of the Sellers.

(c) Any representation or warranty will survive the time it would otherwise terminate pursuant to this Section 3.4 to the extent that the Sellers will have delivered to the Purchasers written notice setting out the basis of such claim prior to the expiration of such time pursuant to this Section 3.4, provided, that after the delivery of any such notice, the Sellers must expeditiously pursue the resolution of such claim.

4. INDEMNIFICATION; RESOLUTION OF DISPUTES

4.1 **Indemnification Provisions for the Benefit of the Purchasers**.

(a) Subject to the limitations set out in Section 4.2 and this Article 4, the Seller Parties will indemnify, save, hold harmless, discharge and release the Purchasers and directors, employees and agents (collectively, the "**Purchasers' Indemnitees**") from and against any and all Losses arising from or based on:

(i) Any misrepresentation or omission in any representation or warranty made by the Seller Parties in this Agreement;

(ii) Any breach of any covenant of any of the Seller Parties set forth in this Agreement;

(iii) Any claims of third parties to the extent relating to the Retained Liabilities including any claims of any Employees in respect of or in any way arising or resulting from their employment or the termination of such employment prior to the Closing Date;

(iv) Taxes applicable to the Business or the Assets, in each case attributable to periods (or portions thereof) ending on or prior to the Closing Date; and

(v) any Losses incurred by any Purchaser Indemnitee relating to the Business or the Seller Parties in connection with any period prior to the Closing Date;

4.2 **Certain Limitations**. No claim may be brought by a Purchaser Indemnitee under Section 4.1(a)(i) until the amount of Losses, either in regard to a single admissible claim or when aggregated with all admissible claims exceeds one hundred fifty thousand dollars ($150,000) (the "**Indemnification Threshold**"), at which point the Sellers will be obligated to indemnify the Purchaser Indemnitees for all such admissible claims including the full amount of the Indemnification Threshold. For certainty, the limitations set out in this Section 4.2 shall not apply to claims of any amount involving fraud.

(a) The Seller Parties' aggregate liability for any and all claims of the Purchasers and any Purchaser Indemnitee:

(i) for breaches of the Fundamental Representations, Intellectual Property Representations and Tax Representations shall be limited to an aggregate amount of one hundred percent (100%) of the Purchase Price.

(ii) for any other representations and warranties not subject to Section 4.2(a) shall be limited to an aggregate amount of forty five per cent (45%) of the Purchase Price actually received,

(b) For clarity, under no circumstances shall the aggregate liability of the Seller Parties' exceed one hundred percent (100%) of the Purchase Price for all claims.

(c) Where a Purchaser has given notice to the Seller Parties before the expiry of the relevant survival period set forth in Section 3.2, the time limitations shall be suspended and the Purchasers shall be entitled to recover Losses with respect to such claim despite the expiry of the relevant survival period, provided that the Purchasers have commenced proceedings no later than three (3) months after expiry of the relevant survival period pursuant to Section 3.2 where the Seller acknowledges that the claim is valid and payable.

(d) If an event, a fact, a circumstance or a situation simultaneously constitutes a violation or inaccuracy of several Seller Party representations and warranties or triggers the liability of the

Seller on the basis of several legal grounds under this Agreement, the Purchasers shall be entitled to be compensated with respect to the relevant breach or other matter, only once.

(e) In no event shall a Seller Party be liable for the full amount of a breach, if and to the extent:

(i) the Purchasers have solely caused such breach or any Losses resulting therefrom or failed to mitigate Losses;

(ii) the payment or settlement of any item relating to a breach results in any kind of monetary benefit (including tax benefits) for the Purchasers but only if and to the extent such benefit could effectively be realized by the Purchasers using commercially reasonable efforts;

(iii) the Losses result from or are increased by the passing of, or any change in, any Law or in the interpretation thereof by, or practice of any Governmental Authority or court after the Closing Date; and

(iv) the facts and circumstances underlying the breach were disclosed to the Purchaser via the Disclosure Schedule attached hereto,

4.3 **No Additional Rights or Remedies.** Except with respect to claims for specific performance, injunctive relief or other equitable relief, the indemnities provided in this Article 4 constitute the only remedy of the Parties with respect to claims arising under or as a result of this Agreement.

4.4 **Indemnification Provisions for the Benefit of the Sellers**.

(a) Subject to the limitations set out in this Article 4, the Purchasers will indemnify, save, hold harmless, discharge and release the Sellers and directors, employees and agents (collectively, the "**Sellers' Indemnitees**") from and against any and all Losses arising from or based on:

(i) Any misrepresentation or omission in any representation or warranty made by the Purchasers in this Agreement;4.1(a)(i)

(ii) Any breach of any covenant of any of the Purchasers set forth in this Agreement; and

(iii) Sales taxes applicable to the transaction contemplated in this Agreement;

4.5 **Notice; Right to Defend**. Each Party will give reasonably prompt written notice to the other of the assertion or commencement of any third party claim (a "**Third Party Claim**") in respect of which indemnity is or may be sought hereunder, other than claims in which the Parties are making claims against each other. If the indemnified party fails to give such reasonably prompt notice, such failure will not preclude the indemnified party from obtaining indemnification, but its right to indemnification will be reduced to the extent that such delay prejudiced the defence of the claim or increased the amount of liability or cost of defence. The indemnifying party will have the right and obligation to assume the defense or settlement of any Third Party Claim in respect of which it is obligated to provide indemnity hereunder; provided, however, that (x) the indemnified party shall procure that the indemnifying party is provided with all materials, information and assistance relevant in relation to the Third Party Claim and is given reasonable opportunity to comment or discuss with the indemnified party any measures which the indemnifying party proposes to take or to omit in connection with such Third Party Claim, and (y) the indemnifying party will not settle or compromise

any such claim without the indemnified party's prior written consent thereto, unless the terms of such settlement or compromise discharge and release the indemnified party from any and all liabilities and obligations. Notwithstanding the foregoing: (i) the indemnified party at all times will have the right, at its option and expense, to participate fully in the defense or settlement of any Third Party Claim; and (ii) if the indemnifying party does not proceed diligently to defend or settle such claim within 10 days after its receipt of notice of the assertion or commencement thereof, then (a) the indemnified party will have the right, but not the obligation, to undertake the defense or settlement of such Third Party Claim for the account and at the risk of the indemnifying party, and (b) the indemnifying party will be bound by any defense or settlement that the indemnified party may make as to such Third Party Claim. Each party will cooperate fully in defending or settling any Third Party Claim.

4.6 **Adjustment to the Purchase Price.** All amounts payable by the Sellers to a Purchaser Indemnitee pursuant to this Section 4 will be deemed to be a decrease to the Purchase Price. All amounts payable by the Purchasers to the Sellers' Indemnitee pursuant to this Section 4 will be deemed to be an increase to the Purchase Price.

5. COVENANTS

5.1 **Taxes**. The Sellers will be liable for and will pay all Taxes applicable to the Business and the Assets, in each case attributable to periods (or portions thereof) ending on or prior to the Closing Date. Except as provided in this Section 5.1, all Taxes levied with respect to the Assets for any taxable year that includes the day before the Closing Date and ends on or after the Closing Date, whether imposed or assessed before or after the Closing Date, will be prorated between the Sellers and the Purchasers as of the Closing. If any Taxes subject to proration are paid by the Purchasers, on the one hand, or the Sellers, on the other hand, the proportionate amount of such Taxes paid (or in the event a refund of any portion of such Taxes previously paid is received, such refund) will be paid promptly by (or to) the other after the payment of such Taxes (or promptly following the receipt of any such refund).

5.2 **Post-Closing Remittances**.

(a) *Payments Received by Sellers for Business.* If on or after the Closing Date, the Sellers receive a payment or invoice in respect of the Business after the Closing Date, the Sellers agree to hold it in trust for the Purchasers and to promptly remit such payment to the Purchasers within five (5) Business Days of such receipt.

(b) *Accounts Receivable*. The Purchasers shall use commercially reasonable efforts to collect the accounts receivable of the Sellers which are purchased hereunder consistent with efforts that it uses to collect accounts receivable for its other portfolio businesses; provided, that the Purchasers (i) shall have no obligation to commence any legal process, including the initiation of any civil lawsuit, the filing of any criminal complaint, foreclosure upon any collateral, commencement of any involuntary bankruptcy or receivership petition in connection herewith; (ii) shall have no obligation to incur any out of pocket expenses or unreasonable internal expenses in connection herewith; and (iii) shall have no obligation to engage in any activity which, in the opinion of the Purchasers' counsel, shall subject the Purchasers or any of the Purchasers' affiliates to any risk of legal liability.

5.3 **Delivery of, and Access to, Books and Records**. At the Time of Closing, the Sellers shall deliver to the Purchasers the following documents: (i) lists of suppliers and customers of the Sellers which relate to the Business; (ii) employee records with respect to Transferred Employees; (iii) advertising, promotional and marketing materials which relate to the Business; and (iv) files relating to the Assets

including the maintenance records for each item of equipment or machinery included in the Assets. Each of the Purchasers agrees to preserve the documents, books and records so delivered to it for a period of seven (7) years from the Closing Date and will permit the Sellers and its authorized representatives reasonable access to those books and records for reasonable business purposes, including in connection with the affairs of the Sellers relating to any Tax matters, workers' compensation or litigation matters. Each of the Sellers agrees to preserve the documents, books and records which are not delivered to the Purchasers for a period of seven (7) years from the Closing Date and will permit the Purchasers or its authorized representatives reasonable access to those books and records for reasonable business purposes, including in connection with the affairs of the Purchasers relating to any Tax, workers' compensation or litigation matters.

5.4 **Transfer of Middle East Trademarks**. Notwithstanding anything else contained in this Agreement, upon the terms and subject to the conditions hereof:

(a) As directed by the Purchasers, Kognitiv AIMIA will transfer in perpetuity to Jonas UK, or a nominee thereof, free and clear of all Liens, the Middle East Trademarks and deliver to that entity any and all agreements necessary to demonstrate the transfer all its rights, title and interest in the Middle East Trademarks to the designated entity.

(b) Kognitiv AIMIA undertakes to take all actions and sign all documents as required to enable registration of the Middle East Trademarks in the name of such designated entity; and

(c) For the period between the Closing Date and the completion of the transfer of Middle East Trademarks, Kognitiv AIMIA, for consideration set out under this Agreement, grants an exclusive license to Jonas UK, or a nominee thereof, to use the Middle East Trademarks for the Business. Kognitiv AIMIA will be entitled to use the Middle East Trademarks only in connection with its performance of its obligations under this Agreement.

5.5 **Transfer of Lease Obligations**. Notwithstanding anything else contained in this Agreement, upon the terms and subject to the conditions hereof, the parties agree that the commercial intent is that the Leased Premises will be transferred to the applicable Purchaser following the Closing Date. In furtherance of this commercial intent, each of Parties will take such actions as required under the respective lease agreements for the Leased Premises in order to either: (i) assign to the appropriate Purchaser or nominee thereof, free and clear of all Liens, all right, title and interest to the Leased Premises; or (ii) the applicable Seller Party terminating the respective Lease and the applicable Purchaser or a nominee thereof entering into a new lease agreement with the applicable landlord on substantially similar terms as the current lease;

5.6 **Transferred Employees**. Transferred Employees shall be hired by the Purchasers, or their designates on substantially similar terms as currently received by the Transferred Employees from the Seller Parties, and shall include terms recognizing continuity of employment.

(a) **UK Employees**

(i) The parties agree that the sale and purchase pursuant to this agreement will constitute a relevant transfer of the UK Employees for the purposes of TUPE and, accordingly, that it will not operate so as to terminate the contracts of employment of any of the UK Employees. Such contracts shall be transferred to the Purchaser pursuant to TUPE with effect from the Time of Closing.

(ii) The Sellers undertakes to the Purchaser:

(A) that, they have complied with all of their obligations and, to the best of the Seller Parties' knowledge, those of any of its predecessors (whether or not legally binding or in respect of which it would be expected to comply by any regulatory or other body to which it is subject) due to or in connection with the UK Employees or any body representing them (or any of the said obligations the Sellers would have had under or in connection with such contracts but for TUPE);

(B) that they have paid all sums due to the UK Employees up to and including the Closing Date (whether arising under common law, statute, equity or otherwise) including all salaries, wages, bonus or commission, expenses, holiday pay, national insurance and pension contributions, liability to Tax and other sums payable in respect of any period up to the Closing Date;

(C) that it has complied and shall comply in all respects with its obligations under regulation 11 and regulation 13 and regulation 13A of TUPE;

(D) that there are no sums due to or from any Employee other than reimbursement of expenses for the current period and wages for the current salary period; and

(E) any contract of employment or engagement or collective agreement which is transferred to the Purchasers (whether in whole or in part) by virtue of TUPE not disclosed to the Purchasers and the termination of any such contract.

(iii) The Purchasers shall indemnify the Sellers against any loss which the Sellers incur in connection with or arising out of:

(A) any actual or proposed substantial change by the Purchasers to any of the UK Employees' working conditions to the material detriment of such UK Employee;

(B) anything done or omitted to be done by the Purchaser, or any other event or occurrence, in relation to the employment of any of the UK Employees at any time on or after the Closing Date; and

(C) any breach by the Purchaser of its obligations under Regulation 13(4) of the TUPE.

(b) **UAE Employees**

(i) Notwithstanding anything else contained in this Agreement, upon the terms and subject to the conditions hereof, within 120 days from the Closing Date:

(A) Kognitiv AIMIA will transfer the employment of all Transferring UAE Employees in accordance with applicable laws;

(B) Kognitiv AIMIA will take commercially reasonable efforts to ensure that all Transferring UAE Employees complete the transfer of their employment to Jonas UAE and will not do anything to deter the Transferring UAE Employees from

accepting employment with Jonas UAE;

(C) Kognitiv AIMIA will transfer to Jonas UAE or cancel (as directed by Jonas UAE) the work permits and/ or residency visa sponsorship (as applicable) for all the Transferring UAE Employees, at the cost of Jonas UAE; and

(D) Kognitiv AIMIA and Jonas UAE will cooperate to enable transfer or settlement of all employee benefits including but not limited to insurance policies, and end of service benefits in relation to the Transferring UAE Employees.

(ii) If the details of the Transferring UAE Employees change between the Closing Date and the date by which the obligations set out in Section 5.6(b) must be completed, Kognitiv AIMIA must inform the Purchasers within 24 hours of such change occurring.

(iii) From the Closing Date, Kognitiv AIMIA agrees that it shall not without the written consent of the Purchasers:

(A) increase the number of or replace any Transferring UAE Employees; or

(B) make, permit or propose any changes to the terms and conditions of employment of any Transferring UAE Employees, except as obligated under any employment contract or applicable law of the UAE.

(iv) Subject to the limitations set out in Section 4, the Seller Parties will indemnify, save, hold harmless, discharge and release the Purchasers Indemnitees from and against any and all Losses arising from or based on any claims of any Transferring UAE Employees in respect of or in any way arising or resulting from their employment, the employment benefits or the termination of their employment prior to their transfer.

(c) **Singapore Employees.**

(i) Upon the terms and subject to the conditions hereof, the date on which the Transferring Singapore Employees are transferred from Kognitiv Singapore to Jonas Singapore ("**Singapore Employee Transfer Date**"), within 120 days from the Closing Date, shall be after the completion of the following steps:

(A) Kognitiv Singapore will transfer the employment of all Transferring Singapore Employees in accordance with applicable laws;

(B) Kognitiv Singapore will take commercially reasonable efforts to ensure that all Transferring Singapore Employees complete the transfer of their employment to Jonas Singapore and will not do anything to deter the Transferring Singapore Employees from accepting employment with Jonas Singapore. In the event any of the Transferring Singapore Employees does not accept employment with Jonas Singapore, the said employee will continue to be employed by Kognitiv Singapore;

(C) Kognitiv Singapore will apply to transfer to Jonas Singapore or cancel (as directed by Jonas Singapore) the work permits and/or employment passes (as

applicable) for all the Transferring Singapore Employees, at the cost of Jonas Singapore; and

(D) Kognitiv Singapore and Jonas Singapore will cooperate to enable transfer or settlement of all employee benefits including but not limited to insurance policies and end of service benefits in relation to the Transferring Singapore Employees.

(ii) If the details of the Transferring Singapore Employees change between the Closing Date and the date by which the obligations set out in Section 5.6(c)(i) must be completed, Kognitiv Singapore must inform Jonas Singapore within 24 hours of such change occurring.

(iii) From the Closing Date, Kognitiv Singapore agrees that it shall not without the written consent of Jonas Singapore:

(A) Terminate the employment of, increase the number of or replace any Transferring Singapore Employees, except as required under this Agreement; or

(B) make, permit or propose any changes to the terms and conditions of employment of any Transferring Singapore Employees, except as obligated under any employment contract or applicable law of Singapore.

(iv) Kognitiv Singapore shall perform and discharge all of its obligations in respect of the Transferring Singapore Employees due on or before the Singapore Employee Transfer Date, including but not limited to:

(A) discharging all payment of contractually binding nature including but not limited to any bonuses, holiday accruals, any unpaid insurance, Central Provident Fund, etc. payments due as of the Singapore Employee Transfer Date to be determined and agreed between Kognitiv Singapore and Jonas Singapore;

(B) discharging all costs and expenses due before the Singapore Employee Transfer Date, including salary, commission, bonuses, share option, share or other incentive, entitlements, benefits, or other mandatory payments to social security funds, labour insurance premiums, medical insurance premiums, employers' and employees' insurance premiums or contributions obligations, paid time off, annual leave, public holiday, guarantees and compensations or other payment including any penalty (if applicable) relating to, payable or due in respect of any of the Transferring Singapore Employees under the terms of any applicable contract, scheme, plan, arrangement, understanding or any applicable law or regulation; and

(v) discharging all costs in respect of severance payments and long service payments due on, or in connection with, Kognitiv Singapore's termination of employment of a Transferring Singapore Employee before the Singapore Employee Transfer Date, if any.

5.7 **Conditions for the Benefit of the Purchasers**. The Purchasers acknowledge that the Sellers have delivered, or caused to be delivered, to the Purchasers, at or prior to the Closing Date, the following:

(a) such certificates or other instruments as the Purchasers reasonably consider necessary to establish that the terms, covenants and conditions contained in this Agreement to have been performed or complied with by the Seller Parties have been performed or complied with;

(b) a bill of sale and general conveyance in the form of Exhibit C duly executed by each Seller transferring the tangible personal property included in the Assets to the Purchasers;

(c) physical possession of all the Assets capable of passing by delivery, with the intent that title in such Assets shall pass by and upon such delivery (including but not limited to all computer and other equipment and accessories and supplies of all kinds owned by the Sellers used in the Business);

(d) an assignment and assumption agreement in the form of Exhibit A (or such other assignment agreement or novation agreement in a form to be agreed between the relevant Seller and the relevant Purchaser) duly executed by each Seller effecting the assignment to and assumption by the Purchaser of the Assets;

(e) an assignment in the form of Exhibit B duly executed by the Sellers transferring all of the Seller's right, title and interest in and to the Intellectual Property and Owned Intellectual Property to the Purchaser;

(f) the consents to assignment of certain of the Business Contracts listed in Schedule C;

(g) certified copies of the resolutions of the shareholders and the board of directors, as applicable, of the Sellers approving the execution, delivery and performance of this Agreement and all documents contemplated hereunder,

(h) a certificate of status of the Seller Parties issued by the their respective state of incorporation or organization;

(i) completion and execution of applicable and mutually agreed upon tax election forms including, but not limited to, those pertaining to Section 167(1) of the *Excise Tax Act;*

(j) execution of Transitional Services Agreement;

(k) execution of the Partnership Agreement;

(l) employment agreements, reasonably satisfactory to the Purchaser entered into between each of the Key Employee and the Business; and

(m) an undertaking to discharge all Liens applicable to the Assets.

5.8 **Conditions for the Benefit of the Sellers**.

(a) The Sellers acknowledge that the Purchasers have delivered, or caused to be delivered, to the Sellers, at or prior to the Closing Date, the following:

(i) such certificates or other instruments as the Sellers reasonably consider necessary in order to establish that the terms, covenants and conditions contained in this Agreement

to have been performed or complied with by the Purchasers have been performed or complied with;

(ii) certified copies of the resolutions of the shareholders and the board of directors, as applicable, of the Purchasers approving the execution, delivery and performance of this Agreement and all documents contemplated hereunder;

(iii) a certificate of status of each of the Purchasers issued by the jurisdiction of their incorporation;

(iv) execution of Transitional Services Agreement;

(v) a bill of sale and general conveyance in the form of Exhibit C duly executed by each Purchaser, whereby the Sellers are transferring the tangible personal property included in the Assets to the Purchasers;

(vi) an assignment and assumption agreement in the form of Exhibit A duly executed by each Purchaser, effecting the Sellers assignment to and assumption by the Purchasers of the Assets;

(vii) employment agreements, reasonably satisfactory to the Sellers entered into between Transferred Employees and the Purchasers, except for those employees outlined in the Transitional Services Agreement;

(viii) execution of the Partnership Agreement;

(ix) an assignment in the form of Exhibit B duly executed by the applicable Parties transferring all of the applicable Seller Party's right, title and interest in and to the Intellectual Property and Owned Intellectual Property to the applicable Purchasers; and

(x) payment of the Closing Payment.

5.9 **Transaction Personal Information**. The Purchasers shall collect Transaction Personal Information only as necessary for purposes related to the transactions contemplated by this Agreement, including in connection with its investigations of the Business, the Assets and the Sellers, and shall not disclose Transaction Personal Information to any Person other than to its representatives who are evaluating and advising on the transactions contemplated by this Agreement. The Purchasers shall not, following the Closing, without the consent of the individuals to whom such Transaction Personal Information relates or as permitted or required by Law, use or disclose Transaction Personal Information for purposes other than those for which such Transaction Personal Information was collected by the Sellers prior to the Closing, and shall give effect to any withdrawal of consent made in accordance with Law**.**

5.10 **Transfer of Incomplete Contracts.** The Seller Parties shall use best efforts, within one hundred and twenty (120) days following the Closing Date, to locate, transfer, and assist the Purchasers in memoralizing any missing or deficient contractual terms for those contracts identified as such in Schedule C. For greater certainty, the Purchasers shall not be obligated to accept any assignment of such contracts following the Closing Date.

6. RESTRICTIVE COVENANTS

6.1 **Non-Competition**. In consideration of the completion of the transactions contemplated hereunder, each of the Seller Parties agrees that it will not, directly or indirectly, or through any Person or entity, for a period of three (3) years from the Closing Date own any interest in, manage, control, participate in, consult with, become employed by, become a member of, render services to, or in any other manner whatsoever engage in, any business or business activity (i) with the Business' existing customers or their affiliates and subsidiaries; (ii) with potential customers in the car rental, airline industries, or financial institutions or (iii), which is designed or leads to the creation of any product, or business that replicates the Business in whole or in substantial part. For greater certainty, the restrictions set out in item (iii) above shall not apply to the Seller Parties' business as conducted immediately prior to the Closing Date or the Seller Parties' products commercially known as Pulse, Ignite, Amplify and Kognition.

6.2 **Non-Disclosure**. Each of the Sellers agrees that it will not, directly or indirectly, disclose, divulge or communicate orally, in writing or otherwise any confidential information, trade secrets or confidential data relating to the Assets or the Business or the Purchasers to any other Person, firm or corporation, and this obligation will survive in perpetuity.

6.3 **Non-Solicitation of Employees or Customers**. Each of the Sellers agrees that for a period of five (5) years from the Closing Date, it will not (i) solicit, service, sell, approach, have contact with, divert or attempt to divert any entity which is a customer of the Business or a prospective customer of the Business for the purposes of offering products or services that compete with the Business; or (ii) recruit, solicit, divert, attempt to retain as an independent contractor, employ or cause to be employed by a third party, any Person who is an employee or independent contractor of the Purchasers provided, however, that the foregoing will not prohibit a general solicitation to the public, use of professional recruiters, or general advertising.

6.4 **Fair and Reasonable**. Each of the covenants in this Article 6 is considered fair and reasonable by the Parties. Each of the Sellers expressly acknowledge that the restrictions contained in this Article 6 will not cause them any undue hardship and are reasonable and necessary in order to protect the Purchasers' legitimate interests and that any violation thereof would result in irreparable injury to the Purchasers.

6.5 **Enforcement of Covenants**. Each of the Sellers expressly acknowledge that it would be extremely difficult to measure the damages that might result from any breach of the covenants in this Article 6 and that any breach of such covenants will result in irreparable harm to the Purchasers for which money damages could not adequately compensate. If a breach of the covenants occurs, the Purchasers shall be entitled, in addition to all other rights and remedies that the Purchasers may have at Law or in equity, to have an injunction issued by any competent court enjoining and restraining the Sellers, and all other parties involved therein, from continuing such breach. The existence of any claim or cause of action that the Sellers and all other parties may have against the Purchasers shall not constitute a defense or bar to the enforcement of any of the covenants in this Article 6.

6.6 **Scope of Covenants**. To the extent that any covenant in this Article 6, or any part thereof, or the application thereof, is construed to be invalid, illegal or unenforceable, then the other covenants, the other portions of such covenants and the application thereof shall not be affected thereby and shall be enforceable without regard thereto. If any covenant in this Article 6 is determined to be unenforceable because of its scope, duration, geographical area or other factor, then the court making such determination shall have the power to reduce or limit such scope, duration, area or other factor

as may be necessary to make such covenant valid and enforceable. If the Purchasers must resort to litigation to enforce any covenant in this Article 6 that has a fixed term, then the term of such covenant or covenants will be extended for a period of time equal to the period during which a breach of such covenant was occurring (such breach will be considered to have ended on the date of any interlocutory order restraining such breach, provided such order is complied with), beginning on the date of a final court order (without further right of appeal) holding that such breach occurred or, if later, the last day of the original fixed term of such covenant, but the term of such covenant will be extended only to the extent that a court determines that such covenant was breached.

7. RESOLUTION OF DISPUTES

7.1 **Good faith attempts to resolve Disputes.** The Parties agree that they will at all times attempt initially to resolve any controversy or dispute arising out of or relating to this Agreement, or the breach hereof involving a claim as between the Parties ("**Dispute**") in an amicable fashion through good faith negotiation.

7.2 **Dispute resolution procedure.** The Parties agree that, in the event that a Dispute is not resolved in accordance with Section 7.1 (*Good faith attempts to resolve Disputes*), then either Party may issue a formal written notice (a "**Dispute Notice**") and the dispute resolution procedures set forth in Sections 7.3 and 7.4 will apply.

7.3 **Consultation.** The Parties will meet within fourteen (14) days of receipt of a Dispute Notice, and attempt to resolve the Dispute described in the Dispute Notice by consultation procedures.

7.4 **Arbitration**. Any controversy or dispute arising out of or relating to this Agreement, or the breach hereof involving a claim as between the Parties that has not been resolved by the procedures set forth above, will be settled by final and binding arbitration under the rules of the Canadian Commercial Arbitration Centre. The Parties will jointly appoint a mutually acceptable arbitrator. If the Parties fail to appoint a mutually acceptable arbitrator, then the Canadian Commercial Arbitration Centre may be instructed by either Party to the dispute to appoint an arbitrator of its choice. The arbitration will be conducted at a neutral location reasonably accessible by all Parties. The decision of the arbitrator will be final and binding on all Parties hereto and will not be subject to further appeal or review. The provisions of this Section 7.4 will not apply to matters relating, in whole or in part, to Article 6.

8. GENERAL

8.1 **Further Assurances**. The Sellers and the Purchasers will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement and to consummate the transactions contemplated hereunder. The Parties shall assist each other and, in particular, make available to the other Parties all relevant documents and information relating to the Business, to the extent necessary in connection with (i) preparation of financial statements, (ii) any third party claims, (iii) response to any investigation by a court or authority, (iv) preparation of any Tax return or Tax election or response to any Tax audit, or (v) requirement to comply with any laws or regulations. Each Party shall each keep all books and records, including those relevant for Tax purposes, as long as required under applicable law.

8.2 **Time of the Essence**. Time is of the essence of this Agreement.

8.3 **Fees, Expenses and Taxes**. Each of the Parties will pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement. The Purchasers will pay all sales, use, transfer, documentary and similar Taxes and any payments relating to the transfer of the assets contemplated hereunder.

8.4 **Benefit of the Agreement**. This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, permitted assigns and successors of the Parties, including any successor by reason of amalgamation or statutory arrangement of any Party.

8.5 **Entire Agreement**. This Agreement, together with those agreements to be entered into among the Parties pursuant hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings, commitments or agreements between the Parties with respect thereto.

8.6 **Amendments and Waivers**. No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the Parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived and shall not otherwise affect the right to indemnification pursuant to this Agreement.

8.7 **Assignment**. This Agreement may not be assigned by the Sellers without the written consent of the Purchasers, but may be assigned by the Purchasers without the consent of the other Parties to an associated nominee of the Purchasers, provided that (i) such associated nominee enters into a written agreement with the other Parties to be bound by the provisions of this Agreement in all respects and to the same extent as the Purchasers are bound, and (ii) the Purchasers will be jointly and severally liable with the associated nominee of its obligations under this Agreement.

8.8 **Notices**. Any demand, notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To the Sellers:

Kognitiv Corporation
199 Bay Street, Suite 4000
Toronto, ON Canada M5L 1A9
Attention: Legal Department
Email: legal@kognitiv.com

To the Purchasers:

Gary Jonas Computing Ltd.
c/o 8133 Warden Avenue, Suite 400
Markham, ON, L6G 1B3, Canada
Attention: Daniel Shiff, General Counsel
Email: Daniel.Shiff@jonassoftware.com

or to such other address, individual or electronic communication number as may be designated by notice given by either Party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery

thereof and, if given by registered mail, on the fifth Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

8.9 **Announcements**. The Purchasers and the Seller Parties agree that no public release or announcement concerning the transactions contemplated hereby shall be issued or made by any Party without the prior consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, the Purchasers and the Sellers may each issue a press release on the Closing Date, provided that the Party issuing the release shall have allowed the other Party reasonable time to comment on such release in advance of such issuance. The Purchasers and the Sellers agree to keep the terms of this Agreement confidential, except to the extent required by applicable Law or for financial reporting purposes and except that the parties may disclose such terms to their respective accountants and other representatives as necessary in connection with the ordinary conduct of their respective businesses (so long as such persons agree to keep the terms of this Agreement confidential).

8.10 **Nature of Obligations**. Except as provided for herein, the covenants and obligations of, and the representations and warranties made by or attributable to, the Sellers pursuant to this Agreement will be deemed to be made by and attributable to the Sellers, jointly and severally, and the Purchasers will have the right to pursue remedies against any one or more of them without any obligation to give notice to or pursue any other one of them.

8.11 **Release**. Each of the Sellers, by execution and delivery hereof, on behalf of itself and its predecessors, successors, executors, administrators, heirs and estate, past, present and future assigns, agents and representatives, hereby releases and forever discharges the Purchasers and the successors and past, present and future assigns, directors, officers, employees, members, attorneys, representatives and agents of the Purchasers (collectively, the "**Released Parties**"), of and as to any and all losses, costs, claims, demands, causes of action, obligations, damages and liabilities of any and every kind, nature and character whatsoever arising through the date of this Agreement, whether or not now known, suspected or claimed, whether based on a tort, contract (express or implied, oral or written) or any other theory of recovery, whether by statute, ordinance, or common law or in equity, and whether for compensatory, general, punitive or other damages, in connection with the Business or the Assets; provided, however, that the foregoing release shall in no event release, or be deemed to release, any rights of such Party (x) that are incapable of release under applicable Law or (y) arising out of this Agreement and the transactions contemplated hereby. Each of the Sellers acknowledges that it has entered into this Agreement of its own free will and that such Party has not assigned, transferred, conveyed or otherwise disposed of any released claim against any of the Released Parties, or any direct or indirect interest in any such released claim, in whole or in part.

8.12 **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the Province of Ontario. Any and all claims, controversies, and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by the laws of the Province of Ontario, including its statutes of limitations, without giving effect to any conflict-of-laws or other rule that would result in the application of the Laws of a different jurisdiction. In the event of any litigation arising hereunder or in connection with the matters contemplated hereby, each Party agrees to submit to the non-exclusive jurisdiction (subject to Article

8) of courts of the Province of Ontario and of Canada in each case located in the city of Toronto, Ontario. Each Party hereto further irrevocably and unconditionally waives to the maximum extent permitted by applicable Law, any right to trial by jury with respect to any suit related to or arising out of this Agreement.

8.13 **Counterparts and Electronic Signatures**. This Agreement may be executed by the parties in separate counterparts and all such counterparts shall together constitute one and the same instrument. The parties agree that the reproduction of signatures by electronic mail in "portable document format" (.pdf) or by facsimile transmission will be treated as though such reproductions were executed originals.

8.14 **Independent Legal Advice**. Each of the Parties acknowledges and agrees that the Purchasers' counsel has acted as counsel only to the Purchasers and all other Parties to this Agreement acknowledge and confirm that they have been advised to seek, and have sought or have otherwise waived, independent Tax and legal advice with respect to this Agreement and the documents delivered pursuant thereto and that the Purchasers' counsel is not protecting the rights and interests of any other Party to this Agreement. This Agreement shall not be construed against any Party by reason of the drafting or preparation thereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

AIMIA MIDDLE EAST FREE ZONE LLC

By: Umer Mahmood

Name: Umer Mahmood
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

AIMIA PROPRIETARY LOYALTY SENDIRIAN BERHAD

By: Elaine Ruello

Name: Elaine Ruello
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

CORA GROUP AUSTRALIA PTY LTD.

By: Jeff McKee

Name: Jeff McKee
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

EXTREME INNOVATIONS TECHNOSYS INDIA PRIVATE LIMITED

By: Megan Mitchell

Name: Megan Mitchell
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

GARY JONAS COMPUTING LTD.

By: Jeff Mackinnon

Name: Jeff MacKinnon
Title: Authorized Signatory

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

JONAS COMPUTING (UK) LIMITED

By: Jeff MacKinnon

Name: Jeff MacKinnon
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

JONAS FOOD HOLDCO INC.

By: Jeff MacKinnon

Name: Jeff MacKinnon
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

KOGNITIV AUSTRALIA PTY LTD.

By: Megan Mitchell

Name: Megan Mitchell
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

KOGNITIV CORPORATION

By: Tim Sullivan

Name: Tim Sullivan
Title: Chief Executive Officer

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

KOGNITIV HONG KONG LIMITED

By: Elaine Ruello

Name: Elaine Ruello
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

KOGNITIV SINGAPORE PTE LTD.

By: Elaine Ruello

Name: Elaine Ruello
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

KOGNITIV UK LIMITED

By: Megan Mitchell

Name: Megan Mitchell
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

KOGNITIV US LLC

By: Julia Wehmeyer

Name: Julia Wehmeyer
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

LOYALTY SOLUTIONS CANADA INC.

By: Megan Mitchell
Name: Megan Mitchell
Title: Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

NOETIC MARKETING TECHNOLOGIES (PVT) LTD

By: Elaine Ruello

Name: Elaine Ruello
Title: Director

This is Exhibit "Z" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

In the Matter of an Arbitration Between

Gary Jonas Computing Ltd., CORA Group Australia Pty Ltd., Jonas Computing (UK) Limited and Jonas Food Holdco Inc.

(the "Jonas" Parties or the "Buyer")

v.

Loyalty Solutions Canada Inc., Kognitiv Australia Pty Ltd., Kognitiv US LLC, AIMIA Middle East Free Zone LLC, Kognitiv Singapore Pte Ltd. and Kognitiv Corporation.

(the "Kognitiv" Parties or the "Seller")

PROCEDURAL ORDER No. 2
(July 26, 2025)

The following amendments and additions to Procedural Order No. 1 have been agreed upon by the parties:

1. The Arbitration shall be divided into two phases. Phase Two will begin upon the release of a Partial Final Award deciding the issues in Phase One (the "**Partial Final Award**").

2. The Phase One hearing shall proceed on July 28, 29 and 30 as presently scheduled on the issues as originally pleaded.

3. For greater certainty, the Claimants' assertion that the breaches of contract alleged in the Amended Notice of Arbitration caused the insolvency of some or all of the Claimants (the "**Insolvency Damages Claim**"), the Claimants' claim for the $2m Holdback Amount (the "**Holdback Amount Claim**"), and the quantum of the Respondents' claim based on the deficiency alleged in the working capital and whether this amount is subject to a right of set-off in favour of the Jonas Group under the APA (the "**NTA Shortfall Claim**") will not be addressed in Phase One, but will be addressed in Phase Two of this arbitration.

4. The following steps in relation to Phase Two have already occurred:
    a. Claimants have delivered an Amended Notice of Arbitration to add its Insolvency Damages Claim.

b. Claimants have delivered the Expert Report of Secretariat dated June 4, 2025 in connection with the Insolvency Damages Claim

c. Respondents have delivered an Amended Answer and Counterclaim to add its defence to the Insolvency Damages Claim and to add its NTA Shortfall Claim;

5. Claimants shall, on or before July 28, 2025, deliver a sur-reply to the Expert Report of Cohen Hamilton Steger, dated July 17, 2025.

6. Claimants shall, on or before August 8, 2025, deliver an Amended Reply and Defence to Counterclaim to add its reply on the Insolvency Damages Claim and its defence to the NTA Shortfall Claim;

7. Respondents may deliver a Reply to Defence to Counterclaim on or before August 15, 2025.

8. Claimants shall, on or before August 15, 2025, deliver a Notice of Arbitration in connection with the Holdback Amount Claim.

9. Respondents shall, on or before August 22, 2025, deliver an Answer to the Holdback Amount Claim.

10. Claimants shall, on or before August 29, 2025, deliver a Reply to Answer.

11. No further evidence shall be submitted with respect to the Insolvency Damages Claim, the Holdback Amount Claim, or the NTA Shortfall Claim until Phase Two. Evidence in Phase One relevant to the Insolvency Damages Claim, the Holdback Amount Claim, and the NTA Shortfall Claim need not be re-submitted in Phase Two but may be supplemented by additional evidence.

12. The Partial Final Award will be final and binding with respect to the matters pleaded prior to the above amendments. However, no steps to enforce the Partial Final Award shall be taken for 30 days without leave of the Arbitrator.

13. The Jonas Group may, within 7 days of the release of the Partial Final Award, bring a motion for a stay of execution with respect to the enforcement of any Partial Final Award.

14. A timetable with respect to any such motion will be determined by the parties with the assistance of the arbitrator, if necessary, but the parties agree that such a motion will be heard within 30 days of any Partial Final Award.

15. A further procedural timetable for Phase Two will be set following release of the Partial Final Award.

16. For greater certainty, Procedural Order No. 1 and Procedural Order No. 2 in this Arbitration do not replace or vary any other process agreed to by the parties under the APA for determining the amount of working capital at closing of the sale.

17. Nothing in Procedural Order No. 1 or Procedural Order No. 2 in any way replaces or varies the obligations of the parties arising from the Insolvency Order of Justice Cavanagh dated April 14, 2025.

William G. Horton, C.Arb, FCIArb. / Sole Arbitrator
July 26, 2025

This is Exhibit "AA" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

IN THE MATTER OF AN ARBITRATION
under the *International Commercial Arbitration Act, 2017, SO 2017, c 2*
pursuant to Section 7.4 of an Asset Purchase Agreement dated July 5, 2024

BETWEEN:

LOYALTY SOLUTIONS CANADA INC., KOGNITIV AUSTRALIA PTY LTD., KOGNITIV US LLC, AIMIA MIDDLE EAST FREE ZONE LLC, KOGNITIV SINGAPORE PTE LTD., AND KOGNITIV CORPORATION

Claimants

- AND -

GARY JONAS COMPUTING LTD., CORA GROUP AUSTRALIA PTY LTD., JONAS COMPUTING (UK) LIMITED, AND JONAS FOOD HOLDCO INC.

Respondents

AND BETWEEN:

LOYALTY SOLUTIONS CANADA INC., KOGNITIV AUSTRALIA PTY LTD., KOGNITIV US LLC, AIMIA MIDDLE EAST FREE ZONE LLC, KOGNITIV SINGAPORE PTE LTD., AND KOGNITIV CORPORATION

Respondents by Counterclaim

- AND -

GARY JONAS COMPUTING LTD., CORA GROUP AUSTRALIA PTY LTD., JONAS COMPUTING (UK) LIMITED, AND JONAS FOOD HOLDCO INC.

Claimants by Counterclaim

PARTIAL FINAL AWARD – PHASE 1

OVERVIEW OF FACTS AND DISPUTE

The Parties

1. The Claimants (Respondents by Counterclaim) were in the business of running loyalty programs primarily for financial institutions in the Middle East. Customers of the financial institutions earn points on purchases at participating merchants and service providers, and those points can be redeemed against travel and other products or services. The Claimants managed the redemption process for a fee using proprietary software and were reimbursed by the financial institutions for the expenditures they incurred in honoring redemptions.

2. The Respondents (Claimants by Counterclaim) are all related companies and are in the business of the acquisition of software companies, the sale of software, and the day-to-day operations of vertical market software companies.

The Agreement

3. On July 5, 2024, the Claimants (Respondents by Counterclaim) , Loyalty Solutions Canada Inc., Kognitiv Australia Pty Ltd., Kognitiv US LLC, AIMIA Middle East Free Zone LLC ("**Kognitiv AIMIA**"), Kognitiv Singapore Pte Ltd., and Kognitiv Corporation (collectively, "**Kognitiv**" or the "**Claimants**") and the Respondents (Claimants by Counterclaim), Gary Jonas Computing Ltd., CORA Group Australia Pty Ltd., Jonas Computing (UK) Limited, and Jonas Food Holdco Inc. (collectively, the "**Jonas Group**" or the "**Respondents**".) entered into an Asset Purchase Agreement (the "**Agreement**").[1] The Agreement was entered into after a period of

[1] Unless defined herein, any capitalized terms used throughout this Partial Final Award have the meaning ascribed to them in the Agreement.

negotiations between the parties commencing in January 2024 and due diligence carried out by the Jonas Group commencing on March 1, 2024. The Agreement closed on the same day it was signed.

4. Under the Agreement, Kognitiv sold, and the Jonas Group purchased, six client contracts and certain of Kognitiv's software and intellectual property, including Kognitiv's Enterprise Loyalty Platform, and other assets, including the programs known as the Air Miles Program and Miles Rewards Program in the Middle East (the "**Program**") for $19,400,000 (the "**Purchase Price**"). The sale included all copyrights, trademarks, patents, technology, licenses, and active contracts associated with the Program (the "**Assets**").

5. All references to currency in the Agreement, and all references to currency in this Partial Final Award, except where specifically noted otherwise, are to Canadian dollars.

6. The Purchase Price was to be paid by the Jonas Group in installments as follows:

(a) $3,000,000 payable at the time of closing (July 5, 2024) (the "**Closing Payment**");

(b) $2,000,000 payable 12 months after closing (the "**Holdback Amount**");

(c) $12,000,000 payable upon receipt of all Customer Consent Agreements (as defined in the Agreement) for the Financial Institution Clients (the "**Financial Institution Client Holdback**");

(d) $1,000,000, $500,000 of which was payable 60 days after closing, and $500,000 of which was payable 120 days after closing (the "**TSA Holdback Amount**"); and

(e) $1,400,000 payable within 30 days of the execution of an agreement of no less than 2 years in term entered into by the Jonas Group with Nordstrom, Inc. (the "**Special Holdback Amount**").[2]

7. In addition to the payment milestones set out above, the Agreement mandated that by no later than January 21, 2025, the Jonas Group was to prepare and deliver to Kognitiv an unaudited statement showing the difference between the value of the Assets and the associated liabilities (the "**Final NTA Amount**"). If the Final NTA Amount is greater than the difference estimated at the time of the Agreement (the "**NTA Expected Amount**"), then the Jonas Group must pay Kognitiv the difference between the Final NTA Amount and the NTA Expected Amount ("**NTA Excess**"). The NTA Excess is to be paid in addition to the Holdback Amount. If the NTA Shortfall is greater than (or equal to) the Holdback Amount, then (A) the Purchasers will retain the entire Holdback Amount and (B) the Sellers will pay to the Purchasers by wire transfer on the Holdback Release Date an amount equal to the difference between the NTA Shortfall and the Holdback Amount.

8. The Agreement provides a separate process for determining any dispute regarding the Final NTA Amount.

The Dispute

9. To date, $4,000,000 of the Purchase Price has been paid by the Jonas Group (the Closing Payment and the TSA Holdback Amount).

[2] Agreement, s.2.5;

10. There is no dispute that the Special Holdback Amount is not payable as Nordstrom did not renew its agreement.

11. Kognitiv claims the balance of the Purchase Price in this arbitration. The Jonas Group resists payment of the Financial Institution Client Holdback based on allegations made by the Jonas Group of non-disclosure, misrepresentation and fraud. The Financial Institution Client Holdback is the subject of Phase 1 of this arbitration.

12. Kognitiv alleges that, as a result of the Jonas Group's breach of the Agreement and of its duties of good faith and honesty, Kognitiv Corporation (the parent company in Kognitiv) was forced to file a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* (*Canada*) on December 12, 2024. Kognitiv's claims in that regard (the "**Insolvency Damages Claim**") have been reserved to Phase 2 of this arbitration.

13. Kognitiv claims punitive damages in relation to the Insolvency Damages Claim (the **Punitive Damages Claim**").

14. During this arbitration a dispute with respect to the Final NTA Amount has arisen. The Jonas Group delivered the unaudited statement to Kognitiv on July 3, 2025. The Jonas Group alleges that there is an NTA Shortfall of $7,676,528. After deducting the $2m Holdback Amount, the Jonas Group claims that is entitled to a payment of $5,676,528, to be set off against any amounts found owing to Kognitiv in this Arbitration (the "**NTA Shortfall Claim**"). Kognitiv denies that this amount is owing or that the NTA Shortfall Claim is subject to a right of setoff. Kognitiv claims the full $2m Holdback Amount ("**Holdback Claim**").

15. The counterclaim of the Jonas Group with respect to the Holdback Claim and the NTA Shortfall claim will be addressed in Phase 2 of the arbitration, after the separate process for determining the NTA Shortfall, if any, has been completed.

16. The Jonas Group also claims an additional $2,342,181 for amounts that Kognitiv received from customers on behalf of the Jonas Group but has refused to hand over (the **"Remittance Amount"**).

17. Kognitiv acknowledges that the Remittance Amount is owing but seeks to set that amount off against what it claims is owing to it by the Jonas Group. The Jonas Group acknowledges that, as they have retained the $12 million Financial Institution Holdback, their losses should be set off against that holdback.

The Dispute with respect to the Financial Institution Client Holdback

18. The dispute between the parties respecting the Financial Institution Client Holdback involves HSBC Bank Middle East Limited ("**HSBC**"), as well as the related HSBC Bank Egypt SAE ("**HSBC Egypt**"). HSBC was one of the six Kognitiv Group clients who participated in the Program and whose contracts were transferred to the Jonas Group under the Agreement.

19. By November 28, 2024, Kognitiv had transferred the Assets to the Jonas Group and had received and delivered to the Jonas Group Customer Consent Agreements for its Financial Institution Clients, being: (i) Toronto-Dominion Bank ("**TD**"); (ii) HSBC; and (iii) the National Australian Bank Limited ("**NAB**").

20. The Jonas Group did not pay the Financial Institution Client Holdback and advised Kognitiv it would be withholding the full $12,000,000. It justified this decision with allegations

that Kognitiv "fraudulently and intentionally" withheld material information from it regarding the Program and the Assets, resulting in what it termed "material deviations" to the HSBC contract, and which allegedly caused it to suffer over $13,500,000 in damages.

21. Specifically, the Jonas Group allege that Kognitiv failed to disclose that:

(a) before closing, HSBC was actively seeking to renegotiate the terms that would govern its exit from the 2022 HSBC Master Services Agreement that governed its relationship with Kognitiv ("**MSA)**. The Jonas Group alleges that these negotiations (the "**HSBC Negotiations**") were a clear signal that HSBC was considering leaving the relationship (which it ultimately did, on July 11, 2025); and

(b) in the 12 months leading up to the closing of the Asset Purchase Agreement on July 5, 2024, about $1.2 million of Kognitiv's revenues from HSBC derived from their practice of billing HSBC Egypt using an inaccurate, fixed Egyptian pound-to-USD conversion rate that was highly unfavourable to HSBC Egypt and that resulted in significant revenues to Kognitiv in respect of what were intended to be merely reimbursements. The Jonas Group alleges that this was an unsustainable state of affairs that HSBC Egypt demanded be corrected shortly after the closing of the Asset Purchase Agreement, followed by its departure from the program entirely (the "**Currency Issue**").

22. The Jonas Group maintains that the foregoing constituted material facts that Kognitiv was obligated to disclose and are breaches of the Representations and Warranties set out in the Agreement. The Jonas group has also alleged that Kognitiv's misrepresentations with respect to these issues were fraudulent.

23. Prior to the hearing, the Jonas Group delivered expert evidence to the effect that their losses range from a low of $3,924,823 to a high of $4,507,797 (with an additional $1.4 million in loss if the forecasted growth rates in its original calculations of what it was prepared to pay for the Assets (the "**Pricing Model**") are found to be reasonable).

24. In response to the allegations of misrepresentation and fraud, Kognitiv takes the position that:

(a) the Jonas Group received the Assets it bargained for and is required to pay the Purchase Price;

(b) with respect to the HSBC Negotiations, Kognitiv did not hide or misrepresent any material information. These were merely contractual maintenance discussions undertaken at HSBC's request as part of a "due diligence" exercise being carried out by HSBC, which negotiations were later taken over by the Jonas Group and did not materially alter the terms of the MSA; and

(c) with respect to the Currency Issue, Kognitiv did not hide or misrepresent any material information. Kognitiv did not engage in any discussions with HSBC related to foreign exchange between December 31, 2023 and the date of closing. Further, the Jonas Group had access to all of the information required to discover the effects of foreign exchange in the course of its due diligence. Its failure to do so should not be attributed to Kognitiv.

25. In addition, Kognitiv maintains that not only did the Jonas Group breach the Agreement by failing to pay funds properly owing to Kognitiv, but that the Jonas Group has done so in a high

handed, arbitrary, and malicious manner, breaching its duties of honesty and good faith. In particular, Kognitiv alleges that:

(a) the Jonas Group knew at all material times that Kognitiv was financially vulnerable. Rather than fulfilling its obligations under the Agreement, it exploited this fact, to secure a lower purchase price than the one it bargained for;

(b) the Jonas Group has accused Kognitiv of fraud in hiding the existence of the Issues without a shred of evidence. It has done so to circumvent the damages cap imposed by section 4.2 of the Agreement, which limits the Jonas Group's damages to an aggregate amount of 45% of the Purchase Price "*actually received*", except for claims involving fraud; [3]

(c) the Jonas Group's claim for damages is grossly inflated. The Claimants cite the fact that the Jonas Group's own expert opined that its damages, even if proven true, are between $3,924,823 and $4,507,797. They note that Kognitiv's experts concluded that the Jonas Group's potential damages are even lower, ranging between $2,966,000 and $3,116,000, reduced to $1,953,000 if the "Egyptian FX Issue" is excluded; and

(d) in any event, the Agreement divided the Financial Institution Client Holdback into amounts per customer. The amount of the Financial Institution Client Holdback associated with HSBC is $7 million which means that if the Jonas Group took the position that Kognitiv did not deliver the relevant HSBC Customer Consent, it

[3] Kognitiv maintains that, since the Jonas Group has only paid $4,000,000 of the Purchase Price, any claim for damages should be capped at $1,800,000; Agreement, s. 4.2. This cap is subject to an exception for fraud.

could deduct $7 million from the Financial Institution Client Holdback. The claims which the Jonas Group have put forward with respect to HSBC have exceeded that amount.

DIVISION OF THE ARBITRATION INTO TWO PHASES

26. As discussed above, the Parties agreed that the Insolvency Damages Claim, the Holdback Claim and the NTA Shortfall Claim, will be heard during the second phase of this Arbitration. The Agreement of the Parties was confirmed by Procedural Order No. 2 dated July 26, 2025.

FACTS AND FINDINGS PERTAINING TO THE HSBC NEGOTIATIONS

27. Kognitiv AIMIA managed and operated the Program. HSBC, through its subsidiaries, HSBC United Arab Emirates, HSBC Qatar, HSBC Bahrain, HSBC Egypt, and HSBC Oman (together the "**HSBC Companies**"), represented greater than 85% of the Program's revenues, although Schedule H to the Agreement allocated to it 8% of the Purchase Price.

28. On October 18, 2022, HSBC and Kognitiv AIMIA had renewed their relationship in the Program for a three-year term through the MSA, with an expiry date of March 31, 2025. Under the Agreement, the Jonas Group purchased the remainder of the term of the MSA – approximately 9 months.

29. The MSA is a comprehensive contract covering the relationship between the parties with respect to the Program. The MSA required each of the HSBC Companies that participated in the Program to execute a "Participation Agreement".

30. HSBC or the HSBC Companies could terminate their respective agreements on one year's written notice. If a Participation Agreement is terminated, the relevant HSBC Company becomes

responsible for paying various fees, including a fee based upon a change request ("**CR**") process that delineates the exit services to be provided as part of the transition after termination of the contract (the "**Exit Fee**"). The parties were also required to prepare a written exit plan ("**Exit Plan**") at least six months before the expiry of the MSA or applicable Participation Agreement, or within three months of a party delivering a notice to terminate.

31. Beginning in December 2023, HSBC began the HSBC Negotiations in which it raised with Kognitiv the topics of an Exit Plan and an Exit Fee that would be applicable to HSBC entities on termination. These discussions continued until the day the Agreement (between Kognitiv and the Jonas Group) was entered into and closed. Until shortly before it signed the Customer Consent Agreement, HSBC had taken the position with Kognitiv that it would not sign until its requests in the HSBC Negotiations were addressed. However, in the circumstances described below, HSBC did sign the Customer Consent Agreement without the HSBC Negotiations being concluded.

32. The HSBC Negotiations were not disclosed by Kognitiv or by HSBC to the Jonas Group until shortly after closing of the Agreement.

33. Kognitiv maintains that HSBC was merely seeking an estimate on the potential Exit Fee if one of the HSBC Companies exited the Program. It says that HSBC explained that this request was prompted only by concerns about the high cost (relative to its annual Program fee) of HSBC Oman exiting the Program in 2023 and what it could mean for a potential future exit of another Participant. Kognitiv points to the explanation offered by HSBC that it was raising these issues as a matter of "due diligence". Kognitiv describes these discussions as non-material, "contract maintenance" and submits that prior to the Agreement, there were no discussions between Kognitiv and HSBC regarding an Exit Plan or a CR.

34. Ultimately, as stated above, HSBC did sign the Customer Consent Agreement allowing Kognitiv to transfer the existing MSA to the Jonas Group. However, it did so several weeks after the Agreement closed and only on condition that the Jonas Group continue the HSBC Negotiations.

35. In addition, prior to HSBC signing the Customer Consent Agreement, Kognitiv offered to pay US$500,000 to HSBC upon receipt by Kognitiv of the Financial Institution Holdback from the Jonas Group (the "**HSBC Incentive**"). Discussions which ensued referred to the payment being compensation for the Currency Issue or for a general release in favour of Kognitiv. After some negotiations as to the terms and amount, the offer was accepted by HSBC. The agreement relating to this payment is dated November 1, 2024 and was recorded in a separate document (the "**Letter Agreement**"). [4] The version of the Letter Agreement eventually signed by the Kognitiv parties (specifically, Kognitiv AIMIA) did not refer to any specific purpose for the payment. Rather, it referred to the payment being made "as part of the finalization of the relationship between Kognitiv and HSBC". The Letter Agreement does not refer to the payment being subject to Kognitiv receiving the Financial Institution Holdback.

36. At the hearing, Mr. Barrera, the founder of Roystone Capital Management LP which is a significant stakeholder of Kognitiv Corporation, testified that it was his idea to offer to pay HSBC $500,000 in return for HSBC signing the consent to the transfer of the MSA to the Jonas Group. He explained that the reason was "to inject a sense of urgency" as HSBC was slow to sign the

[4] Email from T. Sullivan to N. Chawla and A. Kamel, October 23, 2024; Letter Agreement signed by Kognitiv AIMIA, November 1, 2024.

consent to transfer. Mr. Barerra testified that this payment has not yet been made given that the Financial Institution Client Holdback has not been paid by the Jonas Group.[5]

37. The HSBC Incentive was not disclosed to the Jonas Group until the Jonas Group made information requests in this arbitration. It was not mentioned in the affidavits of Mr. Barrera delivered in this arbitration.

38. It is a reasonable inference that the HSBC Incentive explains why HSBC changed its mind about requiring that the HSBC Negotiations be completed before HSBC signed the Customer Consent Agreement.

39. After closing, HSBC entered into a two-year extension of the MSA on terms more favourable to HSBC, including a right to terminate on 6 months' notice. On July 11, 2025, HSBC terminated the relationship with the Jonas Group.

40. No evidence from HSBC was tendered in the arbitration.

41. I am unable to accept Kognitiv's characterization of its discussions with HSBC as non-material, "contract maintenance".

42. HSBC's course of communication with Kognitiv shows that the exit clause negotiations were of high importance to it. Email exchanges confirm the scope and tenor of the discussions that were taking place:

(a) In December 2023, HSBC first asked Kognitiv for a draft Exit Plan.

[5] Barrera Day 1 Transcript, pp. 50-55. In their submissions, counsel for Kognitiv characterized the motive for offering to pay HSBC $500,000 was that "the Kognitiv Group merely sought to incentivize HSBC to speed up the process."

(b) On January 9, 2024, Ms. Chawla of HSBC emailed Ms. Mishra of Kognitiv, writing,

> This is with reference to our discussion on **the termination clause and exit plan linked in the current contract**. This is getting raised in our internal reviews as a due diligence concern.
>
> Appreciate if you provide necessary updates to us on the matter.[6]
>
> [Bold added.]

(c) On January 18, 2024, Ms. Chawla wrote to Ms. Mishra,

> We are awaiting the response from your team.
>
> Do let us know asap.[7]

(d) On January 25, 2024 Mr. Haider Hamdan of HSBC followed up again with Ms. Mishra, writing, "Whats [*sic*] the target date to close out?"[8]

(e) On January 31, 2024, Ms. Chawla wrote to Ms. Mishra, "we are really concerned with the delay in getting a firm closure on estimates. Would you be able to get us these details by end of the week?"[9]

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[6] Email from N Chawla to A Mishra, January 9, 2024, Exhibit "63" to the First Barrera Affidavit, **record, v. 4, p. 1349**.
[7] Email from N Chawla to A Mishra, January 18, 2024, Exhibit "63" to the First Barrera Affidavit, **record, v. 4, p. 1346**.
[8] Email from H Hamdan to A Mishra, January 25, 2024, Exhibit "63" to the First Barrera Affidavit, **record, v. 4, p. 1345**.
[9] Email from N Chawla to A Mishra, January 31, 2024, Exhibit "63" to the First Barrera Affidavit, **record, v. 4, p. 1344**.

(f) Having not received the response he was looking for, the next day, February 1, 2024, Mr. Hamdan escalated the matter to Dena Escobedo (Kognitiv's SVP, Global Customer Experience) seeking to "close this task".[10]

(g) Ms. Mishra sent the exit cost assessment to Mr. Hamdan on February 7, 2024.[11]

(h) On March 8, 2024, Ms. Chawla sent Ms. Mishra a draft contractual exit plan document.[12].The following comments accompanied the draft:

> We have received **the contract draft from our legal** to cover **the discussion on the Exit plan risk for all markets**.
>
> I appreciate your efforts in providing the **exit fees cost, particularly with the capped structure.**
>
> However, our smaller countries have expressed discomfort with this cost, especially if they need to exit individually.
>
> We acknowledge that the **fees will be reviewed and adjusted downward when the actual business scenario arise and if any smaller country have to exit individually.**
>
> [Bolding added.]

(i) On March 18 and 26, 2024, Mr. Hamdan followed up with Ms. Mishra to see whether the Kognitiv legal team had reviewed the draft.[13]

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[10] Email from H Hamdan to D Escobedo, February 1, 2024, Exhibit "63" to the First Barrera Affidavit, **record, v. 4, p. 1344**.
[11] Email from A Mishra to H Hamdan, February 7, 2024, Exhibit "64" to the First Barrera Affidavit, **record, v. 4, pp. 1353-1354**.
[12] Email from N Chawla to A Mishra, March 8, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, pp. 1366-1367**. The attached exit plan document is not included in Exhibit 65 to Mr. Barrera's affidavit, but Ms. Mishra's responding email makes clear that Ms. Chawla had sent a draft document with her email.
[13] Emails from H Hamdan to A Mishra, March 18 and 26, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, pp. 1365-1366**.

(j) On April 1, 2024, Ms. Chawla then followed up, pointing out that the draft had been shared three weeks before.[14]

(k) That same day, Ms. Mishra wrote to Ms. Chawla saying that she had received a response from Kognitiv's legal and corporate governance team, and that Kognitiv could not agree to cap exit fees as requested.[15]

(l) On April 2, 2024, in response to this, Mr. Hamdan referred to there being "**a major disconnect**."[16]

(m) On April 15, 2025, Ms. Chawla wrote, "Let's try to fast track this and close in this week."[17]

(n) A week later, on April 23, 2024, Ms. Chawla wrote, "Do we have an update. We need to close this."[18]

(o) On May 17, 2024, Ms. Chawla wrote, "We value our partnership and look forward to your support to get this clarified and closed asap."[19]

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[14] Email from N Chawla to A Mishra, April 1, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, p. 1364**.
[15] Email from A Mishra to N Chawla, February 7, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, pp. 1362-1363**.
[16] Email from H Hamdan to A Mishra, April 2, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, p. 1361**.
[17] Email from N Chawla to A Mishra, April 15, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, p. 1358**.
[18] Email from N Chawla to A Mishra, April 23, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, p. 1357**.
[19] Email from N Chawla to A Mishra, May 17, 2024, Exhibit "65" to the First Barrera Affidavit, **record, v. 4, p. 1356**.

(p) On May 30, 2024, Ms. Dina Escobedo of Kognitiv wrote to Mr. Hamdan requesting that he execute a consent form "[f]urther to Kognitiv/Cora transaction process"[20] – i.e. a consent to the transfer of the 2022 MSA from Kognitiv to the Jonas Group.

(q) A June 13, 2024 email from Ms. Escobedo to Ms. Chawla, Mr. Hamdan and Afzal Malik of HSBC, shows that, on the date of the email, Ms. Escobedo had a call with these HSBC representatives. Reporting on the call, Ms. Escobedo wrote, "[w]e understand from the call that **finalizing the exit clause amendment is a pre-requisite to HSBC signing the Consent agreement for the Cora purchase**."[21]

[Bold added.]

43. Based on this evidence, the position of Kognitiv that the discussions with HSBC were non-material, "contract maintenance" discussions that had no impact on the MSA is untenable. It is clear that the discussions contemplated a formal change to the existing MSA which would place upper limits on exit fees payable and thereby facilitate any exit of participating HSBC entities. The fact that the completion of these negotiations was at one point made a precondition to HSBC providing the consent to the transfer of the business to the Jonas Group establishes the materiality of the HSBC Negotiations to the transaction between Kognitiv and the Jonas Group. The fact that HSBC's consent was ultimately provided without any amendment to the MSA does not diminish the materiality of the HSBC Negotiations given that Kognitiv agreed to pay the HSBC Incentive upon HSBC's execution of the consent and given that HSBC continued the negotiations with the Jonas Group immediately after the closing of the transaction, thus subjecting the Jonas Group to a

[20] Email from D Escobedo to H Hamdan, May 30, 2024, Exhibit "67" to the First Barrera Affidavit, **record, v. 4, p. 1461**.
[21] Email from D Escobedo to N Chawla, A Malik and H Hamdan, June 13, 2024, Exhibit "68" to the First Barrera Affidavit, **record, v. 4, p. 1471**.

significant business risk of which Kognitiv was aware but which was not disclosed to the Jonas Group before closing.

44. In addition to non-disclosure of the HSBC Negotiations and the HSBC Incentive, I find that the status of the relationship between Kognitiv and HSBC was actively misrepresented by Kognitiv. I accept the evidence of Mr. Brosnan to the effect that in discussions with Kognitiv, through their CEO (Mr. Sullivan) and SVP, Global Customer Experience (Ms. Escobedo), he was assured that the relationship with HSBC was "super solid" and "green".

45. On July 3, 2024 (two days before the closing) Ms. Escobedo emailed the Jonas Group and said:

> Ankita and I met with HSBC this morning and **they are eager to receive a renewal proposal** before the end of July. Their normal procurement practice is to have a proposal 9-12 months before renewal, and we are now 8 months out from expiration. I assured them that this is on your radar and is one of the reasons you're planning to meet with them in person the week of 22 July and speak with them next week.
>
> They indicated **they are looking to receive the commercials for 2 years with 'as is' scope of the contract**, although their procurement person also said HSBC also invites proposals for 3 years from suppliers. They are also **keen to understand the renewal process** with Cora and new management.
>
> **FYI they had not been pushing us for a proposal until now – and now they're treating this with urgency.** Please let me know how I can help.
>
> [Bold added.]

46. While it is possible to parse the words of this email in such a manner as to see them as literally accurate, they are rendered misleading by the omission of any reference to the HSBC Negotiations. For example, it may be true that HSBC was not "pushing" a proposal to renew the MSA or was not previously treating the question of renewal "with urgency". However, the

impression created by these comments is falsified by the fact that HSBC *was* pushing for amendments to the MSA relating to the possible termination of the relationship and was treating *that* as a matter of urgency.

47. It also appears to be the case that HSBC may have similarly misrepresented the status of its relationship with Kognitiv by failing to reference the HSBC Negotiations when it met with the Jonas Group prior to closing. HSBC is not a party to this arbitration and did not give evidence. If HSBC did represent to the Jonas Group that it has a strong and stable business relationship with Kognitiv, I attach no evidentiary weight to those representations in light of the undisclosed HSBC Negotiations and the HSBC Incentive.

48. The purpose of disclosures by a seller when required in business acquisitions is to provide the purchaser with an ability to assess the risk and the value of entering into or completing the transaction. The existence of the HSBC Negotiations had a direct bearing on the risk the Jonas Group was assuming with respect to a major component of the Assets regardless of how the relationship between Kognitiv and HSBC was characterized by either of those parties.

49. Kognitiv makes a number of submissions in justification of their position that the HSBC Negotiations were not material. For example:

(a) The exit fees being negotiated did not relate to termination for convenience (i.e. termination before the end of the term of the contract);

(b) The Agreement did not guarantee the Jonas Group renewal of the HSBC MSA;

(c) Kognitiv did not agree to any changes to the MSA before closing;

(d) Kognitiv told the Jonas Group that HSBC would be tough negotiators; and

(e) Whatever happened after closing was in the control of the Jonas Group.

50. However, these factors go to the assessment or quantification of the risk posed by the HSBC Negotiations, not to the existence of the risk.

51. For example, while the Agreement did not assure the Jonas Group of the renewal of the MSA, the Jonas Group was clearly acquiring the opportunity to secure that renewal and paying a price for that opportunity. The HSBC Negotiations were directly relevant to the assessment of that opportunity. This was true whether or not the negotiations related to termination before the end of the term of the contract which, in any event, was only 9 months away as of the beginning of July 2024. The relevant fact is that HSBC was seeking changes to the current agreement in a way that would reduce the cost to it of non-renewal. Disclosing the MSA without disclosing current negotiations to make substantive changes to it is inherently misleading. The fact that Kognitiv resisted making those changes prior to closing, while offering HSBC the HSBC Incentive instead, did not alter the situation faced by the Jonas Group on acquisition. The general statement that HSBC would be tough negotiators does not constitute disclosure with respect to specific, pending demands made by HSBC to amend the existing MSA.

52. While the events after closing of the transaction have no direct bearing on the assessment of the risk posed by the HSBC Negotiations at the time of the Agreement and closing, the reality of the risk is confirmed by the fact that HSBC continued the same previously undisclosed negotiations with the Jonas Group after closing. In that context, it is difficult to escape the conclusion that Kognitiv did not disclose the HSBC Negotiations because it was concerned that disclosure would have had a negative impact on the Jonas Group's perception of the value of the

transaction and give the Jonas Group additional leverage in the negotiation. In other words, non-disclosure of the HSBC Negotiations by Kognitiv was driven by their perceived materiality to the transaction and not by their irrelevance.

FACTS AND FINDINGS PERTAINING TO THE CURRENCY ISSUE

53. HSBC Egypt has participated in the Program since 2007 and the last Participation Agreement it executed prior to the Agreement is dated October 18, 2022, the same date as the MSA. HSBC Egypt's Participation Agreement sets out that any redemption costs were to be billed out in USD.

54. The currency issue relates to HSBC Egypt paying for redemptions at a fixed USD:EGP (US Dollar to Egyptian Pound) rate, which became highly unfavourable to HSBC Egypt as the EGP had suffered from significant devaluation.

55. The 2022 MSA contemplates Kognitiv being reimbursed for the cost of the redemptions. Attachment D to the 2022 MSA, entitled "Pricing" sets out the fixed program fees in respect of the Middle East territories at s. 1.1, and section 3.2 of Attachment D sets out how Kognitiv was to invoice HSBC entities for redemptions:

> 3.2 On a monthly basis, Kognitiv shall **recharge at cost paid by the Collector**[22] the cost of all redemptions received which relate to HSBC Miles, as per the calculation in Schedule and shall invoice HSBC for the total amounts payable in respect of redemptions in the previous month in relation to HSBC Miles issued. Kognitiv will be able to retain any service fees, margins, commissions, marketing fees, or other such receipts, in support of operating and marketing the Programmes.

[22] Section 1.2 of the 2022 MSA defines "Collector" as "any HSBC cardholder or customer registered with the Air Miles or My Rewards Points Programme as a collector of Miles": "HSBC Master Services Agreement", Exhibit "J013" to the First Brosnan Affidavit, section 1.2, **record, v. 4, p. 2428**.

[Bold added.]

56. Kognitiv invoiced HSBC Egypt on a set cost per point, denominated in EGP for every mile redeemed by a member in exchange for rewards. The USD cost per point was applied to the number of miles redeemed for the period to determine the amount billable in USD.

57. On June 4, 2023, after a period of significant fluctuation in the USD:EGP exchange rate which had resulted in some losses to Kognitiv, HSBC confirmed Kognitiv's proposal to invoice at a fixed rate of 23.69 (avg. rate) starting from May, 2023.

58. A significant devaluation of EGP occurred in March 2024. On the invoices after that date, the fixed rate of 1 USD to 23.69 EGP, resulted in a significantly higher USD cost per point compared to the equivalent calculated using the then current rate. In other words, Kognitiv was billing HSBC Egypt for EGP redemption costs in US dollars, but the amount of the US dollar invoices was determined by using a fixed exchange rate that had been set before the significant devaluation in the EGP.

59. This difference between the fixed rate and the actual current rate of conversion resulted in Kognitiv making a significant profit on the exchange rate instead of just recovering the costs it incurred in fulfilling the redemptions. The amount of the difference between July 2023 and June 2024 inclusive was US$887,833.72, with the amount of the monthly difference rising by about 100% starting in March 2024. Converting the difference to Canadian currency, the amount in the twelve months leading up to and including June 2024 was $1,207,857.

60. There is no evidence of any specific objection from HSBC or HSBC Egypt to Kognitiv benefitting from the fixed exchange rate agreed to in May 2023, until the issue was raised with the

Jonas Group at the end of August 2024, i.e. several weeks after closing but before the consent to transfer was signed by HSBC. It became a significant issue in the Jonas Group's negotiations with HSBC to secure the consent to the transfer.

61. After learning of the Currency Issue, the Jonas Group agreed with HSBC Egypt that the exchange rate applying to the USD invoices that the Jonas Group would send to HSBC Egypt would be at an average monthly exchange rate. This resulted in significantly lower invoices.

62. The Jonas Group maintains that the non-disclosure of the Currency Issue by Kognitiv was prejudicial to it in that:

(a) Kognitiv failed to disclose an issue that confronted the Jonas Group after closing as a problem in the relationship with HSBC that had to be addressed in order to secure HSBC's consent to the transfer; and

(b) To the extent of the difference between the fixed rate and the actual current rate, the income reported by Kognitiv was materially overstated and, in any event, not sustainable.

63. Kognitiv's response on the currency issue is as follows:

(a) After the exchange rate was set by agreement with HSBC in June 2023, Kognitiv was unaware of any foreign exchange concerns HSBC Egypt may have had. Kognitiv only learned of the Currency Issue after the Agreement closed;

(b) In any event, the Currency Issue was discoverable by the Jonas Group in the course of its due diligence. Kognitiv produced significant financial documentation to the

Jonas Group during the Due Diligence Period, which included revenue from the Currency Issue. In addition, the Jonas Group was already running another loyalty and rewards program that dealt with foreign currencies at the time. The Jonas Group had all of the information and experience that it needed in order to fully analyze Kognitiv's revenues and identify potential risks;[23]

(c) It was because of the Jonas Group's due diligence that it was able to secure a price cut from $30,000,000 at the outset to the eventual Purchase Price of $19,400,000, a reduction in upfront payments from $27,000,000 to $3,000,000, and favourable conditions included in the Agreement, like the various substantial holdbacks to insulate the Jonas Group from the "substantial risk with the customers" that it saw and to account for the possibility of HSBC "lying";[24]

(d) the Jonas Group's evidence is that it has purchased hundreds of companies, undertaken due diligence thousands of times, and that its due diligence and legal teams were the best in the industry. As a result, the Jonas Group decided that it would not retain any third party to assist it during the Due Diligence Period or even commission a quality of earnings report;[25]

(e) Kognitiv submits that if the Jonas Group had undertaken such routine steps, including retaining financial experts to assist with due diligence, obtaining a quality

[23] Barrera Responding Affidavit, at paras. 9-26 (pp. 2094-2099), Exhibit K101-104 (pp. 2103-2157); Brosnan Day 1 Transcript, pp. 232-234.
[24] Barrera Affidavit, at para 42-52 (pp. 34-36), Exhibits K006-013 (pp. 451-655); Brosnan Day 1 Transcript, pp. 237-266 and 269-285; McKinnon Affidavit, Exhibit J057 (pp. 3304-3306).
[25] Affidavit of D. Brosnan affirmed May 20, 2025, Arbitration Record, Vol. D, Tab 14 ("**Brosnan Affidavit**"), Exhibit J001 (pp 2229-2238); Brosnan Day 1 Transcript, pp. 237-243; McKinnon Day 2 Transcript, pp. 153-155 and 177-183.

of earnings report, or even inquiring about basic business risks like foreign exchange, then it would have discovered the Currency Issue. Edward Tobis and Micheal Moxley of Secretariat, the experts retained by Kognitiv, both of whom have considerable experience in financial analysis and due diligence, explicitly noted that a quality of earnings report would have likely flagged the Currency Issue;[26] and

(f) Kognitiv provided the Jonas Group with everything it was asked to provide, including its general ledger which included every line item of revenue. The Jonas Group was in a position to investigate Kognitiv's financials, its revenues, and its customer relationships (which it did with all customers, including HSBC Egypt) to whatever extent it felt necessary. However, the Jonas Group, despite having a team of due diligence experts, simply "didn't catch this one".[27] The Jonas Group failed to turn its mind to, and therefore missed, the Currency Issue.

64. The issue therefore, with respect to the Currency Issue, is whether or not there was a representation made that was untrue or whether there was an affirmative duty on the part of Kognitiv to disclose, and thereby draw attention to, this issue.

PRINCIPLES OF CONTRACT INTERPRETATION

65. I do not propose to review extensively the principles of contract interpretation of which counsel have reminded me, in some detail. In my view, this case does not raise any particular issues of contract interpretation in that the parties have not offered different interpretations of

[26] First Report of Secretariat, dated June 4, 2025, Appendices 3-4, pp. 71-80 (pp.196-211); Second Report of Secretariat, dated July 7, 2025, at paras. 4.50-4.55 (pp. 247-249), and 6.14 (p.257).
[27] Brosnan Affidavit, Exhibit J037 (pp.2657-2661); Nicoll Affidavit, at para. 9 (p. 3463).

words or phrases in the Agreement. They have differed on the application of the language of the Agreement to the facts of this case.

66. That said, I would observe that the surrounding circumstances (including the factual matrix and business purpose of the Agreement) are set out in the facts recited above, and in further observations I will make in the course of this award. I do not find that there is anything in those circumstances that alters the plain meaning of the applicable provisions of the Agreement; nor has either party suggested that reading the Agreement as a whole produces a different, non-obvious interpretation of the individual provisions that have been cited by either side. The Agreement itself is a fairly common type of business transaction, the overall purpose of which is not difficult to discern, and the terms of which allocate risks and set rights and obligations using fairly typical contract mechanisms. In general, the operative principle of contract interpretation in the present case is that the objective, mutual understanding of the parties can best be derived from the words they have used to express their agreement. [28]

67. I do not accept the implied argument made by Kognitiv that its disclosure obligations should be interpreted in light of its perception that the Jonas Group had driven a hard bargain with respect to the price and terms of payment, possibly even taking advantage of a perceived vulnerability on the part of Kognitiv. There is no claim for rescission or reformation of the contract and both sides are seeking to affirm the Agreement and enforce their rights under it. Any alleged misrepresentations must therefore be assessed within the context of the Agreement that was reached and its provisions. In any event, the context of hard bargaining resulting in price reductions based on facts uncovered through the due diligence process does not argue in favour of

[28] *Sattva Capital Corp.,* 2014 SCC 53, at para 57; *All-Terrain Track Sales and Services Ltd. v. 798839*, 2020 ONCA 129, at para 23.

a more lenient interpretation of express contractual representations. It might just as easily support a heightened level of vigilance and a more acute sense of materiality surrounding each disclosure requirement. In the end, in this case, it is preferable to simply apply the contractual language in an objective manner rather than through a filter of how the surrounding circumstances are spun by either side.

DISCLOSURE OBLIGATIONS OF KOGNITIV

68. It is not disputed that Kognitiv did not disclose the HSBC Negotiations and the Currency Issue to the Jonas Group before the Agreement was entered into or before the closing on the same date.

69. The fact that the Jonas Group did not seek to repudiate the Agreement when it discovered both issues shortly after closing is not relevant. The Jonas Group is entitled to affirm the Agreement and sue for damages flowing from any breaches that it can prove. Similarly, as Kognitiv also seeks to enforce the Agreement, whether or not the Jonas Group's withholding of part of the Purchase Price constitutes a breach is subject to a claim for damages by Kognitiv, as has been asserted in this arbitration.

70. It is important to note that the Jonas Group expressly does not seek to make out its claim in negligence. Rather it has framed its case in breach of contract, based on breaches of express terms of the Agreement, and on a characterization of those and other active misrepresentations as fraudulent.

71. The following provisions of the Agreement are relevant (all bolding has been added):

(a) Section 4.1(a)(1) requires Kognitiv to indemnify the Jonas Group for any "misrepresentation or omission in any representation or warranty made by the Seller Parties in this Agreement."[29]

(b) In **s. 3.1(g)(ii), (iii) and (vi)**, Kognitiv represented, *inter alia*, that:

3.1(g) Since the Financial Statement Date [i.e., December 31, 2023] and as of the Closing Date:

> (ii) there has been **no material adverse change to the Business**;
>
> (iii) the **Seller Parties have not materially changed the Business' price lists, manner of pricing or billing**;[30] [and]
>
> (vi) **no customer has notified any of the Seller Parties that it plans to terminate its relationship with any of the Seller Parties or the Business**.

(c) In **s. 3.1(j)** of the Asset Purchase Agreement, Kognitiv represented as follows:

> 3.1(j) Other than as set out in Section 3.1(j) of Schedule B and Schedule G [sic, actually Schedule C] attached hereto, the Business Contracts listed in Schedule D attached hereto are all of the Business Contracts by which any of the Seller Parties is bound in connection with the activities of the Business. **The rights of the respective Sellers under the Business Contracts to which they are a party and Schedule G – TSA, are all of the contractual rights needed by the Seller Parties to operate the Business consistent with past practice.** Other than as set out in Section 3.1(j) of Schedule B, no Business Contract is in default or has been breached by any of the Seller Parties or, to the knowledge of the Sellers, any other Person, and, there exists no condition, event or act that, with the giving of notice or lapse of time or both, could constitute a default or breach. Other than as set out in Section 3.1(j) of Schedule B, to the Sellers' knowledge, no customer of any of the Seller Parties has any intention of making any claims in respect of any Business Contract. None of the Seller Parties has made any commitments to release or develop any updates, versions or releases of the Software except as may be expressly provided in the Business Contracts. None of the Seller Parties is in breach of any

[29] "Asset Purchase Agreement", Exhibit "J006" to the First Brosnan Affidavit, section 4.1(a)(i), **record, v. 4, p. 2339**.
[30] "Asset Purchase Agreement", Exhibit "J006" to the First Brosnan Affidavit, section 3.1(g)(iii), **record, v. 4, p. 2331**.

material term of any license, sublicense or other agreement relating to the Owned Intellectual Property or the Software.

(d) S. 1.1(d) provides:

"**Business**" means the business of licensing the Software and the provision of ancillary services;

(e) S. 1.1(e) provides:

"**Business Contract**" means any Contract listed in Schedule C; and

(f) **s. 3.1(p)** reads as follows:

3.1(p) Other than as set out in Section 3.1(p) of Schedule B and Schedule G attached hereto, as of the Closing Date, **the Assets comprise all of the assets used in the operation of the Business and are sufficient for the Purchasers to continue to fulfill their obligations under the Business Contracts consistent with past practice**.

72. The "Business Contracts" are listed in Schedule C,[31] so the reference to "Schedule D" in s. 3.1(j) is a typographical error. Included in the Business Contracts in Schedule C are the 2022 MSA and the Participation Agreements for HSBC UAE, HSBC Egypt, HSBC Qatar and HSBC Bahrain.

73. The Asset Purchase Agreement defines the "Assets" as "the assets and undertakings referred to or described in Sections 2.1 and 2.2."[32] Included in s. 2.2(b) are "all right, title and interest of the Seller Parties in, to and under the Business Contracts listed in Schedule C." As set out above, the 2022 MSA and the four Participation Agreements are included in Schedule C.

[31] "Schedule C" to the Asset Purchase Agreement, Exhibit "J008" to the First Brosnan Affidavit, **record, v. 4, pp. 2363-2371**.
[32] "Asset Purchase Agreement", Exhibit "J006" to the First Brosnan Affidavit, section 1.1(b), **record, v. 4, p. 2317**.

FINDINGS REGARDING CONTRACTUAL BREACH

74. In my view, the foregoing contractual representations were breached by the non-disclosure of both the HSBC Negotiations and the Currency Issue.

The HSBC Negotiations

75. Fundamental to the Business was the relationship between HSBC (and its associated companies) and Kognitiv. Based on revenues, the other customers paled in comparison.

76. Although there was no guarantee in the Agreement that the current MSA would be renewed, the prospects for renewal were clearly an important attribute of the Assets which were sold by the Agreement. In addition, beyond strict legal rights created by the MSA, the strength and stability of the relationship was fundamental to the completion of the existing MSA in accordance with its terms. In practical terms this was because of the leverage HSBC had with respect both to the renewal of the MSA and with respect to the granting of its consent to the transfer contemplated under the Agreement. The fact that HSBC had taken insistent and persistent steps to seek amendments to the MSA that related specifically to restricting the costs it would incur by ending the relationship at the conclusion of the existing term represented an important risk to the continuation of the relationship beyond the current MSA and therefore did represent a material change in the business within the meaning of s.3.1(g)(ii).

While Kognitiv had not yet changed the financial terms of the MSA as of the date of closing and HSBC had not "notified" Kognitiv that it planned to terminate the relationship, the HSBC Negotiations put those eventualities in play beyond mere theoretical possibility. They created a real and present danger that one or both of those events were imminent in the absence of a resolution. They therefore represented a material adverse change to the relationship with HSBC,

and therefore to the business, with which the Jonas Group was immediately confronted upon closing and which it could not have anticipated due to the non-disclosure.

The Currency Issue

77. The non-disclosure of the Currency Issue was a breach of s. 3.1(j) of the Agreement. As noted above, section 3.2 of Attachment D of the MSA sets out how Kognitiv was to invoice HSBC entities for redemptions. The MSA required that redemptions be reimbursed at cost. Implicit in the making of a profit on the exchange rate is that Kognitiv recovered more than its costs. It did so pursuant to an agreement with HSBC on the exchange rate that predated a major collapse in the value of the EGP.

78. Section 3.1(j) of the Agreement required that the Business Contracts disclosed in Schedule C contain "all of the contractual rights needed by the Seller Parties to operate the Business consistent with past practice". The recovery by Kognitiv of more than its actual costs on redemptions by earning a substantial profit on the basis of a fixed and outdated rate of exchange could only be justified on the basis of an agreement between HSBC and Kognitiv which was not disclosed in Schedule C. The non-disclosure deprived the Jonas Group of the opportunity to assess both the value of that undisclosed agreement and the sustainability of the profits made pursuant to it. As subsequent events affirmed, the missed opportunity was materially detrimental to the Jonas Group as it had to agree to abandon the fixed rate agreement that was an undisclosed source of significant revenue included in financial information provided by Kognitiv. In addition, HSBC Egypt terminated its participation in the Program shortly after closing citing foreign exchange as a burden.

79. In light of the breach of an express representation, it is not relevant whether or not the fixed rate agreement could have been discovered during the due diligence process. [33]

CONTRACTUAL CONTEXT OF FRAUD ALLEGATION

80. Section 4.1 (a) of the Agreement provides:

> (a) Subject to the limitations set out in Section 4.2 and this Article 4, the Seller Parties will indemnify, save, hold harmless, discharge and release the Purchasers and directors, employees and agents (collectively, the "**Purchasers' Indemnitees**") from and against any and all Losses arising from or based on:
>
> (i) Any misrepresentation or omission in any representation or warranty made by the Seller Parties in this Agreement …
>
> [Underlining added.]

81. That indemnity provision is limited by section 4.2, which states:

> (a) […] For certainty, the limitations set out in this Section 4.2 shall not apply to claims of any amount involving fraud.
>
> (a) The Seller Parties' aggregate liability for any and all claims of the Purchasers and any Purchaser Indemnitee:
>
> (i) for breaches of the Fundamental Representations, Intellectual Property Representations and Tax Representations shall be limited to an aggregate amount of one hundred percent (100%) of the Purchase Price.[34]
>
> (ii) for any other representations and warranties not subject to Section 4.2(a) shall be limited to an aggregate amount of forty five per cent (45%) of the Purchase Price actually received,

[33] *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 SCR 678, at para. 69.
[34] This subsection is not applicable here.

(b) For clarity, under no circumstances shall the aggregate liability of the Seller Parties' exceed one hundred percent (100%) of the Purchase Price for all claims.

[Underlining added]

82. To date, as previously noted, the Jonas Group has paid $4,000,000 of the total $19,400,000 Purchase Price. Section 4.2 limits the Jonas Group's damages for breaches of representations and warranties to an aggregate amount of 45% of the Purchase Price "actually received", except for claims involving fraud. Except for "any amount involving fraud", its claim for any breach of representations and warranties is capped at $1,800,000.

83. Therefore, the issue is whether either or both of the contractual misrepresentations that I have found to have been made involve fraud.

LEGAL REQUIREMENTS FOR PROOF OF FRAUD

84. The Supreme Court of Canada has prescribed that a claim for the tort of fraudulent misrepresentation requires proof of the following elements:

(a) a false representation made by the defendant;

(b) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);

(c) the false representation caused the plaintiff to act; and

(d) the plaintiff's actions resulted in a loss.[35]

[35] *Bruno Appliance and Furniture Inc v. Hryniak*, 2014 SCC 8 ["***Hryniak***"], at para. 21.

85. An additional requirement was referenced by the Ontario Court of Appeal, namely that the defendant made the representation with the intention that it would be acted upon by the plaintiff.[36]

FACTS AND FINDINGS REGARDING FRAUD

The HSBC Negotiations

In this case, the legal requirements for proof of fraudulent misrepresentation are met with respect to the HSBC Negotiations. The falsity of the representation as to the absence of any adverse material change to the business is discussed above. However, the falsity of that representation from a contractual point of view was exacerbated by active statements made by Kognitiv to the Jonas Group.

86. Despite the ongoing discussions about the exit terms and HSBC pressing for a response in the spring of 2024, Ms. Escobedo told Mr. Nicoll that there were no bubbling issues[37] and told Mr. Nicoll that HSBC wished to renew "with 'as is' scope of the contract".[38] Mr. Sullivan attempted to allay Mr. Brosnan's concerns about another customer, Nordstrom, by countering that HSBC was a strong customer.[39] Kognitiv also provided two documents to the Jonas Group indicating the health of the relationship as being "green".[40] The misleading nature of Ms. Escobedo's email of July 3, 2024 has been discussed above. When Mr. Nicoll asked on July 3, 2024 what issues might arise during renewal discussions with HSBC, Ms. Escobedo failed to answer till after closing, and

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[36] *1000425140 Ontario Inc. v. 1000176653 Ontario Inc*., 2024 ONCA 610, at para. 24.
[37] First Brosnan Affidavit, at para. 11, **record, v. 4, p. 2193**; Email from D Brosnan to M Otchet and S Nicoll, May 11, 2024, Exhibit "J003" to the First Brosnan Affidavit, **record, v. 4, p. 2250**.
[38] First Brosnan Affidavit, at para. 43, **record, v. 4, p. 2203**; "Meeting with HSBC", Exhibit "J016" to the First Brosnan Affidavit, **record, v. 4, p. 2499**.
[39] First Brosnan Affidavit, at para. 39, **record, v. 4, p. 2202**.
[40] First Brosnan Affidavit, at paras. 12-13, **record, v. 4, p. 2193**; "Briefing Document" and "Enterprise Overview", Exhibits "J004" and "J005" to the First Brosnan Affidavit, **record, v. 4, pp. 2268 and 2282**.

then, in the first thing she wrote after closing, revealed the existence of the negotiations.[41] Mr. Barrera sought to explain Ms. Escobedo's failure to respond before closing on the basis of the July 4th long weekend in the USA. However, if the explanation is that, over the July 4th weekend, Ms. Escobedo was not working on, or looking at or responding to emails, regarding a sale of substantial business assets which was to close on July 5, that explanation would have been more probative coming from her. In any event, the failure to respond to the email of July 3, 2024 was merely an opportunity for Ms. Escobedo to correct false or misleading representations that had previously been made by Kognitiv.

87. It is noteworthy that Ms. Escobedo, who was Kognitiv's SVP, Global Customer Experience, and a leading participant in communications with the Jonas Group regarding customer related issues both before and after the Agreement was entered into, provided no evidence in this arbitration. Nor did Mr. Sullivan, Kognitiv's CEO, or Ms. Mishra the author of most of the emails from Kognitiv cited above. Indeed, the only factual evidence put forward by Kognitiv was through affidavits of Mr. Barrera. Apart from his decision to offer the HSBC Incentive, it is not clear what direct involvement Mr. Barrera had in any of the matters in issue in this arbitration.

88. I accept the evidence of the Jonas Group with respect to statements made by Kognitiv regarding its relationship with HSBC.

89. The above referenced false or misleading representations were made knowingly or with reckless disregard for their truth through Kognitiv's employees who made those representations. That they were made in the course of difficult negotiations with the Jonas Group in which the true

[41] First Brosnan Affidavit, para. 46, **record, v. 4, pp. 2203-2204**; "Meeting with HSBC", Exhibit "J016" to the First Brosnan Affidavit, **record, v. 4, p. 2497**.

state of affairs, if disclosed, would almost certainly have resulted in further requests from the Jonas Group for a reduction in the price, if not in the derailing of the transaction, does not justify the falsehoods. On the contrary, it establishes the reliance by and detriment to the Jonas Group arising from the non-disclosure and the intention of Kognitiv not to weaken that reliance by disclosing the HSBC Negotiations. The Pricing Model used by the Jonas Group in deciding how much to pay for the Assets, which is discussed below in relation to damages, would clearly have been influenced negatively by information concerning HSBC's desire to negotiate new terms making a decision to exit the relationship less expensive. The damages experts retained by both sides calculated quite specifically how reliance on the false representations by the Jonas Group affected the price it was prepared to pay.

90. Kognitiv has cited a number of cases affirming the principle that in arms-length commercial transactions silence, even on a material fact, does not, without more, give rise to a breach of a duty of good faith or honest performance. In this case, with respect to the HSBC Negotiations, there was more. There was a contractual duty to disclose material adverse changes in the business as well as active misrepresentations in response to numerous specific inquiries. Furthermore, there was a deliberate concealment of the HSBC Negotiations and the HSBC Incentive which would have placed a different light on the representations which had been made.

91. No doubt, there was a business calculation in Kognitiv's concealment of the entire truth regarding the relationship with HSBC until after the transaction had closed such that it could not be factored into the negotiations. However, the legal consequence of that decision must now be faced. The legal consequence is that all of the requirements for a finding of civil fraud in relation to the HSBC Negotiations have been met.

The Currency Issue

92. I do not reach the same conclusion with respect to the currency issue. While there was a contractual obligation to disclose the existence of the exchange rate agreement which resulted in a breach given the failure to disclose, there were no specific communications between Kognitiv and the Jonas Group that were inconsistent with the existence of that agreement. In addition, there is no evidence of any complaint by HSBC or HSBC regarding this issue prior to closing of the Agreement.

93. The breach of the contractual representation with respect to the Currency Issue turned not on a pure question of fact, but on the legal sufficiency of the MSA to explain all revenue received from HSBC Egypt. Kognitiv made no specific representation regarding the fixed rate agreement and the fact of substantial revenues earned from foreign exchange was available to the Jonas Group in the information with which it was provided. There is no evidence that the subject was addressed by the Jonas Group in its own due diligence prior to the Agreement.

94. The Currency Issue was clearly a material circumstance relating to Assets transferred pursuant to the Agreement as it related to a significant source of revenue. However, any specific inquiry by the Jonas Group into the Currency Issue or the quality of earnings would have surfaced the issue. The foreign exchange earnings were separately recorded in the general ledger to which the Jonas Group had access before entering into the Agreement. I do not accept that it was unrealistic for the Jonas Group to discover this issue because it was disclosed in only a few lines of the general ledger. I accept the submissions of Kognitiv that the issue should have been identified by the Jonas Group in its due diligence process in furtherance of a specific line of inquiry.

95. In business transactions between sophisticated commercial parties, the consequences of undisclosed or undiscovered defects in a business should normally be resolved by reference to contractual terms allocating the risk. Breaches of contractual representations should not routinely give rise to claims in fraud.

96. The Jonas Group is entitled to damages based on breach of a representation in the Agreement, but it has not made out a case in fraud on the Currency Issue.

DAMAGES

The Cap on Damages

97. Based on the above findings and applying the limitations on damages in s. 4.2 of the Agreement, the damages applicable to the HSBC Negotiations are not limited. The damages in relation to the Currency Issue are limited to a cap of $1.8 million as calculated by counsel for Kognitiv. However, as discussed below, the experts for both sides calculate the damages relating to the Currency Issue as being less than $1.8 million. Therefore, the cap on damages in s. 4.2 is not triggered with respect to the damages for either breach.

Expert Evidence and Assistance

98. The Jonas Group has adduced an expert report and a reply report from Dan Ross of Cohen Hamilton Steger ("**CHS**"). Mr. Ross estimated the Jonas Group's damages as being between a low of $3,924,823 and a high of $4,507,797,[42] which represented, in the opinion of CHS, the amount by which the purchase price was overstated due to Kognitiv's misrepresentations. Included in

[42] CHS First Report, at para. 10, **record, v. 3, p. 28**.

those amounts, CHS assessed the impact of the Currency Issue in a range between $1,101,000 and $887,000.

99. Kognitiv filed a responding report by Messrs. Edward Tobis and Michael Moxley of Secretariat ("**Secretariat**"). The report concluded that the Jonas Group's damages range from $2.966 million to $3.116 million,[43] which represented, in the opinion of Secretariat, the amount by which the purchase price was overstated if Kognitiv is found to have made the alleged misrepresentations. Included in those amounts, Secretariat assessed the impact of the Currency Issue in a range between $1,013,000 and $1,162,000.

100. I would like to state here, as I did at the conclusion of the hearing, that I have been very positively impressed by the professionalism and objectivity of the damage quantification experts retained by both sides in this arbitration. They have adopted essentially the same framework for calculating damages and have collaborated to identify specific points of disagreement which require my decision.

101. Prior to the hearing the experts for both sides met and prepared a Joint Expert Statement. They each made corrections to their formal reports, came to an agreement on many issues relating to the calculation of damages and identified specific areas of disagreement. I have focussed on the areas of disagreement.

Overall Approach

102. The common approach followed by the experts was as follows. First, they calculated the actual purchase price as of closing which involved discounting and risk adjusting future payments

[43] Secretariat Report, Figure 6-1, **record, v. 3, p. 258**.

due under the Agreement (the "Actual" scenario). They then recalculated the purchase price using the same Pricing Model that had been used by the Jonas Group but factoring in the information regarding the HSBC Negotiations and the Currency Issue which had not been disclosed (the "But For" scenario). The damages are assessed as the difference between the Actual and the But For scenario, subject to some other adjustments that are discussed below.

103. In my view, the approach taken by the experts fairly corresponds to the harm caused to the Jonas Group by the misrepresentations, i.e. a higher price than they likely would have been willing to pay had they known the facts that were not disclosed. Primarily, this approach to the calculation of damages involved reducing the projected length of the relationship with HSBC within the Pricing Model used by the Jonas Group to assess the value of the Assets to them.

104. One overall difference in approach between CHS and Secretariat was that CHS performed its damages assessment solely on the basis of the HSBC component of the transaction whereas Secretariat made its assessment on the basis of the transaction as a whole. This difference in approach did not produce a significant difference in the end.

105. The price adjustment framework is consistent with the fact that the Jonas Group elected to continue to perform the Agreement after discovering the breaches, as it did very shortly after closing. By making that election, the Jonas Group preserved all the advantages and disadvantages inherent in the Agreement, subject to recovering damages caused by the breach. [44] The price adjustment approach eliminates the need to consider every aspect of what happened after closing

[44] John McCamus, *The Law of Contracts* (3d ed.) (Toronto: Irwin Law, 2020) at 793-794 (including footnote 27).

in terms of whether or not it could reasonably have been anticipated before closing based on either the Actual or But For scenarios.

106. A key component of the Pricing Model was a set of alternative assumptions regarding future scenarios which were labelled:

(a) W – most optimistic;
(b) MW – less optimistic;
(c) WW – even less optimistic; and
(d) WO – least optimistic.

Projected Length of the HSBC Relationship

107. Both experts agreed that, within the scenarios in the Pricing Model the projected length of the relationship should be reduced in the But For scenario, although they disagreed somewhat on the length of the reduction and on some other aspects of the damages calculation exercise as itemized below.

108. CHS based its "high" projections on the evidence of Mr. Jeff McKinnon, CFO of the Jonas Group. Mr. McKinnon deposed in his first affidavit that, if it knew of the HSBC Negotiations, the Jonas Group "...would have likely assumed two renewals up until 2031" in the most optimistic ("W") scenario of the Pricing Model. CHS calculated an alternative But For scenario using "indefinite" as the projected length of the relationship with HSBC as a low "projection" for its damage calculation. It does so on the basis that the projected duration of the relationship between Kognitiv and Nordstrom, which was known by the Jonas Group to be problematic, was projected to be "indefinite" in the W scenario. The difference between the high and low damage projections by CHS results primarily from these alternate assumptions.

109. Secretariat projected the duration of the HSBC relationship in the But For W scenario to be indefinite based on the analogy to the Nordstrom projection.

110. Mr. McKinnon testified that the situation with HSBC was worse than that with Nordstrom because HSBC was actively looking for ways to make it easier to exit the relationship. However, Mr. McKinnon's comparison is called into question by the evidence given by Mr. Brosnan at the hearing in which he reported on a meeting in which Nordstrom voiced serious ongoing problems with the Program. In the course of the meeting the head of IT at Nordstrom stated that he "couldn't see how that they would be able to do a renewal".[45]

111. The expectation that either the Nordstrom or the HSBC relationship would continue indefinitely seems unrealistic in any scenario. However, a consistent application of the Pricing Model to both customers in the But For scenario for HSBC would suggest that the same expectation as to the length of the relationship should be applied to HSBC as was applied to Nordstrom in the But For W scenario, given that there is no allegation of misrepresentation regarding Nordstrom. The standard for how optimistic the most optimistic scenario should be can best be understood in terms of how the Jonas Group itself has applied the standard in an equivalent non-controversial context.

112. I therefore prefer the approach taken by Secretariat, and by CHS in its "low" assessment, with respect to the But For W scenario.

[45] Brosnan Day 1 Transcript, pp. 210-211, 253-260.

113. Differences between CHS and Secretariat relating to other components (MW, WW and WO) of the Pricing Model relating to duration of the relationship vary as follows:

CHS Projections	Secretariat Projections
Scenario MW: Mar 31, 2028 Scenario WW: Mar 31, 2025 Scenario WO: Mar 31, 2025	Scenario MW: Dec 31, 2027 Scenario WW: Dec 31, 2026 Scenario WO: Dec 31, 2025

114. There is no principled basis for choosing between these projections with respect to each component or overall. In the nature of this issue, there is no one verifiably correct answer. For example, the actual HSBC termination date fell between the two But For projections in the WO scenario projections.

115. As I consider both experts to have approached their responsibilities professionally and objectively and in order to balance the outcome between two equally legitimate expert opinions, I adopt the mid-point of the values arrived at between the experts on the MW, WW and WO scenarios.

The Reasonableness of Forecasted Price Increases in the Pricing Model's W and MW scenarios

116. In the Actual W scenario, the Jonas Group forecasted a first year price increase for HSBC Middle East of 10%, with 5% increases every year after that. In the Actual MW scenario, the Jonas Group forecasted a year one price increase for HSBC of 6%. CHS reduced these forecasted increases by reason of their being "optimistic and not specifically attributable to Kognitiv's

Alleged Misrepresentations."[46] This had the result of lowering the base against which damages would be measured, thus lowering CHS's estimate of damages. Secretariat agreed with and applied this approach.[47] However, CHS indicated in its report that if the price increases forecasted by the Jonas Group "are found to have been reasonable and attributable to Kognitiv's Alleged Misrepresentations," such that these adjustments would not be made, damages would be higher by approximately $1.4 million.[48] Mr. Ross also stated on cross-examination that the assumptions may well have been reasonable, although he did consider them optimistic.

117. In my view the adjustment proposed by CHS, and agreed to by Secretariat, is a reasonable adjustment. I accept the judgment of the experts, as expressed in their respective reports, that these projected price increases were overly optimistic, even in the W component of the Pricing Model. If the anticipated rate increases were objectively overly optimistic in the original Pricing Model, that is not because of any representation or misrepresentation made by Kognitiv. There is no evidence of any future rate increases being represented by Kognitiv and there was no representation or warranty that any renewal would occur. Therefore, to compensate the Jonas Group for excessive rate projections would be to protect them from an aspect of the bargain they made which was not attributable to any misrepresentations made by Kognitiv.

118. On this issue, the choice is whether to accept the evidence of Mr. McKinnon as to whether it was reasonable, even in an optimistic scenario, to anticipate an immediate rate increase of 10% on the transfer of the business to a new owner or to accept the independent opinion of three experts. Mr. McKinnon gave extensive evidence as to why such anticipated rate increases would be normal

[46] CHS-1, p. 15, at paras. 54-55, **record, v. 3, p. 40**.
[47] Joint Expert Statement, item 5, **record, v. 3, p. 317**.
[48] CHS-1, p. 15, footnote 48, **record, v. 3, p. 40**; Ross direct examination, transcript, day 3, p. 21, lns. 2-10.

and justifiable in the software industry. In the context of the transfer of a business to a new owner with renewal negotiations pending, I am sceptical regarding the applicability of this evidence to the business context at hand. As the issue is what is objectively reasonable, I prefer the evidence of the experts.

119. In any event the failure to achieve substantially increased revenues when no representation as to rates or renewal was given is not the result of any breach of the Agreement.

Relevance of Hindsight Evidence

120. Although it does not impact any specific calculations, the experts disagreed as to the relevance of hindsight evidence to projections in the But For scenario. Secretariat suggests that it is relevant that events did not unfold in the manner one might have anticipated based on the HSBC Negotiations. HSBC did in fact renew the MSA for two years, although it then terminated the agreement on 6 months notice within the first year.

121. In my view, hindsight evidence is not relevant to determining whether or to what extent the Jonas Group was harmed in its negotiations towards the Agreement by the non-disclosure and misrepresentation of material information which occurred. The precise course of events after closing is not relevant to that issue. The breaches do not relate to a failure to predict the future but to a misrepresentation of existing circumstances. However, the fact that HSBC did end the relationship within a year or so of the transfer and consented to the transfer only after Kognitiv agreed to pay it $500,000 is broadly confirmatory of the materiality and prejudicial effect of the misrepresentations.

Reduction in Projected Non-headcount Operating Expenses

122. In the Actual scenario used in the original Pricing Model, for the dates on which HSBC is forecasted to leave in the less optimistic scenarios, there is a resulting reduction in non-headcount operating expenses. In the model these reductions are expressed as percentages. However, hovering over these percentages in the Excel version of the model reveals notes indicating the dollar figures that these percentages are meant to approximate. CHS used the dollar figures whereas Secretariat used the percentages.[49]

123. I prefer the approach of Secretariat on this issue as it prioritizes the concept of proportionality rather than specific dollar amounts.

Treatment of Intellectual Property Assets for Tax Purposes

124. There was a difference of opinion between the experts as to whether the value allocated to intellectual property in the Pricing Model should be reduced as a result of reduced projections of assumed revenues from customer contracts. CHS would proportionately reduce the value of intellectual property. Secretariat would have the value remain the same as in a Purchase Price Allocation agreed to by the parties after closing.

125. I prefer the approach of CHS in that there was no separate revenue anticipated from the intellectual property and the sole anticipated use of it was for use with the other Assets. I accept the evidence of McKinnon that the Jonas Group used 70% as a usual allocation of purchase price to intellectual property. As the purpose of the damage calculation exercise in the approach of experts on both sides is to establish a But For price, and in the absence of any objective valuation

[49] Secretariat Day 3 Transcript, pp.135 and 208-209.

of the intellectual property assets, it makes sense that the Jonas Group's typical allocation would be applied.

126. The value attributed to the intellectual property in the post closing Purchase Price Allocation is not probative in this situation as the allocation was based on the overall price in the Actual Scenario, which remained constant in all post closing scenarios.

Discount Rate

127. In its first report, in estimating the adjusted actual purchase price and the but-for purchase price, CHS discounted future cash flows by the 21.4% discount rate in the Pricing Model. Secretariat used a rate of 19.2%, which had the effect of increasing the Jonas Group's estimated loss. Mr. Ross remained of the view that the 21.4% rate is appropriate since it is the rate the Jonas Group used in the Pricing Model.[50]

128. For the reason given by Mr. Ross, I prefer the discount rate chosen by CHS.

Removal of Oman Termination fees from Recurring Revenues included in the Pricing Model

129. At the beginning of their evidence at the hearing, Secretariat noted what they suggested was a flaw in the Pricing Model. The flaw is that fees related to the earlier termination by HSBC Oman were treated as recurring revenues.

[50] CHS Sur-Reply Report, at paras. 36-38, **record, v. 3, p. 312**.

130. Kognitiv has clarified that it is not advancing this issue as an additional ground for reducing the damages claimed by the Jonas Group but as "just another instance in which the Jonas Group's due diligence was lacking".[51]

131. In my view, the late addition of this issue precludes any conclusion being drawn with respect to it as there has not been an opportunity to address it through the procedural stages of this arbitration.

Cost of Sales Adjustment re the Currency Issue

132. Secretariat takes the position that since projected revenues are reduced in the Pricing Model due to the Currency Issue, the cost of sales which is a proportion of revenues should also be reduced. I agree with CHS that this is not appropriate. The revenues from foreign exchange differences are not sales and do not cause cost of sales to increase or decrease.

Final Amount of Damages for Misrepresentation

133. The experts have cautioned that the points for decision are not separately additive but may interact with each other in ways that preclude a simple calculation. By agreement with counsel for both sides, I have communicated to the experts my decisions on their points of disagreement, and they have jointly discussed the impact of my decisions in light of their areas of agreement. They have provided me with their respective calculations of the final amount of damages which are attached hereto as Schedule "A". The final calculations of CHS and Secretariat were $112,000

[51] Written Reply Submissions of the Claimants, p. 13 para. 43.

apart. With the agreement of counsel for both sides, the damages have been fixed at the midpoint of the two calculations.

134. Based on the above, I assess the amount for damages for misrepresentation is $3,405,000.

PUNITIVE DAMAGES

135. Kognitiv's claim to punitive damages relates primarily to the Insolvency Claim. Accordingly, if Kognitiv elects to maintain this claim, I defer any consideration of it to Phase 2.

SET OFF AND HOLD BACK

136. Section 2.8 of the Agreement gives the Jonas Group the right "to withhold from the Financial Institution Client Holdback Amount, the Holdback Amount, and the NTA Excess, if any, an amount equal to the amount of any reasonably asserted yet unresolved Loss and to set off such withheld amount against amounts for which the Purchaser has not been fully paid or compensated…".

137. Based on the above, damages proven by the Jonas Group, in the amount of $3,405,000 together with the undisputed Remittance Amount of $2,342,181 held back by Kognitiv, produces a total of $5,747,181 to be deducted from the $12,000,000 Financial Institution Holdback retained by the Jonas Group from the Purchase Price. This produces a balance owing to Kognitiv of $6,252,819.[52]

INTEREST

[52] I do not accept the submission by Kognitiv that the Jonas Group should have tendered the entire balance of the purchase price and then sued for any damages it was able to prove. In making that submission Kognitiv relies on *1785192 Ontario Inc. v. Ontario H Limited Partnership*, 2024 ONCA 775, at para 65. However, that case involved the sufficiency of a tender in a claim to specifically enforce an option agreement. It is not similar to the present case.

138. Kognitiv claims interest at a rate of 14% on any net amount owing to it based on its cost of borrowing under a third-party loan. The Jonas Group characterizes this as an "elevated" rate of interest which would only be payable as a "special circumstance" if Kognitiv were able to "establish that it communicated to [the Jonas Group] in advance of the contract the fact of the loan and the high interest rate it was required to pay to its lender.[53]

139. The considerations that may apply in determining whether or not to award an "elevated" rate of interest in this case overlap Phase 1 and Phase 2 of this arbitration. In addition, the net amount, if any, owed by the Jonas Group will not be known until the conclusion of Phase 2. For those reasons, I defer any determination of the rate of interest to be applied until the conclusion of Phase 2.

140. It should also be noted that paragraph 2 of Procedural Order No. 1 confirmed the agreement of the parties that "…The arbitration will proceed under the International Commercial Arbitration Act, 2017, SO 2017, c 2. The seat of the arbitration will be Toronto."

141. The International Commercial Arbitration Act contains no provisions regarding the pre-award or post-award interest. Further submissions will therefore be needed with respect to interest when the issue is addressed in Phase 2.

COSTS

142. The same considerations that apply to interest, also lead me to the conclusion that costs should also be reserved until the conclusion of Phase 2.

EFFECT OF THIS PARTIAL FINAL AWARD

[53] *Ziai v. Maatschappij (KLM Royal Dutch Airlines)*, 2007 CanLII 41896 at para. 62 (Ont. S.C.J.).

143. Procedural Order No. 2 in this arbitration provided as follows with respect to the effect of this Partial Final Award:

> 1. The Arbitration shall be divided into two phases. Phase Two will begin upon the release of a Partial Final Award deciding the issues in Phase One (the "**Partial Final Award**").
>
> 2. The Phase One hearing shall proceed on July 28, 29 and 30 as presently scheduled on the issues as originally pleaded.
>
> 3. For greater certainty, the Claimants' assertion that the breaches of contract alleged in the Amended Notice of Arbitration caused the insolvency of some or all of the Claimants (the "**Insolvency Damages Claim**"), the Claimants' claim for the $2m Holdback Amount (the "**Holdback Amount Claim**"), and the quantum of the Respondents' claim based on the deficiency alleged in the working capital and whether this amount is subject to a right of set-off in favour of the Jonas Group under the APA (the "**NTA Shortfall Claim**") will not be addressed in Phase One, but will be addressed in Phase Two of this arbitration.
>
> …
>
> 12. The Partial Final Award will be final and binding with respect to the matters pleaded prior to the above amendments. However, no steps to enforce the Partial Final Award shall be taken for 30 days without leave of the Arbitrator.
>
> 13. The Jonas Group may, within 7 days of the release of the Partial Final Award, bring a motion for a stay of execution with respect to the enforcement of any Partial Final Award.
>
> 14. A timetable with respect to any such motion will be determined by the parties with the assistance of the arbitrator, if necessary, but the parties agree that such a motion will be heard within 30 days of any Partial Final Award.

128. The provisions of Procedural Order No.2 remain in effect.

DISPOSITION IN THIS PARTIAL FINAL AWARD

129. For the foregoing reasons:

(a) The Jonas Group shall pay Kognitiv the sum of $6,252,819.

(b) Claims for punitive, exemplary, or aggravated damages, pre-award and post-award interest and costs are reserved to Phase 2 of the arbitration as are the claims reserved to Phase 2 by Procedural Order No.2.

William G. Horton, C.Arb., FCIArb
Sole Arbitrator
October 31, 2025
Toronto, Ontario

SCHEDULE A

GARY JONAS COMPUTING LTD. ET AL ATS LOYALTY SOLUTIONS CANADA INC. ET AL
Arbitration Findings in Partial Final Award Relevant to Damages

	CHS	Secretariat	Difference	Midpoint
	$000s	$000s	$000s	$000s
Jonas' Losses, Excluding Egyptian FX Issue	2,252	2,143	109	2,198
Impact of Egyptian FX Issue	1,208	1,205	3	1,207
Jonas' Losses, Including Egyptian FX Issue	**3,460**	**3,348**	**112**	**3,405**

This is Exhibit "BB" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

In the Matter of an Arbitration Between

Gary Jonas Computing Ltd., CORA Group Australia Pty Ltd., Jonas Computing (UK) Limited and Jonas Food Holdco Inc.

(the "Jonas" Parties or the "Buyer")

v.

Loyalty Solutions Canada Inc., Kognitiv Australia Pty Ltd., Kognitiv US LLC, AIMIA Middle East Free Zone LLC, Kognitiv Singapore Pte Ltd. and Kognitiv Corporation.

(the "Kognitiv" Parties or the "Seller")

Decision on Motion to Stay Execution of Partial Final Award in Phase 1 (December 14, 2025)

1. This is a motion by the Jonas Group to stay enforcement of my Partial Final Award dated October 31, 2025 pending determination of its Holdback Amount Claim and NTA Shortfall Claim in Phase 2 of this arbitration.

2. Capitalized terms are as defined in the Partial Final Award and/or in the Asset Purchase Agreement between the parties.

Background to the Motion

3. Procedural Order No. 2, dated July 26, 2025, allowed the parties to amend their pleadings to include Kognitiv's Insolvency Claim as well as the Jonas Group's Holdback Amount Claim and NTA Shortfall Claim. The claims which had been advanced in this arbitration prior to Procedural Order No. 2 were to proceed in what became Phase 1 and were to be decided on the previously agreed schedule of the arbitration. The claims added by the amendments were to proceed in Phase 2.

4. Specifically, paragraph 2 of Procedural Order No. 2 provided as follows:

> For greater certainty, the Claimants' assertion that the breaches of contract alleged in the Amended Notice of Arbitration caused the insolvency of some or all of the Claimants (the "**Insolvency Damages Claim**"), the Claimants' claim for the $2m Holdback Amount (the "**Holdback Amount Claim**"), and the quantum of the Respondents' claim based on the deficiency alleged in the working capital and whether this amount is subject to a right of set-off in favour of the Jonas Group under the APA (the "**NTA Shortfall Claim**") will not be addressed in Phase One, but will be addressed in Phase Two of this arbitration.

5. The potential overlap between the determinations in Phase 1 of the arbitration and the claims to be determined in Phase 2 of the arbitration was dealt with in paragraph 12 of Procedural Order No. 2 as follows:

> The Partial Final Award will be final and binding with respect to the matters pleaded prior to the above amendments. However, no steps to enforce the Partial Final Award shall be taken for 30 days without leave of the Arbitrator.

6. The purpose of the 30-day stay was to allow an opportunity for the Jonas Group to bring an application to extend the stay until the completion of Phase 2. Following release of the Partial Final Award, the 30 days have been extended by agreement of the parties until release of this decision.

7. One of the factors which were considered in bifurcating the arbitration was the fact that the claims which were added by amendment were all to some degree dependent on the outcome of the claims which were previously pleaded.

8. In addition, the Asset Purchase Agreement between the parties provided for a separate process for determining the NTA Shortfall Claim, a process that required the appointment of a Reviewing Accountant. The Asset Purchase Agreement by s. 2.6(b) provided that any such dispute "will be determined [and] resolved fully, finally and exclusively by the Reviewing Accountant and such determination will be final and binding on the Parties and shall not be subject to recourse or appeal regarding the Reviewing Accountant's position".

9. The Phase 1 hearing took place on July 28-30, 2025. It was agreed that my decision in Phase 1 would not be released before October 31, 2025. The purpose of this timing was to provide a

window for the Reviewing Accountant process to be completed so that the result of that process would be available for consideration on the stay motion which was anticipated by Procedural Order No. 2.

10. On September 29, 2025, Kognitiv proposed to the Jonas Group that the Reviewing Accountant process be delayed until after the stay motion was heard, and the Jonas Group agreed. The agreement was not reduced to writing, nor was it communicated to me until the initiation of this stay application. The parties are now at odds as to the reasons for, or the implications of, this delay in the Reviewing Accountant process.

Positions of the Parties

11. The Jonas Group takes the position that, given Kognitiv's insolvency (see below), the failure to stay enforcement of the Partial Final Award would effectively defeat its claimed rights to contractual, legal and equitable set off.

12. Kognitiv takes the position that granting a stay would be effectively defeat its defence that contractual rights of set off are no longer in effect. Kognitiv relies on the Jonas Group's failure to pursue its claim within contractual deadlines set out in in the Asset Purchase Agreement as a basis for denying the right of the Jonas Group to exercise the contractual rights of set off provided for in the Asset Purchase Agreement. The Kognitiv Group also characterizes the Jonas Group's conduct as strategic delay and inflation of its NTA Shortfall Claim which amounts to bad faith. In response, the Jonas Group cites various instances of alleged non-cooperation by Kognitiv in the process of quantifying the Final NTA Amount as a basis for extending the contractual deadlines.

13. Apart from any contractual right of set off, Kognitiv takes the position that the Jonas Group is not entitled to legal set off or equitable set off and opposes the granting of a stay which would give effect to those defences before they are adjudicated. Kognitiv therefore seeks a determination now that any further stay should not be granted based on a finding that the right to set off is not available. If the availability of a set off is not decided on this stay application, Kognitiv is of the view that the Jonas Group's right to set off should be decided before any effort or expense is expended in having a Reviewing Accountant determine the quantum of the NTA Shortfall.

14. In effect, both sides seek to use the stay motion as a way of winning on their substantive positions as to the availability of set off for the NTA Shortfall Claim. Kognitiv seeks a *de jure* determination that the right to set off does not exist and uses those arguments as a basis for resisting the stay. Jonas Group seeks a *de facto* enforcement of its claimed right to set off by staying execution on the Partial Final Award in Phase 1 until the NTA Shortfall Claim is determined. It would have been considerably easier to resolve this impasse if the report of the Reviewing Accountant was available, as had originally been contemplated – at least by me.

15. I do not intend to make any substantive determination of the Jonas Group's right to set off or Kognitiv's defences to the claim of set off on this stay application and will therefore limit my comments in that regard.

Insolvency Proceeding

16. A further consideration is that Kognitiv is subject to an insolvency order dated April 14, 2025, in the Ontario Superior Court of Justice. On April 15, 2025, the Jonas Group obtained a lifting of the stay in those proceedings "solely to permit the Jonas Parties to assert any of the claims, defences or counterclaims between the Jonas Parties and Kognitiv Parties arising in respect of the APA in the Arbitration." At that time, the Jonas Group had not yet advanced the claims that are to be dealt with in Phase 2 of the Arbitration. There is now a dispute between the parties as to whether the lifting of the stay by the court order of April 15, 2025, applies to Jonas Group's Phase 2 claims and defences. In my view, that is a matter to be resolved in the insolvency proceedings.

17. I repeat and extend to this order what was said in paragraph 17 of Procedural order No.2:

> Nothing in Procedural Order No. 1 or Procedural Order No. 2 in any way replaces or varies the obligations of the parties arising from the Insolvency Order of Justice Cavanagh dated April 14, 2025.

18. To that I would add that, I recognize the separate ambit of the Court with respect to the insolvency proceedings and with respect to the authorization and control over the parties regarding this arbitration. I do not presume that the Court, on any application made to it, will necessarily adopt my disposition or reasons respecting this stay application.

Test for an Interim Stay of Enforcement

19. In deciding the stay application that is before me, I adopt the traditional test in Ontario courts and, with some variations in many sets of arbitration rules, for the granting of an interim stay of enforcement, namely that the Jonas Parties are required to demonstrate that:

a. there is a serious issue to be tried;

b. irreparable harm will result if the stay is not granted; and

c. the balance of convenience favours granting the stay.[1]

Analysis and Decision

20. Although the threshold for the first part of the test is a low one, [2] I find that it is not met with respect to part of the Jonas Group's claim for set off. Based on the evidence before me on this application, there is no serious issue to be tried with respect to two items that are included in the Jonas Group's NTA Shortfall Claim.

21. First, as currently stated, the NTA Shortfall Claim includes $1,207,857 with respect to the Currency Issue (Egyptian FX) that has already been dealt with in Phase 1 of this arbitration. Damages were assessed at a different amount and an off set against the Financial Institution Holdback was made. As a result, the Jonas Group's claim on this issue has been assessed and paid. Once this claim was submitted for determination in Phase 1 of the arbitration it should have been removed from the alleged NTA Shortfall Claim.

22. Second, the Jonas Group includes in the NTA Shortfall Claim $1,500,000, representing an alleged liability with respect to a Toronto-Dominion Bank prepaid float. However, Kognitiv

[1] *Dramel Limited v. Multani*, 2023 ONCA 540 at para 6; *Hong v. Yin*, 2025 BCCA 419 at para 11.
[2] *RJR-MacDonald* at p 337; *Hong v. Yin*, 2025 BCCA 419 at para 12; *Mandarin Restaurant Franchise Corporation v. Amalie Holdings Limited*, 2019 ONSC 5085 at para 27.

has provided evidence that it paid this float by way of a November 28, 2024 direction to pay the float by setting it off against credits owed to Kognitiv. The direction bears a signature on behalf of TD Bank. This evidence has not been contradicted by the Jonas Group. Indeed, it does not appear that the Jonas Group has made any inquiries of TD Bank with respect to its alleged concerns.

23. The Jonas Group has suggested, with respect to both of these matters, that it has some concerns about possible further liability. However, it has not provided any objective support for these concerns. Neither of these concerns provide a reasonable basis for asserting a right of continuing set off against an adjudicated debt.

24. The overall NTA Shortfall claimed by the Jonas Group is $7,676,528. Removing the $2,000,000 Holdback Amount which the Jonas Group has retained from the Purchase Price and has applied to its claim yields $5,676,528. This is the amount the Jonas Group claims to be owed by the Kognitiv Parties to the Jonas Parties under s. 2.7(e)(ii) of the Asset Purchase Agreement. The amount owed by the Jonas Group to Kognitiv pursuant to the Partial Final Award in Phase 1 is $6,252,819. Therefore, the difference of $576,291 in favour of Kognitiv is not covered by the claim for set off. This appears to be acknowledged by the Jonas Group but it does not appear that the amount has been tendered.

25. Adding these amounts together, there is no serious issue to be tried with respect to $3,284,148 of the amount owed to Kognitiv pursuant to the Partial Final Award in Phase 1. Taking into account the $2,000,000 Holdback Amount currently held by the Jonas Group, the remaining balance of the Partial Final Award with respect to which the Jonas Group arguably requires a stay is $2,392,380.

26. The exposure to interest and costs is not properly included in this calculation as those matters have been reserved to Phase 2 of the arbitration. There remain claims from both sides that are yet to be adjudicated and that may yet result in costs and/or interest paid to either side.

27. In the absence of any stay and in light of the insolvency of Kognitiv, the Jonas Group could be irretrievably prejudiced if there is no stay of enforcement with respect to the amount of its claim which could be established by the Reviewing Accountant Process. In that respect, there is no irreparable harm to either party if there is a stay of execution pending completion of Phase 2 of the arbitration.

28. Similarly, the balance of convenience at this stage favours the granting of a stay with respect to $2,392,380 of the Partial Summary Judgment. This presumes that payment of the balance of the Partial Final Award is made in a timely manner. There is no point in making an order staying enforcement with respect part of the award if the balance of the award is not going to be paid. I will therefore make it a condition of the stay that the balance of the Partial Final Award in the amount of $3,284,148 be paid within 45 days.

29. I have considered whether to also require security from the Jonas Group for payment of the amount with respect to which enforcement has been stayed. I have decided against doing so. On consideration, the ordering of a stay on a portion of the Partial Final Award on condition that the balance be paid within 45 days appropriately balances the convenience and equities between the parties.

30. I note that there is a dispute as to whether the Jonas Group's right to a set off should be determined before deciding whether or not to proceed with the Reviewing Accountant process. As noted above, this approach is advocated by Kognitiv, whereas the Jonas Group would like

to proceed immediately to the appointment of a Reviewing Accountant. This issue will be dealt with as part of the process of setting the procedure for Phase 2 of the arbitration.

Disposition

31. Therefore, on condition that the Jonas Group pay Kognitiv $3,284,148 within 45 days of this order, enforcement of the balance of the Partial Final Award, in the amount of $2,392,380 is stayed until the completion of Phase 2 of the arbitration.

32. This is to be considered an interim order which is subject to change at any time on the application of either party if I find it to be warranted by the circumstances.

William G. Horton, C.Arb., FCIArb
Sole Arbitrator
December 14, 2025
Toronto, Canada

This is Exhibit "CC" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

IN THE MATTER OF AN ARBITRATION
under the *International Commercial Arbitration Act, 2017*, SO 2017, c 2
pursuant to Section 7.4 of an Asset Purchase Agreement dated July 5, 2024

B E T W E E N :

LOYALTY SOLUTIONS CANADA INC., KOGNITIV AUSTRALIA PTY LTD., KOGNITIV US LLC, AIMIA MIDDLE EAST FREE ZONE LLC, KOGNITIV SINGAPORE PTE LTD., AND KOGNITIV CORPORATION

Claimants

- and -

GARY JONAS COMPUTING LTD., CORA GROUP AUSTRALIA PTY LTD., JONAS COMPUTING (UK) LIMITED, AND JONAS FOOD HOLDCO INC.

Respondents

A N D B E T W E E N :

LOYALTY SOLUTIONS CANADA INC., KOGNITIV AUSTRALIA PTY LTD., KOGNITIV US LLC, AIMIA MIDDLE EAST FREE ZONE LLC, KOGNITIV SINGAPORE PTE LTD., AND KOGNITIV CORPORATION

Respondents by Counterclaim

- and -

GARY JONAS COMPUTING LTD., CORA GROUP AUSTRALIA PTY LTD., JONAS COMPUTING (UK) LIMITED, AND JONAS FOOD HOLDCO INC.

Claimants by Counterclaim

MINUTES OF SETTLEMENT

WHEREAS the Claimants/Respondents by Counterclaim, being each of Loyalty Solutions Canada Inc., Kognitiv Australia Pty Ltd., Kognitiv US LLC, AIMIA Middle East Free Zone LLC, Kognitiv Singapore Pte Ltd., and Kognitiv Corporation (collectively, the "**Kognitiv Parties**"), and the Respondents/Claimants by Counterclaim, being each of Gary Jonas Computing Ltd., CORA Group Australia Pty Ltd., Jonas Computing (UK) Limited, and Jonas Food Holdco Inc. (collectively, the "**Jonas Parties**"), entered into an asset purchase agreement dated July 5, 2024 (the "**Agreement**") pursuant to which the Kognitiv Parties agreed to sell, and the Jonas Parties agreed to purchase, six client contracts and certain of the Kognitiv Parties' software and intellectual property and other assets, including the programs known as the Air Miles Program and Miles Rewards Program in the Middle East;

AND WHEREAS on December 12, 2024, Kognitiv Corporation filed a Notice of Intention to Make a Proposal under Subsection 50.4(1) of the *Bankruptcy and Insolvency Act (Canada)* (the "*BIA*") and a stay of proceedings against Kognitiv Corporation was therefore implemented pursuant to Section 69 of the *BIA*;

AND WHEREAS on October 22, 2025, Loyalty Solutions Canada Inc. voluntarily assigned itself into bankruptcy;

AND WHEREAS the Kognitiv Parties issued an Amended Notice of Arbitration and Supplemental Notice of Arbitration against the Jonas Parties in respect of matters arising from the Agreement;

AND WHEREAS the Jonas Parties issued an Amended Answer and Counterclaim against the Kognitiv Parties in respect of matters arising from the Agreement (collectively with the Kognitiv Parties' Amended Notice of Arbitration and Supplemental Notice of Arbitration, the **"Arbitration"**);

AND WHEREAS the Parties agreed to divide the Arbitration proceedings into two phases (respectively, **"Phase One"** and **"Phase Two"**) as follows: (i) Phase One dealing with, *inter alia*, the Kognitiv Parties' claim for payment of the Financial Institution Client Holdback Amount and the Jonas Parties' counterclaim for various misrepresentations; and (ii) Phase Two dealing with, *inter alia*, the Kognitiv Parties' claim for damages arising from the insolvency of Kognitiv Corporation, payment of the Holdback Amount, and the Jonas Parties' NTA Shortfall Claim;

AND WHEREAS a partial final award was issued on October 31, 2025 addressing the issues in Phase One in which the arbitrator (i) determined the Jonas Parties had incurred a loss of $3,405,000 as a result of certain misrepresentations by the Kognitiv Parties and (ii) ordered the Jonas Parties to pay $6,252,819 to the Kognitiv Parties, representing the balance of the Financial Client Institution Holdback Amount after deducting the Jonas Parties' loss arising from the Kognitiv Parties' misrepresentations and withholding of other amounts (the "**Partial Final Award**");

AND WHEREAS the Jonas Parties were, in a decision dated December 14, 2025, granted a stay of enforcement of a portion of the Partial Final Award until completion of Phase Two, on the condition that the Jonas Parties pay the balance of the Partial Final Award to the Kognitiv Parties within 45 days of December 14, 2025 (the **"Stay"**);

AND WHEREAS the Kognitiv Parties, on the one hand, and the Jonas Parties, on the other hand (collectively, the "**Parties**"), wish to settle all issues raised or which could have been raised in relation to the Agreement, or in the Arbitration, including the Partial Final Award and the Stay;

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably received and acknowledged, the Parties agree to settle all issues raised or which could have been raised in relation to the Agreement, or in the Arbitration, including the Partial Final Award and the Stay, on the following terms:

1. The Jonas Parties shall pay the all-inclusive sum of CAD $5,000,000 on or before December 31, 2025 to counsel to the Kognitiv Parties, which amount shall be held in trust by counsel to the Kognitiv Parties, to be released in accordance with paragraph 3. For greater certainty, the Parties agree and acknowledge that under the terms of this Settlement no amount beyond CAD $5,000,000 is or shall be owed by the Jonas Parties to the Kognitiv Parties under the Partial Final Award and no amount is or shall be owed by the Kognitiv Parties to the Jonas Parties under the Agreement or in connection with the Arbitration.

2. Concurrently with the execution of these Minutes of Settlement, the Parties shall execute a Full and Final Mutual Release in the form attached hereto as **Schedule** "**A**" (the "**Mutual Release**"), which shall be held in escrow by the Parties' counsel until counsel exchange confirmation, in writing, that the Kognitiv Parties have received the payment set out in paragraph 3 below, at which time the Mutual Release shall be released from escrow.

3. Upon approval by the Ontario Superior Court of Justice (Commercial List) of these Minutes of Settlement, the amount set out in paragraph 1 above shall be indefeasibly released to

the Kognitiv Parties by counsel to the Kognitiv Parties, the Mutual Release shall be released in accordance with paragraph 2 hereof, and the Parties will direct their respective solicitors to consent to a discontinuance of the Arbitration, with prejudice and without costs. For greater certainty, the parties acknowledge and agree that, in the event that the Parties are not, despite exercising best efforts, able to obtain Court approval of the Minutes of Settlement, the amount set out in paragraph 1 above shall be returned to the Jonas Parties, and these Minutes of Settlement and the Mutual Release shall be of no force or effect.

4. The Parties hereto agree that, upon payment of the amount set out in paragraph 3 above, all claims, liabilities, or obligations of any Party under the Agreement shall be fully satisfied and that neither Party shall have any further obligations thereunder.

5. The Parties shall execute such documentation as may be necessary to give effect to and to implement the terms of these Minutes of Settlement.

6. The Parties acknowledge and agree that they have had the opportunity to seek independent legal advice and that they have received independent legal advice regarding the terms of these Minutes of Settlement and that they voluntarily and without duress make this settlement and enter into these Minutes of Settlement.

7. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and any dispute arising from these Minutes of Settlement will be adjudicated by the Ontario Superior Court of Justice, and the Parties hereby attorn to the exclusive jurisdiction of this Court for this purpose.

8. These Minutes of Settlement and all other documents to be executed and delivered pursuant to these Minutes of Settlement constitute the entire agreement between the Parties as to the matters

dealt with herein or therein and supersede all prior negotiations and understandings. Any amendment to these Minutes of Settlement or waiver of any provision of these Minutes of Settlement must be in writing and signed by the Parties.

9. These Minutes of Settlement may be executed by electronic signature and in one or more counterparts and exchanged in electronic or PDF format by electronic mail, each of which shall be deemed an original, and all of which together shall constitute one and the same document notwithstanding their date of actual execution.

10. Each of the Parties acknowledges that: (i) the Trustee, in executing the Agreement, is entering into the Agreement solely in its capacity as Trustee of the Debtor, and not in its personal or any other capacity; (ii) the Trustee shall have no personal or corporate liability of any kind whether in contract, tort or otherwise; and (iii) the Trustee's authority to act in respect of the Property is governed by provisions of the BIA.

[*Remainder of this page intentionally left blank*]

IN WITNESSS WHEREOF the undersigned have executed these Minutes of Settlement as at December 30, 2025.

KOGNITIV AUSTRALIA PTY LTD., KOGNITIV US LLC, AIMIA MIDDLE EAST FREE ZONE LLC, KOGNITIV SINGAPORE PTE LTD., AND KOGNITIV CORPORATION

Per: DocuSigned by: Griffin Rotman 8FA4DA4415F495...

Name: Griffin Rotman
Title: Authorized Signatory
I have the authority to bind the corporations

LOYALTY SOLUTIONS CANADA INC.

Per: _____

BDO Canada Limited, in its capacity as The Trustee of the Estate of Loyalty Solutions Canada Inc., a bankrupt, and not in its personal or corporate capacities.

Name:
Title:

I have the authority to bind the corporation

GARY JONAS COMPUTING LTD., CORA GROUP AUSTRALIA PTY LTD., JONAS COMPUTING (UK) LIMITED, AND JONAS FOOD HOLDCO INC.

Per: _____

Name:
Title:

I have the authority to bind the corporations

This is Exhibit "DD" of
the Affidavit of **GRANT MCLEOD**
Sworn before me this 9th day of February 2026

A Commissioner, etc.

Reem Atallah, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 28, 2026.

SCHEDULE "A"

FULL AND FINAL MUTUAL RELEASE

WHEREAS Loyalty Solutions Canada Inc., Kognitiv Australia Pty Ltd., Kognitiv US LLC, AIMIA Middle East Free Zone LLC, Kognitiv Singapore Pte Ltd., and Kognitiv Corporation (collectively, the "**Kognitiv Parties**") and Gary Jonas Computing Ltd., CORA Group Australia Pty Ltd., Jonas Computing (UK) Limited, and Jonas Food Holdco Inc. (collectively, the "**Jonas Parties**") entered into an asset purchase agreement dated July 5, 2024 (the "**Agreement**"), pursuant to which the Kognitiv Parties agreed to sell, and the Jonas Parties agreed to purchase, six client contracts and certain of the Kognitiv Parties' software and intellectual property and other assets, including the programs known as the Air Miles Program and Miles Rewards Program in the Middle East;

AND WHEREAS the Kognitiv Parties issued an Amended Notice of Arbitration against the Jonas Parties claiming, among other things, damages for breach of contract for failing to pay the Financial Institution Client Holdback Amount under the Agreement and that this breach caused the insolvency of some or all of the Kognitiv Parties, and the Kognitiv Parties issued a Supplemental Notice of Arbitration against the Jonas Parties claiming, among other things, damages for beach of contract for failing to pay the Holdback Amount required under the Agreement;

AND WHEREAS the Jonas Parties, in their Amended Answer and Counterclaim to the Amended Notice of Arbitration claimed, among other things, damages for the Kognitiv Parties' knowing misrepresentations during the negotiations related to the Agreement, and that any obligation the Jonas Parties had to pay the Financial Institution Client Holdback Amount or the Holdback Amount under the Agreement was subject to set off against these damages and against the shortfall in the Final NTA Amount contemplated by the Agreement (collectively with the Kognitiv Parties' Amended Notice of Arbitration and Supplemental Notice of Arbitration, the "**Arbitration**");

AND WHEREAS the Parties agreed to divide the Arbitration proceedings into two phases (respectively, "**Phase One**" and "**Phase Two**") as follows: (i) Phase One dealing with, *inter alia*, the Kognitiv Parties' claim for payment of the Financial Institution Client Holdback Amount and the Jonas Parties' counterclaim for various misrepresentations; and (ii) Phase Two dealing with, *inter alia*, the Kognitiv Parties' claim for damages arising from the insolvency of Kognitiv Corporation, payment of the Holdback Amount, and the Jonas Parties' NTA Shortfall Claim;

AND WHEREAS a partial final award was issued on October 31, 2025 addressing the issues in Phase One in which the arbitrator (i) determined that the Jonas Parties had incurred a loss of $3,405,000 as a result of certain misrepresentations by the Kognitiv Parties and (ii) ordered the Jonas Parties to pay $6,252,819 to the Kognitiv Parties, representing the balance of the Financial Client Institution Holdback Amount after deducting the Jonas Parties' loss arising from the Kognitiv Parties' misrepresentations and withholding of other amounts (the "**Partial Final Award**");

AND WHEREAS the Jonas Parties were, in a decision dated December 14, 2025, granted a stay of enforcement of a portion of the Partial Final Award until completion of Phase Two, on the condition that the Jonas Parties pay the balance of the Partial Final Award to the Kognitiv Parties within 45 days of December 14, 2025;

AND WHEREAS the Kognitiv Parties, on the one hand, and the Jonas Parties, on the other hand, have agreed to terms of settlement in respect of all outstanding matters between them in connection with the issues raised or which could have been raised in relation to the Agreement and in the Arbitration;

NOW THEREFORE, IN CONSIDERATION of the settlement of the claims advanced by the Kognitiv Parties against the Jonas Parties, the settlement of the claims advanced by the Jonas Parties against the Kognitiv Parties, and in consideration of the Jonas Parties' payment to the Kognitiv Parties of the sum of FIVE MILLION DOLLARS ($5,000,000) of lawful money of Canada by December 31, 2025, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned,

LOYALTY SOLUTIONS CANADA INC., KOGNITIV AUSTRALIA PTY LTD., KOGNITIV US LLC, AIMIA MIDDLE EAST FREE ZONE LLC, KOGNITIV SINGAPORE PTE LTD., AND KOGNITIV CORPORATION, for themselves, their present and former parent, subsidiaries, affiliates and related companies and each of their respective present and former directors, officers, shareholders, employees, servants, agents, administrators, trustees, successors and assigns and any party or parties who claim a right or interest through them,

on the one hand,

AND:

GARY JONAS COMPUTING LTD., CORA GROUP AUSTRALIA PTY LTD., JONAS COMPUTING (UK) LIMITED, AND JONAS FOOD HOLDCO INC., for themselves, their present and former parent, subsidiaries, affiliates and related companies and each of their respective present and former directors, officers, shareholders, employees, servants, agents, administrators, trustees, successors and assigns and any party or parties who claim a right or interest through them,

on the other hand,

(collectively, the "**Parties**"),

HEREBY FULLY RELEASE, REMISE AND FOREVER DISCHARGE EACH OTHER, without qualification or limitation from any and all claims, actions, causes of action, demands for monies, losses, damages, indemnity or injuries howsoever arising which heretofore may have been or may hereafter be sustained by them, as a consequence of any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a result of a fiduciary duty or by virtue of any statute or upon or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters arising out of the Agreement and any and all matters that were alleged or pleaded in, or could have been alleged or pleaded in, the Arbitration.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, the Parties hereto declare that the intent of this Full and Final Mutual Release is to conclude all issues arising from the matters set forth above, in the Arbitration, and relating to the Agreement and to release the Parties from any claims whatsoever and howsoever arising from the matters set forth above, in the Arbitration, and relating to the Agreement.

AND THE PARTIES HEREBY CONFIRM that they have full authority and capacity to release their respective rights and interests as against the Parties and have authorized and instructed their solicitors to settle the arbitration on the terms outlined herein and in the Minutes of Settlement.

AND FOR THE SAID CONSIDERATION the Parties hereby irrevocably represent and warrant that they have not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind which they have released by this Full and Final Mutual Release.

AND FOR THE SAID CONSIDERATION it is agreed and understood that no Party to this Full and Final Mutual Release will make or continue any claim or take or advance any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, from any of the Parties, in connection with the matters outlined above and in the Amended Notice of Arbitration, Amended Answer and Counterclaim, and Supplemental Notice of Arbitration.

IT IS AGREED AND UNDERSTOOD that if any Party to this Full and Final Mutual Release should commence or continue such an action, or take or advance such proceedings, and the Parties, or any of them, are added to such proceeding in any manner whatsoever, the Party or Parties advancing such a proceeding and/or claims will immediately discontinue the proceedings and/or claims, and such Parties will be jointly and severally liable to the Parties, or those affected, for the legal costs incurred in any such proceeding, on a substantial indemnity cost basis. This Full and Final Mutual Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by any of the Parties with respect to the matters covered by this Full and Final Mutual Release. This Full and Final Mutual Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim,

action, complaint or proceeding on a summary basis and no objection will be raised by any of the Parties in any subsequent action that the other parties in the subsequent action were not privy to formation of this Full and Final Mutual Release.

AND IT IS FURTHER UNDERSTOOD AND AGREED that the Parties do not, by the payment set out in this Full and Final Mutual Release and the Minutes of Settlement, or otherwise, admit any liability or obligation of any kind whatsoever to the Parties and such liability or obligation is specifically denied.

AND IT IS HEREBY DECLARED that the terms of this settlement are fully understood, that the consideration stated herein is the sole consideration for this Full and Final Mutual Release and that the said payments are accepted voluntarily for the purpose of making full and final compromise in settlement of all claims and proceedings advanced between, or against the Parties, now or hereafter brought, for damages, loss or injury in respect of the matters set forth above, in relation to the Agreement, and in the Amended Notice of Arbitration, Amended Answer and Counterclaim, and Supplemental Notice of Arbitration, or which could have been asserted by the Parties in relation to or arising from the Agreement now or in the future.

AND IT IS FURTHER UNDERSTOOD AND AGREED that the terms of this Full and Final Mutual Release and the Minutes of Settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, by the Parties, unless deemed essential on auditors' or accountants' written advice for financial statement or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact that the settlement agreement is made without any admission of liability will receive the same publication contemporaneously.

THE PARTIES HERETO IRREVOCABLY direct their respective solicitors to consent to the discontinuance of the Arbitration, with prejudice and without costs.

THE PARTIES ACKNOWLEDGE that they have carefully read this Full and Final Mutual Release, have had opportunity to seek the advice of a lawyer as to the nature and effect of the Full and Final Mutual Release, understand all of the terms in this Full and Final Mutual Release, and have executed this Full and Final Mutual Release voluntarily and with knowledge of the consequences thereof.

THE PARTIES HEREBY ACKNOWLEDGE that this Full and Final Mutual Release contains the entire agreement between the Parties hereto, that the terms of this Full and Final Mutual Release are contractual, are not a mere recital and any breach of these terms may be enforced against any Party in breach, and may give rise to a damages claim against any such Party, or any of them, enforceable by a further legal proceeding.

THE PARTIES HEREBY AGREE that this Full and Final Mutual Release will be governed by the Laws of the Province of Ontario and that any dispute arising from this Full and Final Mutual Release will be adjudicated by the Ontario Superior Court of Justice, and the Parties hereby attorn to the exclusive jurisdiction of this Court for this purpose.

IT IS UNDERSTOOD AND AGREED that this Full and Final Mutual Release may be executed by electronic signature and in two or more counterparts and exchanged in electronic or PDF format by electronic mail, each of which shall be deemed to be an original, and that such separate counterparts shall constitute together one and the same instrument, notwithstanding their date of actual execution.

[*Remainder of the page intentionally left blank*]

IN WITNESS WHEREOF the Parties have executed this Full and Final Mutual Release by their hands and seals this 30th day of December 2025.

KOGNITIV AUSTRALIA PTY LTD., KOGNITIV US LLC, AIMIA MIDDLE EAST FREE ZONE LLC, KOGNITIV SINGAPORE PTE LTD., AND KOGNITIV CORPORATION

Per: DocuSigned by: Griffin Rotman
8FA4DA44415F495...

Name: Griffin Rotman

Title: Authorized Signatory

I have the authority to bind the corporations

LOYALTY SOLUTIONS CANADA INC.

Per: _____

BDO Canada Limited, in its capacity as The Trustee of the Estate of Loyalty Solutions Canada Inc., a bankrupt, and not in its personal or corporate capacities

Name:
Title:

I have the authority to bind the corporation

GARY JONAS COMPUTING LTD., CORA GROUP AUSTRALIA PTY LTD., JONAS COMPUTING (UK) LIMITED, AND JONAS FOOD HOLDCO INC.

Per: _____

Name:
Title:

I have the authority to bind the corporations

67242539.15

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KOGNITIV CORPORATION OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-25-3165297-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

Proceedings commenced at Toronto

AFFIDAVIT OF GRANT MCLEOD
(sworn February 9, 2026)

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle B. Plunkett (LSO # 61044N)
Tel: (416) 865-3406
Email: kplunkett@airdberlis.com

Miranda Spence (LSO # 60621M)
Tel: (416) 865-3414
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Alex Bernicchia-Freeman (LSO # 93556P)
Tel: (416) 865-7735
Email: afreeman@airdberlis.com

Lawyers for Kognitiv Corporation

TAB 3

Court File No. BK-25-3165297-0031
Estate File No. 31-3165297

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE	)	TUESDAY, THE 17th
	)	
JUSTICE CAVANAGH	)	DAY OF FEBRUARY, 2026

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KOGNITIV CORPORATION OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

ANCILLARY RELIEF ORDER
(re Settlement, Distributions and Approval of Fees)

THIS MOTION, made by Kognitiv Corporation (the "**Company**"), for certain relief pursuant to the *Bankruptcy and Insolvency* Act, R.S.C., 1985, c. B-3 (the "**BIA**") for an Order (the "**Ancillary Relief Order**"), *inter alia*, (i) approving the First Report dated March 14, 2025 (the "**First Report**") and Second Report dated <*>, 2026 (the "**Second Report**" and collectively with the First Report, the "**Reports**") of BDO Canada Limited ("**BDO**"), in its capacity as the Trustee acting *in re* the proposal of the Company (in such capacity, the "**Proposal Trustee**"), and the activities and conduct of the Proposal Trustee as described therein; (ii) approving the fees and disbursements of the Proposal Trustee and the Proposal Trustee's independent legal counsel, Dentons Canada LLP ("**Dentons**") as described in the Second Report and the fee affidavits appended thereto (the "**Fee Affidavits**"); (iii) approving the Settlement and authorizing the Company to enter into both of the Minutes of Settlement and the Release attached as Exhibits "**CC**" and "**DD**" to the McLeod Affidavit (as defined below) among each of the Company, Aimia Middle East Free Zone LLC, Kognitiv Singapore Pte Ltd., Kognitiv Australia Pty Ltd., Kognitiv US LLC, and BDO in its capacity as bankruptcy trustee of Loyalty Solutions Canada Inc.

(collectively, the "**Kognitiv Parties**"), on the one hand, and each of Gary Jonas Computing Ltd., CORA Group Australia Pty Ltd., Jonas Computing (UK) Limited, and Jonas Food Holdco Inc. (collectively, the "**Jonas Parties**"), on the other hand; and (iv) authorizing and directing the Proposal Trustee to make certain payments and distributions and establish, hold and maintain certain reserves as recommended and described in the Second Report, was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Company, including the Affidavit of Grant McLeod sworn February 9, 2026 (the "**McLeod Affidavit**"), the Reports of BDO in its capacity as Proposal Trustee, and the Factum of the Company dated February <*>, 2026, and on hearing the submissions of counsel to the Company, counsel to the Proposal Trustee and those other parties listed on the Counsel Slip, no one else appearing although duly served as evidenced by the Affidavit of Service of <*> sworn February <*>, 2026, as filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the respective meanings given to them in the McLeod Affidavit.

APPROVAL OF THE PROPOSAL TRUSTEE'S REPORTS, ACTIVITIES AND FEES

3. **THIS COURT ORDERS** that the First Report and the Second Report, and the actions, conduct and activities of the Proposal Trustee described therein are hereby approved, provided that only the Proposal Trustee in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the Proposal Trustee and counsel to the Proposal Trustee (collectively, the "**Professionals**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges (the "**Professional Fees**"), by the Company as part of the

costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Professionals.

5. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee, for the period between March 3, 2025 and January 30, 2026, as set out in the fee affidavit of <*> sworn February <*>, 2026, appended to the Second Report, be and are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee's counsel, Dentons, for the period between March 1, 2025 and January 30, 2026, as set out in the fee affidavit of <*> sworn February <*>, 2026, appended to the Second Report, be and are hereby approved.

MINUTES OF SETTLEMENT AND RELEASE

7. **THIS COURT ORDERS** that each of the Minutes of Settlement and the Release is hereby approved and the Company is hereby authorized to enter into both the Minutes of Settlement and the Release, *nunc pro tunc*, and the Company is authorized to take such steps and execute such additional documentation as may be necessary or desirable to give effect to the Minutes of Settlement and the Release.

PAYMENT OF SUCCESS FEE AND DISTRIBUTIONS TO SECURED CREDITORS

8. **THIS COURT ORDERS AND DECLARES** that the Company is hereby authorized and directed to pay to Roystone Capital Management LP the Success Fee from the proceeds of the Remaining Assets in accordance with the terms of the Restructuring Advisory Agreement, which fee shall be paid in priority to all amounts owing to the Senior Secured Creditors (as defined below).

9. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to make one or more distributions (the "**Distributions**") from the Remaining Assets to each of Guines LLC ("**Guines**") and Aimia Inc. ("**Aimia**" and together with Guines, the "**Senior Secured Creditors**") on account of and in partial satisfaction of their respective senior secured indebtedness detailed in the Second Report, after deducting payment of the Success Fee, the Administrative Payments (which includes the Professional Fees), and any accrued and unpaid expenses in these

NOI Proceedings. For greater certainty, if any portion of the Reserve is not required by the Proposal Trustee or Dentons, the Proposal Trustee is hereby authorized and directed, without further Order of this Court, to distribute any such unused portion of the Reserve to the Senior Secured Creditors on account of and in partial satisfaction of the indebtedness of the Senior Secured Creditors.

10. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized to take all necessary steps and actions to effect each of the Distributions in accordance with the provisions of this Order from time to time and shall not incur any liability as a result of making any of the Distributions.

11. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized to establish, hold and maintain, from the Settlement proceeds, a reserve (the "**Reserve**") in such amount as the Proposal Trustee determines, acting reasonably, to be necessary to fund the Company's eventual assignment into bankruptcy, as detailed in the Second Report.

12. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings, or the termination of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Company and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of the Company; and

(d) the provision of any other federal, provincial or other statute,

any Distributions made pursuant to this Order and the transactions contemplated by the Settlement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims,

liens, security interests, charges or other encumbrances granted by or relating to the Company or its property.

13. **THIS COURT ORDERS** that the Proposal Trustee and its agents shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to the Distribution under the *Income Tax Act* (Canada) or other applicable laws and to remit such amounts to the appropriate governmental authority ("**Governmental Authority**") or other person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the Distribution in respect of which such withholding or deduction was made.

GENERAL

14. **THIS COURT ORDERS AND DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or any other jurisdiction, to give effect to this Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

17. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. (Eastern Time) from the date that it is made and is enforceable without any need for entry and filing.

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KOGNITIV CORPORATION OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-25-3165297-0031
Estate File No. 31-3165297

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

PROCEEDING COMMENCED AT
TORONTO

ANCILLARY RELIEF ORDER
(re Settlement, Distributions and Approval of Fees)

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TAB 4

Court File No. BK-24-3165297-0031
Estate File No. 31-3165297

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KOGNITIV CORPORATION OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KOGNITIV CORPORATION OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-25-3165297-0031
Estate File No. 31-3165297

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

Proceedings commenced at Toronto

MOTION RECORD (VOLUME 2 OF 2) OF KOGNITIV CORPORATION (Returnable February 17, 2026)

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