

Court File No. 33-2466100
Estate File No. 33-2466100

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF
OTTAWA, IN THE PROVINCE OF ONTARIO

MOTION RECORD
(Returnable January 30, 2019)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSUC#33338U)
Tel: 416.365.4444
Fax: 416.369.7945
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSUC #53802D)
Tel: 416.365.3421
Fax: 416.369.7945
Email: danny.nunes@dlapiper.com

Lawyers for VersAccounts Limited

TO: ATTACHED SERVICE LIST

**NOI PROCEEDINGS OF VERSACCOUNTS LIMITED
SERVICE LIST**

TO: **DLA PIPER (CANADA) LLP**
100 King Street West, Suite 6000
1 First Canadian Place
Toronto, ON M5X 1E2

Edmond F.B. Lamek / Danny M. Nunes
Tel: 416.365.3444 / 416.365.3421
Email: edmond.lamek@dlapiper.com/danny.nunes@dlapiper.com

Lawyers for VersAccounts Limited

AND TO: **A. FARBER & PARTNERS INC.**
150 York Street, Suite 1500
Toronto, ON M5H 3S5

Attention: Hylton Levy / Robyn White / Noah Litwack
Tel: 416.496.3070 / 647.796.6030 / 416.496.3719
Email: hlevy@farbergroup.com / rwhite@farbergroup.com /
nlitwack@farbergroup.com

Proposal Trustee

AND TO: **DENTONS CANADA LLP**
77 King Street West, Suite 400
Toronto, ON M5K 0A1

Sara Van Allen
Tel: 416.863.4402
Email: sara.vanallen@dentons.com

Lawyers for A. Farber & Partners Inc., in its capacity as Proposal Trustee

AND TO: **OSLER, HOSKIN & HARCOURT LLP**
100 King Street West, Suite 6200
1 First Canadian Place
Toronto ON M5X 1B8

Michael Shakra
Tel: 461.862.6643
Email: mshakra@osler.com

Lawyers for Seattle Atlantic, Inc.

AND TO: MINISTRY OF FINANCE
77 Bay Street, 11th Floor
Toronto, ON M5G 2C8

Kevin O'Hara
Tel: 416.327.8463
Email: Kevin.Ohara@ontario.ca

AND TO: CANADA REVENUE AGENCY
c/o Department of Justice Canada
Ontario Regional Office – Tax Law Section
130 King Street West, Suite 3400

Diane Winters
Tel: 416.973.3172
Email: diane.winters@justice.gc.ca

AND TO: Sunil Pande
Email: sunil.pande@versaccounts.com

AND TO: Kevin Riegelsberger
200 W. Highland Drive, Unit 201
Seattle, WA 98119
Email: kevin.riegelsberger@yahoo.com

AND TO: Matthew Dougherty
31 Deerfield Drive
Malvern, PA 19355
Email: matthew_dougherty@comcast.com

AND TO: Michael Riegelsberger
22840 Willard Avenue
Lake Forest, CA 92630
Email: mriegs@yahoo.com

AND TO: Raymond Bigley
4737 153 Avenue SE
Bellevue, WA 98006
Email: rbigley91@gmail.com

AND TO: Balthasar Wyss
8531 SE 80th Street
Mercer Island, WA 98040
Email: balthasarwyss@gmail.com

AND TO: Webb Stevens
116 E Edgar Street
Seattle, WA 98102
Email: webbstevens@gmail.com

AND TO: Rohit Thukral
1030 NW 12th Avenue, A530
Portland, OR 97209
Email: thuky@thuky.com

AND TO: Timothy Duffy
P.O.Box 10096
Bainbridge Island, WA 98110
Email: tduffy@winslowbi.com

AND TO: Tommy Pacholke
47242 SE 137th Street
North Bend, WA 98045
Email: tpacholke@gmail.com

AND TO: Pascal Van Dooren
815 1st Avenue, #212
Seattle, WA 98104
Email: pascalvandooren@hotmail.com

AND TO: Ryan Buma
18015 15th Avenue NW
Shoreline, WA 98177
Email: ryan.buma@comcast.net

AND TO: Mitchell Stewart
20 Willing Way
Malvern, PA 19355
Email: mitchellstewart@gmail.com

AND TO: The Jon Staenberg Trust
2121 Terry Avenue, A1403
Seattle, WA 98121
Email: jon@staenberg.com

AND TO: Michael Espenshade
Pensco Trust Company LLC
P.O. Box 173859
Denver, CO 80217
Email: assetmaintenance@pensco.com

AND TO: Stephen Ferrante
610 Industry Drive
Seattle, WA 98188
Email: sferrante@emsposinc.com

AND TO: Joseph Davy
2820 W Lynn Street
Seattle, WA 98199
Email: jp@davy.io

AND TO: Nariman Ghandhi
13 Eastern Road
London, UK N29LD
Email: narighandhi@gmail.com

**NOI PROCEEDINGS OF VERSACCOUNTS LIMITED
SERVICE LIST – EMAIL ADDRESSES**

edmond.lamek@dlapiper.com; danny.nunes@dlapiper.com; hlevy@farbergroup.com;
rwhite@farbergroup.com; nlitwack@farbergroup.com; sara.vanallen@dentons.com
mshakra@osler.com; Kevin.Ohara@ontario.ca; diane.winters@justice.gc.ca
sunil.pande@versaccounts.com; kevin.riegelsberger@yahoo.com;
matthew_dougherty@cable.comcast.com; mriegs@yahoo.com; rbigley91@gmail.com;
balthasarwyss@gmail.com; webbstevens@gmail.com; thuky@thuky.com;
tduffy@winslowbi.com; tpacholke@gmail.com; pascalvandooren@hotmail.com;
ryan.buma@comcast.net; mitchellstewart@gmail.com; jon@staenberg.com;
assetmaintenance@pensco.com; sferrante@emsposinc.com; jp@davy.io;
narighandhi@gmail.com;

INDEX

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF
OTTAWA, IN THE PROVINCE OF ONTARIO

INDEX

TAB	DOCUMENT
1	Notice of Motion returnable January 30, 2019
2	Affidavit of James Welch sworn January 24, 2019

EXHIBITS

A	VersAccounts Limited Promissory Note
B	Certificate of NOI Filing
C	Asset Purchase Agreement (redacted)
3	Sale Process Approval Order

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF
OTTAWA, IN THE PROVINCE OF ONTARIO**

NOTICE OF MOTION

VERSACCOUNTS LIMITED (the “**Company**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Wednesday, January 30, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario, for an Order, *inter alia*, pursuant to Section 50.4(9), 65.13 and 84.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

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

THE MOTION IS FOR:

1. An Order substantially in the form attached at Tab 3 of the Motion Record, among other things:
 - (a) validating and abridging the time and manner of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

- (b) extending the time within which to file a proposal with the Official Receiver by the Company under section 62(1) of the BIA to April 8, 2019;
- (c) approving the “stalking horse” sale process (the “**Sale Process**”) including the bid procedures therein (the “**Bid Procedures**”);
- (d) approving the Seattle APA (as defined herein) between the Company and Seattle Atlantic, Inc. (“**SAI**”), pursuant to which SAI has agreed to purchase all of the Company’s right, title and interest in and to the Purchased Assets (as defined in the Seattle APA), as a “stalking horse” bid in the Sale Process, provided that any successful bid under the Sale Process, including the Seattle APA, will be subject to the Court’s final approval;
- (e) authorizing the Company’s use of the deposit payable under the Seattle APA for liquidity purposes and in accordance with the terms of the Seattle APA;
- (f) granting a charge in the amount of US\$50,000 in favour of SAI, over all of the Company’s Property (as defined in the draft Order attached at Tab 3 of the Motion Record), to secure payment of the deposit payable under and as contemplated in the Seattle APA (the “**Deposit Charge**”);
- (g) granting a charge in the amount of US\$50,000 in favour of SAI, over all of the Company’s Property, to secure payment of the break fee and expense reimbursement contemplated in the Seattle APA (the “**Break Fee Charge**”);
- (h) granting a charge in the amount of \$125,000 in favour of A. Farber & Partners Inc. (“**Farber**”), in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”), counsel to the Proposal Trustee and counsel to the Company, over all of the Company’s Property (the “**Administration Charge**”);
- (i) granting such additional powers to the Proposal Trustee as may be necessary for the Proposal Trustee to take control of the Company’s assets for the purposes of marketing them as part of the Sale Process; and

2. such other and further relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

3. the Company filed a Notice of Intention to Make a Proposal (the “NOI”) on January 22, 2019, pursuant to section 50.4(1) of the BIA, and Farber was named as Proposal Trustee;
4. the Company has two employees in Canada and is the parent of a wholly-owned subsidiary, VersAccounts USA Inc., that has four employees in the U.S. but which does not form part of the Company’s NOI proceedings;
5. the Company is involved in the enterprise resource planning or “ERP” industry. Its customers are generally small to medium sized businesses that are looking for cloud-based ERP solutions to address e-commerce, distribution, multi-channel retail, manufacturing, cost-centre accounting and/or multi-entity accounting needs;
6. the Company offers a “software as a service” or “SaaS” accounting system that is targeted to small businesses that need a robust accounting, distribution and inventory system;
7. the Company’s customers pay an average yearly fee of US\$10,000 to use the Company’s software and as at the date of the filing of the NOI, the Company has thirty customers actively using the software;
8. over the course of the two years preceding the NOI filing, the Company’s financial performance began to suffer due to a lack of new sales and the loss of certain customers;
9. in and around April/May 2017, the Company secured funding through the issuance of certain unsecured subordinated convertible promissory notes (the “Notes”). The amount of the individual Notes varied, from US\$10,000 to US\$200,000, and the aggregate amount raised pursuant to the Notes was US\$660,000;

10. pursuant to the terms of the Notes, unless converted into equity securities in the Company at the option of the Noteholder, the principal and any accrued and unpaid interest under the Notes shall be due and payable on January 31, 2019 (the “**Maturity Date**”);
11. the Company currently satisfies its accounts payable using the cash flow generated from customer payments and renewals, however, certain employee salaries that have accrued, with the agreement of those employees, continue to do so as the Company is unable to pay them. Furthermore, the Company does not have the necessary liquidity to pay the amounts owing under the Notes on the Maturity Date;
12. the principal purpose of the NOI proceeding is to create a stabilized environment to allow the Company to enter into a transaction in respect of the Company’s assets and, in conjunction with the Proposal Trustee, run the Sale Process to solicit bids for the Company’s assets;
13. further in that regard, the Company, with the assistance of the Proposal Trustee, has negotiated the terms of an asset purchase agreement with SAI pursuant to which SAI will act as the stalking horse bidder in the Sale Process (the “**Seattle APA**”);

Approval of the Seattle APA and Sale Process

14. the Sale Process, which will be run by the Proposal Trustee, will look to maximize value for the Company’s assets on an *en bloc* basis by soliciting offers from potential bidders and, should there be more than one “qualified bidder”, holding an auction;
15. the Seattle APA contemplates payment in the amount of US\$250,000 as well as the assumption of all material contracts of the Company, including but not limited to customer contracts, and the payment of any cure costs associated with those material contracts and the assumption of all liabilities thereunder, all of which shall be purchased on an “as is, where is” basis, with limited representations and warranties;
16. the deadline for the submission of bids to the Proposal Trustee under the Sale Process shall be March 1, 2019 (the “**Bid Deadline**”);

17. pursuant to the Bid Procedures, if more than one qualified bid is submitted by the Bid Deadline, the Proposal Trustee will invite all “qualified bidders”, including SAI, to attend an auction to be held within seven (7) business days of the Bid Deadline, which auction shall be conducted in accordance with the auction procedures included as a schedule to the Seattle APA;
18. the Seattle APA is conditional upon, *inter alia*, the Court granting an order approving the Sale Process and the Seattle APA;
19. the Seattle APA provides for payment of a US\$50,000 deposit (the “**Deposit**”) which the Company can immediately use for liquidity purposes in accordance with the cash flow projections filed by the Company as part of the NOI;
20. the Deposit Charge will secure payment of the Deposit in the event that SAI is not the successful bidder under the Sale Process or the transaction contemplated under the Seattle APA fails to close by the Outside Date (as defined in the Seattle APA) other than as a result of the failure by SAI to perform any of its obligations under the Seattle APA;
21. in the event that a superior transaction to the Seattle APA is chosen pursuant to the Sale Process, the Seattle APA provides that SAI shall be paid a US\$25,000 break fee and a US\$25,000 expense reimbursement (together, the “**Bid Protections**”);
22. it is a condition of the Seattle APA that the Court grant the Deposit Charge and Break Fee Charge in favour of SAI;
23. the granting of the Deposit Charge and Break Fee Charge is reasonable in the circumstances to secure payment of the Deposit and the Bid Protections, in the event that SAI is not the successful bidder in the Sale Process;
24. the Deposit Charge and Break Fee Charge shall rank on a *pari passu* basis and in priority to the Administration Charge;
25. at all material times since the filing of the NOI, the Company has acted, and continues to act, in good faith and with due diligence;

26. the current deadline by which the Company must file a proposal with the Official Receiver under the BIA is February 21, 2019;
27. the Company is seeking an extension of the deadline for it to file a proposal with the Official Receiver until April 8, 2019 to allow the Sale Process to be conducted and to close a transaction with the successful bidder;
28. the Company would likely be able to make a viable proposal if the extension is granted;
29. none of the Company's creditors will be materially prejudiced if the extension is granted;
30. such further and other grounds as set out in the First Report of the Proposal Trustee to be filed (the "**First Report**"); and
31. Rules 1.04, 1.05, 2.01, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

AND FURTHER TAKE NOTICE that the following materials will be filed in support of the Company's motion, namely:

- (a) the affidavit of James Welch sworn January 24, 2019;
- (b) the First Report; and
- (c) such further and other material as counsel may advise and this Honourable Court may permit.

January 24, 2019

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSUC No. 33338U)
Tel: 416.365.4444
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSUC No. 53802D)
Tel: 416.365.3421
Email: danny.nunes@dlapiper.com

Lawyers for VersAccounts Limited

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERSACCOUNTS LIMITED, OF THE
CITY OF OTTAWA, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF MOTION
(returnable January 30, 2019)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSUC No. 33338U)
Tel.: 416.365.3444
Fax: 416.369.7945
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSUC No. 53802D)
Tel.: 416.365.3421
Fax: 416.369.7945
Email: danny.nunes@dlapiper.com

Lawyers for VersAccounts Limited

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF
OTTAWA, IN THE PROVINCE OF ONTARIO

AFFIDAVIT OF JAMES WELCH
(SWORN JANUARY 24, 2019)

I, JAMES WELCH, of the City of Ottawa, in the Province of Ontario, MAKE OATH
AND SAY AS FOLLOWS:

1. I am the founder of VersAccounts Limited (the “**Company**”) and am currently a director of the Company and formerly its chief technology officer. As such, I have knowledge of the matters deposed to in this affidavit. Where the information set out in this affidavit is based upon information which I have received from others, I have stated the source of that information and believe it to be true.
2. This affidavit is sworn in support of the Company’s motion for, among other things, an extension of the time within which the Company is to file a proposal with the Official Receiver under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), approval of a “stalking horse” sale process (the “**Sale Process**”), including the approval of a “stalking horse” agreement of purchase and sale between Seattle Atlantic, Inc. (“**SAI**”) and the Company for the purposes of the Sale Process, and approval of certain charges over the Company’s assets.

3. All references to currency in this affidavit are to US dollars, unless otherwise indicated.

Background

4. The Debtor is a corporation incorporated pursuant to the laws of Canada with its registered head office at 1798 Rosebella Avenue, Ottawa, Ontario. The Company previously had two employees in Canada but no longer has any current employees. The Company also has a wholly-owned subsidiary, VersAccounts USA Inc., which employs four individuals in the U.S. but which does not form part of these proceedings.
5. The Company is involved in the enterprise resource planning or "ERP" industry. Its customers are generally small to medium sized businesses that are looking for cloud-based ERP solutions to address e-commerce, distribution, multi-channel retail, manufacturing, cost-centre accounting and/or multi-entity accounting needs.
6. The Company's "software as a service" or "SaaS" accounting system targets businesses that need a robust accounting, distribution and inventory cloud-based system but have outgrown the available entry-level accounting products or are looking for an alternative to legacy systems that cannot meet the needs of modern businesses.
7. The Company's operational assets are located on cloud servers maintained by Amazon Web Services ("AWS"). Certain AWS servers run the Company's proprietary software while others support engineering software development. The AWS servers contain all of the Company's customer data and all proprietary software developed by the Company. The Company also has email and file storage servers maintained by Google under Google's G-Suite brand.
8. As at the date of this affidavit, the Company has thirty customers actively using its software. The Company offers customers monthly, annual or 4 year pricing packages to utilize its software, and the Company's cash flow is derived from existing customer payments and renewals, in addition to any new sales. Customers pay an average yearly fee of US\$10,000 to use the Company's software.

The Company's Financial Performance and the Filing of the NOI

9. Over the course of the past two years, the Company's financial performance steadily declined as it failed to meet sales projections and some existing customers chose not to renew their agreements with the Company.
10. In and around April/May 2017, the Company secured additional funding through the issuance of unsecured subordinated convertible promissory notes (the "Notes").
11. The Notes were issued to seventeen different individuals for amounts varying from US\$10,000 to US\$200,000. The aggregate amount raised by the Company as a result of the issuance of the Notes was US\$660,000. Attached hereto as Exhibit "A" is a copy of the Note issued to Kevin Riegelsberger, a director of the Company and chairman of the Company's board of directors. The form of the Note attached hereto is the same used for each of the Notes issued by the Company.
12. The funds raised from the issuance of the Notes were used to fund the Company's ongoing business expenses, including employee salaries, marketing expenses, sales and product development.
13. Pursuant to the terms of the Notes, unless converted into equity securities in the Company at the option of the Noteholder, the principal and all accrued and unpaid interest under the Notes shall be due and payable on January 31, 2019 (the "Maturity Date"). As at the date of this affidavit, no Noteholder has converted.
14. Notwithstanding the injection of capital from the Notes, the Company's financial performance continued to decline. All efforts made to secure further funding, including additional equity investment, have been unsuccessful as a result of the Company's poor performance. In addition to the efforts made to source further funding, the salaries of certain employees have been accrued, with the agreement of those employees, rather than paid to assist the Company in managing its liquidity problems.

15. The Company satisfied its accounts payable using the cash flow generated from customer payments and renewals but without additional funding, it will not have the financial capacity to repay the Notes on the Maturity Date.
16. As a result of its dire liquidity issues, the Company filed a Notice of Intention to Make a Proposal (the “NOI”) on January 22, 2019 pursuant to section 50.4(1) of the BIA and named A. Farber & Partners Inc. (“Farber”) as the proposal trustee (the “Proposal Trustee”) under the NOI. Attached hereto as Exhibit “B” is a true copy of the certificate of filing from the Office of the Superintendent in Bankruptcy.
17. The purpose of the NOI is to provide a stable environment within which to allow the Company, under the supervision of the Proposal Trustee, to market its assets for sale as part of a Court-approved Sale Process and to enter into a transaction with the successful bidder.
18. Further in that regard, the Company entered into discussions with SAI about a potential transaction whereby SAI would acquire the Company’s assets. The SAI transaction would act as a “stalking horse” bid in the Sale Process that would be overseen by the Proposal Trustee.
19. With the Proposal Trustee’s assistance, the Company has negotiated the terms of an asset purchase agreement with SAI pursuant to which SAI has agreed to act as the stalking horse bidder in the Sale Process (the “Seattle APA”). Attached hereto as Exhibit “C” is a redacted true copy of the Seattle APA.

The Stalking Horse Bid

20. The key terms of the Seattle APA include the following (defined terms used in this section are as defined in the Seattle APA):

Purchased Assets	(i) all movable property, leasehold improvements and equipment, furniture, fixtures, computer hardware and other fixed assets (excluding those that are subject to
-------------------------	--

	<p>capital leases) used in connection with the business;</p> <p>(ii) the Assumed Contracts;</p> <p>(iii) all Accounts Receivable;</p> <p>(iv) all Intellectual Property owned or licensed by the Company and used in or relating to the carrying on of the business;</p> <p>(v) all government licenses, approvals, permits or similar used in connection with the business; and</p> <p>(vi) all goodwill associated with the business or the Purchased Assets, including the right to carry on the business in continuation of the Company.</p>
Purchase Price	US\$250,000, plus all applicable taxes, as well as any cure costs associated with the Assumed Contracts and the Assumed Liabilities thereunder.
Deposit	US\$50,000 to be paid to the Company upon the parties' execution of the Seattle APA which can be used immediately by the Company for liquidity purposes in accordance with the cash flow projections filed by the Company as part of the NOI.
Representations and Warranties	Limited representations and warranties consistent with an "as is, where is" transaction.
Closing	First Business Day that is three Business Days after the date the Approval and Vesting Order is obtained or such other earlier or later date as may be agreed to by SAI and the Company
Material Conditions	<p>(i) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and</p> <p>(ii) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom).</p>
Bid Protections	US\$25,000 break fee and US\$25,000 expense reimbursement, both secured by a charge over the Company's assets

21. A critical term of the Seattle APA is that the Deposit may be used immediately by the Company to fund its business in accordance with the cash flow projections filed by the Company as part of the NOI. Without these funds, the Company will not have the necessary liquidity to maintain its business during the course of the NOI proceedings and the Sale Process and through to the closing of a transaction.
22. In the event that SAI is the successful bidder under the Sale Process, the amount of the Deposit will be credited against the purchase price. If SAI is not the successful bidder, the Company will repay the amount of the Deposit from the proceeds of sale to the successful bidder. Further in that regard, SAI's agreement to make the Deposit immediately available to the Company is conditional upon the Court granting a charge over the Company's assets in favour of SAI in the amount of US\$50,000 to secure payment of the Deposit in the event that SAI is not the successful bidder or the Transaction fails to close by the Outside Date other than as a result of the failure by SAI to perform any of its obligations under the Seattle APA (the "**Deposit Charge**").
23. In addition to the Deposit Charge, it is a term of the Seattle APA that a charge is granted over the Company's assets in favour of SAI to secure payment of the break fee in the amount of US\$25,000 (inclusive of HST, if any) and an expense reimbursement amount not to exceed US\$25,000 (inclusive of HST) (collectively the "**Bid Protections**"). The Bid Protections will only be payable in the event that a successful bid other than the Seattle APA is accepted by the Company, approved by the Court and completed, or when the assets are otherwise sold to a party other than SAI.

The Sale Process

24. I am advised by Robyn White, a managing director with Farber, that the Proposal Trustee shall be responsible for the marketing and sale of the Company's Assets under the Sale Process. The Company's assets will be marketed on an "as is, where is" basis. Furthermore, the assets will be offered on an *en bloc* basis only, such that any partial bids submitted to the Proposal Trustee will not be considered "qualified bids".

25. In marketing the Company's assets, the Proposal Trustee will establish a data room that prospective purchasers can access once they have executed a confidentiality agreement. Due to the nature of the Company's assets and the fact that those assets are in certain instances held by third parties or accessible only with the assistance of third parties, the Company is seeking the Court's assistance by requiring, among other things, that all parties in possession of the Company's assets provide the Proposal Trustee with possession of the assets or the means by which the Proposal Trustee can secure control of the assets so that they may form part of the Sale Process.
26. The terms of the Sale Process provide that to be considered a "qualified bidder", a bidder must, among other things, submit a bid in substantially the same form as the Seattle APA, with a cash purchase price of US\$325,000, being an amount equal to the cash component of the Seattle APA, an amount sufficient to cover payment of the Bid Protections and an additional US\$25,000.
27. All qualified bids must be submitted to the Proposal Trustee by no later than 5:00PM EST on March 1, 2019 (the "**Bid Deadline**").
28. If no qualified bids are received by the Bid Deadline, the Seattle APA shall be the successful bid. If one or more qualified bids (other than the Seattle APA) are received by the Proposal Trustee by the Bid Deadline, the Proposal Trustee shall advise all qualified bidders as to which bid constitutes the best offer and will invite all qualified bidders, including SAI, to attend an auction to be conducted by the Proposal Trustee within 7 business days of the Bid Deadline (the "**Auction**"). The Auction procedures are attached as Appendix 1 to Schedule "C" of the Seattle APA.
29. Upon selection of a successful bid, the Company will seek the Court's approval of the bid, including if the Seattle APA is the successful bid.

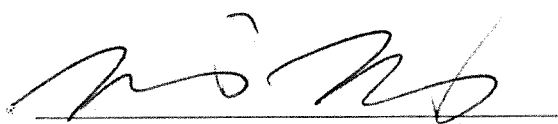
Extension of Time to File a Proposal

- 30. The current deadline by which the Company must file a proposal with the Official Receiver under the BIA is February 21, 2019.
- 31. As set out above, the Bid Deadline under the Sale Process is March 1, 2019. As such, the Company is seeking an extension of the deadline for it to file a proposal with the Official Receiver until April 8, 2019 to allow the Sale Process to be conducted and to close a transaction with the successful bidder.
- 32. The Company is working diligently and in good faith in an effort to put forward a viable proposal to its creditors and the extension of the BIA deadline is absolutely necessary in that regard.
- 33. I am not aware of any creditors that would be materially prejudiced if the extension is granted.

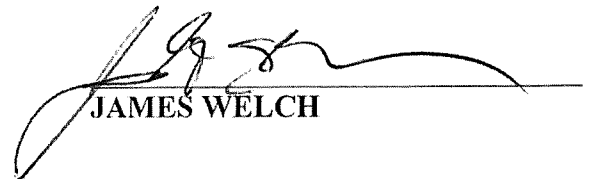
Conclusion

- 34. I swear this affidavit in support of the Company's motion for the relief set out in the Company's Notice of Motion dated January 23, 2019 and for no other or improper purpose.

Sworn before me at the City of Ottawa, in
the Province of Ontario, this 24th day of)
January, 2019.)
)
)
)
)

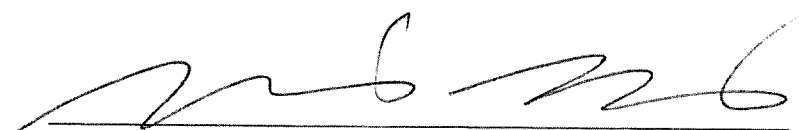


Commissioner for Taking Affidavits
Haiyan Zhang, LUSC#67647H



JAMES WELCH

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF JAMES WELCH
SWORN THIS 24TH DAY OF JANUARY 2019

A handwritten signature in black ink, appearing to read 'Haiyan Zhang', written over a horizontal line.

Haiyan Zhang, LSUC # 67647H

THE SECURITIES REFERENCED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

UNLESS PERMITTED UNDER CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (I) APRIL [•], 2017, AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY IN CANADA.

SUBORDINATED CONVERTIBLE PROMISSORY NOTE

US\$ 50,000

Issuance Date: _____

For value received, VersAccounts Limited, a corporation incorporated under the laws of Canada (the "Company"), promises to pay to KEVIN RIEGELSBERGER (the "Holder"), the principal sum of US \$ 50,000. Simple interest shall accrue from the date of this Note on the unpaid principal amount at a rate equal to 6.00% per annum, computed on the basis of the 360-day year of twelve 30-day months. This Note is one of a series of Subordinated Convertible Promissory Notes containing substantially identical terms and conditions issued pursuant to that certain Subordinated Convertible Note Purchase Agreement dated _____ (the "Purchase Agreement"). Such Notes are referred to herein as the "Notes," and the holders thereof are referred to herein as the "Holder." This Note is subject to the following terms and conditions.

1. **Maturity.** Unless converted as provided in Section 4, principal and any accrued but unpaid interest under this Note shall be due and payable upon demand of the Holders who hold at least a Majority in Interest of the Notes at any time after January 31, 2019 (the "Maturity Date").

2. **Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" under this Note:

(a) **Failure to Pay or Convert.** The Company shall fail to either convert any principal of, or accrued interest on, this Note or pay when due any principal or accrued interest payment on the due date hereunder, and such conversion or payment shall not have been made within five (5) business days of the Company's receipt of Holder's written notice to the Company of such failure to pay or convert;

(b) **Voluntary Bankruptcy or Insolvency Proceedings.** The Company shall (i) apply for, or consent to, the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its creditors, (iii) be dissolved or liquidated, (iv) commence a voluntary case or other proceeding

seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it or (v) take any action for the purpose of effecting any of the foregoing; or

(c) **Involuntary Bankruptcy or Insolvency Proceedings.** Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and (i) an order for relief is entered that is not stayed or vacated within 60 days of the entry of such order or (ii) such proceeding shall not be dismissed or discharged within 90 days of commencement.

3. **Rights of Holder Upon Default.**

(a) **Optional Acceleration.** Upon the occurrence or existence of any Event of Default described in Section 2(a) and at any time thereafter, the Holders who hold at least a Majority in Interest of the Notes may, by written notice to the Company, declare all outstanding obligations payable by the Company hereunder to be immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived.

(b) **Automatic Acceleration.** Upon the occurrence or existence of any Event of Default described in Section 2(b) or 2(c), immediately and without notice, all outstanding obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived.

4. **Next Equity Conversion.**

(a) **Next Equity Financing.** Upon the Company's next equity financing yielding at least US\$2,500,000 (including conversion of up to US\$1,000,000 of indebtedness under the Notes, the "Requisite Conversion Proceeds") in a single transaction or a series of related transactions (the "Next Equity Financing"), all outstanding principal and accrued but unpaid interest under this Note shall automatically convert into equity securities of the Company as set forth in Section 4(b) below.

(b) **Terms of Conversion.** This Note shall automatically convert in the initial closing of the Next Equity Financing (or, if the initial closing raises less than the Requisite Conversion Proceeds, at such closing wherein the aggregate proceeds raised (including all Next Equity Financing closings then to date) are not less than the Requisite Conversion Proceeds) into a shadow series of those equity securities issued in such Next Equity Financing with identical rights other than those rights, including any dividend preference or liquidation preference, that are based on the price per share paid for such securities, which shall be based on the Conversion Price of the Notes instead of the price per share paid by the other investors (the "Next Equity

Securities”). The number of shares of Next Equity Securities to be issued upon such conversion shall be equal to the quotient obtained by dividing (i) the then outstanding principal amount of this Note plus any accrued but unpaid interest under this Note by (ii) 80.00% of the price per share of the majority of the equity securities issued in such Next Equity Financing (not including the Next Equity Securities) (the “Note Conversion Price”) and the issuance of such shares upon such conversion shall be upon the terms and subject to the conditions applicable to the Next Equity Financing and the Company’s corporate governing documents, as determined by the Company and its investors in their sole discretion. The Note Conversion Price, however, shall not be greater than the quotient obtained by dividing (x) US\$6,500,000 by (y) the sum of (1) the total number of common shares then outstanding (assuming full conversion and exercise of all convertible or exercisable securities other than the Notes and any other securities convertible into the same financing as the Notes) and (2) common shares issuable to employees, consultants or directors pursuant to a stock option plan, restricted stock plan, or other stock or equity incentive plan approved by the Company’s Board of Directors. For clarity, the foregoing cap on the Note Conversion Price shall be in lieu of the foregoing discount in circumstances where the cap results in more shares being issued upon conversion than the discount. Upon such conversion of this Note, the Holder hereby agrees to execute and deliver to the Company all transaction documents related to the Next Equity Financing, including a purchase agreement and other ancillary agreements, with customary representations and warranties and transfer restrictions (including a lock-up agreement in connection with an initial public offering).

5. **Change of Control.** In the event of a Change of Control (as defined below) prior to repayment in full of this Note, immediately prior to the closing of such Change of Control, the outstanding principal and any accrued but unpaid interest on this Note shall, at the option of Holders who hold at least a Majority in Interest of the Notes (as defined in the Purchase Agreement), convert into either cash equal to 2.00 times the outstanding principal and any accrued but unpaid interest on this Note, to be paid upon the closing of the Change of Control, or shall convert into the Company’s common shares at a price per share equal to the quotient obtained by dividing (x) US\$6,500,000 by (y) the total number of the Company’s common shares outstanding (assuming full conversion and exercise of all convertible or exercisable securities receiving a portion of the proceeds of the Change of Control transaction, other than the Notes). The term “Change of Control” means (i) a sale of all or substantially all of the Company’s assets other than to an Excluded Entity (as defined below), (ii) an amalgamation, merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, limited liability company or other entity other than an Excluded Entity, or (iii) the consummation of a transaction, or series of related transactions, in which any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of more than 50% of the Company’s then outstanding voting securities. Notwithstanding the foregoing, a transaction shall not constitute a Change of Control if its purpose is to (A) change the jurisdiction of the Company’s incorporation, (B) create a holding company that will be owned in substantially the same proportions by the persons who hold the Company’s securities immediately before such transaction, or (C) obtain funding for the Company in a bona fide financing that is approved by the Company’s Board of Directors. An “Excluded Entity” means a corporation or other entity of which the holders of voting shares of the Company outstanding immediately prior to such transaction are the direct or indirect holders of voting securities representing at least a majority

of the votes entitled to be cast by all of such corporation's or other entity's voting securities outstanding immediately after such transaction. The Company shall at all times reserve and keep available out of its authorized but unissued common shares solely for the purpose of effecting the conversion of this Note pursuant to this Section 5 such number of its common shares as shall from time to time be sufficient to effect the conversion of the Note; and if at any time the number of authorized but unissued common shares shall not be sufficient to effect the conversion of the entire outstanding principal amount of, and accrued but unpaid interest under, this Note, without limitation of such other remedies as shall be available to the Holder, the Company will use its best efforts to take such corporate action as may, in the opinion of counsel to the Company, be necessary to increase its authorized but unissued common shares to such number of shares as shall be sufficient for such purposes.

6. **Mechanics and Effect of Conversion.** The Company will not issue fractional shares upon conversion of this Note, but will instead round down the number of shares issued to the nearest whole number. Upon conversion of this Note pursuant to Section 4, the Holder shall surrender this Note, duly endorsed, at the principal offices of the Company or any transfer agent of the Company. At its expense, the Company will, as soon as practicable thereafter, issue and deliver to such Holder, at such principal office, a notice of issuance for the shares to which such Holder is entitled upon such conversion, together with any other securities and property to which the Holder is entitled upon such conversion under the terms of this Note. Upon conversion of this Note, the Company will be forever released from all of its obligations and liabilities under this Note with regard to that portion of the principal amount and accrued interest being converted including without limitation the obligation to pay such portion of the principal amount and accrued interest.

7. **Payment; Prepayment.** All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to the accrued interest then due and payable and the remainder shall be applied to principal. The Company may prepay this Note at any time without penalty with the written consent of at least a majority in interest of the Holders.

8. **Shareholders, Officers and Directors Not Liable.** In no event shall any shareholder, officer or director of the Company be liable for any amounts due or payable pursuant to this Note.

9. **Subordination.**

(a) The indebtedness evidenced by this Note is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all of the Company's Senior Indebtedness. The Holder further agrees to execute a form of subordination agreement, as requested by any current or future lender to the Company, to effect the foregoing subordination. "**Senior Indebtedness**" shall mean the principal of and unpaid interest and premium, if any, on (i) indebtedness of the Company or with respect to which the Company is a guarantor, whether outstanding on the date hereof or hereafter created, to banks, insurance companies or other lending or thrift institutions regularly engaged in the business of lending money, whether or not secured and (ii) any deferrals, renewals or extensions or any

debentures, notes or other evidence of indebtedness issued in exchange for such Senior Indebtedness.

(b) Upon any receivership, assignment for the benefit of creditors, bankruptcy, reorganization, or arrangement with creditors (whether or not pursuant to bankruptcy or other insolvency laws), sale of all or substantially all of the assets, dissolution, liquidation, or any other marshaling of the assets and liabilities of the Company or in the event this Note shall be declared due and payable, (i) no amount shall be paid by the Company, whether in cash or property in respect of the principal of or interest on this Note at the time outstanding, unless and until the full amount of any Senior Indebtedness then outstanding shall be paid in full, and (ii) no claim or proof of claim shall be filed with the Company by or on behalf of the holder of this Note which shall assert any right to receive any payments in respect of the principal of and interest on this Note except subject to the payment in full all of the Senior Indebtedness then outstanding.

(c) If an event of default has occurred with respect to any Senior Indebtedness, permitting the holder thereof to accelerate the maturity thereof, then unless and until such event of default shall have been cured or waived or shall have ceased to exist, or all Senior Indebtedness shall have been paid in full, no payment shall be made in respect of the principal of or interest on this Note.

(d) Nothing contained in this the preceding paragraphs shall impair, as between the Company and the Holder, the obligation of the Company, which is absolute and unconditional, to pay to the Holder hereof the principal hereof and interest hereon as and when the same shall become due and payable, or shall prevent the Holder, upon default hereunder, from exercising all rights, powers and remedies otherwise provided herein or by applicable law, all subject to the rights, if any, of the holders of Senior Indebtedness under the preceding paragraphs to receive cash or other properties otherwise payable or deliverable to the Holder pursuant to this Note.

10. **Interest Rate Limitation.** Notwithstanding anything to the contrary contained in this Note or the Purchase Agreement (the "Loan Documents"), the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Holder shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal remaining owed under this Note or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Holder exceeds the Maximum Rate, the Holder may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of this Note.

11. **Action to Collect on Note.** If action is instituted to collect on this Note, the Company promises to pay all costs and expenses, including reasonable attorney's fees, incurred in connection with such action.

12. **Loss of Note.** Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and indemnity satisfactory to the Company (in case of loss, theft or destruction) or surrender and cancellation of such Note (in the case of mutilation), the Company will make and deliver in lieu of such Note a new Note of like tenor.

13. **Miscellaneous.**

(a) **Governing Law.** The validity, interpretation, construction and performance of this Note, and all acts and transactions pursuant hereto and the rights and obligations of the Company and Holder shall be governed, construed and interpreted in accordance with the laws of the State of Oregon, without giving effect to principles of conflicts of law.

(b) **Entire Agreement.** This Note, together with the Purchase Agreement and the documents referred to therein, constitute the entire agreement and understanding between the Company and the Holder relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written between them relating to the subject matter hereof.

(c) **Amendments and Waivers.** Any term of this Note may be amended only with the written consent of the Company and Holders who hold at least a Majority in Interest of the Notes, *provided, however*, that no such amendment, waiver or consent shall: (i) reduce the principal amount of this Note without Holder's written consent, or (ii) reduce the rate of interest of this Note without Holder's written consent. Any amendment or waiver effected in accordance with this Section 13(c) shall be binding upon the Company, each Holder and each transferee of any Note.

(d) **Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the Company and the Holder. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Company. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new Note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of the Holders who hold at least a Majority in Interest of the Notes; provided, however, that no consent will be required for an assignment in connection with a reorganization, reincorporation, or similar transaction primarily for the purpose of changing the Company's domicile.

(e) **Notices.** Any notice, demand or request required or permitted to be given under this Note shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address as set

forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records.

(f) **Counterparts.** This Note may be executed in any number of counterparts, manually or electronically, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Subordinated Convertible Promissory Note as of the date first set forth above.

THE COMPANY:

VERSACCOUNTS LIMITED

By: _____

Sunil Pande
Chief Executive Officer

Address:
2828 SW Corbett Avenue
Suite 140B
Portland, Oregon 97201
United States

AGREED TO AND ACCEPTED:

THE HOLDER:

KEVIN RIEGELSHBERGER
(PRINT NAME)

By: 
(Signature)

Name: _____

Title: _____

Address:

Email: _____

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF JAMES WELCH
SWORN THIS 24TH DAY OF JANUARY 2019


Haiyan Zhang, LSUC # 67647H



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 12 - Ottawa
Court No. 33-2466100
Estate No. 33-2466100

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

VersAccounts Limited
Insolvent Person

A. FARBER & PARTNERS INC.
Licensed Insolvency Trustee

Date of the Notice of Intention: January 22, 2019

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

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

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

Date: January 23, 2019, 10:26

E-File/Dépôt Electronique

Official Receiver

Place Bell Canada, 160 Elgin Street, 11th Floor, Suite B-100, Ottawa, Ontario, Canada, K2P2P7, (877)376-9902

Canada

THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF JAMES WELCH
SWORN THIS 24TH DAY OF JANUARY 2019



Haiyan Zhang, LSUC # 67647H

VERSACCOUNTS LIMITED

as Vendor

and

SEATTLE ATLANTIC, INC.

as Purchaser

ASSET PURCHASE AGREEMENT

January 23, 2019

ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of January 23, 2019, between VersAccounts Limited, a corporation incorporated under the laws of Canada (the “Vendor”) and Seattle Atlantic, Inc., a corporation incorporated under the laws of the State of Delaware (the “Purchaser”).

RECITALS:

- (1) on January 22, 2019, the Vendor filed a Notice of Intention to Make a Proposal pursuant to section 50.4(9) of the BIA;
- (2) pursuant to the Sale Process Order, the Vendor and the Trustee were authorized to conduct the Sale Process and this Agreement was approved as the Stalking Horse Bid; and
- (3) the Vendor desires to sell certain of its assets and the Purchaser has agreed to purchase such assets subject to the terms and conditions set forth in this Agreement, the Sale Process and the applicable provisions of the BIA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

“**Accounts Receivable**” means, on any date, all accounts receivable generated in the operation of the Vendor’s business, together with any unpaid interest or fees accrued thereon which are outstanding on such date and the full benefit of all security or collateral for such amounts, including recoverable advances and deposits, but excluding any amounts owing to the Vendor as at the Closing Time from any of its shareholders or Affiliates, or from any other Person who does not deal at arm’s length with it.

“**Additional Amount**” has the meaning set out in Section 4.2(b).

“**Affiliate**” has the meaning given to the term “affiliate” in the *Canada Business Corporations Act*.

“**Agreement**” means this asset purchase agreement, as amended from time to time.

“**Applicable Law**” means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (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.

"Approval and Vesting Order" means an order by the Court substantially in the form attached as Schedule E authorizing the Transaction and vesting in the Purchaser all the right, title and interest of the Vendor in and to the Purchased Assets.

"Assignment Order" means an order or orders of the Court pursuant to section 84.1 and 66(1.1) of the BIA and other applicable provisions of the BIA, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the BIA Proceedings or the insolvency of the Vendor and (iii) the vesting in the Purchaser of all right, title and interest of the Vendor in such Consent Required Contracts.

"Assumed Obligations" has the meaning set out in Section 2.4.

"BIA" means *The Bankruptcy and Insolvency Act (Canada)*.

"BIA Proceedings" means the proceedings under the BIA to which the Vendor is subject.

"Bid Protections" has the meaning set out in Section 4.2(a).

"Bid Protections Charge" means the Court-ordered charge in the Sale Process Order in favour of the Purchaser over the Vendor's assets to secure; (i) payment by the Vendor to the Purchaser of the Bid Protections; and (ii) payment by the Vendor to the Purchaser of the amount of Deposit in accordance with Section 3.4.

"Bidding Procedures" means the bidding procedures substantially in the form attached hereto as Schedule "C";

"Benefit Plans" means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of each Vendor with respect to some or all of the Employees and which provide for or relate to (i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or (ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor's benefits, supplementary employment insurance, day care, tuition

or professional commitments or expenses and perquisites or similar employment benefits.

"Books and Records" means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by, and in the possession of the Vendor, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Purchased Assets, and, for greater certainty, excluding the minute books and corporate records of the Vendor.

"Break Fee" has the meaning set out in Section 4.2(a).

"Business Day" means a day on which banks are open for business in Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Cash Flow Projections" means the prescribed cash flow projections filed by the Vendor as part of the BIA Proceedings.

"Claims" means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person.

"Closing" means the successful completion of the Transaction.

"Closing Cash Payment" has the meaning set out in Section 3.2(b).

"Closing Cash Purchase Price" has the meaning set out in Section 3.2.

"Closing Date" means the date that is three (3) Business Days after the date the Approval and Vesting Order is obtained or such other earlier or later date as may be agreed by the Parties.

"Closing Time" means 2:00 p.m. (Toronto time) on the Closing Date.

"Consent Required Contract" has the meaning set out in Section 2.2a).

"Contracts" means all of the contracts and other written agreements to which the Vendor is a party constituting part of the Purchased Assets, including, for greater certainty, all Contracts listed in Appendix I to **Schedule "A"** to this Agreement.

"Court" means Ontario Superior Court of Justice (Commercial List).

"Cure Costs" means the monetary defaults of the Vendor in relation to the Consent Required Contracts, which shall in each case have been reasonably incurred by the Vendor and the quantum of which, having been determined by the Vendor, acting reasonably and in consultation with the Trustee, shall be acceptable to the Purchaser, acting reasonably.

"Deposit" has the meaning set forth in Section 3.2.

"Employee" means an individual who is employed by the Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave.

"Encumbrances" means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

"Excise Tax Act" means the *Excise Tax Act* (Canada).

"Excluded Assets" means all of the Vendor's right, title and interest, in and to those assets and rights set forth in Schedule B.

"Excluded Equipment" means any equipment or machinery and any parts and components thereof, that are Excluded Assets.

"Expense Reimbursement" has the meaning set out in Section 4.2(a).

"Governmental Authority" means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

"Income Tax Act" means the *Income Tax Act* (Canada).

"Intellectual Property" means all intellectual property of the Vendor used by or currently being developed for use in the business of the Vendor, and all rights of any of the Vendor therein, including all claims for past infringement, worldwide, whether registered or unregistered, including without limitation:

- a) all patents, patent applications and other patent rights, including provisional and continuation patents;

- b) all registered and unregistered trade-marks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
- c) registered and unregistered copyrights and mask works, including all copyright in and to computer software programs and applications and registrations of such copyright;
- d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- e) industrial designs; and
- f) trade secrets and proprietary information not otherwise listed in (a) through (e) above, including, without limitation, all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, mask works, circuit topography, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded or unrecorded.

“Login Credentials” means the login credentials for any software or programs that form part of the Purchased Assets.

“Ordinary Course of Business” means the ordinary course of business of the Vendor with respect to the Purchased Assets consistent with the conduct of such business on the date hereof and consistent with the Orders of the Court in the BIA Proceedings.

“Outside Date” means April 1, 2019.

“Party” means the Purchaser or the Vendor.

“Permitted Encumbrances” means those Encumbrances set forth in Schedule D.

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

“Purchase Price” has the meaning set out in Section 3.1.

"Purchased Assets" means all of the Vendor's right, title and interest, in and to the assets used in the business of the Vendor, including those assets set forth in Schedule A, but excluding Excluded Assets.

"Purchaser" has the meaning set out in the recitals hereto.

"Representative" means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates.

"Sale Process Order" means the order of the Court dated January 30, 2019 approving the Sale Process and this Agreement and granting the Bid Protection Charge in favour of the Purchaser.

"Sale Process" means the Court-approved sale process pursuant to which the Vendor, with the assistance of the Trustee, shall market its assets for sale in accordance with the Bidding Procedures.

"Sales Taxes" means all taxes imposed under Sales Tax Legislation.

"Sales Tax Legislation" means Part IX of the *Excise Tax Act* and the regulations made under such legislation.

"ServiceTrade" has the meaning set out in Section 8.1.

"ServiceTrade Agreement" has the meaning set out in Section 8.1.

"ServiceTrade Agreement Purchase Price" means all amounts payable to the Vendor, the Trustee and/or the Purchaser in connection with any ServiceTrade Agreement.

"Stalking Horse Bid" has the meaning set out in Section 4.1(b).

"Tax Deduction" has the meaning set out in Section 4.2(b).

"Transaction" means the transaction of purchase and sale contemplated by this Agreement.

"Transfer Taxes" means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Taxes but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

"Trustee" means A. Farber & Partners Inc. in its capacity as Proposal Trustee of the Vendor in the BIA Proceedings.

“Trustee’s Certificate” means the certificate of the Trustee certifying that the Trustee has received written confirmation in form and substance satisfactory to the Trustee from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Trustee has received the Closing Cash Payment.

“Vendor” has the meaning set out in the recitals hereto.

Section 1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

Section 1.3 General Construction.

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof. The expression “Section” or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

Section 1.4 Extended Meanings

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.

Section 1.5 Currency

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in US currency unless otherwise specifically indicated.

Section 1.6 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

Section 1.7 Schedules

The following Schedules are incorporated in and form part of this Agreement:

- Schedule A - Purchased Assets
- Schedule B - Excluded Assets
- Schedule C - Bidding Procedures
- Schedule D - Permitted Encumbrances
- Schedule E - Form of Approval and Vesting Order

Schedule F - Purchase Price Allocation

**ARTICLE 2
SALE AND PURCHASE AND ASSIGNMENT**

Section 2.1 Sale and Purchase of Assets

Subject to the terms and conditions hereof, at the Closing Time, the Vendor hereby agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order.

Section 2.2 Assignment of Contracts

In the event that there are any Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and such consents, approvals or waivers have not yet been obtained as of the Closing Date, then:

- a) nothing in this Agreement will be construed as an assignment of any such Contract (each a "Consent Required Contract");
- b) until the Approval and Vesting Order is granted, the Vendor shall use its commercially reasonable efforts to obtain any such consent, approval or waiver and the Purchaser shall provide its reasonable cooperation to assist the Vendor in obtaining any such consent, approval or waiver;
- c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the service of the motion for the Approval and Vesting Order, the Vendor shall bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts together with the motion for the Approval and Vesting Order; and
- d) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or the assignment of such Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

With respect to each Consent Required Contract, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing.

Section 2.3 "As is, Where is"

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets. No representation, warranty or condition is

expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 5.2, no representation, warranty or condition has or will be given by the Vendor concerning completeness or accuracy of such descriptions.

Notwithstanding anything contained in this Section 2.3, the Vendor confirms that it shall be in possession of and shall deliver all Login Credentials to the Purchaser on the Closing Date.

Section 2.4 Assumed Obligations

The Purchaser shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendor (the “**Assumed Obligations**”) after the Closing:

- a) all debts, liabilities and obligations under the Contracts (to the extent assigned or transferred to the Purchaser on Closing) for the period from and after the Closing Time;
- b) the obligation and liability of the Vendor to pay Cure Costs in respect of any Contract; and
- c) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.

Section 2.5 Excluded Obligations

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendor, including, without limiting the generality of the foregoing:

- a) all debts, liabilities, obligations or Claims related to any Benefit Plans, Employees or any Excluded Asset;
- b) all debts, liabilities and obligations related to any Purchased Asset arising out of or related to the period prior to the Closing Time;
- c) all obligations and liabilities owing by the Vendor to any Affiliate;
- d) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser;

- e) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes); and
- f) all debts, liabilities and obligations of the Vendor arising under this Agreement.

ARTICLE 3 PURCHASE PRICE

Section 3.1 Purchase Price

The aggregate purchase price (the "**Purchase Price**") payable by the Purchaser to the Vendor for the Purchased Assets is: (i) the sum of USD \$250,000 ("**Closing Cash Purchase Price**") plus (ii) the assumption by the Purchaser of the Assumed Obligations. The Purchase Price shall be allocated amongst the Purchased Assets in accordance with the provisions of Schedule F.

Section 3.2 Deposit

The Vendor acknowledges, contemporaneously with the execution of this Agreement, of a deposit (the "**Deposit**") in the amount of USD \$50,000 on account of the Closing Cash Purchase Price, paid to the Trustee and held in trust by the Trustee pursuant to the terms of this Agreement. If the Closing takes place, the Deposit shall be credited and set off against the Closing Cash Purchase Price. The Deposit shall be forfeited in favour of the Vendor on the Outside Date in the event that the Closing does not occur by the Outside Date solely as a result of the failure by the Purchaser to perform any of its obligations in Section 7.2.

Section 3.3 Satisfaction of Purchase Price

Provided that all conditions precedent to Closing have been satisfied or waived in accordance with Article 7, the Purchase Price shall be paid and satisfied on Closing as follows:

- a) as to the amount of the Deposit, by the crediting and set off of the Deposit against an amount of the Closing Cash Purchase Price equal to the amount of the Deposit;
- b) as to the balance of the Closing Cash Purchase Price (the "**Closing Cash Payment**"), by wire transfer in immediately available funds paid to the Trustee to be held pending further Order of the Court; and
- c) as to the dollar value of the Assumed Obligations, by the assumption by the Purchaser of the Assumed Obligations.

Section 3.4 Use of Deposit to Fund Vendor's Business and BIA Proceedings

The Parties acknowledge and agree that the Deposit is required by the Vendor to fund its operations and BIA Proceedings in accordance with the Cash Flow Projections, prior to Closing. The Purchaser consents to the use by the Vendor of the Deposit to fund its business in accordance with the Cash Flow Projections, subject to the Vendor obtaining the Bid Protections Charge in the Sale Process Order. In the event that the Purchaser is not the successful bidder in the Sale Process, the Vendor shall repay the amount of the Deposit to the Purchaser in addition to an amount sufficient to cover the Bid Protections. In the event that that Transaction fails to close by the Outside Date OTHER THAN as a result of the failure by the Purchaser to perform any of its obligations hereunder, the obligation of the Vendor to repay the Deposit to the Purchaser shall remain secured by the Bid Protections Charge and such Deposit shall be returned to the Purchaser no later than one (1) Business Day after the closing of a sale of all of the Vendor's assets in an amount equal to the lesser of the actual proceeds of such sale or the amount of the Deposit. In the event that the sale of the Vendor's assets is for substantially all of the Vendor's assets and the Purchaser has not been repaid the Deposit amount, in full, after the closing of the aforementioned sale, the outstanding Deposit amount shall remain secured by the Bid Protections Charge against the Vendor's remaining assets.

Section 3.5 Transfer Taxes

- (1) The Parties agree that:
 - a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets;
 - b) subject to Section 3.5(c), the Purchaser shall pay any applicable Transfer Taxes on the Purchaser's acquisition of the Purchased Assets;
 - c) if applicable, the Vendor and the Purchaser shall jointly elect that no Sales Taxes be payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Excise Tax Act, prepared by the Purchaser and made jointly by the Purchaser and the Vendor, in compliance with the requirements of the Sales Tax Legislation. The Purchaser shall indemnify the Vendor for any Sales Tax, interest and penalties applicable to the Vendor on the sale of the Purchased Assets caused by the Purchaser's failure to file a valid election under section 167 of the Excise Tax Act in the prescribed time.
- (2) If requested by the Purchaser, the Vendor shall make:
 - a) a joint election(s) to have the rules in section 22 of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable; and

- b) a joint election(s) to have the rules in subsection 20(24) of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Vendor in respect of undertakings which arise from the operation of the business to which the Purchased Assets related and to which paragraph 12(1)(a) of the Income Tax Act applies.

ARTICLE 4

BIDDING PROCEDURES

Section 4.1 Bidding Procedures

- a) The Vendor and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- b) The Vendor and the Purchaser acknowledge and agree that the Vendors shall apply to the Court by no later than January 30, 2019, or such other date as they may agree, for the Sale Process Order, inter alia, recognizing this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") and approving the Bidding Procedures, the payment of the Break Fee, an amount equal to the Deposit and Expense Reimbursement in the circumstances set out in Section 4.2, and the parties will use commercially reasonable efforts to have the Sale Process Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

Section 4.2 Break Fee, Deposit Repayment and Expense Reimbursement

- a) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to: (i) a break fee in the amount of USD \$25,000 (inclusive of HST, if any) (the "**Break Fee**"); (ii) repayment in full of the Deposit; and (iii) an expense reimbursement amount not to exceed USD \$25,000 (inclusive of HST) (the "**Expense Reimbursement**", and together with the Break Fee and the Deposit, the "**Bid Protections**") , in each case payable by the Vendors to the Purchaser only in the event that a successful bid other than the Stalking Horse Bid is accepted by the Vendor, approved by the Court and completed. The payment of the foregoing amounts shall be approved in the Sale Process Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the successful bid. Each of the parties hereto acknowledges and agrees that the foregoing amounts represent a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of non-completion of this Agreement, and is not

intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets, business and Assumed Liabilities.

- b) The Bid Protections shall be paid by the Vendor to the Purchaser without deduction or withholding for taxes (a "**Tax Deduction**"), unless a Tax Deduction is required by Applicable Law. In the event that the Vendor determines that a Tax Deduction is required by Applicable Law to be made in respect of the payment of the Bid Protections, or any portion thereof, the Vendor shall pay such additional amount (the "**Additional Amount**") as shall be required to result in the Purchaser receiving an amount equal to the amount which it would have received if no Tax Deduction had been required.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Section 5.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendor as of the date hereof and acknowledges that, as of the Closing Time, the Vendor is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- b) to the best of the Vendor's actual knowledge, and without investigation, no notices of termination have been received by the Vendor under any customer or vendor contracts of the Vendor;
- c) the Purchaser has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- d) neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms; and
- e) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any

proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

Section 5.2 Vendor's Representations

The Vendor, represents and warrant to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledges that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) the Vendor is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation;
- b) the Vendor is not a non-resident of Canada for purposes of the Income Tax Act or the Excise Tax Act, as applicable;
- c) on the Closing Date, the Vendor shall be in possession of active and accurate Login Credentials and shall be able to transfer such Login Credentials to the Purchaser; and
- d) subject to obtaining the Sale Process Order and the Approval and Vesting Order and, if applicable, the Assignment Order, the Vendor has the requisite power and authority to enter into this Agreement and to complete the Transaction contemplated hereunder.

Section 5.3 Limitations

With the exception of the Vendor's representations and warranties in Section 5.2 and the Purchaser's representations and warranties in Section 5.1, none of the Vendor or the Purchaser, or their respective Representatives, nor any of their respective officers, directors or Employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendor, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

Section 5.4 Condition of the Purchased Assets

The Purchaser acknowledges that the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that the Vendor has not guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is

expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given concerning the accuracy of such description.

ARTICLE 6 COVENANTS

Section 6.1 Conduct of Business in the Ordinary Course

- (1) The Vendor shall use commercially reasonable efforts to conduct its business in the Ordinary Course of Business except to the extent required to allow the Vendor to comply with its obligations under this Agreement, subject in all cases to any limitation imposed by being subject to BIA Proceedings and any Court order.
- (2) Without limiting the generality of Section 6.1(1), the Vendor shall use its commercially reasonable efforts to:
 - a) remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the Ordinary Course of Business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business,
 - b) not dispose of any of the Purchased Assets,
 - c) not disclaim any Contract that is material to the business of the Vendor; and
 - d) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, such consent not to be unreasonably withheld, or an order of the Court, and provided that such consent of the Purchaser shall be deemed to have been given with respect to any request for such a consent to which the Purchaser fails to respond within two (2) Business Days after such request is made.

Section 6.2 Actions to Satisfy Closing Conditions

- (1) The Vendor agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.1 and Section 7.3.

- (2) The Vendor agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to complete the Transaction contemplated in this Agreement as expeditiously as possible.
- (3) The Vendor agrees prior to the Closing Date to take all such actions as are within its power to control and shall use its commercially reasonable efforts to assist the Purchaser with the transition of customer and supplier relationships from the Vendor to the Purchaser. The Purchaser agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.2 and Section 7.3.

ARTICLE 7 CONDITIONS PRECEDENT

Section 7.1 Conditions Precedent in favour of the Purchaser

- (1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:
 - a) all representations and warranties of the Vendor contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
 - b) the Vendor shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 9.3; and
 - c) all stays of proceedings provided for in the BIA Proceedings, including in any Court orders granted therein, shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which is not prejudicial to the Purchaser or which does not adversely affect the Purchaser's rights under this Agreement or the Purchased Assets.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 7.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 7.1 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendor to terminate this Agreement.

Section 7.2 Conditions Precedent in favour of the Vendor

- (1) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed:

- a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
 - b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 9.2.
- (2) The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 7.2 may be waived by the Vendor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set forth in Section 7.2 is not satisfied or performed on or prior to the Outside Date, the Vendor may elect on written notice to the Purchaser to terminate the Agreement.

Section 7.3 Conditions Precedent in favour of both the Purchaser and the Vendor

- (1) The obligations of the Vendor and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:
- a) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
 - b) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
 - c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser. If the conditions set out in this Section 7.3 are not satisfied performed or mutually waived on or before the Outside Date, any Party shall have the option to terminate this Agreement upon written notice to the other Parties.

ARTICLE 8 SERVICE TRADE AGREEMENT

Section 8.1 ServiceTrade Agreement

(1) The Vendor and the Purchaser acknowledge that the Vendor has been approached by ServiceTrade, Inc. ("**ServiceTrade**") in connection with the sale and/or licensing of certain of the Vendor's assets (a "**ServiceTrade Agreement**"). In the event that the Vendor, the Trustee or the Purchaser enters into a ServiceTrade Agreement within 120

days following the execution of this Agreement, the Vendor and the Purchaser hereby agree as follows:

- a) so long as this Agreement has not been terminated, any ServiceTrade Agreement entered into by the Vendor or the Trustee must be on terms acceptable to the Purchaser, in its sole discretion;
- b) if the Vendor or the Trustee enter into a ServiceTrade Agreement on terms that are not acceptable to the Purchaser, in its sole discretion, then notwithstanding any other provision of this Agreement, the Purchaser shall have the right to terminate this Agreement effective immediately upon notice, and at such termination the Break Fee, the Deposit and the Expense Reimbursement shall become immediately due and payable to the Purchaser; and
- c) if a ServiceTrade Agreement is entered into by the Vendor, the Trustee or the Purchaser on terms that are acceptable to the Purchaser, in its sole discretion, then the Vendor, the Trustee and the Purchaser agree that (A) the Purchaser shall receive 50% of the ServiceTrade Agreement Purchase Price, in connection with such ServiceTrade Agreement, and the Vendor shall receive the remainder of the ServiceTrade Agreement Purchase Price.

ARTICLE 9 CLOSING

Section 9.1 Closing

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of DLA Piper (Canada) LLP, 6000 First Canadian Place, 100 King Street West, Toronto, Ontario, M5X 1E2, or as otherwise determined by mutual agreement of the Parties in writing and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time and, in any event, prior to the Outside Date.

Section 9.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- a) the Closing Cash Payment in accordance with Section 3.3b);
- b) payment of Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, the election(s) referred to in Section 3.5(1)c) executed by the Purchaser;
- c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;

- d) an executed assignment agreement evidencing the assumption by the Purchaser of all Intellectual Property;
- e) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all respects the covenants to be performed by it prior to the Closing Time; and
- f) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

Section 9.3 Vendor's Deliveries on Closing

At or before the Closing Time, the Vendor shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- b) the Approval and Vesting Order;
- c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;
- d) an executed assignment agreement evidencing the assumption by the Purchaser of all Intellectual Property;
- e) a true and complete copy of all Assignment Orders, if any, entered by the Court;
- f) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendor contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendor have performed in all material respects the covenants to be performed by them prior to the Closing Time;
- g) if applicable, the election(s) referred to in Section 3.5(1)c) executed by the Vendor;
- h) the executed Trustee's Certificate;
- i) such other necessary deeds, conveyances, assurances, transfers and assignments and any other instruments necessary to transfer the Purchased Assets to the Purchaser; and

- j) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

Section 9.4 Possession of Assets

- (1) On Closing, the Purchaser shall take possession of the Purchased Assets where situate at Closing. The Purchaser acknowledges that the Vendor has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied or waived by the Purchaser or Vendor, as applicable, and the Purchaser has satisfied all delivery requirements outlined in Section 9.2. The Purchaser shall promptly notify the Vendor of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Vendor, or to such other Person as the Vendor may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendor shall have no obligation to remove any Excluded Equipment from any premises that constitute part of Purchased Assets. All right, title and interest in any such Excluded Equipment which is not sold or removed from such premises after three months following Closing shall vest in the Purchaser unless the Purchaser objects to such title transfer in which case, right, title and interest shall continue to vest in the Vendor but the Purchaser shall be entitled to dispose of such Excluded Equipment at the Purchaser's expense.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard to the Purchased Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by notice in writing.

Section 9.5 Dispute Resolution

If any dispute arises with respect to any matter related to the Transaction or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct or as mutually agreed by the Vendor and the Purchaser.

Section 9.6 Termination

- (1) This Agreement shall automatically terminate at any time prior to the Closing Time by mutual written agreement of the Vendor and the Purchaser and on consent of the Trustee.
- (2) This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:
 - a) a condition precedent has not been satisfied or waived pursuant to and in accordance with Article 7 and a Party entitled to terminate this Agreement as

a result thereof has delivered written notice of termination pursuant to Article 7 (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement);

- b) by the Purchaser, if the Vendor or the Trustee enter into a ServiceTrade Agreement that are on terms not acceptable to the Purchaser, in its sole discretion; or
- c) Closing shall not have occurred on or prior to the Outside Date in accordance with Section 7.3 and any of the Parties shall have delivered written notice of termination to the other Parties terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement).

Section 9.7 Effects of Termination and Closing

- (1) If this Agreement is terminated pursuant to Section 9.6, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of: (i) Section 3.2 (Deposit); and (ii) this Section 9.7 (Effects of Termination and Closing), each of which will survive termination.
- (2) If the Transaction is not completed by the Outside Date solely as a result of the Vendor's failure to perform any of its obligations in Section 7.1, then the Deposit and Expense Reimbursement shall become due and payable to the Purchaser in accordance with the terms of this Agreement.
- (3) If the Transaction is not completed by the Outside Date solely as a result of the Purchaser's failure to perform any of its obligations in Section 7.2, then the Deposit shall be forfeited to the Vendor in accordance with Section 3.2 (Deposit), as liquidated damages, and not as penalty, and the Vendor shall have no other rights and remedies against the Purchaser available at law or in equity.
- (4) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

ARTICLE 10 GENERAL

Section 10.1 Access to Books and Records

- (1) For a period of two years from the Closing Date or for such longer period as may be reasonably required for the Vendor to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the

Purchaser pursuant to this Agreement and subject to Section 10.1(2), the Vendor (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of any Vendor, including the Trustee) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

- (2) If the Vendor or an Affiliate are engaged in any business that competes, directly or indirectly, with the business carried on by Purchaser, then the Purchaser shall only be required to provide the right to inspect as contemplated in Section 10.1(1) to the Vendor or such Affiliate if the sole purpose is of evaluating or preparing any of its tax returns, the sale of the remaining assets of the Vendor, in respect of any third party claim against such Person or in connection with any bankruptcy and insolvency proceeding. For greater certainty, the right of the Trustee, any former director or officer or any trustee in bankruptcy of the estate of the Vendor to inspect Books and Records and make copies thereof shall not be restricted under this Section 10.1(2).

Section 10.2 Notice

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

- a) in the case of the Purchaser, as follows:

Seattle Atlantic, Inc.

Attention: Joe Davy
Email: joe@getbanzai.com

with a copy to:

Osler, Hoskin & Harcourt LLP
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Attention: Justin Young and Michael Shakra
Email: jyoung@osler.com/mshakra@osler.com

- b) in the case of the Vendor, as follows:

VersAccounts Limited

Attention: Kevin Riegelsberger
Email: kevin.riegelsberger@yahoo.com

with a copy to:

DLA Piper (Canada) LLP
1 First Canadian Place
100 King Street West, Suite 6000
Toronto, ON M5X 1E2

Attention: Edmond Lamek
Email: edmond.lamек@dlapiper.com

- c) in each case, with a further copy to the Trustee, as follows:

A. Farber & Partners Inc.
150 York Street, Suite 1500
Toronto, ON M5H 3S5

Attention: Hylton Levy/Robyn White
Email: hlevy@farbergroup.com/rwhite@farbergroup.com

- (2) Any such notice or other communication, if given by personal delivery or by courier, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

Section 10.3 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser.

Section 10.4 Survival

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

Section 10.5 Personal Information

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

Section 10.6 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

Section 10.7 Entire Agreement

This Agreement, the attached Schedules hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

Section 10.8 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.

Section 10.9 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Section 10.10 Commission

The Purchaser agrees to indemnify the Vendor and its Representatives against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendor shall indemnify the Purchaser and its Representatives for any third party or agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Transaction.

Section 10.11 Assignment by Purchaser

This Agreement may not be assigned by the Purchaser without the prior written consent of the Vendor, which consent may be withheld in the Vendor's sole and absolute discretion; provided, however that the Purchaser shall be permitted to assign the benefit of all or a portion of this Agreement prior to the issuance of the Approval and Vesting Order to an Affiliate thereof in circumstances where (i) prior notice of such assignment is provided to the Vendor, (ii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment, and (iii) such assignment shall not release the Purchaser from any obligation or liability hereunder in favour of the Vendor and the Purchaser shall acknowledge and confirm its continuing obligations and liabilities in favour of the Vendor in form and substance satisfactory to the Vendor; for greater certainty, the Purchaser shall be permitted to assign the right to buy all or a portion of the Purchased Assets to one or more Affiliates and such assignment shall be permitted so long as the requirements of this Section 10.11 are complied with. This Agreement may not be assigned by the Vendor without the consent of the Purchaser.

Section 10.12 Further Assurances

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

Section 10.13 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

Section 10.14 Severability

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

Section 10.15 Trustee's Certificate

The Parties acknowledge and agree that the Trustee shall be entitled to deliver to the Purchaser, and file with the Court, the executed Trustee's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Trustee shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived (other than the payments contemplated in Section 3.3 and the delivery of the executed Trustee's

Certificate), the Trustee may deliver the executed Trustee's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Trustee's written confirmation of receipt of the payments contemplated in Section 3.2 to be delivered to it, and (ii) upon the Trustee's written confirmation that all such funds have been received, the Trustee's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

Section 10.16 Trustee's Capacity


The Vendor and the Purchaser acknowledge and agree that the Trustee, acting in its capacity as Trustee of the Vendor, will have no liability, in its personal capacity or otherwise, in connection with this Agreement whatsoever as Trustee.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

SEATTLE ATLANTIC, INC.

By: 
Name:
Title:

VENDOR:

VERSACCOUNTS LIMITED

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

SEATTLE ATLANTIC, INC.


By: _____

Name:

Title:

VENDOR:

VERSACCOUNTS LIMITED

By: 

Name: JAMES W. WELCH

Title: DIRECTOR

Schedule A - Purchased Assets

- (1) all movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets, if any (excluding those that are subject to capital leases), in addition to all computer hardware used in connection with the business;
- (2) all Books and Records;
- (3) all inventory of the Vendor used in the carrying on of its business;
- (4) the benefit of (i) all customer contracts or agreements of the Vendor (including, but not limited to those referenced in Appendix 1; and (ii) all contracts or other agreements listed in Appendix 1 to this Schedule A in each case, as amended, extended, assigned or otherwise modified, which shall include, (in this Schedule A, the "Assumed Contracts");
- (5) all Accounts Receivable;
- (6) all prepaid expenses to the extent necessary for the operation of the business form and after the Closing;
- (7) all supplies owned by the Vendor and used in connection with the business;
- (8) all Intellectual Property owned or licensed by the Vendor and used in or relating to the carrying on of the business, including Intellectual Property developed by the Vendor's employees but not otherwise present on Amazon Web Services servers including AWS deployment recipes and Published Gems;
- (9) all customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations (in each case, solely to the extent related to any of the Accounts Receivables and/or Assumed Contracts);
- (10) all government licenses, approvals, permits or similar used in connection with the business; and
- (11) all goodwill associated with the business or the Purchased Assets, including the right to carry on the business in continuation of the Vendor.

Appendix 1 to Schedule A - Assumed Contracts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Schedule B - Excluded Assets

- 1. Benefit Plans**
- 2. Shares of U.S. Subsidiary**

Schedule C

Schedule C

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERSACCOUNTS LIMITED. (the "VENDOR") under the *BANKRUPTCY AND INSOLVENCY ACT*, R. S. C. 1985 c B-3 as amended. (the "BIA")

Bidding Procedures

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the sale (the "**Sale**") of the Vendor's assets pursuant to a court approved solicitation process in the matter of the Notices of Intention to Make a Proposal of the Vendor under the BIA.

On January 30, 2019, the Court issued an order (the "**Sale Process Order**") approving and accepting for the purpose of conducting a "stalking horse" solicitation process (the "**Stalking Horse Process**") in accordance with these Bidding Procedures that certain asset purchase agreement dated January 23, 2019 (the "**Stalking Horse Bid**") between the Vendor and Seattle Atlantic, Inc. (the "**Stalking Horse Bidder**"), including, without limitation, the payment of a break fee (the "**Break Fee**") and expense reimbursement (the "**Expense Reimbursement**") by the Vendor to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability, within ten (10) business days following the Auction (defined below) the Vendor shall bring a motion (the "**Approval and Vesting Order Motion**") seeking the granting of an order by the Court authorizing the Vendor to proceed with the Sale of the Vendor's Assets to the Qualified Bidder making the Successful Bid (each as defined below) (the "**Successful Bidder**") (such order, as approved, the "**Approval and Vesting Order**").

Assets to Be Sold En Bloc

The Vendor is offering for Sale all of the Vendor's right, title and interest in and to all of the Vendor's assets en bloc (the "**Vendor's Assets**") and only a bid for all of the Vendor's Assets, in whole and not in part can be eligible to be a Qualified Bid (as defined below). A. Farber & Partners Inc., in its capacity as Proposal Trustee under the Notice of Intention to Make a Proposal of the Vendor (the "**Trustee**") will be responsible for conducting the solicitation process and an auction (the "**Auction**") (if any) on behalf of the Vendor.

The Bidding Process

The Trustee shall be responsible for the marketing and sale of the Vendor's Assets pursuant to the process described by the Proposal Trustee's First Report to Court dated January , 2019 (the "**Bidding Process**"), which is set out below. The Trustee shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder.

Participation Requirements

"**Qualified Bidder**" is; (i) a bidder who submits a Sale bid in substantially the same form as the Stalking Horse Bid, for a Cash Purchase Price of at least USD \$325,000 and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria that is received by the Trustee before the Bid Deadline is a qualified bid ("**Qualified Bid**").

Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Trustee no later than 5:00 p.m. (prevailing Eastern time) on March 1, 2019 (the "**Bid Deadline**").

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Trustee, the following (collectively, the "**Required Bid Terms and Materials**"):

- (i) A base Cash Purchase Price equal to or greater than USD \$325,000, being the Stalking Horse Bid (USD \$250,000) plus the Break Fee (USD \$25,000), Expense Reimbursement (up to USD \$25,000) and USD \$25,000 bid increment (collectively, the "**Base Purchase Price**");
- (ii) A provision stating that the bidder's offer is irrevocably open for acceptance until the Vendor's Assets have been sold pursuant to the closing of the sale approved by the Court;

- (iii) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting variations from the Stalking Horse Bid (the "**Marked Agreement**");
- (iv) A cash deposit in the amount of not less than USD \$50,000 in the form of a wire transfer, certified cheque or such other form acceptable to the Trustee (the "**Bid Deposit**"), which shall be held in the trust account of the Trustee's solicitors (the "**Escrow Account**"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

A Sale bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**". The Trustee reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the "**Lead Bid**"). Details of the Lead Bid will be provided by the Trustee to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) two (2) Business Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

"As Is, Where Is, With All Faults"

The Sale of the Vendor's Assets shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Trustee or the Vendor or their agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Vendor. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Vendor's Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Vendor's Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Vendor's Assets, the financial performance of the Vendor's Assets or the physical condition or location of the Vendor's Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Vendor.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, and subject to any permitted encumbrances therein, all of the Vendor's right, title and interest in and to the Vendor's Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

The Sale and Auction Process

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Trustee on or before the Bid Deadline, the Trustee shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Trustee in accordance with the **Auction Procedures** attached hereto as Appendix 1.

If no Qualified Bid is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

Trustee to Determine Highest and/or Best Bid: The Trustee shall determine, in its reasonable business judgment, which Qualified Bid is the Lead Bid and which bid after each round of offers is the then-prevailing highest and/or best bid. In making such determination, the Trustee may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of liabilities, if any, and the related implied impact on recoveries for creditors; (iii) the ability of the Qualified Bidder in question to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase price adjustment; (vi) the net economic effect of any changes made to the Stalking Horse Bid; and (vii) such other considerations as the Trustee deems relevant in its reasonable business judgment. At the end of each round of offers, the Trustee shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bidder. The next highest offer, as determined by the Trustee (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Vendor's Assets to the Successful Bidder.

Highest versus Best Offer

In determining the Lead Bid, the highest and/or best Sale offer during each round of offers, and the Successful Bid, the Trustee is not required to select the offer with the highest purchase price and may, exercising its reasonable business judgment, select another offer on the basis that it is the best offer even though not the highest purchase price. Without limiting the foregoing, the Trustee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under "Trustee to Determine Highest and/or Best Bid".

Break Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Vendor have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee in the amount of USD \$25,000 and an Expense Reimbursement on account of its reasonable and documented out of pocket fees and expenses, up to a maximum of USD \$25,000 inclusive of HST, in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Break Fee and Expense Reimbursement are material inducements for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee and Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

Acceptance of Qualified Bids

The sale of the Vendor's Assets to any Successful Bidder by the Vendor is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Vendor to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Vendor will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

Approval and Vesting Order Motion Hearing

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before March 15, 2019. The Trustee, in the exercise of its business judgement,

reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Vendor's Assets.

Miscellaneous

The solicitation process and these Bidding Procedures are solely for the benefit of the Vendor and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

APPENDIX I

Auction Procedures

Auction

1. If the Trustee determines to conduct an Auction pursuant to the Stalking Horse Bid Procedures, the Trustee will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held at the offices of DLA Piper (Canada) LLP at 10:00 a.m. (Eastern Time) on date that is determined by the Trustee, provided that that is not later than seven (7) Business Days after the Bid Deadline, or such other place and time as the Trustee may advise. Capitalized terms used but not defined have the meaning given to them in the Stalking Horse Bid Procedures. The Auction shall be conducted in accordance with the following procedures:
 - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Trustee shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) two (2) Business Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Trustee whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Trustee, the Vendor and

their respective counsel and other advisors shall be permitted to attend the Auction.

- b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
- c) Trustee Shall Conduct the Auction. The Trustee and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Trustee shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any factors that the Trustee reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Trustee's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round, and (vi) such other considerations as the Trustee deems relevant in its reasonable business judgment (collectively, the "Bid Assessment Criteria"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Trustee shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.
- d) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Trustee's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Cash Purchase Price increments of USD \$25,000 above the Opening Bid, or such increments as the Trustee may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.

- (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Trustee shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
 - (iv) *Consideration of Overbids:* The Trustee reserves the right to make one or more adjournments in the Auction to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Trustee with such additional evidence as it, may require, that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Trustee may have clarifying discussions with a Qualified Bidder, and the Trustee may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.
 - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Trustee may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Stalking Horse Bid Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.

- f) Closing the Auction. The Auction shall be closed after the Trustee has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and advised the Qualified Bidders participating in the Auction of such determination
- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid.

Schedule D - Permitted Encumbrances



Schedule E - Form of Approval and Vesting Order

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) WEEKDAY, THE #
)
JUSTICE) DAY OF MONTH, 20YR
)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF OTTAWA, IN THE
PROVINCE OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by VersAccounts Limited (the "**Vendor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Vendor and Seattle Atlantic, Inc. (the "**Purchaser**") dated ♦ and vesting in the Purchaser the Vendor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ♦ Report of A. Farber & Partners Inc. in its capacity as Proposal Trustee of the Vendor (the "**Trustee**") and on hearing the submissions of counsel for the Trustee, the Vendor and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendor and the Purchaser is hereby authorized and approved, with such minor amendments as the Vendor and the Purchaser, with the approval of the Trustee, may agree upon. The Vendor and the Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Trustee's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: [(i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]; and (ii)] all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**" and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that the Trustee may rely on written notice from the Vendor and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Trustee's Certificate.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Vendor and the Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of the Vendor and any bankruptcy order issued pursuant to any such applications or otherwise; and
- (c) any assignment in bankruptcy made in respect of the Vendor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, 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 it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor and the Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Vendor and the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor and the Trustee and their agents in carrying out the terms of this Order.

Schedule A - Form of Trustee's Certificate

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF OTTAWA, IN THE
PROVINCE OF ONTARIO

TRUSTEE'S CERTIFICATE

RECITALS

- A. VersAccounts (the "Vendor") commenced these proceedings by filing a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, on ♦ (the "NOI");
- B. A. Farber & Partners Inc. was appointed as proposal trustee (the "Trustee") under the NOI;
- C. Pursuant to an Order of the Court dated ♦ (the "Approval and Vesting Order"), the Court approved the agreement of purchase and sale made as of ♦ (the "Sale Agreement") between the Vendor and Seattle Atlantic, Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Vendor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Trustee to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser (as applicable); and (iii) the Transaction has been completed to the satisfaction of the Trustee.

D. Pursuant to the Approval and Vesting Order, the Trustee may rely on written notice from the Vendor and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement.

E. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE TRUSTEE CERTIFIES the following:

1. The Vendor and the Purchaser have each delivered written notice to the Trustee that all applicable conditions under the Sale Agreement have been satisfied and/or waived, as applicable;
2. The Trustee has received the Closing Cash Payment; and
3. The Transaction has been completed to the satisfaction of the Trustee.
4. This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

A. Farber & Partners Inc., in its capacity as Trustee of VersAccounts Limited, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B - Purchased Assets

- (1) All movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets, if any (excluding those that are subject to capital leases), in addition to all computer hardware used in connection with the business;
- (2) all Books and Records;
- (3) all inventory of the Vendor, used in the carrying on of its business;
- (4) the benefit of (i) all customer contracts or agreements of the Vendor (including, but not limited to those referenced in Appendix 1; and (ii) all contracts or other agreements listed in Appendix 1 to this Schedule B in each case, as amended, extended, assigned or otherwise modified, which shall include, (in this Schedule A, the "Assumed Contracts");
- (5) all Accounts Receivable;
- (6) all prepaid expenses to the extent necessary for the operation of the business form and after the Closing;
- (7) all supplies owned by the Vendor and used in connection with the business;
- (8) all Intellectual Property owned or licensed by the Vendor and used in or relating to the carrying on of the business, including Intellectual Property developed by the Vendor's employees but not otherwise present on Amazon Web Services servers including AWS deployment recipes and Published Gems;
- (9) all customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations (in each case, solely to the extent related to any of the Accounts Receivables and/or Assumed Contracts);
- (10) all government licenses, approvals, permits or similar used in connection with the business; and

- (11) all goodwill associated with the business or the Purchased Assets, including the right to carry on the business in continuation of the Vendor.

Appendix 2 to Schedule B - Assumed Contracts

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]



IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERSACCOUNTS LIMITED, OF THE
CITY OF OTTAWA, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

PROCEEDINGS COMMENCED AT TORONTO

AFFIDAVIT OF JAMES WELCH
(sworn January 24, 2019)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSUC No. 33338U)
Tel.: 416.365.3444
Fax: 416.369.7945
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSUC No. 53802D)
Tel.: 416.365.3421
Fax: 416.369.7945
Email: danny.nunes@dlapiper.com

Lawyers for VersAccounts Limited

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE) **WEDNESDAY, THE 30th DAY OF**
JUSTICE) **JANUARY, 2019**

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF
OTTAWA, IN THE PROVINCE OF ONTARIO

ORDER
(SALE PROCESS APPROVAL)

THIS MOTION, made by VersAccounts Limited (the “**Company**”), pursuant to Sections 50.4(9) and 64.2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), for an order, *inter alia*, approving a “stalking horse” sale process (the “**Sale Process**”) in respect of the Company and approving a stalking horse asset purchase agreement (the “**Stalking Horse APA**”) between the Company and Seattle Atlantic Inc. (“**Seattle**”), for the purposes of the Sale Process, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Company, the first report of A. Farber & Partners Inc., in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), to be filed (the “**First Report**”) and the appendices thereto, and on hearing the submissions of counsel for the Company, counsel for the Proposal Trustee, counsel for Seattle and those other parties listed on the counsel slip, no one else appearing for any other person although duly served as appears from the Affidavit of Service of ♦ sworn January ♦, 2019, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing 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.

CAPITALIZED TERMS

2. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Stalking Horse APA.

APPROVAL OF SALE PROCESS AND STALKING HORSE APA

3. **THIS COURT ORDERS** that the Sale Process be and is hereby approved.

4. **THIS COURT ORDERS** that the Bidding Procedures set out in Schedule "C" to the Stalking Horse APA and the Break Fee and Expense Reimbursement set out in Section 4.2 of the Stalking Horse APA are each hereby approved and that the Stalking Horse APA is hereby approved solely for the purposes of standing as the Stalking Horse Bid in the Sale Process, provided that if Seattle is the successful bidder under the Sale Process, implementation of the transaction contemplated by the Stalking Horse APA will be subject to the Court's approval upon further motion by the Company.

5. **THIS COURT ORDERS** that (i) all of the Company's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (ii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Proposal Trustee of the existence of any of the Company's assets, undertakings and properties of every nature and kind whatsoever, and wherever situate (the "**Property**") in such Person's possession or control, shall grant immediate and continued access to the Property to the Proposal Trustee and shall deliver all such Property to the Proposal Trustee upon the Proposal Trustee's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Proposal Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Proposal Trustee or permit the Proposal Trustee to make, retain and take away copies thereof and grant to the Proposal Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Proposal Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Proposal Trustee for the purpose of allowing the Proposal Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Proposal Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Proposal Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Proposal Trustee with all such assistance in gaining immediate access to the information in the Records as the Proposal Trustee may in its discretion require including providing the Proposal Trustee with instructions on the use of any computer or other system and providing the Proposal Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Company and the Proposal Trustee shall have no personal or corporate liability in connection with the Sale Process.

BREAK FEE CHARGE

9. **THIS COURT ORDERS** that Seattle shall be entitled to the benefit of and is hereby granted a charge (the “**Break Fee Charge**”) on the current and future assets, undertakings and properties of the Company of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), which charge shall not exceed the amount of US\$50,000, as security for payment of the break fee and expense reimbursement provided for under Section 4.2 of the Stalking Horse APA. The Break Fee Charge shall have the priority set out in paragraphs 13 and 14 hereof.

TREATMENT OF DEPOSIT AND DEPOSIT CHARGE

10. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to deliver the Deposit, held in trust by the Proposal Trustee pursuant to the terms of the Stalking Horse APA, to the Company for the purposes of funding the Company’s business operations, in accordance with the terms of the Stalking Horse APA.

11. **THIS COURT ORDERS** that: (i) the Deposit; and (ii) the Company’s obligation to repay the Deposit as provided for in the Stalking Horse APA in the event that (a) the Stalking Horse APA is not chosen as the successful bid under the Sale Process or (b) the Transaction fails to close by the Outside Date other than as a result of the failure of Seattle to perform any of its obligations under the Stalking Horse APA, shall each be and are hereby secured by a charge (the “**Deposit Charge**”) on the Property, which charge shall not exceed the amount of US\$50,000. The Deposit Charge shall have the priority set out in paragraphs 13 and 14 hereof.

ADMINISTRATION CHARGE

12. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the amount of CAD\$125,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 13 and 14 hereof.

PRIORITY OF BREAK FEE, DEPOSIT AND ADMINISTRATION CHARGES

13. **THIS COURT ORDERS** that the filing, registration or perfection of the Break Fee Charge, Deposit Charge and Administration Charge shall not be required, and that the Break Fee Charge, Deposit Charge and Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Break Fee Charge, Deposit Charge and Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

14. **THIS COURT ORDERS** that the Break Fee Charge and Deposit Charge shall rank on a *pari passu* basis and in priority to the Administration Charge. The Break Fee Charge, Deposit Charge and Administration Charge shall rank in priority as against all other validly perfected security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, granted by the Company or to which the Company is subject (together, the “**Encumbrances**”) as of the date of this Order.

15. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by further order of this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Break Fee Charge and Deposit Charge.

16. **THIS COURT ORDERS** that the Break Fee Charge, Deposit Charge and Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Break Fee Charge, Deposit Charge and Administration Charge (the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such an application; (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (together, the “**Agreements**”) which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Break Fee Charge, Deposit Charge and Administration Charge shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Break Fee Charge, Deposit Charge and Administration Charge; and
- (c) the payments made by the Company pursuant to this Order, and the granting of the Break Fee Charge, Deposit Charge and Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

17. **THIS COURT ORDERS** that the Break Fee Charge, Deposit Charge and Administration Charge created by this Order over leases of real property in Canada shall only be a Break Fee Charge, Deposit Charge and Administration Charge in the Company's interest in such real property leases.

EXTENSION OF TIME TO FILE PROPOSAL

18. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to April [8], 2019.

SERVICE AND NOTICE

19. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceedings, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject

to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL < <https://farbergroup.com/engagements/versaccounts-limited/>>.

GENERAL

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Company, the Proposal Trustee, Seattle and their respective 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 Company and 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 Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that each of the Company, the Proposal Trustee and Seattle shall be at liberty and are 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.

Court File No. 33-2466100
Estate File No. 33-2466100

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF OTTAWA, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

PROCEEDINGS COMMENCED AT TORONTO

ORDER
(Sale Process Approval)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F. B. Lamek (LSUC No. 33338U)
Tel.: 416.365.4444
Fax: 416.369.7945
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSUC No. 53802D)
Tel.: 416.365.3421
Fax: 416.369.7945
Email: danny.nunes@dlapiper.com

Lawyers for VersAccounts Limited

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERSACCOUNTS LIMITED, OF THE CITY OF
OTTAWA, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD
(Returnable January 30, 2019)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSUC No. 33338U)
Tel.: 416.365.4444
Fax: 416.369.7945
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSUC No. 53802D)
Tel.: 416.365.3421
Fax: 416.369.7945
Email: danny.nunes@dlapiper.com

Lawyers for VersAccounts Limited