

## **AGENCY AGREEMENT**

(Capital Pool Company)

**MEMORANDUM OF AGREEMENT** dated the 22<sup>nd</sup> day of May, 2013.

### **BETWEEN:**

**MERCURY CAPITAL II LIMITED**, a corporation incorporated under the laws of the Province of Ontario, with its head office in the City of Toronto, in the Province of Ontario (the "**Corporation**")

- and -

**HAMPTON SECURITIES LIMITED**, a corporation incorporated under the laws of the Province of Ontario, with its head office in the City of Toronto, in the Province of Ontario (the "**Agent**")

### **WHEREAS:**

- A. The Corporation wishes to raise funds for the purposes described in the Prospectus (as defined below) by offering for sale the Offered Shares (as defined below) at the Share Price (as defined below);
- B. The Corporation wishes to retain the Agent, and the Agent is willing to act as agent of the Corporation to offer for sale the Offered Shares on a commercially reasonable efforts basis, subject to the terms and conditions hereof;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

### **ARTICLE 1** **DEFINITIONS**

- 1.1 For the purposes of this agreement and any amendments hereto, the following words and phrases shall have the following meanings:
  - (a) "**Agent's Option**" means the stock option to be granted to the Agent pursuant to Section 2.6 hereof;
  - (b) "**Agreement**" means this agreement, the recitals, the schedules attached hereto and any amendments;
  - (c) "**business day**" means any day other than a Saturday, Sunday or statutory or civic holiday in Toronto, Ontario;
  - (d) "**Closing**" means the completion of the transactions contemplated by this Agreement on the Closing Date as herein provided;
  - (e) "**Closing Date**" means such date as is agreed to between the Corporation and the Agent, provided however that the Closing Date shall not be more than ninety (90) days from the

date of the issuance of a receipt for the Prospectus by the Commissions, or such other date as Securities Legislation may allow;

- (f) "**Commissions**" means the Ontario Securities Commission, British Columbia Securities Commission and the Alberta Securities Commission;
- (g) "**Common Share**" or "**Common Shares**" means a common share or the common shares in the capital of the Corporation;
- (h) "**CPC Policy**" means Policy 2.4 of the Exchange's Corporate Finance Manual and shall include all orders, policies, rules, instruments, regulations, by-laws and procedures of the Commissions and the Exchange which govern offerings by capital pool companies, as amended from time to time;
- (i) "**Engagement Letter**" means the agreement dated March 8, 2013 between the Agent and the Corporation related to the offering contemplated herein;
- (j) "**Exchange**" means the TSX Venture Exchange Inc.;
- (k) "**Incentive Stock Options**" means stock options to be granted to the directors and officers of the Corporation to purchase, in aggregate up to 236,666 Common Shares at a price of \$0.30 per Common Share, exercisable for a period of ten (10) years from the date of grant;
- (l) "**Material Change**" has the meaning defined in the Securities Legislation;
- (m) "**Material Fact**" has the meaning defined in the Securities Legislation;
- (n) "**Maximum Subscription**" means Successful Subscriptions for a maximum of 1,700,000 Offered Shares on or before the Closing Date, as more fully described in the Prospectus;
- (o) "**Member**" means a Person who has executed the Members' Agreement, as amended from time to time, and is accepted as and becomes a member of the Exchange under the Exchange requirements;
- (p) "**Members' Agreement**" means the members' agreement among the Exchange and each Person who, from time to time, is accepted as and becomes a member of the Exchange under the Exchange requirements;
- (q) "**Minimum Subscription**" means subscriptions for an aggregate of not less than 1,000,000 Common Shares on or before the Closing Date as more fully described in the Prospectus;
- (r) "**Misrepresentation**" has the meaning ascribed thereto by the Securities Legislation;
- (s) "**Offered Shares**" means all or any portion of the Common Shares offered at the Share Price pursuant to the Prospectus;
- (t) "**Person**" means a company or individual;
- (u) "**Preliminary Prospectus**" means the preliminary prospectus of the Corporation dated April 30, 2013, and any amendments thereto approved, signed and certified in accordance

with the Securities Legislation, relating to the distribution of the Offered Shares, the Incentive Stock Options and Agent's Option and filed with the Commissions;

- (v) "**Prospectus**" means the (final) prospectus of the Corporation and any amendments thereto, approved, signed and certified in accordance with the Securities Legislation, relating to the distribution of the Offered Shares, the Incentive Stock Options and Agent's Option and filed with the Commissions;
  - (w) "**Securities Legislation**" means the *Securities Act* (Ontario), the *Securities Act* (Alberta) and the *Securities Act* (British Columbia) and the respective rules and regulations thereto, and the policy statements, rules, notices and blanket orders of the Commissions, the national instruments, the multilateral instruments, the national policy statements and uniform act policies applied by the Commissions, and the policies and by-laws of the Exchange, as amended from time to time;
  - (x) "**Share Price**" means \$0.30 per Common Share;
  - (y) "**Subscriber**" or "**Subscribers**" means a person or those persons who purchase the Offered Shares through the Agent or such other registrants retained by the Agent as sub-agents;
  - (z) "**Subscription Funds**" means all funds received with respect to all Successful Subscriptions in accordance with the terms and provisions of this Agreement;
  - (aa) "**Successful Subscription**" means a subscription for Offered Shares by a Subscriber which subscription has been accepted by the Corporation and the Agent;
  - (bb) "**Time of Closing**" means 11:00 a.m. Toronto time on the Closing Date, or such other time on the Closing Date as the Corporation and the Agent may agree;
  - (cc) "**Total Subscription**" means all of the Successful Subscriptions for the Offered Shares; and
  - (dd) "**Transfer Agent**" means Olympia Transfer Services Inc.
- 1.2 For the purposes of this Agreement, all references to "**Dollars**" or "\$" shall mean Canadian funds, unless otherwise specified.
- 1.3 The headings of the Sections and Articles of this Agreement are inserted for convenience of reference only and shall not in any manner affect the construction or meaning of anything herein contained or govern the rights or liabilities of the parties hereto.
- 1.4 Words importing the singular number only shall include the plural and vice versa and words of gender shall entail all genders and words importing persons shall include companies, corporations, partnerships, syndicates, trusts and any number or aggregate of persons.

## **ARTICLE 2**

### **APPOINTMENT AND REMUNERATION OF AGENT**

- 2.1 Subject to the terms hereof, the Corporation hereby appoints the Agent as its exclusive agent and the Agent hereby agrees to act as the agent of the Corporation to offer the Offered Shares for sale

under the Prospectus on a commercially reasonable efforts basis, pursuant to the Securities Legislation.

- 2.2 The Corporation understands and agrees that the Agent is acting as agent only and is under no obligation to purchase any of the Offered Shares. The Agent may retain other registrants to act as sub-agents to offer the Offered Shares for sale at no additional cost to the Corporation provided that any compensation paid or payable to such sub-agents shall be solely for the account of the Agent. The Agent shall be under no liability for any failure to sell any or all of the Offered Shares or to engage sub-agents.
- 2.3 The Corporation has paid the Agent a non-refundable work fee in the amount of \$10,000 (plus HST) (the "**Work Fee**").
- 2.4 If the Minimum Subscription is achieved, the Corporation shall pay to the Agent, in consideration for the services to be performed by it hereunder, a commission in the amount of ten (10%) percent of the Subscription Funds. If the Minimum Subscription is achieved, the Agent's commission shall be paid at the Time of Closing from the Subscription Funds pursuant to Section 4.1 hereof.
- 2.5 Agent's Expenses
  - (a) Notwithstanding Section 2.5(b) below, the Agent's expenses and the Agent's legal fees and expenses shall be payable by the Corporation upon demand regardless of whether the offering of the Offered Shares under the Prospectus is completed, provided that the legal fees of the Agent's counsel shall not exceed \$15,000, exclusive of taxes and disbursements.
  - (b) For convenience purposes and subject to Section 2.5(a), if the Minimum Subscription is achieved, the Agent's expenses, Agent's legal fees and expenses may be paid at the Time of Closing from the Subscription Funds pursuant to Section 4.1 hereof.
- 2.6 Provided that the Minimum Subscription is achieved, the Corporation will grant to the Agent at the Time of Closing an irrevocable non-transferable option (the "**Agent's Option**") to purchase that number of Common Shares as is equal to 10% of the Offered Shares sold hereunder at the Share Price for a period of 24 months from the date the Common Shares are listed and posted for trading on the Exchange, and the Corporation shall execute and deliver a certificate, in a form satisfactory to the Agent, setting forth the terms and conditions of the Agent's Option.

### **ARTICLE 3**

### **SUBSCRIPTIONS**

- 3.1 The Corporation will:
  - (a) at such time as Successful Subscriptions for the Maximum Subscription have been received;
  - (b) at 5:00 p.m. (Toronto time) on the day that is ninety (90) days from the date of the issuance of the receipt for the Prospectus by the Commissions, or such other date as the parties hereto may agree and Securities Legislation may allow; or
  - (c) such other date as the parties hereto may agree and Securities Legislation may allow;

whichever shall first occur, close the subscription books and thereafter shall not receive any further subscriptions for the Offered Shares.

- 3.2 Subscribers may subscribe for Offered Shares by delivering to the Agent, or any sub-agent retained pursuant to Section 2.2 hereof, on or prior to the Closing Date, (a) payment for the aggregate Share Price for the Offered Shares purchased by such Subscriber in a manner acceptable to the Agent; and (b) such documents, certificates and forms as, in the opinion of the Agent and the Corporation, may be required.

**ARTICLE 4**  
**RELEASE OF SUBSCRIPTION FUNDS**

- 4.1 The Agent shall not at any time deliver any Subscription Funds received by it to the Corporation until it shall have received a receipt for the Subscription Funds less the amounts to be deducted pursuant to Article 2 hereof and receipt of all closing documents contemplated by Article 8 hereof.
- 4.2 Upon receiving the documentation referred to in Section 4.1 hereof, subject to Section 4.4 hereof and subject to satisfaction of or waiver of the conditions of the Corporation for the benefit of the Agent as set forth in this Agreement, the Agent shall forthwith deliver to the Corporation or as the Corporation shall direct, all Subscription Funds resulting from Successful Subscriptions held by it pursuant to this Agreement, less the amounts to be deducted pursuant to Article 2 hereof, against delivery of the Corporation of the Offered Shares, in certificated or uncertificated form, as directed by the Agent, and a certificate or certificates representing the Agent's Option, registered as directed by the Agent.
- 4.3 If the Minimum Subscription is not received or if the Agent has not received the documentation referred to in Section 4.1 hereof at or prior to the Time of Closing, the Agent shall promptly thereafter return to each Subscriber without interest or deduction the Subscription Funds held for the Subscriber by the Agent, unless such Subscriber has otherwise instructed the Agent.
- 4.4 If the funds of any Subscriber delivered to the Agent are for any reason rejected (in whole or in part) by the Corporation and Agent, such rejected funds shall be returned to such Subscriber without interest or deduction in the manner provided in Section 4.3 hereof.

**ARTICLE 5**  
**OBLIGATIONS OF THE AGENT**

- 5.1 The Agent shall:
- (a) use its commercially reasonable efforts to obtain subscriptions for all of the Offered Shares and without limiting the generality of the foregoing, to obtain subscriptions from at least 200 Subscribers, or such lesser number as is acceptable to the Exchange, each of such Subscribers:
    - (i) purchasing at least 1,000 Common Shares free of Resale Restrictions (as "Resale Restrictions" is defined in the Exchange's Corporate Finance Manual Policy 1.1); and
    - (ii) individually purchasing, directly or indirectly, no more than 2% of the Offered Shares, and, in conjunction with such Subscriber's Associates and Affiliates (as

"Associates" and "Affiliates" are defined in the Exchange's Corporate Finance Manual Policy 1.1), purchasing no more than 4% of the Offered Shares.

- (b) only offer the Offered Shares for sale to subscribers resident in the Provinces of Alberta, Ontario or British Columbia in compliance with Securities Legislation and the terms and conditions set out herein;
- (c) close the subscription books and thereafter not receive any further subscriptions for the Offered Shares at the earlier of such time:
  - (i) as orders for all of the Offered Shares have been received; or
  - (ii) as prescribed by Securities Legislation;
- (d) provide all such notices and documents as may be required by Securities Legislation in connection with the sale of the Offered Shares pursuant to the Prospectus, including without limiting the generality of the foregoing, to deliver to the Exchange (or, at the option of the Agent, to the Corporation for delivery to the Exchange) as soon as reasonably possible after the Closing a Distribution Summary Statement (Exchange Form 2E) or such other document(s) as may be required by the Exchange, if any; and
- (e) notwithstanding the foregoing, it is understood and agreed by the Corporation that the Agent is under no obligation pursuant to this Agreement to act as Sponsor or to provide a Sponsor Report for a Qualifying Transaction of the Corporation (as "Sponsor", "Sponsor Report" and "Qualifying Transaction" are defined in the Exchange's Corporate Finance Manual Policy 1.1 and the CPC Policy, as applicable).

## **ARTICLE 6**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE CORPORATION**

- 6.1 The Corporation hereby covenants, represents and warrants to the Agent and acknowledges that the Agent is relying thereon, that:
- (a) The Corporation has been duly incorporated and organized and is valid and subsisting and in good standing under the laws of its jurisdiction of incorporation and has all the requisite corporate power and capacity to carry on its business as now conducted.
  - (b) The Corporation does not own or have any interest in any asset or property of any kind whatsoever, other than cash or deposits with financial institutions, and, without limiting the generality of the foregoing, the Corporation does not have an Agreement in Principle (as "Agreement in Principle" is defined in the CPC Policy).
  - (c) The Corporation has undertaken no business since the date of its incorporation, except as permitted by the CPC Policy.
  - (d) The authorized capital of the Corporation consists of the share capital as disclosed in the Prospectus, and such number of Common Shares is issued and outstanding as is disclosed in the Prospectus, and all of the issued and outstanding Common Shares have been duly issued and are fully paid and non-assessable. No person, firm or corporation has any agreement, option, or right or privilege, whether pre-emptive or contractual, capable of becoming an agreement, including convertible securities, for the purchase, subscription

or issuance of any unissued Common Shares or other securities of the Corporation except as disclosed in the Prospectus.

- (e) The financial statements of the Corporation contained in the Prospectus, including the notes thereto, fairly present the financial position and condition of the Corporation, as at the date thereof, reflect all liabilities (absolute, accrued, contingent or otherwise) of the Corporation as at the date thereof, and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis, and there has not been any Material Change in such position from the date of such financial statements.
- (f) The information and statements contained in the Preliminary Prospectus and the Prospectus (except any such information and statements relating solely to the Agent) constitute full, true and plain disclosure of all Material Facts relating to the Corporation and the Preliminary Prospectus and, to the knowledge of the Corporation, the Prospectus fully complies with Securities Legislation, including without limitation the CPC Policy.
- (g) The Preliminary Prospectus and the Prospectus do not contain a Misrepresentation (except a Misrepresentation which is based upon information relating solely to the Agent and furnished to the Corporation by the Agent expressly for inclusion in the Preliminary Prospectus and Prospectus).
- (h) There is no action, proceeding or investigation (whether or not purportedly on behalf of the Corporation) to which the Corporation is a party or which is pending or, to the knowledge of the Corporation and its directors or officers, threatened against or affecting the Corporation, at law or in equity or before or by any court or federal, provincial, municipal or other government department, board or agency, domestic or foreign, including without limitation the Commissions, the Exchange, or any other securities commission, stock exchange or similar regulatory authority, which in any way materially adversely affects the Corporation, or the condition (financial or other) of the Corporation or which questions the validity of the issuance, as fully paid and non-assessable, of the Offered Shares or any action taken or to be taken by the Corporation pursuant to or in connection with this Agreement.
- (i) There are no judgments against the Corporation which are unsatisfied, nor are there any consent decrees or injunctions to which the Corporation is subject.
- (j) The Corporation is not in default or breach of, and the execution and delivery of this Agreement, and all other material contracts (as disclosed in the Prospectus), the performance and compliance with the terms of this Agreement and all other material contracts, the sale of the Offered Shares by the Corporation and the issuance of the Agent's Option by the Corporation does not and will not result in any breach of, or be in conflict with or constitute a default under, or create a state of facts which after notice or lapse of time, or both, would constitute a default under any term or provision of the constating documents, or resolutions of the directors or shareholders of the Corporation, or any mortgage, note, indenture, contract, agreement (written or oral), instrument, lease or other document to which the Corporation is a party, any judgment, decree, order, statute, rule or regulation applicable to the Corporation and any term or provision or condition (financial or otherwise) applicable to the Corporation.
- (k) There is no person, firm or corporation entitled to any brokerage or finder's fee in connection with this Agreement or any of the transactions contemplated hereunder,

except as provided herein and as referred to in the Prospectus and, to the knowledge of the Corporation, there is no person, firm or corporation purporting to act for the Corporation whereby such person, firm or corporation would be entitled to any brokerage or finder's fee in connection with this Agreement or any of the transactions contemplated hereunder.

- (l) Except as disclosed in the Prospectus, to the knowledge of the Corporation, none of the directors or senior officers of the Corporation, any holder of more than ten (10%) percent of its outstanding Common Shares, any Promoters of the Corporation, or any Associates or Affiliates of any of the foregoing persons or companies (as "Promoters", "Associates" or "Affiliates" are defined in the Securities Legislation) has had any material interest, direct or indirect, in any material transaction of the Corporation since incorporation of the Corporation, has any material interest, direct or indirect, in any material transaction which, as the case may be, materially affects, is material to or will materially affect the Corporation, except as stated in the Prospectus, in which are fully set forth all relevant particulars required by the Securities Legislation.
- (m) This Agreement has been duly authorized, executed and delivered on behalf of the Corporation and is a valid and binding obligation of the Corporation enforceable in accordance with its terms.
- (n) Upon issuance of the Offered Shares pursuant to the terms of this Agreement, the Offered Shares shall have been duly allotted and will be outstanding as fully paid and non-assessable Common Shares.
- (o) The Transfer Agent, at its principal office in the City of Toronto, has been appointed transfer agent and registrar for the Common Shares.
- (p) The Corporation has not, directly or indirectly, declared or paid any dividends or declared or made any other distribution on any of its Common Shares or any other shares of any class since incorporation.
- (q) Application has been made to list the outstanding Common Shares of the Corporation, including without limitation the Offered Shares, and the Common Shares issuable upon exercise of the Incentive Stock Options and Agent's Option on the Exchange and conditional approval of such application has been or will be obtained from the Exchange.
- (r) The net proceeds received by the Corporation from the sale of the Offered Shares and any Common Shares sold prior to the date of the Prospectus will be applied for the specific purposes more particularly set forth under "Use of Proceeds" in the Prospectus and management of the Corporation has advised the Corporation's directors and officers of the requirements and restriction on the use of the net proceeds set out in section 8 of the CPC Policy.
- (s) The Corporation has not made and will not make any payments which are prohibited by the CPC Policy.
- (t) The Corporation has not reached an Agreement in Principle and the board of directors of the Corporation has not reached a "meeting of minds" with the other parties to a Qualifying Transaction on the fundamental terms of a Qualifying Transaction in respect



of which no material conditions exist the satisfaction of which is outside the control of the Corporation.

- (u) All statements, facts, data, information and materials provided from time to time by the Corporation in writing to the Agent relating to the Corporation, the directors and officers of the Corporation or, if applicable, the Corporation's potential Qualifying Transaction (as that term is defined in the CPC Policy) are true and correct and all Material Facts relating to the subject matter have been fully disclosed to the Agent and such statements, facts, data, information and materials did not and do not contain a Misrepresentation.
- (v) Management of the Corporation has advised the directors and officers of the Corporation about:
  - (i) the nature and scope of their responsibilities and duties as directors and officers, respectively, of a public corporation listed on the Exchange, including, without limitation, the matters set out in Policy 3.1 of the Exchange's Corporate Finance Manual; and
  - (ii) the obligations of the Corporation to prepare, file, publish and disseminate, as applicable, such information and documentation as may be required by the Securities Legislation, including, without limitation, Policies 3.2 and 3.3 of the Exchange's Corporate Finance Manual.
- (w) The Corporation is not a party to a material contract which is not disclosed in the Prospectus and the material contracts disclosed in the Prospectus constitute valid and binding obligations of the parties thereto, enforceable against each of such parties in accordance with their respective terms except as enforcement may be limited by general principles of equity, applicable bankruptcy, insolvency, preference and reorganization laws and other laws generally affecting the enforcement of creditors' rights and the availability of discretionary judicial remedies.
- (x) The Corporation has complied and will comply fully with the requirements of all applicable corporate and securities laws, including, without limitation, the Securities Legislation and its regulations and the *Business Corporations Act* (Ontario) in relation to the issue and trading of its securities and in all matters relating to the offering of the Offered Shares under the Prospectus.
- (y) The Corporation has not received a notice of non-compliance, nor knows of, nor has reasonable grounds to know of, any facts that could give rise to a notice of non-compliance with any applicable laws, regulations and statutes.
- (z) The auditors of the Corporation who audited the financial statements of the Corporation contained in the Prospectus and who provided their audit report thereon have represented to the Corporation that they are independent public accountants as required under Securities Legislation and there has never been a reportable event (within the meaning of National Instrument 51-102) with the present auditors of the Corporation.
- (aa) The financial statements of the Corporation in the Prospectus have been approved by the directors of the Corporation.

- (bb) There has been no adverse Material Change in the assets, financial position or business of the Corporation since March 31, 2013, and the Corporation has not entered into a transaction of a nature material to the Corporation since March 31, 2013, which is not disclosed in the Prospectus or the financial statements of the Corporation contained in the Prospectus.
- (cc) No event has occurred which would require the Prospectus to be amended which has not been so set forth.
- (dd) The Agent's Option will be validly created, authorized and delivered and the Common Shares issued upon the exercise of the Agent's Option will be validly authorized, allotted and reserved for issuance upon the exercise of the Agent's Option and the Common Shares issued upon the exercise of the Agent's Option will, when issued, be issued as fully paid and non-assessable Common Shares and will be issued free and clear of all liens, charges or encumbrances of any kind whatsoever.
- (ee) The Corporation's directors and officers, as disclosed in the Prospectus, have been duly elected or appointed and hold the offices indicated in the Prospectus.
- (ff) As at the date hereof, the minute books of the Corporation are true, complete and correct and contain the minutes of all meetings and all resolutions of the directors and shareholders thereof.
- (gg) The Corporation is not a "connected issuer" or a "related issuer" of the Agent within the meaning of National Instrument 33-105 – *Underwriting Conflicts* or a related party of the Agent within the meaning of Multilateral Instrument 61-101 – *Take-Over Bids and Special Transactions*.
- (hh) No order ceasing, halting or suspending trading in securities of the Corporation nor prohibiting the sale of such securities has been issued to and is outstanding against the Corporation or its directors, officers or promoters or against any other companies that have common directors, officers or promoters and no investigations or proceedings for such purposes are pending or threatened.

## **ARTICLE 7**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE AGENT**

- 7.1 The Agent hereby covenants, represents and warrants to the Corporation and acknowledges that the Corporation is relying thereon, that:
- (a) The Agent has been duly incorporated and organized and is valid and subsisting and in good standing under the laws of its jurisdiction of incorporation and has all the requisite corporate power and capacity to carry on its business as now conducted.
  - (b) The Agent is an investment dealer in each jurisdiction in which the Offered Shares will be offered to purchasers pursuant to the Preliminary Prospectus and Prospectus.
  - (c) The Agent is a Member in good standing of the Exchange.

- (d) This Agreement has been authorized by all necessary corporate action on the part of the Agent and is a valid and binding obligation of the Agent enforceable in accordance with its terms.
- (e) The Corporation is not a "connected issuer" or a "related issuer" of the Agent within the meaning of National Instrument 33-105 – *Underwriting Conflicts* or a related party of the Agent within the meaning of Multilateral Instrument 61-101 – *Take-Over Bids and Special Transactions*.
- (f) The Agent will conduct activities in connection with arranging for the sale and distribution of the Offered Shares in compliance with the Securities Legislations and the provisions of this Agreement.
- (g) The Agent will notify the Corporation when, in its opinion, the distribution of the Offered Shares shall have ceased and provide the Corporation the distribution numbers for each jurisdiction where such breakdown is required for the purpose of calculating fees payable to the Commissions.
- (h) The Agent will not make use of any "greensheet" in respect of the Corporation and the offering of the Offered Shares without the prior approval of the Corporation.
- (i) The Agent will not make any representation or warranty with respect to the Corporation other than as set forth in this Agreement and the Prospectus without the prior approval of the Corporation.
- (j) The Agent has good and sufficient rights to enter into this Agreement and to complete the transactions contemplated under this Agreement.
- (k) The Agent has complied with and will fully comply with the requirements of the Securities Legislation and the applicable policies of the Exchange, in relation to the offering of the Offered Shares and all matters relating to the Prospectus.

**ARTICLE 8**  
**COVENANTS OF THE CORPORATION AND CONDITIONS OF CLOSING**

8.1 The Corporation covenants and agrees with the Agent and undertakes that:

- (a) Prior to the Closing Date, the Corporation shall allow the Agent to conduct all due diligence which the Agent may reasonably require to confirm that the Preliminary Prospectus and Prospectus comply with the requirements of the Securities Legislation and do not contain a Misrepresentation, and to fulfil the Agent's obligations as agent.
- (b) Now and at all times subsequent hereto during the distribution of the Offered Shares to the public or such longer period of time, if any, while the Prospectus continues to be current, the Prospectus and any amendments thereto does and will fully comply with the requirements of the Securities Legislation. The Prospectus together with any amendments thereto does and will during such period provide full, true and plain disclosure of all Material Facts relating to the Corporation, to the Offered Shares and the Agent's Option and to the distribution of the Offered Shares to the public and of the Agent's Option to the Agent and any members of its selling group, and does not and will not during such period contain a Misrepresentation; provided that the foregoing covenants of the Corporation do

not and shall not apply with respect to statements contained in the Prospectus relating solely to the Agent.

- (c) The Corporation shall promptly inform the Agent in writing during the period of the distribution of the Offered Shares to the public or such longer period of time, if any, during which the Prospectus continues to be current, of full particulars of any Material Change or change in a Material Fact, whether actual, anticipated or threatened, including but not limited to:
  - (i) a change in any Material Fact contained or referred to in the Prospectus, or any amendment thereto, which is, or may be, of such a nature as to make any such fact untrue, false or misleading at the time and in light of the circumstances under which it was made;
  - (ii) a change in any statements, facts, data, personal information form or materials provided to the Agent with respect to the directors and officers of the Corporation or, if applicable, the Corporation's potential Qualifying Transaction (as that term is defined in the CPC Policy); or
  - (iii) a change in any of the representations and warranties contained in Article 6 of this Agreement.

The Corporation shall file under the Securities Legislation, as soon as reasonably possible, and in any event within any statutory limitation therefor, such new or correcting information, amendments and other documents as the Securities Legislation may require. The Corporation shall further provide the Agent with such copies of such information, amendments or other documents as the Agent may reasonably require.

- (d) During the period of distribution to the public of the Offered Shares or such longer period of time, if any, while the Prospectus continues to be current, the Corporation will advise the Agent promptly of any request of the Commissions or Exchange for amendment of the Prospectus or for any additional information, of the issuance by the Commissions, Exchange or any other securities commission, stock exchange or similar regulatory authority, of any cease trading order, halt order or similar order relating to the Common Shares or Offered Shares or the use of the Prospectus, or of the institution or threat of institution of any proceedings for that purpose or of the receipt by the Corporation of any communication from the Commissions, Exchange or any other securities commission, stock exchange or similar regulatory authority relating to the Prospectus or the offering of the Offered Shares. The Corporation will use its commercially reasonable efforts to prevent the issuance of any such cease trading order or halt order and, if issued, to obtain the withdrawal thereof as soon as possible.
- (e) The Corporation will deliver, from time to time without charge, to the Agent as many copies of the Prospectus (and in the event of an amendment thereto, of such amended Prospectus) as the Agent may reasonably request for the purposes contemplated hereunder and by the Securities Legislation and such delivery shall constitute the consent of the Corporation to the use thereof in connection with offering the Offered Shares to the public, subject to the provisions of the Securities Legislation relating thereto.
- (f) Delivery of the Preliminary Prospectus and the Prospectus and any supplementary material shall constitute a representation and warranty by the Corporation to the Agent

that all information and statements (except information and statements relating solely to or provided solely by the Agent) contained in the Preliminary Prospectus and the Prospectus and supplementary material are true and correct in all material respects at the time of delivery thereof and contain no Misrepresentation and constitute full, true and plain disclosure of all Material Facts relating to the Corporation and that no Material Fact has been omitted therefrom (except facts relating solely to the Agent) which is required to be stated therein or is necessary to make the statements or information contained therein not misleading in light of the circumstances under which they were made.

- (g) On or before the Closing Date, the Corporation shall take or cause to be taken all steps and proceedings (including but not limited to the filing of the Prospectus and the obtaining of a receipt for the Prospectus from the Commissions under the Securities Legislation), necessary in order to qualify for distribution the Offered Shares for sale to Subscribers resident in Alberta, Ontario and British Columbia through the Agent and any sub-agents retained pursuant to Section 2.2 hereof, and to qualify for distribution the Agent's Option and the Incentive Stock Options.
- (h) The Corporation shall deliver to the Agent at the Closing, an opinion to the Agent from counsel of the Corporation, in form and substance satisfactory to the Agent, with respect to such matters as the Agent may reasonably request.
- (i) The Corporation shall deliver to the Agent at the Closing a certificate signed by the Chief Executive Officer and the Chief Financial Officer of the Corporation, or such other director(s) or officer(s) of the Corporation as the Agent may accept, dated as of such date addressed to the Agent to the effect that:
  - (i) the representations and warranties of the Corporation contained in this Agreement are true and correct as at the Closing Date with the same force and effect as if made at and as at the Closing Date after giving effect to the transactions contemplated hereby;
  - (ii) the Corporation has duly complied with all covenants and satisfied all the conditions herein on its part to be performed or satisfied;
  - (iii) no order suspending the sale or ceasing the trading of the Common Shares or any other securities of the Corporation has been issued and no proceedings for that purpose have been instituted or are pending or are, to the knowledge of such officer, contemplated or threatened by the Commissions, Exchange, or any other securities commission, stock exchange and similar regulatory authority; and
  - (iv) such officers have carefully examined the Prospectus, and since the respective dates as of which information is given in the Prospectus, except as set forth in and contemplated thereby, the Corporation has not incurred any material liabilities or obligations (absolute, accrued, contingent or otherwise), or entered into any transaction not in compliance with the CPC Policy; there has been no Material Change in the assets, financial position, business or results of operations of the Corporation; and, to the best of the knowledge and information of such officers, there has occurred no event and no state or fact exists that, under Securities Legislation, is required to be set forth in an amended Prospectus that has not been so set forth.

- (j) The Corporation shall deliver to the Agent at the Closing such other documents and certificates that the Agent may reasonably require.
- (k) As soon as possible after the Closing, the Corporation shall take all necessary steps to complete and file with the Exchange its application for listing with all other documentation required by the Exchange, to allow for the listing and posting for trading of the Common Shares on the Exchange.
- (l) It is understood that the Agent may waive, in whole or in part, non-compliance with any of the conditions or other matters contained herein or extend the time for compliance therewith without prejudice to its rights in respect of any other condition or conditions or any other subsequent breach or non-compliance, provided that any such waiver or extension shall be binding upon the Agent only if it is in writing.
- (m) The Closing shall occur at the Time of Closing on the Closing Date at the Toronto offices of the Corporation's counsel, or such other location as may be agreed to between the Corporation and the Agent.
- (n) Without limiting the generality of any other provision of this Agreement, the Closing is subject to the following conditions precedent:
  - (i) the Corporation shall have received conditional listing approval for the Common Shares from the Exchange; and
  - (ii) the Agent shall have received all closing documents contemplated by this Article 8.
- (o) The Corporation agrees that, from the date hereof and ending on the Closing Date, the Corporation will not offer, or announce the offering of, or make or announce any agreement to issue, sell, or exchange Common Shares or securities convertible or exchangeable into Common Shares without the prior written consent of the Agent

#### **ARTICLE 9** **EXPENSES**

- 9.1 All costs and expenses of or incidental to the transaction herein contemplated and the issue and sale of the Offered Shares hereunder, whether or not the offering of the Offered Shares is completed, are to be assumed and paid by the Corporation, including without limiting the generality of the foregoing, the engraving or lithographing of the definitive certificates representing the Offered Shares, the fees and expenses payable to the Exchange and the Commissions, the fees and disbursements of qualifying the offering of the Offered Shares for sale to the public under the Securities Legislation, the preparation and printing of the Preliminary Prospectus and the Prospectus, and the fees, charges and expenses of the counsel and auditors of the Corporation.

#### **ARTICLE 10** **INDEMNIFICATION OF AGENT**

- 10.1 The Corporation agrees to indemnify and save harmless the Agent, its respective affiliates and their respective directors, officers, employees, partners, agents, advisors and shareholders (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**") from and

against any and all losses, claims, actions, suits, proceedings, damages, liabilities or expenses of whatsoever nature or kind (excluding loss of profits), including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees, disbursements and taxes of their counsel in connection with any action (including any shareholder action, derivative or otherwise), suit, proceeding, investigation or claim that may be made or threatened against any Indemnified Party or in enforcing this indemnity (collectively, the "**Claims**") to which an Indemnified Party may become subject or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise out of or are based upon, directly or indirectly, the engagement of the Agent pursuant to this Agreement whether performed before or after the Corporation's execution of this Agreement and to reimburse each Indemnified Party forthwith, upon demand, for any legal or other expenses reasonably incurred by such Indemnified Party in connection with any Claim.

- 10.2 The Corporation also agrees that no Indemnified Party will have any liability (either direct or indirect, in contract or tort or otherwise) to the Corporation or any person asserting claims on the Corporation's behalf or in right for or in connection with this Agreement, except to the extent that any losses, expenses, claims, actions, damages or liabilities incurred by the Corporation are determined by a court of competent jurisdiction in a final judgement that has become non-appealable to have resulted from the negligence or wilful misconduct of such Indemnified Party.
- 10.3 In the event and to the extent that a court of competent jurisdiction in a final judgement that has become non-appealable determines that an Indemnified Party was negligent or guilty of wilful misconduct in connection with a Claim in respect of which the Corporation has advanced funds to the Indemnified Party pursuant to this indemnity, such Indemnified Party will reimburse such funds to the Corporation and thereafter this indemnity will not apply to such Indemnified Party in respect of such Claim. The Corporation agrees to waive any right the Corporation might have of first requiring the Indemnified Party to proceed against or enforce any other right, power, remedy or security or claim payment from any other person before claiming under this indemnity.
- 10.4 In case any action, suit, proceeding or claim is brought against an Indemnified Party or an Indemnified Party has received notice of the commencement of any investigation in respect of which indemnity may be sought against the Corporation, the Indemnified Party will give the Corporation prompt written notice of any such action, suit, proceeding, claim or investigation of which the Indemnified Party has knowledge and the Corporation will undertake the investigation and defence thereof on behalf of the Indemnified Party, including the prompt employment of counsel acceptable to the Indemnified Parties affected and the payment of all expenses. Failure by the Indemnified Party to so notify will not relieve the Corporation of its obligation of indemnification hereunder unless (and only to the extent that) such failure results in forfeiture by the Corporation of substantive rights or defences.
- 10.5 No admission of liability and no settlement, compromise or termination of any action, suit, proceeding, claim, or investigation will be made without the Corporation's consent and the consent of the Indemnified Parties affected, such consents not to be unreasonably withheld. Notwithstanding that the Corporation will undertake the investigation and defence of any Claim, an Indemnified Party will have the right to employ separate counsel with respect to any Claim and participate in the defence thereof, but the fees and expenses of such counsel will be at the expense of the Indemnified Party unless:
  - (a) employment of such counsel has been authorized in writing by the Corporation;

- (b) the Corporation has not assumed the defence of the action within a reasonable period of time after receiving notice of the claim;
- (c) the named parties to any such claim include both the Corporation and the Indemnified Party and the Indemnified Party will have been advised by counsel to the Indemnified Party that there may be a conflict of interest between the Corporation and the Indemnified Party; or
- (d) there are one or more defences available to the Indemnified Party which are different from or in addition to those available to the Corporation;

in which case such fees and expenses of such counsel to the Indemnified Party will be for the Corporation's account. The rights accorded to the Indemnified Parties hereunder will be in addition to any rights an Indemnified Party may have at common law or otherwise.

- 10.6 If for any reason the foregoing indemnification is unavailable (other than in accordance with the terms hereof) to the Indemnified Parties (or any of them) or is insufficient to hold them harmless, the Corporation will contribute to the amount paid or payable by the Indemnified Parties as a result of such Claims in such proportion as is appropriate to reflect not only the relative benefits received by the Corporation or the Corporation's shareholders on the one hand and the Indemnified Parties on the other, but also the relative fault of the parties and other equitable considerations which may be relevant. Notwithstanding the foregoing, the Corporation will in any event contribute to the amount paid or payable by the Indemnified Parties as a result of such Claim any amount in excess of the fees actually received by the Indemnified Parties hereunder.
- 10.7 The Corporation hereby constitutes the Agent as trustee for each of the other Indemnified Parties of the Corporation's covenants under this indemnity with respect to such persons and the Agent agrees to accept such trust and to hold and enforce such covenants on behalf of such persons.
- 10.8 The Corporation agrees to reimburse the Agent monthly for the time spent by the Agent's personnel in connection with any Claim at their normal per diem rates. The Corporation also agrees that if any action, suit, proceeding or claim will be brought against, or an investigation commenced in respect of the Corporation or the Corporation and the Agent and personnel of the Agent will be required to testify, participate or respond in respect of or in connection with this Agreement, the Agent will have the right to employ its own counsel in connection therewith and the Corporation will reimburse the Agent monthly for the time spent by its personnel in connection therewith at their normal per diem rates together with such disbursements and reasonable out-of-pocket expenses as may be incurred, including fees and disbursements of the Agent's counsel.

## **ARTICLE 11** **TERMINATION**

- 11.1 The obligations of the Agent contained in this Agreement may be terminated by the Agent in the event that prior to the Time of Closing:
- (a) any order operating to restrict, prevent or cease trading, including communicating with persons to obtain expressions of interest, in the Common Shares is made pursuant to the Securities Legislation;
  - (b) the Corporation is in breach of any material term of this Agreement;



- (c) the Agent determines that any of the material representations or warranties made by the Corporation in this Agreement are false or have become false;
  - (d) any material adverse change, in the sole opinion of the Agent, acting reasonably, occurs in or to the state of the financial markets generally, or there shall occur any changes (actual, anticipated, contemplated or threatened) in the assets, liabilities, business or operations of the Corporation which, in the sole opinion of the Agent, could reasonably be expected to have a material adverse effect on the market price or value of the Common Shares of the Corporation or materially adversely affects or may materially adversely affect the marketability of the Common Shares of the Corporation;
  - (e) any inquiry, investigation or other proceeding (whether formal or informal) in relation to the Corporation, its affairs, records or accounts or any of its directors or officers is commenced, announced or threatened, or any order is issued by a federal, provincial or other government authority or by any stock exchange, or there is any change of law which, in the sole opinion of the Agent, operates or will operate to prevent or to restrict the trading of the Common Shares or the distribution of any Common Shares or materially adversely affects or may materially adversely affect the marketability of the Common Shares;
  - (f) if there should develop, occur or come into effect or existence any event, action, state, condition or financial occurrence of consequence or any governmental action, law, regulation, inquiry or other occurrence of any nature whatsoever which, in the sole opinion of the Agent, materially adversely affects or involves, the financial markets generally or the business, operations, affairs or financial condition of the Corporation, and the Agent determines, in its sole discretion, that it is not in the interest of purchasers to complete the purchase and sale of the Common Shares;
  - (g) any new or amended Prospectus discloses information which, in the sole opinion of the Agent results in the Subscribers of a material number of the Common Shares exercising their rights under the Securities Legislation to withdraw from or rescind their purchase thereof at any time prior to the Closing;
  - (h) the Agent is advised that the Exchange will not approve the listing of the Common Shares; or
  - (i) the Agent is not satisfied, acting reasonably, with results of its due diligence investigations.
- 11.2 This Agreement will terminate if a receipt for the Prospectus is not issued by the Principal Regulator (as defined in Securities Legislation) within 120 days of the reference date of this Agreement.
- 11.3 Any termination of any of the obligations of the Agent hereunder pursuant to the provisions hereof shall be effected by notice to the Corporation. Notwithstanding the giving of any notice of termination hereunder, the provisions of Article 10 and Section 2.5 and all rights of action in connection therewith shall survive following such termination and the fees and expenses agreed to be paid by the Corporation, incurred up to the time of the giving of such notice shall be paid by the Corporation. The rights of the Agent to terminate this Agreement are in addition to such remedies as it may have in respect of any default, misrepresentation, act or failure to act of the Corporation in respect of any of the transactions contemplated in this Agreement.

**ARTICLE 12**  
**RIGHT OF FIRST REFUSAL**

- 12.1 The Corporation hereby grants to the Agent the right of first refusal to act as fiscal advisor and lead agent or lead underwriter (including without limitation, acting as lead manager) in any transaction, whether debt or equity, required by the Corporation involving an agent or underwriter of a public or private offering, including without limitation, issuance or sale of any securities of the Corporation, including without limitation, an initial public offering, private placements, secured, unsecured, mezzanine or subordinated debt financing or otherwise, for a period of 24 months following the Closing Date.
- 12.2 The Corporation shall provide to the Agent prior notice in writing of the terms of any financial services that the Corporation requires or proposes to obtain, including the terms on which such financial services are to be provided and compensated, and shall provide the Agent the right to provide such financial services. The right of first refusal must be exercised by the Agent within five (5) business days following receipt of such notice by notifying the Corporation that it will agree to provide such financial services on the terms set out in the notice. Should the Agent fail to give notice within five (5) business days of the receipt of the Corporation's notice, the Corporation may then make other arrangements to engage another source to obtain financial services on terms no less favourable to the Corporation for a period of 30 days thereafter. The Agent's waiver of its right in respect of any one or more transactions will not constitute a waiver of its right of first refusal in respect of any other transaction. If another source is not engaged in connection with a transaction where the Agent waives or is deemed to have waived its right of first refusal within 30 days following the date on which the five (5) business day period set forth above expires, the transaction shall be deemed to be a new transaction requiring the Corporation to give written notice to the Agent as set forth above.

**ARTICLE 13**  
**ALTERNATIVE TRANSACTION**

- 13.1 Until the completion of the Offering or termination of this Agreement, the Corporation agrees not to sell or negotiate or enter into an arrangement to sell all or substantially all of the assets of the Corporation or enter into a merger, amalgamation, arrangement, reorganization, take-over bid or other business combination transaction with a third party or any other similar transaction, which transaction does not provide for the completion of the Offering (an "**Alternative Transaction**"). In the event that the Corporation enters into an agreement or makes a public announcement with respect to an Alternative Transaction prior to completion of the Offering, the Company agrees to engage the Agent, on mutually agreeable terms, as its exclusive advisor with respect to the Alternative Transaction.

**ARTICLE 14**  
**CONFIDENTIALITY**

- 14.1 The Agent covenants and agrees that it shall and shall cause its employees, agents and representatives to hold all confidential information pertaining to the Corporation received in the course of this retainer on a strictly confidential basis and to only use such information in connection with this Agreement and for no other purpose or reason. The Agent also covenants and agrees that it shall not disclose any confidential information to any third party without the prior written consent of the Corporation, other than to Agent's counsel and to applicable regulatory authorities pursuant to applicable Securities Legislation or pursuant to the rules and policies of the Exchange. For the purposes of this covenant, the term "confidential information"

shall exclude: (i) information that is in the public domain other than as a result of the breach of this Agreement; (ii) information that becomes available to the Agent other than under this Agreement; and (iii) information which the Agent may be required to disclose by law or in connection with legal process or regulatory proceedings.

**ARTICLE 15**  
**NOTICE**

15.1 Any notice under this Agreement shall be given in writing and either sent by electronic format, delivered or mailed by prepaid post to the party to receive such notice at the address indicated below, or at such other address as any party may hereafter designate by notice in writing to each of the others:

to the Corporation at:	1 Adelaide Street East, Suite 801 Toronto, Ontario, M5C 2V9 Attention: Thomas Sears Email: <a href="mailto:tsears@dominick.ca">tsears@dominick.ca</a>
with a copy to:	Garfinkle Biderman LLP Dundee Place 1 Adelaide Street East, Suite 801 Toronto, Ontario M5C 2V9 Attention: Robbie Grossman Facsimile: (416) 869-0547 Email: <a href="mailto:rgrossman@garfinkle.com">rgrossman@garfinkle.com</a>
to the Agent at:	141 Adelaide Street West, Suite 1800 Toronto, Ontario M5M 3L5 Attention: Taras Krutous Facsimile: (416) 862-8642 Email: <a href="mailto:tkrutous@hamptonsecurities.com">tkrutous@hamptonsecurities.com</a>
with a copy to:	Fogler Rubinoff LLP Toronto-Dominion Centre 77 King Street West, Suite 3000 TD Centre, PO Box 95 Toronto, Ontario M5K 1G8 Attention: Judith Hong Wilkin Facsimile: (416) 941-8852 Email: <a href="mailto:jwilkin@foglers.com">jwilkin@foglers.com</a>

If such notice is sent by electronic format or is delivered, it shall be deemed to have been given at the time of receipt of the electronic format or delivery; if such notice is sent by mail, it shall be deemed to have been received five (5) business days following the date of mailing thereof. In the event of a strike or other disruption in postal service at or prior to the time a notice is deemed to have been received, such notice shall be delivered or sent by facsimile.

**ARTICLE 16**  
**ELECTION**

- 16.1 The Corporation covenants and agrees to file a public corporation election (the "**Election**") as contemplated under the section entitled "Eligibility for Investment" in the Prospectus.
- 16.2 If the Corporation does not file the Election in the manner contemplated in the Prospectus, the Corporation agrees to indemnify the Agent for any and all expenses, losses, fees, claims, actions, damages, obligations and liabilities, including the reasonable fees and expenses of its counsel, the Agent incurs in connection with the Corporation's failure to file the Election, including but not restricted to any claims against the Agent in relation to penalties assessed by the Canada Revenue Agency against Subscribers.

**ARTICLE 17**  
**PRESS RELEASES**

- 17.1 Neither the Corporation nor the Agent shall make any public announcement in connection with the offering under the Prospectus, except if the other party has consented to such announcement or the announcement is required by Securities Legislation or the policies of the Exchange. In such event, the party proposing to make the announcement will provide the other party and its solicitors with a reasonable opportunity, in the circumstances, to review a draft of the proposed announcement and to provide comments thereon.

**ARTICLE 18**  
**MISCELLANEOUS**

- 18.1 Time shall be of the essence of this Agreement.
- 18.2 All warranties, representations, covenants and agreements of the Corporation herein contained or contained in certificates or documents submitted pursuant to or in connection with the transaction provided for herein shall continue in full force and effect for the benefit of the Agent regardless of any investigation by or on behalf of the Agent with respect thereto.
- 18.3 This Agreement shall be construed and enforced in accordance with and the rights of the parties hereto shall be governed by the laws of the Province of Ontario. Each of the parties hereto irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.
- 18.4 This Agreement supersedes all other agreements, documents, letters, writings and oral understandings among the parties relating to the subject matter hereof, including without limitation the Engagement Letter, and represents the entire agreement between the parties with respect to the subject matter hereof.
- 18.5 If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.
- 18.6 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts together shall constitute one and the same agreement. The parties hereto shall be entitled to rely on delivery of a facsimile or PDF copy of the executed counterpart.

- 18.7 All the terms and provisions of this Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto, their respective successors and assigns, but shall not be assignable without the prior written consent of the other parties hereto.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement, the day and year first above written.

**MERCURY CAPITAL II LIMITED**

Per: signed "Thomas Sears"  
"Authorized Signing Officer"  
I have authority to bind the corporation.

**HAMPTON SECURITIES LIMITED**

Per: signed "Mark George"  
"Authorized Signing Officer"  
I have authority to bind the corporation.