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**SUPPORT AGREEMENT**

**KOOTENAY ZINC CORP.**

**- and -**

**LIFTED INNOVATIONS INC.**

Dated as of June 23, 2020

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## SUPPORT AGREEMENT

**THIS SUPPORT AGREEMENT** made the 23<sup>rd</sup> day of June, 2020 (the “**Agreement**”).

BETWEEN:

**KOOTENAY ZINC CORP.,**

a corporation incorporated pursuant to the *Business Corporations Act* (British Columbia)

(“**Kootenay**”)

- and -

**LIFTED INNOVATIONS INC.**

a corporation incorporated pursuant to the *Canada Business Corporations Act*,

(the “**Company**”)

**RECITALS:**

- A. Kootenay and the Company, along with Canndora Delivery Ltd. (“**Canndora**”) and Greeny Collaboration Group (Canada) Inc. (“**Greeny**”) have executed a binding letter agreement dated May 18, 2020, as amended, pursuant to which Kootenay, Greeny, Canndora and the Company have agreed to complete a business combination (the “**Business Combination**”), resulting in a reverse takeover and change of business of Kootenay (to be renamed PeakBirch Logic Inc. upon closing of the Business Combination);
- B. In connection and in conjunction with the closing of the Business Combination, Kootenay will complete a 23:1 share consolidation (the “**Consolidation**”) to reduce the number of Kootenay Shares issued and outstanding from 14,964,324 pre-consolidated common shares to 650,623 post-consolidated Kootenay Shares (which post-consolidated Kootenay Shares are referred to herein as “**PeakBirch Shares**”);
- C. Kootenay wishes to make an offer by way of take-over bid to: (i) the shareholders of the Company to purchase all of the outstanding common shares of the Company (the “**Common Shares**”) in exchange for PeakBirch Shares, and (ii) the Optionholders to purchase all of the outstanding but unexercised stock options of the Company (the “**Company Options**”) in exchange for stock options of Peakbirch (the “**PeakBirch Options**”) and
- D. The Board of Directors of the Company wishes to support and facilitate the offer on the terms set out in this Agreement and has concluded that it is in the best interests of the Company to enter into this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the covenants and agreements herein contained and other good and valuable consideration (the

receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

“**affiliate**” has the meaning ascribed thereto in the CBCA;

“**Agreement**” or “**Support Agreement**” means this support agreement dated June 23, 2020 entered into between Kootenay and the Company;

“**Appropriate Regulatory Approvals**” means those sanctions, rulings, consents, orders, exemptions, permits and other approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of Governmental Entities required in connection with the commencement of the Offer or the consummation of the Offer;

“**BCBCA**” means the *Business Corporations Act*, S.B.C. 2002, c 57, as amended;

“**Benefit Plans**” means any pension or retirement income plans or other employee compensation or benefit plans, agreements, policies, programs, arrangements or practices, whether written or oral;

“**Board of Directors**” means the board of directors of the Company;

“**Business Combination**” has the meaning specified in the Recitals to this Agreement;

“**business day**” means any day of the week, other than a Saturday, a Sunday or a statutory or civic holiday observed in Vancouver, British Columbia;

“**Canndora**” has the meaning specified in the Recitals to this Agreement;

“**CBCA**” means the *Canada Business Corporations Act*, R.S.C. 1995, c. C-44, as amended;

“**Common Shares**” has the meaning specified in the Recitals to this Agreement;

“**Company**” has the meaning specified in the Recitals to this Agreement;

“**Company Convertible Debt**” means the promissory notes issued by the Company in the aggregate amount of \$[Redacted] convertible to Common Shares at the option of the holder, as disclosed in the Company Information;

**“Company Financial Statements”** means the audited financial statements of the Company for the year ended October 31, 2019 and unaudited interim financial statements of the Company for the six months ended April 30, 2020;

**“Company Information”** means the documents of the Company and its Subsidiaries made available to Kootenay or Kootenay’s representatives posted as of 11:59 p.m. on June 22, 2020 to the Project PeakBirch due diligence website hosted by Firmex;

**“Company Intellectual Property”** means all of the Intellectual Property that is material to the business of the Company as currently conducted;

**“Company Material Adverse Effect”** means any change, effect, event, occurrence or state of facts that is, or would reasonably be expected to be, material and adverse to the assets, business, operations or financial condition (including cash resources) of the Company and its Subsidiaries taken as a whole other than any change, effect, event, occurrence or state of facts relating to (a) general, political, financial or economic conditions or the state of the securities or capital markets in general, including without limitation any reduction in major market indices (which shall include, directly or indirectly, the effects of COVID-19); or (b) any change, effect, occurrence or state of facts arising in the ordinary course of business;

**“Company Options”** means options to purchase Common Shares granted pursuant to agreements between the Company and the Optionholders;

**“Company Convertible Debt”** means the promissory notes issued by the Company in the aggregate amount of \$[Redacted] convertible to Common Shares at the option of the holder, as disclosed in the Company Information;

**“Consolidation”** has the meaning specified in the Recitals to this Agreement;

**“Deposit Period News Release”** means a news release prepared and disseminated by the Company as specified in National Instrument 62-104 – *Take-Over Bids and Issuer Bids*;

**“Depositary”** means any trust company, bank or other financial institution agreed to in writing by each of the Parties for the purpose of, among other things, accepting tenders of Common Shares and exchanging certificates representing Common Shares for the Offered Consideration in connection with the Offer;

**“Deposited Shares”** means all of the Common Shares and Company Options validly deposited by a Shareholder or Optionholder under the Offer and not withdrawn as at the Expiry Time;

**“Directors’ Circular”** has the meaning ascribed thereto in Subsection 2.1(g);

**“Effective Date”** means the date on which Kootenay first pays for the Deposited Shares;

**“Environmental Laws”** means all applicable Laws, including applicable common laws, relating to the protection of human health and safety or the environment, or relating to hazardous or toxic substances or wastes, pollutants or contaminants;

**“Expiry Date”** means the 35<sup>th</sup> day after the date that the Offer is commenced within the meaning of the Securities Act, or any subsequent date set out in any notice of Kootenay extending the period during which Common Shares may be deposited under the Offer or as otherwise provided under the Agreement, which for greater certainty such date shall not be earlier than, if applicable, the last day of the mandatory 10-day extension period (as such term is defined in National Instrument 62-104 – *Take-Over Bids and Issuer Bids*), provided that, if such day is not a business day, then the Expiry Date shall be the next business day;

**“Expiry Time”** means 12:01 a.m. on the Expiry Date;

**“Financing”** means the proposed unit financing of Kootenay of a minimum of \$500,000 and up to \$1,500,000 at a price per unit of \$1.15, with each unit consisting of 1 PeakBirch Share, and 1 common share purchase warrant, entitling the holder thereof to acquire 1 PeakBirch Share at a price of \$1.40 for a period of 3 years from the closing of the Financing;

**“Governmental Entity”** means (a) any multinational, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, commissioner, board, bureau or agency, domestic or foreign, (b) any subdivision, agent, commission, commissioner, board, or authority of any of the foregoing; (c) any self-regulatory authority, including the Canadian Securities Exchange; or (d) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

**“Greeny”** has the meaning specified in the Recitals to this Agreement;

**“IFRS”** means International Financial Reporting Standards, as issued by the International Accounting Standards Board, as at the date on which the calculation is made, applied on a consistent basis;

**“Intellectual Property”** means all:

- (i) copyrights, whether registered or not;
- (ii) trade-marks, designs, logos, indicia, distinguishing guises, trade dress, trade names, business names, whether registered or not, and all goodwill associated with the foregoing;
- (iii) patents and inventions and applications therefor and patents which may be issued from current applications (including divisions, reissues, renewals, re-examinations, continuations, continuations-in-part and extensions) applied for or registered;



- (iv) trade secrets and confidential information; and
- (v) industrial designs;

“**Kootenay**” has the meaning specified in the Recitals to this Agreement;

“**Kootenay Filings**” means all documents of Kootenay publicly filed under the profile of Kootenay on the System for Electronic Document Analysis Retrieval (SEDAR);

“**Kootenay Financial Statements**” means the audited financial statements of Kootenay for the years ended February 28, 2019 and February 29, 2020;

“**Kootenay Information**” means the documents of Kootenay and its Subsidiaries made available to the Company or the Company’s representatives posted as of 11:59 p.m. on June 22, 2020 to the Project PeakBirch due diligence website hosted by Firmex and the Kootenay Filings;

“**Kootenay Intellectual Property**” means all of the Intellectual Property that is material to the business of Kootenay as currently conducted;

“**Kootenay Material Adverse Effect**” means any change, effect, event, occurrence or state of facts that is, or would reasonably be expected to be, material and adverse to the assets, business, operations or financial condition (including cash resources) of Kootenay and its Subsidiaries taken as a whole other than any change, effect, event, occurrence or state of facts relating to (a) general, political, financial or economic conditions or the state of the securities or capital markets in general, including without limitation any reduction in major market indices (which shall include, directly or indirectly, the effects of COVID-19); or (b) any change, effect, occurrence or state of facts arising in the ordinary course of business;

“**Kootenay Shares**” means the common shares in the authorized capital of Kootenay;

“**Kootenay Shares for Debt Transactions**” means the proposed full and final settlement of certain debt of Kootenay prior to or concurrently with the closing of the Business Combination in exchange for 69,441 PeakBirch Shares;

“**Laws**” means all laws (including common law), by-laws, statutes, rules, regulations, principles of law, orders, ordinances, judgments, decrees or other requirements, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or license of any Governmental Entity and the term “applicable” with respect to such Laws and in a context that refers to one or more Parties, means such Laws as are applicable to such Party or its business, undertaking, property or securities and emanate from a Person having jurisdiction over the Party or Parties or its or their business, undertaking, property or securities;

“**material**” means, with respect to Kootenay or the Company (as the case may be), a fact, liability, transaction or circumstance concerning the business, assets, liabilities, operations or financial condition of Kootenay or the Company (as the case may be) and their

respective Subsidiaries, that would be reasonably likely to have a significant effect on the value of the shares of Kootenay or the Company (as the case may be) or that would prevent or materially delay completion of the Offer in accordance with this Agreement;

**“Minimum Tender Condition”** means that there shall have been validly deposited under the Offer and not withdrawn at the Expiry Time that number of Common Shares which, together with any Common Shares held by Kootenay and its affiliates, constitutes at least 50.1% of the Common Shares outstanding (on a fully diluted basis) at the Expiry Time;

**“Offer”** means the offer to be made by Kootenay by way of a take-over bid for: (i) all of the outstanding Common Shares at an offer price of 1 PeakBirch Share per 1 Common Share, and (ii) all of the outstanding Company Options at an offer price of 1 PeakBirch Option per 1 Company Option, in accordance with Section 2.1;

**“Offer Deadline”** has the meaning ascribed thereto in Subsection 2.1(a);

**“Offer Documents”** has the meaning ascribed thereto in Subsection 2.1(c);

**“Offered Consideration”** has the meaning ascribed thereto in Subsection 2.1(a);

**“Offering Circular”** means the offer to purchase and accompanying take-over bid circular of Kootenay to be provided to the Shareholders in respect of the Offer;

**“Optionholders”** means the holders of Company Options;

**“Parties”** means the Company and Kootenay; and **“Party”** means any one of them;

**“PeakBirch Option”** has the meaning specified in the Recitals to this Agreement;

**“PeakBirch Share”** has the meaning specified in the Recitals to this Agreement;

**“Person”** includes an individual, partnership, association, body corporate, joint venture, business organization, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

**“Product Authorizations”** means approvals, licences, permits, consents, authorizations or registrations required or issued by any Governmental Entity, any other regulatory authority of competent jurisdiction or any material third party test house, registrar or certification body, relating to the manufacture, import, export, sale, distribution and/or marketing of the Products;

**“Products”** means all of the products that are developed, manufactured or sold by Kootenay or the Company, as the case may be, and/or its Subsidiaries;

**“Securities Act”** means the *Securities Act* (British Columbia), RSBC 1996, Chapter 418 and the rules, regulations and published policies made thereunder, as now in effect and as they may be amended from time to time prior to the Effective Date;

“**Securities Authorities**” means the British Columbia Securities Commission and the applicable securities commission or securities regulatory authority of each of the other provinces and territories of Canada;

“**Securities Laws**” has the meaning ascribed thereto in Subsection 2.1(c);

“**Shareholders**” means the holders of Common Shares;

“**Subsidiary**” means, with respect to a specified body corporate, any body corporate of which more than 50% of the outstanding shares ordinarily entitled to elect a majority of the board of directors thereof (whether or not shares of any other class or classes shall or might be entitled to vote upon the happening of any event or contingency) are at the time owned, or publicly announced as in the process of being acquired, directly or indirectly, by such specified body corporate and shall include any body corporate, partnership, joint venture or other entity over which such specified body corporate exercises direction or control or which is in a like relation to a subsidiary;

“**Taxes**” includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Entity, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping duties, all license, franchise and registration fees and all employment insurance, health insurance and Canada and other government pension plan premiums or contributions;

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

“**Termination Date**” has the meaning ascribed thereto in Subsection 5.1.

## **1.2 Interpretation Not Affected by Headings**

The division of this Agreement into Articles, Sections, Subsections and Paragraphs and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Unless the contrary intention appears, references in this Agreement to an Article, Section, Subsection, Paragraph or Schedule by number or letter or both refer to the Article, Section, Subsection, Paragraph or Schedule, respectively, bearing that designation in this Agreement.

### **1.3 Number and Gender**

In this Agreement, unless the contrary intention appears, words importing the singular include the plural and vice versa, and words importing gender include all genders.

### **1.4 Date for Any Action**

If the date on which any action is required to be taken hereunder by a Party is not a business day, such action shall be required to be taken on the next succeeding day which is a business day.

### **1.5 Time References**

In this Agreement, any references to time are to Pacific Standard Time.

### **1.6 Currency**

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada.

### **1.7 Accounting Matters**

- (a) Unless otherwise stated all accounting terms used in this Agreement in respect of the Company shall have the meanings attributable thereto under IFRS and all determinations of an accounting nature in respect of the Company required to be made shall be made in a manner consistent with IFRS and past practice.
- (b) Unless otherwise stated all accounting terms used in this Agreement in respect of Kootenay shall have the meanings attributable thereto under IFRS and all determinations of an accounting nature in respect of Kootenay required to be made shall be made in a manner consistent with IFRS and past practice.

### **1.8 Knowledge**

In this Agreement, unless otherwise stated, references to:

- (a) “the knowledge of the Company” means the actual knowledge of the directors and officers of the Company after reasonable inquiry within the Company; and
- (b) “the knowledge of Kootenay” means the actual knowledge of the directors and officers of Kootenay after reasonable inquiry.

### **1.9 Schedules**

The following Schedule is annexed to this Agreement and is incorporated by reference into this Agreement and forms part hereof:

Schedule A - Conditions of the Offer

## ARTICLE 2 THE OFFER

### 2.1 Actions by Kootenay

- (a) Kootenay shall mail the Offer Documents in accordance with applicable Law to each registered Shareholder and Optionholder and to each other person required by applicable Law as soon as reasonably practicable and, in any event, not later than 11:59 p.m. (Pacific time) on July 15, 2020 (such time on such date being referred to herein as the “**Offer Deadline**”) at an offer price of: (i) one PeakBirch Share per one Common Share; and (ii) one PeakBirch Option per one Company Option (the “**Offered Consideration**”), it being acknowledged and agreed that: (i) each PeakBirch Option issued as part of the Offered Consideration shall expire on the later of (A) the expiry date of the Company Option for which such PeakBirch Option is exchanged, and (B) 12 months after the date of the closing of the Business Combination; and (ii) PeakBirch Shares and PeakBirch Shares issued upon exercise of a PeakBirch Option issued as Offered Consideration will be subject to a contractual hold period of 4 months from the date of the closing of the Business Combination, and any share certificates or evidence of electronically registered position will bear a legend or restriction to such effect.
- (b) The Offer shall be subject to the terms and conditions set out herein and in Schedule A. In the event that the conditions to the Offer have been satisfied or waived by Kootenay, Kootenay shall take up and pay for the Deposited Shares as soon as possible after Kootenay becomes obligated by the terms of the Offer to take up the Deposited Shares.
- (c) Kootenay shall prepare the Offering Circular and the related letter(s) of transmittal and notice(s) of guaranteed delivery (collectively, the “**Offer Documents**”) with respect to the Offer in English only in compliance with the Securities Act and all other applicable provincial securities laws, rules and regulations and published policies thereunder (collectively, the “**Securities Laws**”). Prior to printing the Offer Documents, Kootenay shall provide the Company and its counsel with an opportunity to review and comment on the Offer Documents, the Company recognizing that whether or not such comments are appropriate will be determined by Kootenay, acting reasonably. Kootenay shall provide the Company with a final copy of the Offer Documents to be mailed to registered Shareholders and Optionholders prior to the mailing to registered Shareholders and Optionholders.
- (d) The Offer shall expire at the Expiry Time, subject to extension as contemplated in Section 5.5. Upon the conditions to the Offer set out in Schedule A having been satisfied or waived prior to the Expiry Time, Kootenay shall within three business days accept for payment and pay for all of the Deposited Shares.
- (e) The terms of the Offer shall comply with the terms of this Agreement. In making the Offer, Kootenay shall comply with the provisions of applicable Laws.

- (f) Kootenay may not amend, supplement or change any term or condition of the Offer without the prior written consent of the Company, not to be unreasonably withheld, except to extend the Offer subject to the restrictions contained in herein or increase the Offered Consideration. Kootenay may, in its sole discretion, waive any term or condition of the Offer, provided that Kootenay shall not waive the Minimum Tender Condition.
  
- (g) The obligation of Kootenay to make the Offer by mailing the Offering Circular to Shareholders and Optionholders is conditional on the prior satisfaction of the following conditions, all of which conditions are included for the sole benefit of Kootenay and any or all of which may be waived by Kootenay in whole or in part in its sole discretion without prejudice to any other rights it may have under this Agreement or otherwise and which shall be deemed to have been waived by the commencement of the Offer:
  - (i) the obligations of Kootenay hereunder shall not have been terminated pursuant to Section 6.1;
  - (ii) no circumstance, fact, change, event or occurrence shall have occurred that would render it impossible for one or more of the conditions set out on Schedule A hereto to be satisfied;
  - (iii) the Board of Directors shall have prepared and approved in final form, authorized for printing and distribution to Shareholders and Optionholders and delivered to Kootenay for mailing with the Offering Circular a directors' circular (the "**Directors' Circular**"), which circular shall contain a unanimous recommendation that Shareholders accept the Offer. Prior to printing the Directors' Circular, the Company shall provide Kootenay and its counsel with an opportunity to review and comment on the Directors' Circular, Kootenay recognizing that whether or not such comments are appropriate will be determined by the Company, acting reasonably;
  - (iv) the Company shall have prepared and approved in final form and disseminated, immediately after the mailing of the Offering Circular, the Deposit Period News Release which the Company shall provide Kootenay and its counsel with an opportunity to review and comment on the Deposit Period News Release, Kootenay recognizing that whether or not such comments are appropriate will be determined by the Company, acting reasonably;
  - (v) Shareholders representing no less than 50.1% of the issued and Common Shares will have executed lock-up and support agreements in a form satisfactory to Kootenay;
  - (vi) no cease trade order, injunction or other prohibition at Law shall exist against Kootenay making the Offer or taking up or paying for the Deposited Shares;

- (vii) Kootenay shall have received all waivers, rulings or orders necessary for the making of the Offer or to mail to Shareholders the Offering Circular from all applicable Securities Authorities;
- (viii) the Company shall have complied in all material respects with its obligations under this Agreement;
- (ix) all representations and warranties of the Company:
  - (A) that are qualified by a reference to a Company Material Adverse Effect shall be true and correct in all respects at the time of the making of the Offer; and
  - (B) that are not qualified by a reference to a Company Material Adverse Effect shall be true and correct in all material respects at the time of the making of the Offer;
- (x) there shall not have occurred or arisen (or there shall not have been generally disclosed or discovered, if not disclosed in writing to Kootenay) any change (or any condition, event or development involving a prospective change) in the business, operations, affairs, assets, liabilities (including any contingent liabilities that may arise through outstanding, pending or threatened litigation or otherwise), capitalization, financial condition, licenses, permits, rights or privileges, whether contractual or otherwise, of the Company or its Subsidiary considered on a consolidated basis which Kootenay determines, acting reasonably, individually or in the aggregate, has or may have a Company Material Adverse Effect; and
- (xi) the Board of Directors shall not have authorized the grant of further Company Options.

## **2.2 Preparation of Filings**

- (a) Kootenay and the Company shall cooperate in the preparation of any application for orders, registrations, consents, filings, circulars and approvals and the preparation of any required documents reasonably deemed by the Parties to be necessary to discharge their respective obligations under applicable Laws in connection with this Agreement or the Offer.
- (b) Each of the Company and Kootenay shall promptly notify the other if at any time before the Effective Date it becomes aware that the Offering Circular, the Directors' Circular, an application for an order, any registration, consent, circular or approval, registration statement or any other filing under companies, corporations or securities Laws contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in the light of the circumstances in which they are made, or that otherwise requires an amendment or supplement to the Offering Circular, the Directors' Circular, such application, registration statement or filing,

and the Parties shall cooperate in the preparation of any amendment or supplement to the Offering Circular, the Directors' Circular, application, registration statement or filing, as required.

### **2.3 Shareholder Communications**

The Company and Kootenay agree to cooperate in the preparation of presentations to investors, if any, regarding the Offer prior to the making of such presentations and to promptly consult with each other in issuing any press releases or otherwise making public statements with respect to this Agreement or the Offer and in making any filing with any Governmental Entity with respect thereto. Each Party shall use all commercially reasonable efforts to enable the other Party to review and comment on all such press releases prior to the release thereof and shall enable the other Party to review and comment on such filings prior to the filing thereof; provided, however, that the foregoing shall be subject to each Party's overriding obligation to make disclosure in accordance with applicable Laws, and if such disclosure is required and the other Party has not reviewed or commented on the disclosure, the Party making such disclosure shall use all commercially reasonable efforts to give prior oral or written notice to the other Party, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure or filing. Each of Kootenay and the Company agrees that, promptly after the entering into of this Agreement, a joint press release shall be issued announcing the entering into of this Agreement and, Kootenay's intention to make the Offer, which press release shall be satisfactory in form and substance to each of Kootenay and the Company, acting reasonably.

### **2.4 Company Approval of the Offer**

- (a) The Company represents and warrants to and in favour of Kootenay, and acknowledges that Kootenay is relying upon such representations and warranties in entering into this Agreement, that, as of the date of this Agreement:
  - (i) the Board of Directors has: (A) unanimously determined that the Offer is fair to the Shareholders and it is in the best interests of the Company for the Offer to be made and the Board of Directors to support it on the terms of this Agreement; and (B) approved the entering into of this Agreement and the making of a recommendation that Shareholders accept the Offer; and
  - (ii) after reasonable inquiry, the Board of Directors believes that all of the directors and senior officers of the Company intend to tender their Common Shares, including the Common Shares issuable on the exercise of all Company Options held by them, and Company Options to the Offer.
- (b) The Company shall use commercially reasonable efforts to prepare and make available for distribution contemporaneously with the Offering Circular, in English only, and in compliance with Securities Laws, sufficient copies of the Directors' Circular. Provided the Board of Directors has not changed or withdrawn its recommendation set out in Paragraph (i) of Subsection 2.4(a) above, the Directors' Circular shall reflect the determinations and recommendations set forth in Paragraph (i) of Subsection 2.4(a) above, and the Company shall take all reasonable



action to support the Offer on the terms of this Agreement. Prior to printing the Directors' Circular, the Company shall provide Kootenay and its counsel with an opportunity to review and comment on it, Kootenay recognizing that whether or not such comments are appropriate will be determined solely by the Company, acting reasonably.

- (c) The Company shall provide Kootenay, as soon as practicable and in any event within ten business days following the execution and delivery of this Agreement, with a list (in both written and electronic form) of the Shareholders and Optionholders, together with their addresses and respective holdings of Common Shares and Company Options. The Company shall concurrently provide Kootenay with a list of the names, addresses and holdings of all persons having rights issued by the Company to acquire Common Shares (including holders of Company Options). The Company shall from time to time request that its registrar and transfer agent furnish Kootenay with such additional information, including updated or additional lists of Shareholders, a list of participants in book-based nominee registered shareholders such as CDS & Co. and CEDE & Co., lists of securities positions and other assistance as Kootenay may reasonably request in order to be able to communicate the Offer to the Shareholders and to such other Persons as are entitled to receive the Offer under applicable Laws.
- (d) The Company represents that it has no shareholder rights plan or other similar plan or agreement that would prevent the Offer from being completed as contemplated herein.

## **2.5 Payment of Offer Consideration**

Kootenay will, prior to taking up and paying for any Common Shares and Company Options pursuant to the Offer, deposit in escrow with the Depositary (the terms and conditions of such escrow to be satisfactory to the Parties, acting reasonably) sufficient certificates representing PeakBirch Shares and PeakBirch Options to satisfy the aggregate Offered Consideration payable pursuant to the Offer.

## **2.6 Adjustment to Offer Consideration Regarding Distributions**

If on or after the date hereof, the Company declares, sets aside or pays any dividend or other distribution to the Shareholders of record as of a time prior to the Expiry Time, Kootenay shall make such adjustments to the Offered Consideration as it determines acting in good faith to be necessary to restore the original agreement of the parties in the circumstances. For greater certainty, if the Company takes any of the actions referred to above, the aggregate Offered Consideration to be paid by Kootenay shall be decreased by an equivalent amount.

## **2.7 Withholding Taxes**

The Company, Kootenay and the Depositary will be entitled to deduct and withhold from any consideration otherwise payable to any Shareholder or holder of Company Options pursuant to the Offer such amounts as the Company, Kootenay or the Depositary is required to deduct and withhold with respect to such payment under applicable Laws, as counsel may advise is required

to be so deducted and withheld by the Company, Kootenay or the Depositary, as the case may be. For the purposes hereof, all such withheld amounts shall be treated as having been paid to the person in respect of which such deduction and withholding was made on account of the obligation to make payment to such person hereunder, provided that such deducted or withheld amounts are actually remitted to the appropriate Governmental Entity by or on behalf of the Company, Kootenay or the Depositary, as the case may be. Without limitation, to the extent necessary, such deductions and withholdings may be effected by selling any Common Shares to which any such person may otherwise be entitled under the Offer, and any amount remaining following the sale, deduction and remittance shall be paid to the person entitled thereto as soon as reasonably practicable.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF KOOTENAY**

Kootenay hereby represents and warranties to the Company as follows, and acknowledges that the Company is relying upon these representations and warranties in connection with the entering into of this Agreement:

#### **3.1 Organization**

Kootenay is a company duly incorporated and existing under the laws of British Columbia, and Kootenay has all necessary corporate power and authority to own its respective assets and conduct its respective businesses as now owned and conducted. Kootenay is duly qualified to carry on business and is in good standing in each jurisdiction in which the character of its respective properties or the nature of its respective activities makes such qualification necessary, except where the failure to be so qualified will not, individually or in the aggregate, have a Kootenay Material Adverse Effect.

#### **3.2 Authority Relative to this Agreement**

Kootenay has the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Kootenay and the consummation of the Offer have been duly authorized by the board of directors of Kootenay and no other corporate proceedings on the part of Kootenay are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Kootenay and constitutes a valid and binding obligation of Kootenay, enforceable by the Company against them in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and subject to the qualification that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

#### **3.3 No Conflict; Required Filings and Consent**

The execution and delivery by Kootenay of this Agreement and the performance by it of its obligations hereunder and the completion of the Offer will not: (a) violate, conflict with or result in a breach of any provision of (i) the constating documents of Kootenay or any of its Subsidiaries; (ii) any agreement, joint venture arrangement, contract, indenture, deed of trust, mortgage, bond, instrument, license, franchise or permit to which Kootenay or any of its Subsidiaries is a party or

by which Kootenay or any of its Subsidiaries is bound; or (iii) subject to obtaining all Appropriate Regulatory Approvals applicable to Kootenay or a Subsidiary, any Law to which Kootenay or any of its Subsidiaries is subject or by which Kootenay or any of its Subsidiaries is bound; (b) give rise to any right of termination, or the acceleration of any indebtedness, under any such agreement, contract, indenture, deed of trust, mortgage, bond, instrument, license, franchise or permit; or (c) give rise to any rights of first refusal, trigger any change in control or influence provisions or any restriction or limitation under any such agreement, contract, indenture, deed of trust, mortgage, bond, instrument, license, franchise or permit, or result in the imposition of any encumbrance, charge or lien upon any of Kootenay's assets or the assets of any of its Subsidiaries, except where such violation, conflict or breach, or rights of termination or other rights would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect. Other than in connection with or in compliance with applicable Laws and policies, no authorization, consent or approval of, or filing with, any Governmental Entity or any court or other authority is necessary for the consummation by Kootenay of its obligations under this Agreement or for the completion of the Offer not to cause or result in any loss of any rights or assets or any interest therein held by Kootenay or any of its Subsidiaries, except where the failure to obtain such authorization, consent or approval, or to make such filing, would not, individually or in the aggregate, reasonably be expected to have, or have, a Kootenay Material Adverse Effect.

### **3.4 Subsidiaries**

Kootenay does not have any interests in any Person that is material to Kootenay other than those disclosed in the Kootenay Information. Each Subsidiary is duly organized and is validly existing under the laws of its jurisdiction of incorporation or organization, has all necessary corporate power and authority to own its assets and conduct its business as now owned and conducted by it and is duly qualified to carry on business in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not have a Kootenay Material Adverse Effect. Kootenay beneficially owns, directly or indirectly, all of the issued and outstanding securities of each of the Subsidiaries, if any. All of the outstanding shares in the capital of each of the Subsidiaries, if any, are: (i) validly issued, fully-paid and non-assessable and all such shares are owned free and clear of all pledges, security interests, liens, claims or encumbrances of any kind or nature whatsoever and (ii) free of any other restrictions including any restriction on the right to vote, sell or otherwise dispose of the shares.

### **3.5 Compliance with Laws, Licenses and Product Authorizations**

Kootenay and each of its Subsidiaries is in compliance with all applicable Laws and all Product Authorizations, each of Kootenay and its Subsidiaries has all Product Authorizations and all licenses, permits, orders or approvals of, and has made all required registrations with, any Governmental Entity that is required in connection with the ownership of their respective assets or the conduct of their respective operations as presently carried on and each of them has fully complied with and is in compliance with all such Product Authorizations, licenses, permits, orders, approvals and registrations, except, in each case, for failures which, individually or in the aggregate, would not have a Kootenay Material Adverse Effect. Neither Kootenay nor any of its Subsidiaries has received any notice, whether written or oral, of revocation or non-renewal of any such Product Authorizations, licenses, permits, orders, approvals or registrations, or of any intention of any Governmental Entity to revoke or refuse to renew any of such Product

Authorizations, licenses, permits, orders, approvals or registrations except in each case, for revocations or non-renewals which, individually or in the aggregate, would not have a Kootenay Material Adverse Effect and, to the knowledge of Kootenay, all such Product Authorizations, licenses, permits, orders, approvals and registrations shall continue to be effective in order for Kootenay and its Subsidiaries to continue to conduct their respective businesses as they are currently being conducted, except where the failure to maintain such effectiveness would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect. None of Kootenay or any of its Subsidiaries is in conflict with, or in default (including cross defaults) under or in violation of (i) its articles or by-laws or equivalent organizational documents, or (ii) any agreement or understanding to which it or by which any of its properties or assets is bound or affected, except for conflicts or defaults which, individually or in the aggregate, would not have a Kootenay Material Adverse Effect. No person or entity other than Kootenay or a Subsidiary thereof owns or has any proprietary, financial or other interest (direct or indirect) in any of the Product Authorizations, licenses, permits, order, approvals or registrations, except for interests that would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect.

### **3.6 Capitalization**

- (a) The authorized share capital of Kootenay consists of an unlimited number of common shares, of which: (i) there are 14,964,324 common shares validly issued and outstanding as fully paid and non-assessable shares in the capital of Kootenay; and (ii) there are no outstanding options to purchase Kootenay Shares. Except in connection with the Business Combination and the Kootenay Shares for Debt Transaction, there are no options, warrants, conversion privileges, calls or other rights, shareholder rights plans, agreements, arrangements, commitments, or obligations of Kootenay or any of its Subsidiaries to issue or sell any shares of Kootenay or of any of its Subsidiaries or securities or obligations of any kind convertible into, exchangeable for or otherwise carrying the right or obligation to acquire any shares of Kootenay or any of its Subsidiaries. No shareholder of Kootenay is entitled to any pre-emptive or other similar right granted by Kootenay or any of its Subsidiaries.

### **3.7 Financial Statements and Auditor**

- (a) The Kootenay Financial Statements have been prepared in accordance with IFRS applied on a basis consistent with prior periods and present fairly, in all material respects, the consolidated financial position and results of operations of Kootenay and its Subsidiaries, taken as a whole, as of the respective dates thereof and for the respective periods covered thereby. There are no outstanding loans made by Kootenay or any of its Subsidiaries to any executive officer or director of Kootenay or its Subsidiaries except for such loans with respect to which the failure to repay would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect.

- (b) There has not been a reportable disagreement (within the meaning of section 4.11 of National Instrument 51-102 – *Continuous Disclosure Obligations*) with Kootenay’s auditors.

### **3.8 Undisclosed Liabilities**

Neither Kootenay nor any of its Subsidiaries has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, except for liabilities disclosed in the Kootenay Financial Statements.

### **3.9 Absence of Unusual Transactions**

Except as disclosed in the Kootenay Information, since February 28, 2019 neither Kootenay nor any of Kootenay’s Subsidiaries has:

- (a) given any guarantee of any debt, liability or obligation of any person;
- (b) subjected, or permitted to be subjected, any of its assets to any encumbrance;
- (c) acquired, sold, leased or otherwise disposed of or transferred any assets, other than in the ordinary course of its business;
- (d) made or committed to any capital expenditures, other than in the ordinary course of its business;
- (e) declared or paid any dividend or otherwise made any distribution or other payment of any kind to any of its shareholders or any other person, or taken any corporate proceedings for that purpose;
- (f) redeemed, purchased or otherwise retired any of its shares or otherwise reduced its stated capital;
- (g) entered into or become bound by any agreement, other than in the ordinary course of its business;
- (h) amended or terminated any agreement (except for agreements which expire by the passage of time) resulting, collectively or individually, in a material and adverse effect on the business, condition (financial or otherwise), properties, assets (tangible or intangible), liabilities (whether absolute, accrued, conditional, contingent or otherwise), capitalization, operations or results of operations of Kootenay or any of its Subsidiaries, taken as a whole;
- (i) waived or released any rights which it has or had, or any debts owed to it, resulting, collectively or individually, in a material and adverse effect on the business, condition (financial or otherwise), properties, assets (tangible or intangible), liabilities (whether absolute, accrued, conditional, contingent or otherwise), capitalization, operations or results of operations of Kootenay and its Subsidiaries, taken as a whole;

- (j) changed any method of accounting or auditing practice; or
- (k) agreed or offered to do any of the things described in this Section 3.9.

### **3.10 Regulatory Matters**

Except to any extent that would not, in the aggregate, be reasonably expected to have, or have, a Kootenay Material Adverse Effect, all of Kootenay's Products: (i) have received all necessary Product Authorizations for their distribution, sale and/or use in accordance with their respective labeling and sales or marketing materials; (ii) meet all applicable specifications as described in connection with such Product Authorizations; (iii) have been developed, manufactured, marketed, distributed and sold in accordance with the Product Authorizations and all applicable Law; and (iv) are not, and have not been subject to any recall notifications, warnings, suspensions or similar actions from any Governmental Entity or other regulatory authorities of competent jurisdiction.

### **3.11 Non-Compliance**

To the knowledge of Kootenay, there are no complaints, investigations, proceedings or actions pending or threatened by regulatory authorities of competent jurisdiction which involve allegations of non-compliance with applicable Laws or the Product Authorizations or the rules, policies or guidelines of such Governmental Entities or other regulatory authorities relating to the Products or the development, manufacture, sale or distribution of the Products (and Kootenay has no knowledge of any facts that would lead to such complaints, investigations, proceedings or actions) other than those which would not, individually or in the aggregate, have a Kootenay Material Adverse Effect. Kootenay and its Subsidiaries have filed all required submissions, notices and reports required by such laws or regulatory rules, policies or guidelines, except where the failure to file would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect.

### **3.12 Absence of Certain Changes or Events**

Since October 31, 2019 and except as set forth in the Kootenay Information: (a) Kootenay and its Subsidiaries have conducted their respective businesses only in the ordinary course of business and consistent with past practice; (b) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) which has had or is reasonably likely to have a Kootenay Material Adverse Effect has been incurred; (c) there has not been any event, circumstance or occurrence which is reasonably likely to give rise to a Kootenay Material Adverse Effect; (d) there has not been any change in the accounting practices used by Kootenay and its Subsidiaries; (e) except for ordinary course increases consistent with past practice, there has not been any increase in the salary, bonus, or other remuneration payable to any employees of any of Kootenay or its Subsidiaries; (f) there has not been a material change in the level of accounts receivable or payable, inventories or employees that is not consistent with the level of business and general economic conditions; (g) Kootenay has not entered into or amended any material contract other than in the ordinary course of business consistent with past practice; and (h) there has not been any satisfaction or settlement or any claims or liabilities that were not reflected in Kootenay's financial statements, other than the settlement of liabilities incurred in the ordinary course of business consistent with past practice.

### **3.13           Litigation, Etc.**

Except as set forth in the Kootenay Information, there is no claim, action, proceeding or investigation pending or, to the knowledge of Kootenay, threatened against or relating to Kootenay or any of its Subsidiaries or the business of Kootenay or any of its Subsidiaries or affecting any of their properties, assets or Products, including claims of adverse ownership of, invalidity of, or opposition to the Kootenay Intellectual Property or that the use by Kootenay or its Subsidiaries of the Kootenay Intellectual Property in the business of Kootenay or its Subsidiaries or in any Product on or before the date of this Agreement violates or infringes the Intellectual Property rights or other proprietary rights of any third party, before or by any court or governmental or regulatory authority or body which, if adversely determined, would have, or would reasonably be expected to have, a Kootenay Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement, nor to Kootenay's knowledge are there any events or circumstances which could reasonably be expected to give rise to any such claim, action, proceeding or investigation (provided that the representation in this Section 3.13 shall not apply to claims, actions, proceedings, or investigations which may arise after the date of this Agreement which do not have a reasonable prospect of succeeding or, if successful, would not give rise to, nor reasonably be expected to give rise to, a Kootenay Material Adverse Effect). Neither Kootenay nor any of its Subsidiaries is subject to any outstanding order, writ, injunction or decree which has had or is reasonably likely to have a Kootenay Material Adverse Effect or which would prevent or materially delay consummation of the transactions contemplated by this Agreement.

### **3.14           Taxes**

Kootenay and each of its Subsidiaries has duly and in a timely manner filed all Tax Returns required to be filed by it, except where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect, those Tax Returns were complete and correct in all material respects and Kootenay and each of its Subsidiaries has paid, collected, withheld or remitted all material Taxes which are due and payable by it on or before the date hereof and Kootenay has provided adequate accruals in accordance with IFRS in the Kootenay Financial Statements for any Taxes for the period covered by such Kootenay Financial Statements that have not been paid whether or not shown as being due on any Tax Returns. Since such publication date, no material liability in respect of Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the ordinary course of business. Except as disclosed in the Kootenay Information, there are no actions, suits, proceedings, investigations or claims threatened against Kootenay or any of its Subsidiaries in respect of Taxes, or any matters under discussion with any Governmental Entity relating to Taxes asserted by any such authority which are reasonably likely to have a Kootenay Material Adverse Effect, individually or in the aggregate. No waivers of statutes of limitations with respect to Taxes have been given or requested with respect to Kootenay or any Subsidiary.

### **3.15           Books and Records**

The corporate records and minute books of Kootenay and its Subsidiaries have, since Kootenay's incorporation, or since such applicable other date in the case of each Subsidiary, been maintained in accordance with all applicable Laws in all material respects and the minute books of Kootenay

and its Subsidiaries are complete and accurate in all material respects. Financial books and records and accounts of Kootenay and its Subsidiaries in all material respects: (i) have been maintained in accordance with good business practices on a basis consistent with prior years; (ii) are stated in reasonable detail and, in the case of its Subsidiaries, during the period of time when owned by Kootenay, accurately and fairly reflect the transactions and dispositions of assets of Kootenay and its Subsidiaries; and (iii) in the case of the Subsidiaries, during the period of time when owned by Kootenay, accurately and fairly reflect the basis for Kootenay's consolidated financial statements.

### **3.16 Non-Arm's Length Transactions**

Except as set forth in the Kootenay Information, there are no current contracts, commitments, agreements, arrangements or other transactions between Kootenay or any of its Subsidiaries on the one hand, and any officer or director of Kootenay or any of its Subsidiaries or any associate of any officer or director, on the other hand, other than contracts of employment.

### **3.17 Restrictions on Business Activities**

There is no agreement, judgement, injunction, order or decree binding upon Kootenay or any Subsidiary that has or could reasonably be expected to have the effect of prohibiting, restricting or materially impairing any business practice of Kootenay, any Subsidiary, any acquisition of property by Kootenay or any Subsidiary or the conduct of business by Kootenay or any Subsidiary as currently conducted (including following the transaction contemplated by this Agreement) other than such agreements, judgements, injunctions, orders or decrees which would not, individually or in the aggregate, reasonably be expected to have a Kootenay Material Adverse Effect.

### **3.18 Material Contracts**

Neither Kootenay nor any of its Subsidiaries is in breach or default under any material contract or is aware of any condition that with the passage of time or the giving of notice or both would result in such a breach or default, except in each case where any such breaches or defaults would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect. Neither Kootenay nor any Subsidiary knows of, or has received written notice of, any breach or default under (nor, to the knowledge of Kootenay, does there exist any condition which with the passage of time or the giving of notice or both would result in such a breach or default under) any material contract by any other party thereto, except where any such violation or default would not, individually or in the aggregate, reasonably be expected to result in a Kootenay Material Adverse Effect. Prior to the date hereof, Kootenay has made available to Kootenay true and complete copies of all material contracts.

### **3.19 Relationships with Customers, Suppliers, Distributors and Sales Representatives**

Kootenay has not received any written (or to the knowledge of Kootenay, other) notice that any customer, supplier, distributor or sales representative intends to cancel, terminate or otherwise modify or not renew its relationship with Kootenay or any Subsidiary, and, to the knowledge of Kootenay, no such action has been threatened, which in either case individually or in the aggregate, would reasonably be expected to have a Kootenay Material Adverse Effect.



### **3.20 Product Recalls**

Kootenay is not aware of any pattern or series of claims against Kootenay or any of its Subsidiaries which reasonably could be expected to result in a generalized product recall relating to products sold by Kootenay or any of its Subsidiaries, including the Products, regardless of whether such product recall is formal, informal, voluntary or involuntary, which recall would reasonably be expected to have, or have, a Kootenay Material Adverse Effect.

### **3.21 Reservation of PeakBirch Shares**

Kootenay has, and will at the Expiry Date have, validly reserved for issuance the PeakBirch Shares to satisfy the Offered Consideration.

### **3.22 Common Share Ownership**

As of the date of this Agreement, neither Kootenay, nor any of its affiliates, is the beneficial owner of any Common Shares.

### **3.23 Knowledge**

As of the date of this Agreement, Kootenay has no knowledge of any fact or circumstance: (a) that would prevent it from making or completing the Offer in accordance with Subsection 2.1, or (b) that makes any representation and warranty of Kootenay herein untrue or incorrect.

### **3.24 Kootenay Filings**

The Kootenay Filings have complied in all material respects with all applicable requirements. None of the Kootenay Filings, at the time filed or as subsequently amended, contained any misrepresentation. Kootenay has not filed any confidential material change report with any Securities Authority which at the date hereof remains confidential. There are no outstanding or unresolved comments in a comment letter from any Securities Authority with respect to any Kootenay Filings and, to the knowledge of Kootenay, neither it nor any of the Kootenay Filings is subject to an ongoing audit, review, comment or investigation by any Securities Authority or the Canadian Securities Exchange.

### **3.25 Forward-Looking Information**

With respect to forward-looking information contained in Kootenay's public disclosure filings required to be filed in accordance with applicable securities Laws:

- (a) Kootenay had, at the time such forward-looking information was made, a reasonable basis for the forward-looking information; and
- (b) all material forward-looking information was identified as such, and all such documents cautioned users of forward-looking information that actual results may vary from the forward-looking information and identified material risk factors that could cause actual results to differ materially from the forward-looking

information, and accurately stated the material factors or assumptions used to develop forward-looking information.

### **3.26 Reporting Issuer Status.**

Kootenay is a “reporting issuer” in the provinces of British Columbia, Alberta and Ontario, and is not in material default of the securities Laws of such jurisdictions or any rules or policies of the CSE.

### **3.27 Reporting Issuer Status and Securities Laws Matters.**

Kootenay is a “reporting issuer” within the meaning of applicable Securities Laws in the provinces of British Columbia, Alberta and Ontario, and not on the list of reporting issuers in default under applicable Securities Laws, and no Securities Authority has issued any order preventing or suspending trading of any securities of Kootenay and Kootenay is not in default of any material provision of applicable Securities Laws. Trading in the PeakBirch Shares is not currently halted or suspended on the Canadian Securities Exchange. No delisting, suspension of trading or cease trading order with respect to any securities of Kootenay is pending or, to the knowledge of Kootenay, threatened. To the knowledge of Kootenay, no inquiry, review or investigation (formal or informal) of Kootenay by any Securities Authority under applicable Securities Laws is in effect or ongoing or expected to be implemented or undertaken. The documents and information comprising the Kootenay Filings, as at the respective dates they were filed, were in compliance in all material respects with applicable Securities Laws and, where applicable, the rules and policies of any applicable Securities Authority, and did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. With the exception of Kootenay not calling and holding a shareholder meeting since December 16, 2016, Kootenay is up-to-date in all forms, reports, statements and documents, including financial statements and management’s discussion and analysis, required to be filed by Kootenay under applicable Securities Laws and the rules and policies of any Securities Authority. Kootenay is not required to file reports under any securities laws applicable in the United States.

### **3.28 No Cease Trade Orders**

No Securities Authority or other Governmental Entity or any similar regulatory authority in any jurisdiction (including any stock exchange) has issued any order which is currently outstanding preventing or suspending trading in any securities of Kootenay, and no such proceeding is pending, contemplated or, to the knowledge of Kootenay, threatened.

### **3.29 Registration Rights**

No shareholder of Kootenay has any right to compel Kootenay to register or otherwise qualify the Kootenay Shares (or any of them) for public sale or distribution.

### **3.30 Brokerage Fees**

Except as disclosed in the Kootenay Information, neither Kootenay nor any of its Subsidiaries has retained any financial advisor, broker, agent or finder, or entered into any agreement entitling any

person to any broker's commission, finder's fee or similar payment, relating to this Agreement or the transactions contemplated by this Agreement.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company hereby represents and warrants to Kootenay, and acknowledges that Kootenay is relying upon these representations and warranties in connection with the entering into of this Agreement and the making of the Offer, that, except as disclosed in the Company Information:

### **4.1 Organization and Qualification**

The Company is validly existing under the CBCA and has all necessary corporate power and authority to own its assets and conduct its business as now owned and conducted. The Company is duly qualified to carry on business in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary, except where the failure to be so qualified will not have a Company Material Adverse Effect. True and complete copies of the constating documents of the Company have been delivered to Kootenay, and the Company has not taken any action to amend or supersede such documents.

### **4.2 Authority Relative to this Agreement**

The Company has the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement have been duly authorized by the Board of Directors and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement. This Agreement has been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company, enforceable by Kootenay against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency and other applicable Laws affecting the enforcement of creditors' rights generally and subject to the qualification that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

### **4.3 No Conflict or Breach; Required Filings and Consent**

The execution and delivery by the Company of this Agreement and the performance by it of its obligations hereunder and the completion of the Offer will not: (a) violate, conflict with or result in a breach of any provision of (i) the constating documents of the Company or any of its Subsidiaries; (ii) any agreement, joint venture arrangement, contract, indenture, deed of trust, mortgage, bond, instrument, license, franchise or permit to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound; or (iii) subject to obtaining all Appropriate Regulatory Approvals applicable to the Company or a Subsidiary, any Law to which the Company or any of its Subsidiaries is subject or by which the Company or any of its Subsidiaries is bound; (b) give rise to any right of termination, or the acceleration of any indebtedness, under any such agreement, contract, indenture, deed of trust, mortgage, bond, instrument, license, franchise or permit; or (c) give rise to any rights of first refusal, trigger any change in control or influence provisions or any restriction or limitation under any such agreement, contract, indenture, deed of trust, mortgage, bond, instrument, license, franchise or permit, or result

in the imposition of any encumbrance, charge or lien upon any of the Company's assets or the assets of any of its Subsidiaries, except where such violation, conflict or breach, or rights of termination or other rights would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Other than in connection with or in compliance with applicable Laws and policies, no authorization, consent or approval of, or filing with, any Governmental Entity or any court or other authority is necessary for the consummation by the Company of its obligations under this Agreement or for the completion of the Offer not to cause or result in any loss of any rights or assets or any interest therein held by the Company or any of its Subsidiaries, except where the failure to obtain such authorization, consent or approval, or to make such filing, would not, individually or in the aggregate, reasonably be expected to have, or have, a Company Material Adverse Effect.

#### **4.4 Subsidiaries**

The Company does not have any interests in any Person that is material to the Company other than those disclosed in the Company Information. Each Subsidiary is duly organized and is validly existing under the laws of its jurisdiction of incorporation or organization, has all necessary corporate power and authority to own its assets and conduct its business as now owned and conducted by it and is duly qualified to carry on business in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not have a Company Material Adverse Effect. The Company beneficially owns, directly or indirectly, all of the issued and outstanding securities of each of the Subsidiaries. All of the outstanding shares in the capital of each of the Subsidiaries are: (i) validly issued, fully-paid and non-assessable and all such shares are owned free and clear of all pledges, security interests, liens, claims or encumbrances of any kind or nature whatsoever and (ii) free of any other restrictions including any restriction on the right to vote, sell or otherwise dispose of the shares.

#### **4.5 Compliance with Laws, Licenses and Product Authorizations**

The Company and each of its Subsidiaries is in compliance with all applicable Laws and all Product Authorizations, each of the Company and its Subsidiaries has all Product Authorizations and all licenses, permits, orders or approvals of, and has made all required registrations with, any Governmental Entity that is required in connection with the ownership of their respective assets or the conduct of their respective operations as presently carried on and each of them has fully complied with and is in compliance with all such Product Authorizations, licenses, permits, orders, approvals and registrations, except, in each case, for failures which, individually or in the aggregate, would not have a Company Material Adverse Effect. None of the Company or any of its Subsidiaries has received any notice, whether written or oral, of revocation or non-renewal of any such Product Authorizations, licenses, permits, orders, approvals or registrations, or of any intention of any Governmental Entity to revoke or refuse to renew any of such Product Authorizations, licenses, permits, orders, approvals or registrations except in each case, for revocations or non-renewals which, individually or in the aggregate, would not have a Company Material Adverse Effect and, to the knowledge of the Company, all such Product Authorizations, licenses, permits, orders, approvals and registrations shall continue to be effective in order for the Company and its Subsidiaries to continue to conduct their respective businesses as they are currently being conducted, except where the failure to maintain such effectiveness would not,

individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. None of the Company or any of its Subsidiaries is in conflict with, or in default (including cross defaults) under or in violation of (i) its articles or by-laws or equivalent organizational documents, or (ii) any agreement or understanding to which it or by which any of its properties or assets is bound or affected, except for conflicts or defaults which, individually or in the aggregate, would not have a Company Material Adverse Effect. No person or entity other than the Company or a Subsidiary thereof owns or has any proprietary, financial or other interest (direct or indirect) in any of the Product Authorizations, licenses, permits, order, approvals or registrations, except for interests that would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.

#### **4.6 Capitalization**

- (a) The authorized share capital of the Company consists of an unlimited number of Common Shares, of which: (i) there are 61,300,000 Common Shares validly issued and outstanding as fully paid and non-assessable shares in the capital of the Company; and (ii) there are outstanding Company Options providing for the issuance of 3,750,000 Common Shares upon the exercise thereof. Except for the Company Options referred to in the immediately preceding sentence, the Company Shares for Debt Transactions and Company Convertible Debt, there are no options, warrants, conversion privileges, calls or other rights, shareholder rights plans, agreements, arrangements, commitments, or obligations of the Company or any of its Subsidiaries to issue or sell any shares of the Company or of any of its Subsidiaries or securities or obligations of any kind convertible into, exchangeable for or otherwise carrying the right or obligation to acquire any shares of the Company or any of its Subsidiaries. No Shareholder is entitled to any pre-emptive or other similar right granted by the Company or any of its Subsidiaries. The Common Shares are not listed or quoted on any market.
- (b) A list of the holders of all outstanding Company Options and the number, exercise prices, vesting provisions and expiration dates of each grant to such holders has been included in the Company Information. All Common Shares that may be issued pursuant to the exercise of outstanding Company Options will, when issued in accordance with the terms of the Company Options, be duly authorized, validly issued, fully paid and non-assessable and are not and will not be subject to or issued in violation of, any pre-emptive rights. There are no outstanding contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Common Shares or any shares in the share capital of any of its Subsidiaries. No Subsidiary of the Company owns any Common Shares.

#### **4.7 Shareholder and Similar Agreements**

Other than the Company Options, the Company is not party to any material shareholder, pooling, voting trust or other agreement relating to the issued and outstanding shares of the Company or any of its Subsidiaries.

#### **4.8 Financial Statements**

The Company Financial Statements have been prepared in accordance with IFRS applied on a basis consistent with prior periods and present fairly, in all material respects, the consolidated financial position and results of operations of the Company and its Subsidiaries, taken as a whole, as of the respective dates thereof and for the respective periods covered thereby. There are no outstanding loans made by the Company or any of its Subsidiaries to any executive officer or director of the Company or its Subsidiaries except for such loans with respect to which the failure to repay would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.

#### **4.9 Undisclosed Liabilities**

Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, except for liabilities disclosed in the Company Financial Statements.

#### **4.10 Interest in Properties**

The Company and its Subsidiaries have title to all of their properties and assets, free and clear of any material claims or encumbrances, and the Company's properties and assets are sufficient for the conduct of the Company's business as now carried on or as contemplated by the Company to be carried on.

#### **4.11 Employment Matters**

- (a) Except as provided in the Company Information, either the Company nor any of its Subsidiaries has entered into any written or oral agreement or understanding providing for severance or termination payments to any director, officer or employee in connection with the termination of their position or their employment as a direct result of a change in control of the Company.
- (b) Neither the Company nor any of its Subsidiaries (i) is a party to any collective bargaining agreement, or (ii) is subject to any application for certification or, to the knowledge of the Company, threatened or apparent union organizing campaigns for employees not covered under a collective bargaining agreement. To the knowledge of the Company, as of the date hereof, no fact or event exists that would reasonably be expected to give rise to a violation of this Subsection on or before the Effective Date.
- (c) Except as provided in the Company Information, neither the Company nor any of its Subsidiaries is subject to any claim for wrongful dismissal, constructive dismissal or any other tort claim, actual or, to the knowledge of the Company, threatened, or any litigation actual, or to the knowledge of the Company, threatened, relating to employment or termination of employment of employees or independent contractors except where such claim or litigation would not, individually or in the aggregate, reasonably be expected to have, or have, a Company Material Adverse Effect. To the knowledge of the Company, no labour

strike, lock-out, slowdown or work stoppage is pending or threatened against or directly affecting the Company.

- (d) The Company and its Subsidiaries have operated in accordance with all applicable Laws with respect to employment and labour, including, but not limited to, employment and labour standards, occupational health and safety, employment equity, pay equity, workers' compensation, human rights, labour relations and privacy and there are no current, pending, or to the knowledge of the Company, threatened proceedings before any board or tribunal with respect to any of the areas listed herein, except where the failure to so operate would not have a Company Material Adverse Effect.

#### **4.12 Intellectual Property Rights**

- (a) The Company Information contains descriptions of the Company Intellectual Property, all of which is owned by or licensed to the Company or its Subsidiaries. The Company Information contains accurate and complete copies of all contracts and other documentation in the possession or control of the Company by which the Company, or any of its Subsidiaries, has acquired material Intellectual Property licence rights to the Company Intellectual Property. To the extent that material Intellectual Property licence rights to the Company Intellectual Property are not currently reflected in a contract or other documentation in the possession or control of the Company, the Company has provided in the Company Information a complete and accurate written description of the source of the rights of the Company or its Subsidiaries in such Company Intellectual Property and any payment obligations of the Company or its Subsidiaries that continue to exist with respect to such Company Intellectual Property.
- (b) The Company Information contains a list of all of the contracts by which the Company has granted licences in respect of the Company Intellectual Property. The Company has not licensed, conveyed or assigned any Company Intellectual Property except where any such licence, conveyance or assignment would not, individually or in the aggregate, reasonably be expected to have, a Company Material Adverse Effect.
- (c) To the knowledge of the Company, the Company Intellectual Property has not been used or enforced, or failed to be used or enforced, in a manner that would result in the abandonment, cancellation or loss of enforcement rights of such Company Intellectual Property which would reasonably be expected to result in a Company Material Adverse Effect. To the knowledge of the Company, the Company has not taken any action it is prohibited from taking, or failed to take any action it is required to take, that would result in or provide any basis for a material default by, or a material reduction or dilution of the rights of, the Company pursuant to any of the agreements or licences entered into by the Company in respect of any of the Company Intellectual Property and all such agreements and licences are in full force and effect and the proposed transaction will not require the consent or payment to any other parties to such agreements or licences.

- (d) There are no violations or infringements of the Company Intellectual Property or challenges to the enforceability of the Company Intellectual Property except for such violations, infringements or challenges which would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.
- (e) The Company Intellectual Property constitutes all the material Intellectual Property necessary or appropriate to conduct the businesses of the Company and its Subsidiaries as presently conducted in all material respects, and upon consummation of the transactions contemplated by this Agreement, the Company and its Subsidiaries shall: (i) have good, valid and unencumbered title to all Company Intellectual Property owned by the Company and its Subsidiaries on the date hereof; and (ii) have the right to use all Company Intellectual Property licensed to a Company or its Subsidiaries to the same extent such licensed Intellectual Property is currently used in the businesses of the Company and its Subsidiaries.
- (f) No claim has been asserted or, to the knowledge of the Company, is threatened by any person, nor does the Company have knowledge of any valid ground for any bona fide claims: (i) to the effect that the manufacture, sale, offer for sale, importation or use of any Company Intellectual Property, on or before the date of this Agreement, by the Company infringes, misappropriates, violates, dilutes or constitutes the unauthorized use by the Company of any copyright, trade secret, patent, trademark, tradename or other intellectual property right of any person, except where such claim would not, individually or in the aggregate, reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, against the Company relating to the use by the Company of any Intellectual Property, or (ii) challenging the ownership or validity of any Company owned Company Intellectual Property.
- (g) The Company and each of its Subsidiaries: (i) has the right to use all trade secrets, customer lists, hardware designs, programming processes, databases, software and other information required for and used in its products, services or its business as conducted on the date of this Agreement; (ii) has taken all reasonable measures to protect and preserve the security and confidentiality of its trade secrets and other confidential information; (iii) has ensured that all employees and consultants of the Company or its Subsidiaries involved in the design, review, evaluation, development, implementation or support of services or products of the Company or any of its Subsidiaries, that result in the creation or development of any Company-owned Company Intellectual Property, have executed nondisclosure and assignment of inventions agreements to protect the confidentiality of the Company's or its Subsidiaries' trade secrets and other confidential information; (iv) warrant that, to the knowledge of the Company, on the date of this Agreement all trade secrets and other confidential information owned by the Company or its Subsidiaries are not part of the public domain or knowledge, nor have they been misappropriated by any person having an obligation to maintain such trade secrets or other confidential information in confidence for the Company or its Subsidiaries; (v) warrant that, to the knowledge of the Company, no employee or consultant of the Company or any of its Subsidiaries has misappropriated any trade secrets or



other confidential information of any other person in the course of their work for the Company or any such Subsidiary; and (vi) has ensured that no university, government agency (whether federal, state, provincial or municipal) or other organization sponsored research and development conducted by the Company or any of its Subsidiaries has any claim of right to or ownership of or other encumbrance upon any of the Company owned Company Intellectual Property, except in the case of (i) to (vi) above, to the extent the statements contained therein are not correct, there would not, individually or in the aggregate, reasonably be expected to be a Company Material Adverse Effect.

#### **4.13 Regulatory Matters**

Except to any extent that would not, in the aggregate, be reasonably expected to have, or have, a Company Material Adverse Effect, all of the Company's Products: (i) have received all necessary Product Authorizations for their distribution, sale and/or use in accordance with their respective labeling and sales or marketing materials; (ii) meet all applicable specifications as described in connection with such Product Authorizations; (iii) have been developed, manufactured, marketed, distributed and sold in accordance with the Product Authorizations and all applicable Law; and (iv) are not, and have not been subject to any recall notifications, warnings, suspensions or similar actions from any Governmental Entity or other regulatory authorities of competent jurisdiction.

#### **4.14 Non-Compliance**

To the knowledge of the Company, except as provided in the Company Information, there are no complaints, investigations, proceedings or actions pending or threatened by regulatory authorities of competent jurisdiction which involve allegations of non-compliance with applicable Laws or the Product Authorizations or the rules, policies or guidelines of such Governmental Entities or other regulatory authorities relating to the Products or the development, manufacture, sale or distribution of the Products (and the Company has no knowledge of any facts that would lead to such complaints, investigations, proceedings or actions) other than those which would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company and its Subsidiaries have filed all required submissions, notices and reports required by such laws or regulatory rules, policies or guidelines, except where the failure to file would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.

#### **4.15 Absence of Certain Changes or Events**

Since October 31, 2019 and as provided in the Company Information: (a) the Company and its Subsidiaries have conducted their respective businesses only in the ordinary course of business and consistent with past practice; (b) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) which has had or is reasonably likely to have a Company Material Adverse Effect has been incurred; (c) there has not been any event, circumstance or occurrence which is reasonably likely to give rise to a Company Material Adverse Effect; (d) there has not been any change in the accounting practices used by the Company and its Subsidiaries; (e) except for ordinary course increases consistent with past practice, there has not been any increase in the salary, bonus, or other remuneration payable to any employees of any of the Company or its Subsidiaries; (f) there has not been a material change in the level of accounts receivable or payable,

inventories or employees that is not consistent with the level of business and general economic conditions; (g) the Company has not entered into or amended any material contract other than in the ordinary course of business consistent with past practice; and (h) there has not been any satisfaction or settlement or any claims or liabilities that were not reflected in the Company's financial statements, other than the settlement of liabilities incurred in the ordinary course of business consistent with past practice.

#### **4.16           Litigation, Etc.**

Except as provided in the Company Information, there is no claim, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against or relating to the Company or any of its Subsidiaries or the business of the Company or any of its Subsidiaries or affecting any of their properties, assets or Products, including claims of adverse ownership of, invalidity of, or opposition to the Company Intellectual Property or that the use by the Company or its Subsidiaries of the Company Intellectual Property in the business of the Company or its Subsidiaries or in any Product on or before the date of this Agreement violates or infringes the Intellectual Property rights or other proprietary rights of any third party, before or by any court or governmental or regulatory authority or body which, if adversely determined, would have, or would reasonably be expected to have, a Company Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement, nor to the Company's knowledge are there any events or circumstances which could reasonably be expected to give rise to any such claim, action, proceeding or investigation (provided that the representation in this Section 4.16 shall not apply to claims, actions, proceedings, or investigations which may arise after the date of this Agreement which do not have a reasonable prospect of succeeding or, if successful, would not give rise to, nor reasonably be expected to give rise to, a Company Material Adverse Effect). Neither the Company nor any of its Subsidiaries is subject to any outstanding order, writ, injunction or decree which has had or is reasonably likely to have a Company Material Adverse Effect or which would prevent or materially delay consummation of the transactions contemplated by this Agreement.

#### **4.17           Taxes**

The Company and each of its Subsidiaries has duly and in a timely manner filed all Tax Returns required to be filed by it, except where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect, those Tax Returns were complete and correct in all material respects and the Company and each of its Subsidiaries has paid, collected, withheld or remitted all material Taxes which are due and payable by it on or before the date hereof and the Company has provided adequate accruals in accordance with IFRS in the Company Financial Statements for any Taxes for the period covered by such Company Financial Statements that have not been paid whether or not shown as being due on any Tax Returns. Since such publication date, no material liability in respect of Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the ordinary course of business. Except as disclosed in the Company Information, there are no actions, suits, proceedings, investigations or claims threatened against the Company or any of its Subsidiaries in respect of Taxes, or any matters under discussion with any Governmental Entity relating to Taxes asserted by any such authority which are reasonably likely to have a Company Material Adverse Effect, individually or in the aggregate. No waivers

of statutes of limitations with respect to Taxes have been given or requested with respect to the Company or any Subsidiary.

#### **4.18 Books and Records**

The corporate records and minute books of the Company and its Subsidiaries have, since the Company's incorporation, or since such applicable other date in the case of each Subsidiary, been maintained in accordance with all applicable Laws in all material respects and the minute books of the Company and its Subsidiaries are complete and accurate in all material respects. Financial books and records and accounts of the Company and its Subsidiaries in all material respects: (i) have been maintained in accordance with good business practices on a basis consistent with prior years; (ii) are stated in reasonable detail and, in the case of its Subsidiaries, during the period of time when owned by the Company, accurately and fairly reflect the transactions and dispositions of assets of the Company and its Subsidiaries; and (iii) in the case of the Subsidiaries, during the period of time when owned by the Company, accurately and fairly reflect the basis for the Company consolidated financial statements.

#### **4.19 Non-Arm's Length Transactions**

Except as provided in the Company Information, there are no current contracts, commitments, agreements, arrangements or other transactions between the Company or any of its Subsidiaries on the one hand, and any officer or director of the Company or any of its Subsidiaries or any associate of any officer or director, on the other hand, other than contracts of employment.

#### **4.20 Pension and Employee Benefits**

Neither the Company nor any of its Subsidiaries has or maintains, nor have ever had or maintained, any Benefit Plans.

#### **4.21 Environmental**

The Company is in compliance in all respects with, and has no liability of any nature or kind under, applicable Environmental Laws. The Company has not incurred any liability with respect to Environmental Laws.

#### **4.22 Restrictions on Business Activities**

There is no agreement, judgement, injunction, order or decree binding upon the Company or any Subsidiary that has or could reasonably be expected to have the effect of prohibiting, restricting or materially impairing any business practice of the Company, any Subsidiary, any acquisition of property by the Company or any Subsidiary or the conduct of business by the Company or any Subsidiary as currently conducted (including following the transaction contemplated by this Agreement) other than such agreements, judgements, injunctions, orders or decrees which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

#### **4.23 Material Contracts**

Neither the Company nor any of its Subsidiaries is in breach or default under any material contract or is aware of any condition that with the passage of time or the giving of notice or both would result in such a breach or default, except in each case where any such breaches or defaults would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Neither the Company nor any Subsidiary knows of, or has received written notice of, any breach or default under (nor, to the knowledge of the Company, does there exist any condition which with the passage of time or the giving of notice or both would result in such a breach or default under) any material contract by any other party thereto, except where any such violation or default would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Prior to the date hereof, the Company has made available to Kootenay true and complete copies of all material contracts.

#### **4.24 Relationships with Customers, Suppliers, Distributors and Sales Representatives**

Except as provided in the Company Information, the Company has not received any written (or to the knowledge of the Company other) notice that any customer, supplier, distributor or sales representative intends to cancel, terminate or otherwise modify or not renew its relationship with the Company or any Subsidiary, and, to the knowledge of the Company, no such action has been threatened, which in either case individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect.

#### **4.25 Product Recalls**

The Company is not aware of any pattern or series of claims against the Company or any of its Subsidiaries which reasonably could be expected to result in a generalized product recall relating to products sold by the Company or any of its Subsidiaries, including the Products, regardless of whether such product recall is formal, informal, voluntary or involuntary, which recall would reasonably be expected to have, or have, a Company Material Adverse Effect.

### **ARTICLE 5 COVENANTS**

#### **5.1 Conduct of Business by the Company**

The Company covenants and agrees that, prior to the earlier of: (i) the Effective Date; and (ii) the date, if any, on which this Agreement is terminated pursuant to Section 6.1 (the “**Termination Date**”), except as otherwise provided in this Agreement or with the prior written consent of Kootenay, which consent may be withheld for any reason:

- (a) the Company shall, and shall cause each of its Subsidiaries to, conduct its and their respective businesses only in, not take any action except in, and maintain their respective facilities in the ordinary course of business consistent with past practice except as may be required in order to comply with the terms of this Agreement;

- (b) without limiting the generality of Subsection (a) above, and except (A) as otherwise expressly required or contemplated by this Agreement, (B) for transactions involving the Company and one or more wholly-owned Subsidiaries or between wholly-owned Subsidiaries and (C) for transactions involving amounts which, individually or in the aggregate, do not exceed \$50,000, the Company shall not directly or indirectly do, and shall cause each of its Subsidiaries not to:
- (i) issue, sell, award, pledge, dispose of, encumber or agree to issue, sell, award, pledge, dispose of or encumber any Common Shares, or any options, calls, conversion privileges or rights of any kind to acquire any Common Shares or other securities or any shares of its Subsidiaries;
  - (ii) except in the ordinary course of business consistent with past practice, sell, pledge, lease, dispose of, encumber or agree to sell, pledge, dispose of or encumber any assets of the Company or any of its Subsidiaries or any interest in any asset of the Company or any of its Subsidiaries that, in either case, has a value greater than \$50,000;
  - (iii) amend or propose to amend the articles, by-laws or other constating documents of the Company or any of its Subsidiaries;
  - (iv) split, combine or reclassify any outstanding Common Shares;
  - (v) redeem, purchase or offer to purchase any Common Shares or other securities of the Company or any shares or other securities of its Subsidiaries;
  - (vi) declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of any Common Shares except for dividends paid in the ordinary course of business consistent with past practice and for dividends by any Subsidiary of the Company to the Company or another Subsidiary of the Company;
  - (vii) reorganize, amalgamate or merge the Company or any of its Subsidiaries with any other Person;
  - (viii) reduce the stated capital of the shares of the Company or of any of its Subsidiaries;
  - (ix) acquire or agree to acquire (by merger, amalgamation, acquisition of stock or assets or otherwise) any Person, or make any investment either by purchase of shares or securities, contributions of capital (other than to wholly-owned Subsidiaries), property transfer or purchase of any property or assets of any other Person, that has a value greater than \$50,000 other than acquisitions in the ordinary course of business consistent with past practice;

- (x) enter into, directly or indirectly, an investment in or acquisition of, whether individually or with any other Person, any asset or an interest in any asset that has a value greater than \$50,000, provided however that the Company may make such investments in short term investment grade instruments consistent with past practice;
  - (xi) incur or commit to incur any indebtedness for borrowed money or any other material liability or obligation or issue any debt securities, except for the borrowing of working capital in the ordinary course of business, or guarantee, endorse or otherwise as an accommodation become responsible for, the obligations of any other Person or make any loans or advances, except in the ordinary course of business consistent with past practice;
  - (xii) adopt a plan of liquidation or resolutions providing for the liquidation or dissolution of the Company or any of its Subsidiaries;
  - (xiii) pay, discharge or satisfy any claims, liabilities or obligations other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against in the Company's financial statements or incurred in the ordinary course of business consistent with past practice;
  - (xiv) authorize, recommend or propose any release or relinquishment of any contractual right except where such release or relinquishment would not reasonably be expected to result in a Company Material Adverse Effect; or
  - (xv) waive, release, grant or transfer any rights of value or modify or change any existing licence, lease, contract or other document, except where such waiver, release, grant, transfer, modification or change would not reasonably be expected to result in a Company Material Adverse Effect;
- (c) the Company shall not, and shall cause each of its Subsidiaries not to, except in the ordinary course of business consistent with past practice:
- (i) increase the fringe benefits payable or to become payable to its directors or officers (whether from the Company or any of its Subsidiaries); or enter into or modify any employment, severance, or similar agreements or arrangements with, or grant any bonuses, salary increases, severance or termination pay to, any officer of the Company or member of the Board of Directors; other than pursuant to agreements already entered into as disclosed in the Company Information; or
  - (ii) in the case of employees who are not officers of the Company or members of the Board of Directors, take any action other than in the ordinary course of business and consistent with past practice (none of which actions shall be unreasonable or unusual) with respect to the grant of any bonuses, salary increases, severance or termination pay or with respect to any increase of benefits payable in effect on the date hereof;

- (d) except in the ordinary course of business consistent with past practice, the Company shall not, and shall cause each of its Subsidiaries not to, establish, adopt, enter into, amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any bonus, profit sharing, incentive, compensation, stock option, restricted stock, pension, retirement, deferred compensation, savings, welfare, employment, termination, severance or other employee benefit plan, agreement, trust, fund, policy or arrangement for the benefit or welfare of any directors, officers, current or former employees of the Company or its Subsidiaries;
- (e) the Company shall:
  - (i) use reasonable commercial efforts, and cause each of its Subsidiaries, to preserve intact their respective business organizations and goodwill, to keep available the services of its and their officers and employees as a group and to maintain satisfactory relationships with suppliers, distributors, customers and others having business relationships with them;
  - (ii) not take any action, or permit any of its Subsidiaries to take any action, which would render, or which reasonably may be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect;
  - (iii) promptly notify Kootenay orally and in writing of the occurrence of any Company Material Adverse Effect, in the normal course of its or any of its Subsidiaries' businesses or in the operation of its or any of its Subsidiaries' properties and of any material governmental or third party complaints, investigations or hearings (or communications indicating that the same are being contemplated);
  - (iv) not enter into any agreement, contract, lease, license or other binding obligation of the Company or its Subsidiaries: (A) containing (1) any material limitation or restriction on the ability of the Company or its Subsidiaries or, following completion of the transactions contemplated hereby, the ability of Kootenay or its Subsidiaries, to engage in any type of activity or business, (2) any material limitation or restriction on the manner in which, or the localities in which, all or any material portion of the business of the Company or its Subsidiaries or, following consummation of the transactions contemplated hereby, all or any material portion of the business of Kootenay or its Subsidiaries, is or would be conducted, or (3) any material limit or restriction on the ability of the Company or its Subsidiaries or, following completion of the transactions contemplated hereby, the ability of Kootenay or its Subsidiaries to solicit customers or employees, (B) that would reasonably be expected to materially delay or prevent the consummation of the transactions contemplated by this Agreement, or (C) that involves or would reasonably be expected to involve payments outside the ordinary course of business that are in excess of \$50,000 in the aggregate over the term of the contract and that is not

terminable within 30 days of the Effective Date without payment by Kootenay or its Subsidiaries;

- (v) not incur any capital expenditures or enter into any agreement obligating the Company or its Subsidiaries to provide for future capital expenditures outside the ordinary course of business that involve payments in excess of \$50,000 in the aggregate;
  - (vi) not pay, discharge, settle or compromise any claim, action, litigation, arbitration or proceeding, other than any such payment, discharge, settlement or compromise in the ordinary course of business consistent with past practice requiring a monetary payment by the Company not in excess of \$50,000 in the aggregate; and
  - (vii) not initiate or facilitate the filing with any securities commission or other Governmental Entity of a final prospectus in respect of the securities of the Company without Kootenay's prior written consent;
- (f) the Company and each of its Subsidiaries shall:
- (i) duly and timely file all material Tax Returns required to be filed by it on or after the date hereof and all such Tax Returns will be true, complete and correct in all material respects;
  - (ii) timely withhold, collect, remit and pay all material Taxes which are to be withheld, collected, remitted or paid by it to the extent due and payable;
  - (iii) not make or rescind any material express or deemed election relating to Taxes;
  - (iv) not make a request for a Tax ruling or enter into any material agreement with any taxing authorities or consent to any material extension or waiver of any limitation period with respect to Taxes;
  - (v) not settle or compromise any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes that requires a payment by the Company or any of its Subsidiaries in excess of \$50,000; and
  - (vi) not change any of its methods of reporting income, deductions or accounting for income Tax purposes from those employed in the preparation of its past income Tax Returns, except as may required by applicable Laws.
- (g) the Company shall not authorize or enter into or modify any contract, agreement, commitment or arrangement, to do any of the matters prohibited by the other paragraphs of this Section 5.1.



## 5.2 Covenants of Kootenay

Kootenay covenants and agrees that, except as contemplated in this Agreement, until the Effective Date or the Termination Date, whichever is earlier.

- (a) it shall use reasonable commercial efforts to satisfy (or cause the satisfaction of) the conditions of the Offer set forth in Schedule A to this Agreement, to the extent the same is within its control, and take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to complete the Offer in accordance with the terms thereof;
- (b) it shall make or cooperate as necessary in the making of all necessary filings and applications under all applicable Laws required in connection with the transactions contemplated herein and take all reasonable action necessary to be in compliance with such Laws;
- (c) it shall give effect to the Consolidation prior to the Expiry Time, or all steps in respect of the Consolidation shall have been completed except for commencement of trading on a post-Consolidation basis;
- (d) it shall make commercially best efforts to complete the Financing prior to the Expiry Time; or all steps in respect of the Financing shall have been completed, except for the actual closing of the Financing.
- (e) it shall, and shall cause each of its Subsidiaries to, conduct its and their respective businesses only in, not take any action except in, and maintain their respective facilities in the ordinary course of business consistent with past practice except as may be required in order to comply with the terms of this Agreement;
- (f) without limiting the generality of Subsection (e) above, and except (A) as otherwise required or contemplated by this Agreement or in connection with the Business Combination, and (B) for transactions involving Kootenay and one or more wholly-owned Subsidiaries or between wholly-owned Subsidiaries, Kootenay shall not directly or indirectly do, and shall cause each of its Subsidiaries not to:
  - (i) issue, sell, award, pledge, dispose of, encumber or agree to issue, sell, award, pledge, dispose of or encumber any Kootenay Shares, or any options, calls, conversion privileges or rights of any kind to acquire any Kootenay Shares or other securities or any shares of its Subsidiaries;
  - (ii) except in the ordinary course of business consistent with past practice, sell, pledge, lease, dispose of, encumber or agree to sell, pledge, dispose of or encumber any assets of the Company or any of its Subsidiaries or any interest in any asset of the Company or any of its Subsidiaries;
  - (iii) amend or propose to amend the articles, by-laws or other constating documents of Kootenay or any of its Subsidiaries;

- (iv) split, combine or reclassify any outstanding Kootenay Shares;
- (v) redeem, purchase or offer to purchase any Kootenay Shares or other securities of the Kootenay or any shares or other securities of its Subsidiaries;
- (vi) declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of any Kootenay Shares except for dividends paid in the ordinary course of business consistent with past practice and for dividends by any Subsidiary of Kootenay to Kootenay or another Subsidiary of Kootenay;
- (vii) reorganize, amalgamate or merge Kootenay or any of its Subsidiaries with any other Person;
- (viii) reduce the stated capital of the shares of the Company or of any of its Subsidiaries;
- (ix) acquire or agree to acquire (by merger, amalgamation, acquisition of stock or assets or otherwise) any Person, or make any investment either by purchase of shares or securities, contributions of capital (other than to wholly-owned Subsidiaries), property transfer or purchase of any property or assets of any other Person;
- (x) enter into, directly or indirectly, an investment in or acquisition of, whether individually or with any other Person, any asset or an interest in any asset;
- (xi) incur or commit to incur any indebtedness for borrowed money or any other material liability or obligation or issue any debt securities, except for the borrowing of working capital in the ordinary course of business, or guarantee, endorse or otherwise as an accommodation become responsible for, the obligations of any other Person or make any loans or advances, except in the ordinary course of business consistent with past practice;
- (xii) adopt a plan of liquidation or resolutions providing for the liquidation or dissolution of Kootenay or any of its Subsidiaries;
- (xiii) other than the Kootenay Shares for Debt Transactions, pay, discharge or satisfy any claims, liabilities or obligations other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against in Kootenay's financial statements or incurred in the ordinary course of business consistent with past practice;
- (xiv) authorize, recommend or propose any release or relinquishment of any contractual right except where such release or relinquishment would not reasonably be expected to result in a Kootenay Material Adverse Effect; or

- (xv) waive, release, grant or transfer any rights of value or modify or change any existing licence, lease, contract or other document, except where such waiver, release, grant, transfer, modification or change would not reasonably be expected to result in a Kootenay Material Adverse Effect;
- (g) Kootenay shall not, and shall cause each of its Subsidiaries not to, except in the ordinary course of business consistent with past practice:
  - (i) increase the fringe benefits payable or to become payable to its directors or officers (whether from Kootenay or any of its Subsidiaries); or enter into or modify any employment, severance, or similar agreements or arrangements with, or grant any bonuses, salary increases, severance or termination pay to, any officer of Kootenay or member of the board of directors of Kootenay; other than pursuant to agreements already entered into as disclosed in the Kootenay Information; or
  - (ii) in the case of employees who are not officers of Kootenay or members of the board of directors of Kootenay, take any action other than in the ordinary course of business and consistent with past practice (none of which actions shall be unreasonable or unusual) with respect to the grant of any bonuses, salary increases, severance or termination pay or with respect to any increase of benefits payable in effect on the date hereof;
- (h) except in the ordinary course of business consistent with past practice, Kootenay shall not, and shall cause each of its Subsidiaries not to, establish, adopt, enter into, amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any bonus, profit sharing, incentive, compensation, stock option, restricted stock, pension, retirement, deferred compensation, savings, welfare, employment, termination, severance or other employee benefit plan, agreement, trust, fund, policy or arrangement for the benefit or welfare of any directors, officers, current or former employees of Kootenay or its Subsidiaries;
- (i) Kootenay shall:
  - (i) use reasonable commercial efforts, and cause each of its Subsidiaries, to preserve intact their respective business organizations and goodwill, to keep available the services of its and their officers and employees as a group and to maintain satisfactory relationships with suppliers, distributors, customers and others having business relationships with them;
  - (ii) not take any action, or permit any of its Subsidiaries to take any action, which would render, or which reasonably may be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect;
  - (iii) promptly notify the Company orally and in writing of the occurrence of any Kootenay Material Adverse Effect, in the normal course of its or any of its Subsidiaries' businesses or in the operation of its or any of its Subsidiaries'

properties and of any material governmental or third party complaints, investigations or hearings (or communications indicating that the same are being contemplated);

- (iv) not enter into any agreement, contract, lease, license or other binding obligation of Kootenay or its Subsidiaries;
  - (v) not incur any capital expenditures or enter into any agreement obligating Kootenay or its Subsidiaries to provide for future capital expenditures outside the ordinary course of business;
  - (vi) not pay, discharge, settle or compromise any claim, action, litigation, arbitration or proceeding, other than any such payment, discharge, settlement or compromise in the ordinary course of business consistent; and
  - (vii) not initiate or facilitate the filing with any securities commission or other Governmental Entity of a final prospectus in respect of the securities of Kootenay without the Company's prior written consent;
- (j) Kootenay and each of its Subsidiaries shall:
- (i) duly and timely file all material Tax Returns required to be filed by it on or after the date hereof and all such Tax Returns will be true, complete and correct in all material respects;
  - (ii) timely withhold, collect, remit and pay all material Taxes which are to be withheld, collected, remitted or paid by it to the extent due and payable;
  - (iii) not make or rescind any material express or deemed election relating to Taxes;
  - (iv) not make a request for a Tax ruling or enter into any material agreement with any taxing authorities or consent to any material extension or waiver of any limitation period with respect to Taxes;
  - (v) not settle or compromise any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes that requires a payment by the Company or any of its Subsidiaries in excess of \$10,000; and
  - (vi) not change any of its methods of reporting income, deductions or accounting for income Tax purposes from those employed in the preparation of its past income Tax Returns, except as may required by applicable Laws.
- (k) Kootenay shall not authorize or enter into or modify any contract, agreement, commitment or arrangement, to do any of the matters prohibited by the other paragraphs of this Section 5.2.

- (1) Kootenay shall perform any obligations, actions or covenants as set out in Section 2.1.

### **5.3 Filings and Authorizations**

- (a) Each of Kootenay and the Company, as promptly as practicable after the execution and delivery of this Agreement, will (i) make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to make and consummate the Offer, (ii) use all its commercially reasonable efforts to obtain, or cause to be obtained, and secure all Appropriate Regulatory Approvals; and (iii) use all commercially reasonable efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order for it to fulfil its obligations under this Agreement including fulfilling as soon as is practicable any reasonable requests for additional information. Subject to any applicable Laws, the Parties will coordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, without limitation, providing each other with all notices and information supplied or filed with any Governmental Entity (except for notices and information which Kootenay or the Company, in each case acting reasonably, considers confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Entity.
- (b) The Parties shall use commercially reasonable efforts to obtain the Appropriate Regulatory Approvals within 75 days from the date hereof.
- (c) Nothing in this Section 5.3 shall oblige any Party to disclose to another Party any written communications or information which that Party, acting reasonably, considers to be confidential and sensitive in nature, provided that arrangements will be made among the Parties and their counsel as necessary for any such confidential written communications or information to be exchanged on a “counsel only” basis.

### **5.4 Indemnification**

- (a) The Parties agree that all rights to indemnification existing in favour of the present and former directors and officers of the Company (each such present or former director or officer of the Company being herein referred to as an “**Indemnified Party**” and such persons collectively being referred to as the “**Indemnified Parties**”) will survive and will continue in full force and effect and without modification, and the Company and any successor to the Company shall continue to honour such rights of indemnification and indemnify the Indemnified Parties pursuant thereto, with respect to actions or omissions of the Indemnified Parties occurring prior to the Effective Date, for six years following the Effective Date.
- (b) The provisions of this Section 5.4 are intended for the benefit of, and shall be enforceable by, each Indemnified Party, his or her heirs and his or her legal representatives and, for such purpose, the Company hereby confirms that it is acting

as trustee on their behalf, and agrees to enforce the provisions of this Section 5.4 on their behalf. Furthermore, this Section 5.4 shall survive the termination of this Agreement as a result of the occurrence of an event giving rise to a termination under this Agreement prior to the Effective Date for a period of six years.

## **5.5 Extension of the Offer**

The Parties acknowledge that if prior to the Expiry Date Kootenay becomes aware that any condition set out in Schedule A is unlikely to be satisfied or performed prior to the Expiry Date, it may, prior to such date, in accordance with applicable Laws, extend the period during which Common Shares may be deposited under the Offer, subject to Subsection 6.1.

## **ARTICLE 6 TERMINATION, AMENDMENT AND WAIVER**

### **6.1 Termination**

This Agreement may be terminated by notice in writing:

- (a) at any time prior to the Effective Date by mutual consent of Kootenay and the Company;
- (b) by Kootenay, if any condition to making the Offer set forth in Section 2.1 is not satisfied or waived by the Offer Deadline (other than as a result of Kootenay's default hereunder);
- (c) by Kootenay, at any time if:
  - (i) the Company shall have breached any of its representations and warranties that are qualified by a reference to a Company Material Adverse Effect, or if any such representations or warranties shall have become untrue or incorrect after the date hereof (except to the extent that the knowledge of Kootenay at the date hereof has identified the untruth or incorrectness of such representations and warranties at or prior to the date hereof); or
  - (ii) the Company shall have breached in any material respect any of its representations and warranties, covenants or other agreements contained in this Agreement, or if any such representations or warranties shall in any material respects have become untrue or incorrect after the date hereof (except to the extent that the knowledge of Kootenay at the date hereof has identified the untruth or incorrectness of such representations and warranties at or prior to the date hereof);

and any such breach or failure to be true and correct is incapable of being cured by the Company or is not cured within 30 days of written notice thereof,

- (d) by Kootenay, at any time if the Company is in default of any covenant or obligation under this Agreement and such default is reasonably likely to prevent or materially delay consummation of the transactions contemplated by this Agreement;
- (e) by the Company at any time if Kootenay is in breach of any of its representations or warranties or in default of any covenant or obligation under this Agreement and such breach or default has had or is reasonably likely to have a Kootenay Material Adverse Effect, or is reasonably likely to prevent or materially delay consummation of the transactions contemplated by this Agreement;
- (f) by the Company if, prior to the Expiry Time:
  - (i) the conditional approval of the Canadian Securities Exchange of the Business Combination has not been obtained;
  - (ii) the Financing has not closed; or all steps in respect of the Financing have not been completed, except for the actual closing of the Financing;
  - (iii) Kootenay has not obtained the requisite approval of the shareholders of Kootenay of the Business Combination at a meeting duly called for such purpose;
  - (iv) the amalgamation of Canndora and Kootenay or its Subsidiary has not completed, or all steps in respect of such amalgamation have not been completed, except for the actual closing of such amalgamation;
  - (v) the amalgamation of Greeny and Kootenay or its Subsidiary has not completed, or all steps in respect of such amalgamation have not been completed, except for the actual closing of such amalgamation;
  - (vi) all government or regulatory approvals, waiting or suspensory periods, waivers, permits, consents, reviews, orders, rulings, decisions, and exemptions required by law, including, without limitation, those required by any provincial securities authorities, stock exchanges or other securities regulatory authorities, have not been obtained on terms satisfactory to the Company, acting reasonably;
  - (vii) an act, action, suit or proceeding has been taken before or by any Governmental Entity (including, without limitation, any individual, company, firm, group or other entity) in Canada or elsewhere, whether or not having the force of Law, or a Law shall have been proposed, enacted, promulgated or applied, in either case:
    - (A) to cease trade, enjoin, prohibit or impose material and adverse limitations, damages or conditions on the purchase by or the sale to Kootenay of the Common Shares or the right of Kootenay to own or exercise full rights of ownership of the Common Shares;

- (B) to cease trade, enjoin, prohibit or impose material and adverse limitations, damages or conditions on the issuance of the PeakBirch Shares as contemplated in this Agreement; or
  - (C) which, if the Offer were consummated, would reasonably be expected to have a Company Material Adverse Effect or Kootenay Material Adverse Effect;
- (viii) there shall exist any prohibition at Law against Kootenay making the Offer or taking up and paying for the Deposited Shares or any material number of Deposited Shares;
- (ix) there shall exist or have occurred a Company Material Adverse Effect if;
  - (A) at the Expiry Time, all representations and warranties of the Company in this Agreement: (A) that are qualified by a reference to Company Material Adverse Effect shall be true and correct in all respects; and (B) that are not qualified by a reference to a Company Material Adverse Effect shall be true and correct in all material respects;
  - (B) the Support Agreement shall not have been terminated; and
  - (C) the Company shall have observed and performed its covenants in the Agreement in all material respects to the extent that such covenants were to have been observed or performed by the Company at or prior to the Expiry Time.
- (g) by the Company, if Kootenay has not taken up and paid for at least 50.1% of the outstanding Common Shares (on a fully diluted basis) under the Offer within 75 days after the Offer is commenced, otherwise than as a result of the breach by the Company of any covenant or obligation under this Agreement or as a result of any representation or warranty of the Company in this Agreement being untrue or incorrect in any material respect; provided, however, that if Kootenay's take-up and payment for the Deposited Shares is delayed by (i) an injunction or order made by a court or regulatory authority of competent jurisdiction, or (ii) Kootenay not having obtained any regulatory waiver, consent or approval which is necessary to permit Kootenay to take up and pay for the Deposited Shares, then, provided that such injunction or order is being contested or appealed or such regulatory waiver, consent or approval is being actively sought, as applicable, this Agreement shall not be terminated by the Company pursuant to this Subsection 6.1(g) until the earlier of (i) 120 days after the Offer is commenced and (ii) the fifth business day following the date on which such injunction or order ceases to be in effect or such waiver, consent or approval is obtained, as applicable;
- (h) by Kootenay if. (i) the Board of Directors withdraws, modifies or changes its recommendation in favour of the Offer in a manner adverse to Kootenay; or (ii) the Board of Directors does not reaffirm its recommendation in favour of the Offer to



the Shareholders in a press release or Directors' Circular within 15 days after the public announcement; and

- (i) by the Company, if Kootenay does not commence the Offer and mail the Offer Documents by the Offer Deadline.

## **6.2 Amendment**

This Agreement may not be amended except by written instrument signed by each of the Parties.

## **6.3 Waiver**

At any time prior to the Effective Date, either Kootenay or the Company may: (a) extend the time for the performance of any of the obligations or other acts of the other Party; or (b) waive compliance with any of the agreements of the other Party or with any conditions to its own obligations, in each case only to the extent such obligations, agreements or conditions are intended for its benefit.

# **ARTICLE 7 GENERAL PROVISIONS**

## **7.1 Further Assurances**

Subject to the conditions herein provided and to the fiduciary duties of the Board of Directors and the board of directors of Kootenay, each Party agrees to use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as is practicable the transactions contemplated by the Offer and this Agreement, including (i) the execution and delivery of such documents as the other Party may reasonably require and (ii) obtaining such information, documents or consents required in connection with the preparation of the Offering Circular, the Directors' Circular and the Deposit Period News Release, and using reasonable best efforts to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings, including, but not limited to, filings under applicable Laws and submissions of information requested by Governmental Entities. Each of the Parties shall cooperate in all reasonable respects with the other Party in taking such actions.

## **7.2 Notification of Certain Matters**

Each Party shall give prompt notice to the others of (i) the occurrence or failure to occur of any event, which occurrence or failure would cause or may cause any representation or warranty on its part contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the earlier of the Effective Date and the termination of this Agreement; and (ii) any failure of such Party, or any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

### **7.3 Access to Information**

Upon reasonable notice, each Party agrees to provide to the other Party and its representatives with continued access to the Kootenay Information and the Company Information, as the case may be, in addition to access during normal business hours to all books, records, information and files in its possession and control and access to its personnel on an as requested basis as well as access to its properties in order to allow them to conduct such investigations as they may consider necessary or advisable for due diligence, strategic planning and other valid business reasons, and further agrees to assist them in all reasonable ways in any investigations which they may wish to conduct. Any investigation by the parties hereto and its representatives after the date of this Agreement shall not mitigate, diminish or affect the representations and warranties in this Agreement or any document or certificate given pursuant hereto.

### **7.4 Exclusivity**

Each of the Parties agrees to cooperate with each other in good faith to complete the transactions outlined herein and until the Expiry Date and closing of the Business Combination, unless this Agreement has been terminated in accordance with its terms. The Parties shall not, directly or indirectly, through any officer, director, manager, employee, agent, partner, affiliate, independent contractor or otherwise (each a “**Representative**”), enter into any agreement in principle or other commitment (whether or not legally binding) relating to any business combination, financing, recapitalization, acquisition, or sale of all or a significant portion of the equity or assets of the respective Parties or any similar transaction (an “**Alternative Transaction**”), or solicit, initiate or encourage the submission of any proposal or offer from any person or entity relating to any Alternative Transaction, nor participate in any ongoing discussions or negotiations regarding, or furnish to any other person or entity any information with respect to, or otherwise cooperate in any way with or assist or participate in, facilitate or encourage, any effort or attempt by any person or entity to effect an Alternative Transaction.

### **7.5 Confidentiality**

Except with the prior written consent of the applicable party, each of the Parties and their respective employees, officers, directors, shareholders, agents, advisors, and other representatives will hold all information received from the other party in strictest confidence, except such information and documents available to the public or as are required to be disclosed by applicable law. All such information (including any copies) in written form and documents will be returned to the party originally delivering them and any electronic copies shall be deleted or destroyed (other than those retained as part of an electronic backup) in the event that the transactions provided for in this Agreement are not consummated in accordance with its terms. No disclosure or announcement, public or otherwise, in respect of this Agreement or the transactions contemplated herein or therein will be made by any party without the prior agreement of the other party as to timing, content, and method, provided that the obligations herein will not prevent any party from making, after consultation with the other party, such disclosure as its counsel advises is required by applicable Law.

## **7.6 Expenses**

Each Party shall pay its own expenses incurred in connection with this Agreement, the completion of the transactions contemplated hereby and/or the termination of this Agreement, irrespective of the completion of the transactions contemplated hereby.

## **7.7 Notices**

All notices, requests, demands and other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the Party for whom it is intended or delivered, or if sent by email, upon confirmation that such transmission has been properly effected, to the Person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such Person. The date of receipt of any such notice or other communication if delivered personally shall be deemed to be the date of delivery thereof, or if sent by email the date of such transmission if sent on a business day, failing which it shall be deemed to have been received on the next business day.

### **If to Kootenay:**

Kootenay Zinc Corp.  
400 - 837 West Hastings Street  
Vancouver, BC V6C3N6

Attention: Von Torres  
Email: [Redacted]

with copies (which shall not constitute notice) to:

Farris LLP  
700 West Georgia Street, Suite 2500  
Vancouver, BC V7Y 1B3

Attention: Peter M. Roth  
Email: [Redacted]

### **If to the Company:**

Lifted Innovations Inc.  
366 Bay Street, Ste 200  
Toronto, Ontario M5H 4B2

Attention: Michael Galloro  
Email: [Redacted]

with copies (which shall not constitute notice) to:

Gowlings LLP  
100 King Street West, #1600  
Toronto, Ontario M5X 1G5

Attention: Peter Simeon  
Email: [Redacted]

Any Party may at any time change its address for service from time to time by giving notice to the other Parties in accordance with this Section 7.7.

### **7.8 Severability**

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

### **7.9 Entire Agreement, Assignment and Governing Law**

- (a) This Agreement constitutes the entire agreement between the Parties and supersedes all other prior agreements and undertakings, both written and oral, between the Parties with respect to the subject matter hereof. Other than as set forth in such agreements, no representation or warranty has been given by any Party to the others.
- (b) This Agreement: (i) is not intended to confer upon any other Person any rights or remedies hereunder; (ii) shall not be assigned by operation of law or otherwise, except that Kootenay may assign all or any portion of its rights under this Agreement to any affiliate (as such term is defined in the Securities Act) upon three business days prior written notice to the Company and provided such affiliate executes and delivers a counterpart of this Agreement pursuant to which it agrees to be bound by the terms of this Agreement as Kootenay but no such assignment shall relieve Kootenay of its obligations hereunder; and (iii) shall be governed in all respects, including validity, interpretation and effect, exclusively by the Laws of the Province of British Columbia and the Laws of Canada applicable therein, without giving effect to the principles of conflict of laws thereof.

### **7.10 Attornment**

The Parties hereby irrevocably and unconditionally consent to and submit to the courts of the Province of British Columbia for any actions, suits or proceedings arising out of or relating to this Agreement or the matters contemplated hereby (and agree not to commence any action, suit or proceeding relating thereto except in such courts) and further agree that service of any process,

summons, notice or document by registered mail to the addresses of the Parties set forth in this Agreement shall be effective service of process for any action, suit or proceeding brought against any Party in such court. The Parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the matters contemplated hereby in the courts of the Province of British Columbia and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding so brought has been brought in an inconvenient forum.

#### **7.11 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 taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce more than one counterpart.

*[The remainder of this page is intentionally left blank]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**KOOTENAY ZINC CORP.**

By: "Von Torres"  
Name: Von Torres  
Title: Interim Chief Executive Office

**LIFTED INNOVATIONS INC.**

By: "Bjorne Borg"  
Name: Biorne Borg  
Title: Authorized Signatory

## **SCHEDULE A**

### **CONDITIONS OF THE OFFER**

Subject to the provisions of the Agreement, Kootenay shall have the right to withdraw the Offer and shall not be required to take up, purchase or pay for, and shall have the right to extend the period of time during which the Offer is open and postpone taking up and paying for, the Deposited Shares unless all of the following conditions are satisfied or waived by Kootenay at or prior to the Expiry Time:

- (a) the Minimum Tender Condition;
- (b) the conditional approval of the Canadian Securities Exchange for the Business Combination will have been obtained;
- (c) the Financing shall have closed; or all steps in respect of the Financing shall have been completed, except for the actual closing of the Financing;
- (d) Kootenay will have obtained the requisite approval of the shareholders of Kootenay of the Business Combination at a meeting duly called for such purpose;
- (e) holders of the shares of Canndora will have approved, by written consent resolution or by special resolution (as such term is defined in the BCBCA), the amalgamation of Canndora with Kootenay or one of its Subsidiaries pursuant to the Business Combination;
- (f) holders of the shares of Greeny will have approved, by written consent resolution or by special resolution (as such term is defined in the BCBCA), the amalgamation of Greeny with Kootenay or one of its Subsidiaries pursuant to the Business Combination;
- (g) all government or regulatory approvals, waiting or suspensory periods, waivers, permits, consents, reviews, orders, rulings, decisions, and exemptions required by law, including, without limitation, those required by any provincial securities authorities, stock exchanges or other securities regulatory authorities, shall have been obtained on terms satisfactory to Kootenay, acting reasonably;
- (h) no act, action, suit or proceeding shall have been taken before or by any Governmental Entity (including, without limitation, any individual, company, firm, group or other entity) in Canada or elsewhere, whether or not having the force of Law, and no Law shall have been proposed, enacted, promulgated or applied, in either case:
  - (i) to cease trade, enjoin, prohibit or impose material and adverse limitations, damages or conditions on the purchase by or the sale to Kootenay of the Common Shares or the right of Kootenay to own or exercise full rights of ownership of the Common Shares; or

- (ii) which, if the Offer were consummated, would reasonably be expected to have a Company Material Adverse Effect;
- (i) there shall not exist any prohibition at Law against Kootenay making the Offer or taking up and paying for the Deposited Shares or any material number of Deposited Shares;
- (j) there shall not exist or have occurred a Company Material Adverse Effect;
- (k) the Support Agreement shall not have been terminated.

The foregoing conditions are for the exclusive benefit of Kootenay and may be asserted by Kootenay regardless of the circumstances giving rise to any such condition. Kootenay may, in Kootenay's sole discretion, waive any of the foregoing conditions, in whole or in part, at any time and from time to time, both before and after the Expiry Time, without prejudice to any other rights which Kootenay may have. The failure by Kootenay at any time to exercise any of the foregoing rights will not be deemed to be a waiver of any such right and each such right shall be deemed to be an ongoing right which may be asserted at any time and from time to time.