

**Court File Nos. 33-2276663/33-2276664**

**FUEL INDUSTRIES INC. AND FUEL TECHNOLOGIES INC.**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.  
IN ITS CAPACITY AS TRUSTEE UNDER THE  
NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
FUEL INDUSTRIES INC. AND FUEL TECHNOLOGIES INC.**

**AUGUST 1, 2017**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
FUEL INDUSTRIES INC. AND FUEL TECHNOLOGIES INC.**

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**AUGUST 1, 2017**

**I. INTRODUCTION**

1. This report (the “**Report**”) is filed by Richter Advisory Group Inc. (“**Richter**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) in connection with the Notices of Intention to Make a Proposal (“**NOIs**”) filed by each of Fuel Industries Inc. (“**Industries**”) and Fuel Technologies Inc. (“**Technologies**” and together with Industries, the “**Companies**”).
2. On July 26, 2017 (the “**Filing Date**”), the Companies each filed an NOI pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”) and Richter was appointed as Proposal Trustee under each NOI. A copy of the Certificates of Filing issued by the Superintendent of Bankruptcy for each of the Companies is attached hereto as **Appendix “A”**.
3. The purpose of this Report is to provide the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) with information pertaining to the following:
  - (i) background information about the Companies;
  - (ii) the Companies’ creditors;
  - (iii) the terms of an Asset Purchase Agreement (the “**Sale Agreement**”) between the Companies and 2587485 Ontario Inc. (the “**Purchaser**”) for the sale of substantially all of the Companies’ business and assets (the “**Sale Transaction**”);

- (iv) the Companies' request that it be authorized and empowered to obtain and borrow interim financing secured by a super-priority charge against the Companies' assets, including the terms of the debtor-in-possession ("**DIP**") facility;
- (v) the reasons why the Proposal Trustee is of the view that the Sale Agreement and Sale Transaction should be approved by this Court; and
- (vi) the Proposal Trustee's recommendation that this Court make order(s) as requested by the Companies:
  - (a) approving the Sale Agreement and the Sale Transaction, and authorizing the Companies and the Proposal Trustee to take the necessary steps to complete the Sale Transaction;
  - (b) vesting, upon the closing of the Sale Transaction, all right, title and interest of the Companies in and to the Companies' assets subject to the Sale Agreement (the "**Purchased Assets**") in the Purchaser free and clear of all liens, charges, security, interests and other encumbrances other than Permitted Encumbrances as defined in the Sale Agreement (the "**Approval and Vesting Order**");
  - (c) approving the terms of the DIP Facility (as hereinafter defined) and granting a super-priority charge against the Companies' assets in favour of the DIP lender (the "**DIP Order**"); and
  - (d) sealing the Comparison Schedule (as hereinafter defined) until the closing of the Sale Transaction or upon further order of the Court.

## II. TERMS OF REFERENCE

- 4. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars.
- 5. In preparing this Report, Richter has relied upon unaudited financial information, the Companies' books and records, financial information prepared by the Companies and discussions with the Companies' management, and the Purchaser's legal counsel, Stikeman Elliott LLP, (collectively, the "**Information**"). Except as otherwise described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountant of Canada Handbook and, as such, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

### III. GENERAL BACKGROUND INFORMATION ON THE COMPANIES

6. The Companies are a full-service digital creative agency focused on connecting global brands with youth, millennial, and family audiences through innovative technology, including augmented reality and virtual reality experiences, immersive virtual worlds, mobile apps, social games, branded entertainment, interactive multi-screen experiences, interactive rich media advertising, and digital loyalty programs.
7. Industries was founded and incorporated in Ontario in 2000 and is the operating entity of the Companies. Technologies was founded and incorporated in Ontario in 2015. The Proposal Trustee understands, however, that Technologies does not carry on active business operations and its assets consist primarily of certain intellectual property and its share interest in an online gaming tournament service provider. The Companies' operate from leased premises located at 7 Hinton Avenue North, Suite 100, Ottawa, Ontario.
8. As at the date of this Report, the Companies had 32 employees (all employed by Industries). The Proposal Trustee understands that none of the Companies' employees are represented by a union or are subject to a collective bargaining agreement and the Companies do not sponsor a pension plan for any of its employees.
9. The Companies' business, affairs, financial performance and position, as well as the causes of its insolvency, are detailed in the affidavit of M. Burns sworn July 31, 2017 in support of the Companies' motion returnable August 2, 2017 (the "**Burns Affidavit**") and are, therefore, not repeated herein. The Proposal Trustee has reviewed the Burns Affidavit and discussed the business and affairs of the Companies with senior management personnel of the Companies and is of the view that the Burns Affidavit provides a fair summary thereof.

#### **The Companies' Corporate Structure**

10. Although Industries and Technologies are distinct legal entities, they share common management and back-office support, occupy common head-office space and are both liable for amounts owing under the credit facilities with Chou Associates Management Inc. ("**Chou**") and Royal Bank of Canada ("**RBC**") (discussed later in this Report).
11. Technologies is related to Industries by virtue of common ownership. An organizational chart for the Companies is attached as Exhibit "B" to the Burns Affidavit.

## IV. FINANCIAL RESULTS

12. As described in the Burns Affidavit, as a result of a number of factors including changing market conditions, increased competition and the failure to monetize certain research and development initiatives, the Companies' financial results have suffered and significant losses have been incurred for the three years ending December 31, 2014, 2015 and 2016. The Companies continued to experience significant losses for the 3-month period ended March 31, 2017, as shown in the below table (results shown are for Industries only, as Technologies does not carry on active business operations):

<b>Industries</b>	<i>(unaudited)</i>	<i>(unaudited)</i>	<i>(audited)</i>	<i>(audited)</i>
<b>Income Statement</b>	3 month ended	Year ended	Year ended	Year ended
(C\$000)	31-Mar-17	31-Dec-16	31-Dec-15	31-Dec-14
Revenue	2,748	15,812	16,158	17,586
Cost of sales	1,334	9,401	11,812	11,702
Gross profit	1,414	6,411	4,346	5,884
Margin %	51%	41%	27%	33%
SG&A	1,176	5,659	6,297	5,388
EBITDA	238	752	(1,951)	496
Net Income (Loss)	(31)	(1,592)	(3,770)	(414)

13. As a result of the Companies' sustained losses, the Companies have been dependent on capital injections from Chou to finance operations. As a result of the Companies' poor financial performance, the Companies' management considered it prudent, as far back as 2015, to consider various strategic options, including the potential sale of the business (discussed further below).

## V. THE COMPANIES' CREDITORS

### Secured Creditors

14. The Proposal Trustee understands that Chou is the primary secured creditor of the Companies, owed approximately \$7.4 million as at the date of this Report pursuant to various loan/credit agreements between the Companies and Chou (the "**Chou Indebtedness**").
15. In addition, the Proposal Trustee understands that until recently RBC was a secured creditor of the Companies pursuant to a loan agreement between Industries and RBC dated October 29, 2013 (and subsequent amendments thereto, the "**RBC Indebtedness**") and that such indebtedness (and associated security) was assigned to Chou on May 23, 2017, as discussed further below. As at the date of this Report, the RBC Indebtedness totals approximately \$1.1 million. The Proposed Trustee understands that Technologies has guaranteed the amounts owed by Industries to RBC and now owed to Chou.

16. Pursuant to various intercreditor agreements between Industries, RBC and Chou, all amounts advanced by Chou are subordinate to the RBC Indebtedness with respect to all of the property of Industries (with the exception of certain refundable tax credits Industries may be entitled to receive for eligible Ontario labour, marketing and distribution expenditures, including the Ontario Interactive Digital Media Tax Credit (the “**OIDMTC**”)) and all of the property of Technologies.
17. Due to the Companies’ continuing losses, the Companies breached certain of their financial and other covenants under the Companies’ credit facilities with each of Chou and RBC and, in January 2017, RBC issued demand letters and a Notices of Intention to Enforce Security pursuant to Section 244 of the BIA to the Companies.
18. On February 9, 2017 the Companies and RBC agreed on the terms of a forbearance agreement (the “**RBC Forbearance Agreement**”), pursuant to which RBC agreed to forbear, subject to certain terms and conditions, from taking steps to proceed with enforcement of its security held in support of its loans until May 10, 2017 to grant the Companies further time to attempt to restructure and/or sell the business or secure alternate financing.
19. As noted in the Burns Affidavit, in order to assist the Companies avoid a receivership/liquidation of the business upon the expiration of the RBC Forbearance Agreement, the RBC Indebtedness, including all loan agreements and security granted in support of same, were assigned to Chou pursuant to an Assignment of Debt and Security dated May 23, 2017 (the “**RBC Assignment**”). At the same time, Chou advanced a further \$318,500 to the Companies, which additional funding was required by the Companies to pay certain critical obligations, including outstanding employee wages.
20. Also on May 23, 2017, the Companies and Chou agreed upon the terms of a forbearance agreement (as amended, the “**Chou Forbearance Agreement**”), pursuant to which Chou agreed to forbear from taking any enforcement steps in connection with either the RBC Indebtedness or the Chou Indebtedness until June 27, 2017 (the “**Forbearance Period**”). According to the Burns Affidavit, the Chou Forbearance Agreement provided the Companies with additional time to attempt to restructure its business, secure alternate financing or seek one final opportunity to pursue a sale of the business (discussed further below). Richter was engaged by the Companies during the Forbearance Period to assist with these initiatives.
21. The Chou Forbearance Agreement was subsequently amended by agreements dated June 14, 2017 and June 27, 2017 to, among other things, outline the additional funding provided by Chou to the Companies during the Forbearance Period and extend the Forbearance Period to July 14, 2017.
22. The Chou Forbearance Agreement expired on July 14, 2017 and was not extended. On July 17, 2017, Chou issued demand letters and Notices of Intention to Enforce Security pursuant to Section 244 of the BIA (“**NITES**”) to the Companies. Copies of the NITES are attached as Exhibits “FF” and “GG” to the Burns Affidavit.

23. The Proposal Trustee has received an opinion from its independent legal counsel, Chaitons LLP (“**Chaitons**”) dated July 28, 2017, that subject to the typical qualifications and assumptions, the security granted by the Companies to Chou and RBC is valid and enforceable.
24. In addition to Chou and RBC, the Proposal Trustee is aware of certain other registrations made pursuant to the *Personal Property Security Act* (Ontario) in favour of LBEL Inc. and Dell Financial Services Canada Limited in respect of certain specific office equipment, as well as Dahavland Capital Corporation, in trust, in respect of historic debts which the Proposal Trustee understands are no longer outstanding. Copies of certified searches of the Personal Property Security Registration System with a currency date of July 10, 2017 in respect of the Companies are attached hereto as Exhibit “MM” to the Burns Affidavit.

### **Unsecured Creditors**

25. In addition to the Chou Indebtedness and the RBC Indebtedness, the Companies estimate that they have accrued and unpaid obligations to unsecured creditors totaling approximately \$2.7 million (excluding intercompany and related party indebtedness).

## **VI. REQUEST FOR INTERIM FINANCING**

26. As noted above, the Companies are dependent on capital injections from Chou to finance operations.
27. As the Proposal Trustee understands that the Companies are currently without funds to continue operations, the ability to borrow additional funds, in the form of a Court-approved DIP facility, secured by a DIP Charge, is vital to providing the stability and cash flow necessary for the Companies to pursue their restructuring initiatives, including the completion of the proposed Sale Transaction.

## **VII. DIP FACILITY**

28. Chou (the “**DIP Lender**”) has agreed to extend to the Companies a senior secured super-priority DIP credit facility in the maximum amount of \$350,000 (the “**DIP Facility**”) to fund the Companies’ working capital and costs/expenses associated with the Companies’ NOI proceedings.
29. The terms of the DIP Facility are contained in the DIP term sheet between the Companies and the DIP Lender (a copy of the DIP term sheet is attached as Exhibit “LL” to the Burns Affidavit.) and include, *inter alia*, the following:
  - (i) the total available under the DIP Facility is \$350,000;



- (ii) the Companies may request an immediate advance under the DIP Facility upon the granting of the DIP Order in an amount to be approved by the DIP Lender in its sole discretion. Further drawdowns may be requested by the Companies by providing written notice to the DIP Lender at least two (2) business days prior to the date the advance is intended to be made;
  - (iii) all advances made under the DIP Facility shall be used for disbursements approved by the DIP Lender (in its sole discretion) in respect of the administrative expenses associated with the Companies' NOI proceedings and approved post-filing obligations incurred by the Companies during the NOI proceedings;
  - (iv) the DIP Facility matures on the earliest of: (i) the date on which the stay of proceedings granted pursuant to the BIA or an order of the Court expires without being extended, (ii) the date on which the Companies' NOI proceedings are terminated, (iii) August 31, 2017, (iv) the closing of the Sale Transaction and the finalization of the Companies' NOI proceedings, (v) the effective date of any proposal filed by the Companies and approved by the Court, and (vi) the occurrence of any event of default (collectively, the "**Maturity Date**"); and
  - (v) the interest rate on the DIP Facility shall accrue at the rate of 10% per annum payable on the Maturity Date. Upon maturity or an event of default that is continuing, the interest rate will automatically become 13% per annum until all obligations under the DIP Facility have been satisfied.
30. The DIP Facility is to be secured by the DIP Charge. In this regard, the DIP Lender requires that all amounts outstanding under the DIP Facility be secured by a first-ranking charge against all of the assets of the Companies in favour of the DIP Lender.
31. The Proposal Trustee has inquired into the marketing process for the DIP financing arrangements and has been advised by the Companies' management that the DIP financing requirement was not marketed externally or to other potential lenders given the willingness of the existing lender to provide the necessary funding.
32. The Companies' management has advised the Proposal Trustee that the DIP Facility represents the only viable alternative available to the Companies to ensure the continuation of the Companies' operations at this time.
33. The Proposal Trustee has compared the principal financial terms of the DIP Facility to a number of other recent debtor-in-possession financing packages with respect to pricing, loan availability and certain security considerations. Based on this comparison, the Proposal Trustee is of the view that, in the circumstances, the financial terms of the DIP Facility appear to be commercially reasonable and consistent with market transactions. In addition, the Proposal Trustee notes that the interest rate charged under the DIP Facility is in line with the rates charged on the existing Chou loans to the Companies.

## VIII. SALE AND INVESTMENT SOLICITATION PROCESS

34. As noted above, as a result of the Companies' poor financial performance, the Companies' management considered it prudent to consider various strategic alternatives, including the potential sale of the Companies.

### **McCracken Advisory Partners Efforts to Sell the Companies' Business**

35. The Proposal Trustee has been advised that, in order to determine third parties' interest in the Companies' business, in or about mid-2015, the Companies retained McCracken Advisory Partners ("**McCracken**"), an investment banking and mergers and acquisitions advisory firm specializing in the advertising, marketing services, media and technology industries, to identify one or more parties interested in acquiring the Companies' business and work towards the completion of a transaction for same.
36. McCracken prepared an in-depth investment profile and information memorandum summarizing the opportunity to acquire the Companies' business, which was distributed through McCracken's global network of contacts to in excess of 60 parties McCracken identified as potential strategic purchasers.
37. As part of the sale process undertaken by McCracken, the Companies engaged in formal discussions with four (4) potential interested parties that signed a non-disclosure agreement ("**NDA**") and were provided access to a data room populated with financial and other information to complete their due diligence. Notwithstanding that the Companies agreement with McCracken had expired, the Proposal Trustee understands that further discussions regarding the opportunity were held between McCracken and two (2) of the four (4) potential interested parties noted above in early 2017.

### **The Companies' Initial Sale Efforts**

38. The Proposal Trustee has been advised that, as McCracken enjoyed limited success in identifying potential purchasers for the Companies' business, commencing in early 2016, the Companies prepared their own marketing materials, including a three-page overview of the Companies (Industries), to distribute to their network of potential interested parties. The Proposal Trustee understands that the Companies' sale efforts were largely carried out by the Companies former Chief Executive Officer who resigned in February 2017. In addition, the Proposal Trustee understands that the marketing of the Companies was a condition of the further financing provided to the Companies in 2016.
39. The Proposal Trustee has been advised that, as a part of the Companies' sale efforts, formal discussions were entered into with seven (7) potential interested parties, each of which signed a NDA and were provided access to the Companies' data room.

40. Although, the Proposal Trustee understands that conversations with several of these potential interested parties progressed and, in certain instances, continued into mid-2017, no formal offers to purchase the Companies' business were presented to the Companies.

#### **Advertising M&A's Efforts to Sell the Companies' Business**

41. To provide assistance to the Companies in their efforts to locate a purchaser for the Companies' business, the Proposal Trustee understands that, in 2016, the Companies (Industries) entered into an agreement with Advertising M&A ("**Advertising**"), another mergers and acquisitions consultancy firm specializing in the advertising, digital, media and creative sectors, to seek out a buyer for the Companies' business.

42. The Proposal Trustee understands that Advertising distributed information in connection with the Companies and the opportunity through its global network to those parties identified as potential strategic purchasers.

43. The Proposal Trustee has been advised that one (1) of the potential interested parties contacted by Advertising submitted a highly conditional letter of intent ("**LOI**") in late December 2016 to acquire Industries. The LOI conditions, however, were not satisfied. The Proposal Trustee understands that the party which submitted the LOI was approached during the most recent sales efforts (discussed further below) and informed the Companies that it was not interested in further pursuing the opportunity.

#### **The Companies' Recent Sale Efforts**

44. As noted above, Richter was engaged by the Companies during the Forbearance Period to assist the Companies in their restructuring efforts, including the facilitation of a potential sale of the business. To advance these efforts, the Proposal Trustee assisted the Companies to:

- (i) develop a marketing/sales strategy, including the preparation of a teaser, sales process instruction letter, and NDA;
- (ii) advance discussions with certain potential interested parties that previously expressed an interest in the Companies' business;
- (iii) communicate with McCracken to both determine the status of recent/ongoing discussions with potential interested parties as well as identify any parties included in McCracken's initial sale efforts that should be included in the Companies' current sale efforts;
- (iv) communicate with Advertising to identify any potential interested parties to approach with the opportunity; and
- (v) identify and approach potential interested parties regarding the opportunity.

45. The key aspects of the sales and investment solicitation process (“**SISP**”) carried out by the Companies, with the assistance of Richter, and its results are summarized as follows:
- (i) the Companies, in consultation with Richter, Chou and it’s counsel, Stikeman, assembled a list of potential interested parties, which included both strategic and financial parties (the “**Potential Interested Parties**”);
  - (ii) commencing on June 13, 2017, Richter contacted approximately 40 Potential Interested Parties, including certain of those parties the Companies’ were previously/currently in discussions with, to advise of the opportunity to acquire and/or invest in the Companies’ business and/or assets. Potential Interested Parties were also provided with the teaser and a letter outlining the SISP process, copies of which are attached hereto as Exhibit “HH” and Exhibit “II” to the Burns Affidavit.
  - (iii) Potential Interested Parties interested in obtaining additional information regarding the Companies’ business and/or its assets were required to execute a NDA in order to obtain access to an electronic data room. A total of five (5) parties executed the NDA and were provided with data room access (the “**Interested Parties**”);
  - (iv) Richter, with the assistance of the Companies, assembled information in an electronic data room. The data room contained financial and other information relevant to the Companies’ business and assets to assist Interested Parties in completing their due diligence;
  - (v) throughout the course of the SISP process, Richter facilitated due diligence by Interested Parties, including updating the data room with current financial and other information, as required;
  - (vi) in addition to the Potential Interested Parties contacted by Richter, in an effort to ensure all potential interested parties were made aware of the opportunity, in early July 2017, the Companies reached a further agreement with Advertising whereby Advertising would be paid a success fee should a sale be concluded with a party Advertising introduced to the SISP;
  - (vii) as per the SISP, Interested Parties were required to submit binding offers for the Companies’ business or assets and/or investment proposals on or before 5:00 p.m. (Eastern Standard Time) on July 14, 2017 (the “**Bid Deadline**”); and
  - (viii) no offers to acquire or invest in the Companies’ business and/or assets were submitted prior to the Bid Deadline.

## IX. SALE TRANSACTION

46. As per the terms of the Chou Forbearance Agreement, Chou was provided with regular updates on both the Companies' financial results and the status of the SISP. During the Forbearance Period representatives of the Companies, Chou and Richter engaged in discussions in connection with the potential acquisition of the Companies' business and assets by Chou in the event no alternative bidder was found.
47. On July 14, 2017, when it became apparent that the SISP did not result in any interest in the Companies' business or assets, Chou and the Companies reached an agreement, in principle, for the Sale Transaction which involves the acquisition of substantially all of the Companies' business and assets by a corporation controlled by Chou.
48. The key elements of the Sale Transaction are as follows (a copy of the Sale Agreement is attached hereto as **Appendix "B"**):
- (i) the Purchaser is acquiring, as a going concern, on an "as is, where is" basis, substantially all of the Companies' business and assets;
  - (ii) the consideration for the Sale Transaction, which is primarily a credit bid, includes the assumption by the Purchaser of a portion of the RBC Indebtedness and the Chou Indebtedness as well as a cash payment to satisfy priority liabilities of the Companies, including professional fees and other priority amounts;
  - (iii) the Proposal Trustee understands that the Purchaser intends to offer employment to certain of the Companies' employees (the "**Transferred Employees**"). In this regard, the Purchaser shall be responsible for the associated employee liabilities arising from and after the closing of the Sale Transaction (or such later date on which a Transferred Employee commences active employment with the Purchaser) in respect of the Transferred Employees. Those employees either not offered or who do not accept offers of employment by the Purchaser are to be paid the amounts owing to them on account of wages and accrued vacation pay for the post-filing period to the date of termination of their employment;
  - (iv) the Proposal Trustee further understands that it is the Purchaser's intention to close the Sale Transaction as soon as reasonably possible following the receipt of all necessary approvals; and
  - (v) the Sale Transaction is conditional on a number of factors, including the Court approving the Sale Agreement, the granting of the Approval and Vesting Order as well as the assignment of certain contracts.
49. Upon closing of the Sale Transaction, the Proposal Trustee shall deliver to the Purchaser and file with the Court a certificate attesting that the Sale Transaction had been completed to the satisfaction of the Proposal Trustee and confirming the closing of the Sale Transaction.

## **X. URGENCY TO COMPLETE THE SALE**

50. Management has advised the Proposal Trustee that the Companies' illiquidity and uncertain future have adversely impacted the Companies' business.
51. The Companies and its management experience daily stresses, including concerns regarding the ability to meet payroll obligations as they come due, numerous staff resignations due to the Companies' financial instability, threatened or commenced litigation for collection of amounts due to creditors, judgments being sought and enforcement proceedings taken thereon, threatened bankruptcy petitions, less than optimal lease arrangements (i.e. employees are required to clean the facilities) as well as actual and threatened loss of customers.
52. Prior to the Filing Date, the Companies' continuing losses eliminated its cash balances leaving it without funds to operate other than the limited funding provided by Chou for the purpose of paying critical expenses and carrying out the SISP.
53. Chou has informed the Proposal Trustee that, other than the funding necessary to complete the Sale Transaction, Chou is not prepared to provide further funding to the Companies. Absent the continued indulgence of Chou, the Companies are without funds to maintain their business and assets or pursue alternatives.

## **XI. ALTERNATIVES TO SALE TRANSACTION**

54. As noted previously in this Report, given the Companies' liquidity constraints, the lack of interest in the Companies' business or assets and that it is wholly dependent on Chou to fund the Companies' continuing operations, it appears that the only alternative to the Sale Transaction is the liquidation of the Companies' assets through receivership and/or bankruptcy proceedings.
55. In order to advise the Court as to the reasonableness of the Sale Transaction, the Proposal Trustee has reviewed the Companies' assets, which primarily consist of certain tax refunds and credits (including the OIDMTC), accounts receivable for active projects, intellectual property, and furniture, fixtures, and equipment.
56. Although the Proposal Trustee has not obtained liquidation proposals for the Companies' assets – given the nature of the assets – the Proposal Trustee has prepared a schedule comparing the realizations generated from the Sale Transaction to the estimated recoveries in a liquidation scenario (the “**Comparison Schedule**”).
57. As detailed in the Comparison Schedule (and based on the assumptions included therein), the realizations generated from the Sale Transaction are significantly more favourable to the potential recoveries in a liquidation scenario. Further, as outlined in the Comparison Schedule, significant additional recoveries would be needed for unsecured creditors to realize any recovery.

58. As the Comparison Schedule includes certain sensitive commercial information, the Proposal Trustee is of the view that it is appropriate for the Comparison Schedule to be filed with the Court on a confidential and sealed basis. Accordingly, the Proposal Trustee proposes to provide the Comparison Schedule to this Honourable Court as **Confidential Appendix "A"** to be sealed until the closing of the Sale Transaction or upon further order of the Court.

## **XII. CONCLUSION AND RECOMMENDATION**

59. The Proposal Trustee is of the view that the relief requested by the Companies, including its request for interim financing (and the terms of the DIP Facility) is necessary, commercially reasonable and justified. The Proposal Trustee is also of the view that granting the relief requested will provide the Companies with the best opportunity to undertake a going concern sale thereby preserving value for the benefit of the Companies' stakeholders.

60. In connection with the above, the Proposal Trustee is of the view that the Sale Transaction satisfies the factors to be considered, pursuant to Section 65.13(4) of the BIA. In particular, the Proposal Trustee is of the view that:

- (i) taking into consideration the Companies' previous efforts to sell the business, the SISP was reasonable in the circumstances. As a result, the Proposal Trustee is of the view that the process leading to the Sale Transaction was reasonable;
- (ii) the only reasonable alternative to the Sale Transaction is a liquidation of the Companies' assets through receivership and/or bankruptcy proceedings that would likely result in lower recoveries;
- (iii) the Sale Transaction would be more beneficial to the Companies' creditors as compared to the alternatives (i.e. liquidation under a bankruptcy or receivership);
- (iv) the Companies' limited liquidity substantially eliminates the opportunity to further market the Companies' business for sale without putting the Sale Transaction at risk and impairing recoveries;
- (v) no funding is available to conduct another sale process and, even if there was, the market has been fully canvassed and all likely bidders have already been provided with an opportunity to bid on the Companies' business and assets;
- (vi) the Sale Transaction provides for the Companies' continued operations;
- (vii) the Sale Transaction represents the best opportunity to maximize recoveries for creditors and provides the greatest benefit to all stakeholders (including employees, customers, suppliers, etc.), as it results in the continuity of the business; and

(viii) the consideration is fair and reasonable in the circumstances, as the recovery is significantly in excess of the estimated liquidation value, and there is no anticipated sale alternative which would be in excess of the secured debt.

61. Based on the forgoing, it is the Proposal Trustee's view that the Sale Transaction is preferable to the alternatives and, as such, respectfully recommends that this Honourable Court issue an order(s) granting the relief outlined in paragraph 3(vi) of this Report.

All of which is respectfully submitted this 1st day of August, 2017.

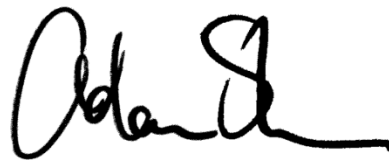
**Richter Advisory Group Inc.  
in its capacity as Proposal Trustee of  
Fuel Industries Inc. and Fuel Technologies Inc.**

Per:



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Paul van Eyk, CA·CIRP, CA·IFA, LIT



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Adam Sherman, MBA, CIRP, LIT



# **APPENDIX "A"**



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 12 - Ottawa  
Court No. 33-2276663  
Estate No. 33-2276663

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

**Fuel Industries Inc.**  
Insolvent Person

**RICHTER ADVISORY GROUP INC / RICHTER GROUPE  
CONSEI**  
Licensed Insolvency Trustee

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Date of the Notice of Intention: July 26, 2017

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

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

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

---

Date: July 27, 2017, 08:30

E-File/Dépôt Electronique

Official Receiver

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

**Canada**



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 12 - Ottawa  
Court No. 33-2276664  
Estate No. 33-2276664

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

**Fuel Technologies Inc.**  
Insolvent Person

**RICHTER ADVISORY GROUP INC / RICHTER GROUPE  
CONSEI**  
Licensed Insolvency Trustee

---

Date of the Notice of Intention: July 26, 2017

---

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

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

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

---

Date: July 27, 2017, 08:34

E-File/Dépôt Electronique

Official Receiver

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

**Canada**

# **APPENDIX “B”**

2587485 ONTARIO LTD.

as Purchaser

and

FUEL INDUSTRIES INC.

and

FUEL TECHNOLOGIES INC.

as Vendor

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**ASSET PURCHASE AGREEMENT**

●, 2017

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## ASSET PURCHASE AGREEMENT

Asset purchase agreement dated August 1, 2017 between Fuel Industries Inc. and Fuel Technologies Inc. (collectively, the “Vendor” or the “Fuel Companies”), and 2587485 Ontario Ltd. (the “Purchaser”).

### RECITALS:

WHEREAS on July 26, 2017 the Vendor filed a notice of intention to make a proposal (the “NOI”) under the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) and the Vendor has appointed Richter Advisory Group Inc. to act as proposal trustee (the “Proposal Trustee”) in connection with such proposal (the “NOI Proposal”);

AND WHEREAS approval of the Ontario Superior Court of Justice (Commercial List) (the “Court”) will be sought by the Vendor for the transactions contemplated by this Agreement.

AND WHEREAS the Purchaser wishes to acquire from Vendor all of the Purchased Assets (as defined herein) upon and subject to the terms and conditions of this Agreement.

## ARTICLE 1 INTERPRETATION

### Section 1.1 Defined Terms.

As used in this Agreement, the capitalized terms listed below shall have the corresponding meanings.

“**Affiliate**” of a Person means any other Person that directly or indirectly controls, is controlled by or is under common control with such Person, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means this asset purchase agreement including all schedules annexed hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“**Ancillary Agreements**” means all agreements, certificates and other instruments delivered or given pursuant to this Agreement.

“**Approval and Vesting Order**” means an approval and vesting order of the Court in form and in substance satisfactory to the Vendor and the Purchaser, each acting reasonably, approving this Agreement and vesting in and to the Purchaser the Purchased Assets, free and clear of and from any and all Liens subject only to Permitted Liens, to the extent and as provided for in such approval and vesting order.

“**Assignment Order**” means an order or orders of the Court, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving the

assignment of one or more Consent Required Contracts for which the consent, approval or waiver of the party or parties thereto (other than the Fuel Companies) is required to assign such Consent Required Contracts has not been obtained by Closing.

**“Assumed Contracts”** means the Contracts listed on Schedule 2.1(a), which shall exclude the Lease.

**“Assumed Liabilities”** has the meaning specified in Section 2.3.

**“Authorization”** means, with respect to any Person, any order, permit, approval, consent, waiver, license or other authorization of any Governmental Entity having jurisdiction over the Person.

**“BIA”** has the meaning specified in the recitals above.

**“Books and Records”** means all information in any form relating to the Business, including books of account, financial, tax, business, marketing, personnel and research information and records, technical information, equipment logs, technical reports, operating guides and manuals and all other documents, files, correspondence and other information, but excluding the minute books and corporate records of the Vendor.

**“Business”** means the business carried on by the Fuel Companies, being an online interactive and marketing agency which provides software programming and product development services in the fields of digital entertainment, immersive web experiences and video/audio production and related services and ancillary business thereto.

**“Business Day”** means any day of the year, other than a Saturday, Sunday or any day on which major Canadian chartered banks are closed for business in Toronto, Ontario.

**“Chou Indebtedness”** means all debts, liabilities and obligations owing by the Fuel Companies to the Lender pursuant to or in connection with the Loan Agreements and the other Loan Documents.

**“Chou Loan Agreements”** means (i) the loan agreement dated February 9, 2015 between Fuel Industries Inc., as borrower and the Lender, as lender, as amended to the date hereof and (ii) a loan agreement dated June 22, 2016 between Fuel Technologies Inc., as borrower and the Lender, as lender, as amended to the date hereof.

**“Closing Date”** means (i) the date that is one (1) Business Day following the day on which the last of the conditions of Closing set out in Article 6 (other than those conditions that by their nature can only be satisfied as of the Closing Date) have been satisfied or waived by the appropriate party or (ii) such earlier or later date as the Parties may agree in writing.

“**Closing**” means the completion of the transaction of purchase and sale contemplated in this Agreement.

“**Consent Required Contract**” means any Assumed Contract which is not assignable in whole or in part without the consent, approval or waiver of the party or parties thereto (other than the Fuel Companies).

“**Contract**” means any agreement, contract, consent (including any contractual consent or government consent), lease, license, undertaking, engagement or commitment of any nature, whether written or oral.

“**Court**” has the meaning specified in the recitals above.

“**Cure Costs**” means, in respect of any Consent Required Contract, all amounts owing as at the Closing Date by the Fuel Companies pursuant to such Consent Required Contract and all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assignment thereof from the Vendor to the Purchaser, together with any fee or other monetary concession approved by the Purchaser and granted in connection with obtaining any Assignment Order for such Consent Required Contract, including all administrative fees and counsel fees of the counterparties required to be paid to obtain such Assignment Order.

“**Designated Employees**” has the meaning specified in Section 2.3(2).

“**DIP Loan Agreement**” means the term sheet between the Vendor, as borrowers, and the Lender and approved by an order of the Court authorizing a super-priority credit facility provided to the Vendor by the Lender as amended, modified or supplemented from time to time.

“**Employee Start Date**” has the meaning specified in Section 2.3(2).

“**Excluded Assets**” has the meaning specified in Section 2.2.

“**Excluded Liabilities**” has the meaning specified in Section 2.4.

“**Fuel Companies**” has the meaning specified in the preamble above.

“**Governmental Entity**” means: (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international, multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; (iii) any stock exchange; and (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

“**Intellectual Property**” means all intellectual property of the Vendor used by or currently being developed for use in the Business, and all rights of the Vendor

therein, including all claims for past infringement, worldwide, whether registered or unregistered, including, without limitation:

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

**"Laws"** means any principle of common law and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws, (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity and (iii) to the extent that they have the force of law, standards, policies, guidelines, notices and protocols of any Governmental Entity.

**"Lender"** means Chou Management Associates, Inc.

**"Lease"** means the lease of the Leased Properties pursuant to a lease agreement dated April 12, 2013 between Metcalfe Realty Company Limited, as landlord and Fuel Technologies Inc., as tenant.

**"Leased Properties"** means the lands and premises listed in Schedule 1.1(f).

**“Lien”** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature which, in substance, secures payment or performance of an obligation.

**“Loan Agreements”** means the Chou Loan Agreements, the RBC/Chou Loan Agreement and the DIP Loan Agreement.

**“Loan Documents”** means all guarantees, security, documents and instruments delivered by any of the Fuel Companies in connection with or pursuant to the Loan Agreements.

**“NOI”** has the meaning specified in the recitals above.

**“NOI Expenses”** has the meaning specified in Section 3.2(b).

**“NOI Proposal”** has the meaning specified in the recitals above.

**“Notice”** has the meaning specified in Section 9.1.

**“OIDMTC Credits”** means all tax credit amounts refundable or payable to the Fuel Companies on account of the Ontario Interactive Digital Media Tax Credit of the Vendor and all interest payable thereon, during its fiscal years ending December 31, 2014, December 31, 2015, December 31, 2016 and any financial year thereafter pursuant to the *Income Tax Act* (Canada) or the *Taxation Act 2007* (Ontario) each as amended from time to time.

**“Ordered Consent Required Contracts”** has the meaning specified in Section 2.5(3).

**“Parties”** means the Vendor and the Purchaser and any other Person who may become a party to this Agreement.

**“Permitted Liens”** means Liens listed and described in Schedule 2.1 but only to the extent such Liens conform to their description in Schedule 2.1.

**“Person”** means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

**“Priority Payable”** has the meaning specified in Section 6.2(c)(iii).

**“Proposal Trustee”** has the meaning specified in the recitals above.

**“Proposal Trustee’s Certificate”** means the Proposal Trustee’s certificate provided for in the Approval and Vesting Order.

“**Purchase Price**” has the meaning specified in Section 3.1, subject to any change pursuant to Section 3.1.

“**Purchased Assets**” has the meaning specified in Section 2.1.

“**Purchaser**” has the meaning specified in the preamble above.

“**RBC/Chou Loan Agreement**” means the loan agreement dated October 29, 2013 between Fuel Industries Inc., as borrower and Royal Bank of Canada, as lender, as amended March 18, 2014, February 3, 2015, August 24, 2015 and September 8, 2016, as supplemented by a forbearance agreement dated February 9, 2017, and as such agreements were assigned by Royal Bank of Canada to Chou Management Associates Inc. pursuant to an assignment of debt and security dated May 23, 2017, and as further amended by a forbearance, restructuring and support agreement dated May 23, 2017, and by amendments dated as of June 14, 2017 and June 27, 2017 and as further amended, modified or supplemented to the date hereof and as part or all of the benefits of such agreement are further assigned to the Purchaser at or prior to the Closing.

“**RFP**” means requests for proposals, letters of intent, expressions of interest or other indications or solicitations requesting submissions of a bid or offer to perform services or provide goods or services to a customer or potential customer.

“**Taxes**” means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies, rates, withholdings, dues, contributions and other charges, collections or assessments of any kind whatsoever, imposed by any Governmental Entity; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

“**Tax Returns**” means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and other documents filed or required to be filed in respect of Taxes.

“**Transferred Employees**” has the meaning specified in Section 2.3(2).

“**Vendor**” has the meaning specified in the preamble above and a reference to the Vendor shall also include a reference to each of them, as the context requires.

## **Section 1.2 References and Usage.**

Unless expressly stated otherwise, in this Agreement:

- (a) reference to a gender includes all genders;

- (b) the singular includes the plural and vice versa and a term defined collectively includes a reference to each individually;
- (c) "or" is used in the inclusive sense of "and/or";
- (d) "any" means "any and all";
- (e) the words "including", "includes" and "include" mean "including (or includes or include) without limitation";
- (f) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of";
- (g) \$ or dollars refers to the Canadian currency unless otherwise specifically indicated;
- (h) a statute includes all rules and regulations made under it, if and as amended, re-enacted or replaced from time to time;
- (i) a Person includes its predecessors, successors and permitted assigns;
- (j) the term "notice" refers to oral or written notices except as otherwise specified;
- (k) the term "Agreement" and any reference in this Agreement to this Agreement or any other agreement or document includes, and is a reference to, this Agreement or such other agreement or document as it may have been, or may from time to time be amended, restated, replaced, supplemented or novated and all schedules to it, except as otherwise provided in this Agreement; and
- (l) whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be required to be made or such action will be required to be taken on or not later than the next succeeding Business Day and in the computation of periods of time, unless otherwise stated, the word "from" means "from and excluding" and the words "to" and "until" each mean "to and including".

### **Section 1.3 Headings, etc.**

The use of headings (e.g. Article, Section, etc.) in this Agreement is reference only and is not to affect the interpretation of this Agreement. References in the Agreement to Article, Section etc., unless otherwise specified, shall mean the applicable Article, Section, etc. of this Agreement.

#### **Section 1.4 Schedules.**

The schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.

### **ARTICLE 2 PURCHASE AND SALE**

#### **Section 2.1 Purchased Assets.**

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor on the Closing Date, on an “as is, where is” basis, all of the Vendor’s right, title and interest in the Vendor’s property, assets and undertakings of every kind and description and wheresoever situate, of the Business, other than the Excluded Assets (collectively, the “**Purchased Assets**”), free and clear of all Liens other than Permitted Liens, including:

- (a) **Contracts.** The full benefit of the Assumed Contracts;
- (b) **Cash, Accounts.** Cash on hand and in bank accounts and all accounts due or accruing due, accounts receivable, deposit accounts maintained for the benefit of the Vendor by a bank, credit union or other financial institution and all other monetary obligations due or accruing due to the Vendor;
- (c) **Tax Refunds and Credits.** The benefit of any refundable Taxes payable or paid by the Vendor net of any amounts withheld by any taxing authority, any tax credits receivable and any claim or right of the Vendor to any refund, rebate, or credit of Taxes, including the OIDMTC Credits;
- (d) **Intellectual Property.** All right, title and interest of the Vendor in and to the Intellectual Property owned by or licensed to the Vendor or used by the Vendor in connection with the Business or the Purchased Assets;
- (e) **IT Systems.** All computer hardware and peripheral systems, supplies and accessories used in the Business, all software relating to the Business, including computer programs, all related documentation, manuals, source code, object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, of the Vendor or the Business;
- (f) **Machinery, Equipment and Supplies.** All machinery, equipment, technology and communications hardware and infrastructure, furniture, fixtures, furnishings and accessories, parts and supplies of all kinds including office supplies, office equipment and office furnishings, owned by the Vendor;



- (g) **Prepaid Expenses.** All prepaid expenses of the Business;
- (h) **Books and Records.** The Books and Records of the Vendor for the five year period prior to the Closing Date;
- (i) **Claims.** All claims of the Vendor relating to the Business or the Purchased Assets, whether choate or inchoate, known or unknown, contingent or otherwise;
- (j) **Equity Interests.** All equity interests held in GGN Gaming, Inc.;
- (k) **Goodwill.** The goodwill of the Business, including the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor and all right, title and interest of the Vendor to the name "Fuel Industries", "Fuel Technologies", "All Girl Arcade", "MishMosh", "Fuel Games", "FuelPlay" and "Fuel Entertainment" or any variation thereof.

## **Section 2.2 Excluded Assets.**

The Purchased Assets shall not include any of the following assets (collectively, the "Excluded Assets"):

- (a) the minute books and corporate records of the Vendor (other than as specifically listed herein);
- (b) the Lease and all Contracts to which the Vendor is a party other than the Assumed Contracts;
- (c) all of the issued and outstanding shares or equity interests in the capital stock of any subsidiaries of the Vendor including any capital stock held by the Vendor in Fuel Industries (U.S.) Inc., Fuel Entertainment Inc. and All Girl Arcade Inc. or of any other Person in which the Vendor holds capital stock or other equity interest, other than the shares of GGN Gaming, Inc.

## **Section 2.3 Assumed Liabilities; Employees**

- (1) **Assumed Liabilities.** Subject to this transaction Closing on the Closing Date, the Purchaser agrees to discharge, perform and fulfil the following obligations and liabilities of the Vendor with respect to the Business and the Purchased Assets as and from the Closing Date (collectively, the "Assumed Liabilities"):
  - (a) all obligations and liabilities of the Vendor relating to the Purchased Assets (other than the Assumed Contracts) that relate to the period from and after the Closing Date;
  - (b) all obligations and liabilities under the Assumed Contracts, to the extent assigned to the Purchaser, arising in respect of the period after the Closing

Date and not related to any default existing at, prior to or as a consequence of Closing; and

- (c) all other obligations and liabilities expressly assumed under this Agreement.
- (2) **Employees.** Subject to the Closing and the terms of this Section 2.3, the Purchaser may offer employment effective as of the Closing Date on such terms as it determines in its sole discretion to those of the individuals it determines shall be offered employment by the Purchaser (the “**Designated Employees**”). In this Agreement, “**Transferred Employees**” means those Designated Employees who have accepted the Purchaser’s offer of employment made pursuant to this Section 2.3(2) and “**Employee Start Date**” means the Closing Date or such later date on which a Transferred Employee commences active employment with the Purchaser. For Transferred Employees, the Purchaser shall be responsible on and after the Closing Date for all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of all Transferred Employees by the Purchaser that arise or accrue on and after the applicable Employee Start Date on terms offered by the Purchaser.

#### **Section 2.4 Excluded Liabilities**

The Purchaser shall not assume and shall have no obligation to discharge, perform or fulfil any and all Excluded Liabilities. “**Excluded Liabilities**” means any and all liabilities and obligations of the Vendor or with respect to the Business or the Purchased Assets, other than the Assumed Liabilities, whether known, unknown, direct, indirect, absolute, contingent or otherwise or arising out of facts, circumstances or events, including, without limiting the generality of the foregoing, the following, all of which are, for greater certainty, Excluded Liabilities:

- (a) all liabilities and obligations relating to any current or former employees of the Vendor or the Business including:
  - (i) all liabilities for salary, wages, bonuses, commissions, vacation pay and other compensation relating to employment of all Persons in the Business prior to the Closing Date and all liabilities under or in respect of any employee plans;
  - (ii) all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Vendor of the employment of any employee who does not become a Transferred Employee;
  - (iii) all liabilities for claims for injury, disability, death or workers’ compensation arising from or related to employment in the Business prior to the Closing Date; and

- (iv) all employment-related claims, penalties and assessments in respect of the Business arising out of matters which occurred prior to the Closing Date;
- (b) any Contracts that are not Assumed Contracts;
- (c) liabilities incurred or accruing due prior to the Closing Date under the Assumed Contracts;
- (d) liabilities relating to the Excluded Assets, including the Lease;
- (e) all liabilities of or relating to any subsidiary companies or entities or associated or affiliated Persons of the Vendor and any guarantees or indemnification obligations provided for the benefit of any such Persons;
- (f) any and all liability for any proceedings, litigation or claims against the Vendor;
- (g) any assessment or reassessment for income, corporate, capital, sales, excise or other taxes, duties or imposts of any kind whatsoever of the Vendor or, if incurred or accruing due prior to the Closing Date, relating to the Business or Purchased Assets; and
- (h) any product liability or warranty or service liability, arising at any time in respect of products of the Business manufactured, constructed, installed, shipped, distributed, sold or provided by the Vendor on or prior to the Closing Date, even though a claim may be made or filed after the Closing Date.

**Section 2.5 Assignment and Assumption of Consent Required Contracts.**

- (1) Notwithstanding anything in this Agreement, the Purchaser does not assume and has no obligation to discharge any liability or obligation under or in respect of any Consent Required Contract unless, in each case, (a) the consent, approval or waiver of the party or parties to such Consent Required Contract (other than the Vendor) required to assign such Consent Required Contract has been obtained on terms satisfactory to the Purchaser, acting reasonably and the value of such Consent Required Contract has enured to the Purchaser or (b) such Consent Required Contract is subject to an Assignment Order.
- (2) The Vendor and the Purchaser shall use reasonable commercial efforts to obtain the consent, approval or waiver of the party or parties to each Consent Required Contract (other than the Vendor) to the assignment of such Consent Required Contract promptly following execution of this Agreement. Until a consent is obtained or an Assignment Order is granted, the Vendor shall hold such Consent Required Contracts in trust for the Purchaser. For greater certainty, neither the Vendor nor the Purchaser is under any obligation to pay any money, incur any obligations, commence any legal proceedings (other than as set forth below with

respect to Assignment Order), or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain any such consent, approval or waiver.

- (3) In the event that the consent, approval or waiver required to assign any Consent Required Contract is not obtained within [5] days of Closing, the Vendor shall, at the request of the Purchaser but subject to Court approval, seek an Assignment Order for such Consent Required Contract (those subject to an Assignment Order, the “**Ordered Consent Required Contracts**”) in form and substance satisfactory to the Vendor and the Purchaser, including payment by the Purchaser of the Cure Costs, each acting reasonably.
- (4) Subject to (i) the consent of the other parties thereto to the assignment thereof or (ii) in the absence of consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Costs related to the Ordered Consent Required Contracts on the date of the receipt of the Assignment Order.

### **ARTICLE 3 PURCHASE PRICE**

#### **Section 3.1 Purchase Price.**

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the “**Purchase Price**”) is (A) an amount equal to [\$●] representing a portion of the obligations and liabilities of the Vendor under the Loan Agreements as at Closing, *plus* (B) the value of all Priority Payables *plus* (C) all Cure Costs, *plus* (D) the NOI Expenses. The consideration paid for the purchase by the Purchaser of the Purchased Assets includes the Purchaser’s assumption of the Assumed Liabilities.

#### **Section 3.2 Payment of the Purchase Price.**

At the Closing, pursuant to a written direction by the Vendor and the Proposal Trustee, the Purchaser shall pay and satisfy the Purchase Price as follows:

- (a) to the Proposal Trustee, in trust, an amount equal to the sum of the value of all Priority Payables, by way of wire transfer of immediately available funds to such bank account as is designated by the Proposal Trustee no later than the Closing Date;
- (b) to the Proposal Trustee, an amount equal to (i) the Proposal Trustee’s costs and expenses, and costs and expenses of its counsel, relating to its role as Proposal Trustee both prior to and subsequent to the Closing Date and to the extent applicable, for its role as trustee in bankruptcy of the Vendor, as invoiced by the Proposal Trustee and its counsel on the Closing Date for amounts invoiced up to the Closing Date and for such amount as estimated by it for its costs subsequent to the Closing Date for the period that its services are expected to be required up to time of discharge; and (ii) the

Vendor's costs and expenses and costs and expenses of its counsel up to an amount approved by the Purchaser to the extent they have not been paid for from advances under the DIP Loan Agreement (the "NOI Expenses");

- (c) to the Proposal Trustee, in trust, an amount equal to the sum of the value of all Cure Costs, by way of wire transfer of immediately available funds to such bank account as is designated by the Proposal Trustee no later than one (1) Business Day prior to the date of the Assignment Order; and
- (d) as to the balance, by the Purchaser assuming under this Agreement the Vendor's obligations and liabilities under the Loan Agreements and the other Loan Documents.

### **Section 3.3 Purchase Price Allocation**

The Vendor and the Purchaser agree to co-operate with one another in allocating the Purchase Price for the Purchased Assets, which shall be mutually agreed in writing between them. The Parties agree to execute and file all of their own Tax Returns and prepare all of their own financial statements and other instruments on the basis of this allocation.

### **Section 3.4 No Effect on Other Rights.**

The determination of the Purchase Price in accordance with the provisions of this Article will not limit or affect any other rights or causes of action either the Purchaser or the Vendor may have with respect to the representations, warranties or covenants in its favour contained in this Agreement.

### **Section 3.5 Transfer Taxes.**

The Purchaser shall be liable for and shall pay all land transfer Taxes, sales Taxes and all other similar Taxes properly payable upon and in connection with the sale, assignment and transfer of the Purchased Assets from the Vendor to the Purchaser, other than any taxes payable on the Vendor's net income, profits or gains.

### **Section 3.6 Tax Elections.**

The Parties shall use their commercially reasonable efforts in good faith to minimize (or eliminate) any taxes payable under the *Excise Tax Act* (Canada) in respect of the Closing by, among other things, making such elections and taking such steps as may be provided for under that Act (including, for greater certainty, making a joint election in a timely manner under Section 167 of that Act) as may reasonably be requested by the Purchaser in connection with the Closing.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Representations and Warranties of the Vendor.**

The Vendor represents and warrants as follows to the Purchaser and acknowledges and agrees that the Purchaser is relying upon the representations and warranties in connection with its purchase of the Purchased Assets and its assumption of the Assumed Liabilities:

- (a) **Incorporation and Qualification.** The Vendor is a corporation incorporated and existing under the laws of jurisdiction of its formation. The Vendor has the corporate power and authority to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party.
- (b) **Corporate Authorization.** Subject to the issuance of the Approval and Vesting Order, the Vendor has the authority to enter into and consummate the transactions contemplated by this Agreement and the Ancillary Agreements and the execution and delivery of and performance by the Vendor of its obligations under this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary and corporate action on the part of the Vendor.
- (c) **Authorizations.** Other than the Approval and Vesting Order and the Assignment Order (if applicable), execution, delivery and performance of this Agreement by the Vendor does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Entity.
- (d) **Execution and Binding Obligation.** Subject to the issuance of the Approval and Vesting Order, this Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding agreement of the Vendor, enforceable against it in accordance with their respective terms subject only to any limitation under applicable Law relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (e) **No Other Agreements or Options.** Except for the Purchaser, no Person has or will have a written or oral agreement for the purchase from the Vendor of any of the Purchased Assets, the Fuel Companies or the Business.

- (f) **Residence of the Vendor.** The Vendor is not a non-resident of Canada within the meaning of the *Tax Act*. The Vendor is not a non-Canadian within the meaning of the *Investment Canada Act*.
- (g) **HST Registrant.** The Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada) and the applicable registration numbers are ● for Fuel Industries Inc. and ● for Fuel Technologies Inc.

#### **Section 4.2 Representations and Warranties of the Purchaser.**

The Purchaser represents and warrants as follows to the Vendor and acknowledges and agrees that the Vendor is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- (a) **Incorporation and Corporate Power.** The Purchaser is an entity that is duly formed and validly existing under the laws of the jurisdiction of its formation. The Purchaser has the power and authority to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party.
- (b) **Corporate Authorization.** The execution and delivery of and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary action on the part of the Purchaser.
- (c) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which the Purchaser is a party have been duly executed and delivered by the Purchaser and constitute legal, valid and binding agreements of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **Investment Canada Act.** The Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act*.
- (e) **HST Registrant.** The Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada) and its registration number is 704493899.

**Section 4.3 No Other Representation or Warranty.** The representations and warranties given by the Vendor in Section 4.1 are the only representations and warranties of the Vendor in connection with this Agreement and the transactions contemplated by it. Except

for the representations and warranties given by the Vendor in Section 4.1, the Purchaser is purchasing the Purchased Assets on an “as is” basis and does not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied (by operation of law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets.

**Section 4.4 As is, Where is.**

THE PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS ARE PURCHASED AND THE ASSUMED LIABILITIES ARE ASSUMED BY THE PURCHASER “AS IS, WHERE IS” AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED LIABILITIES, AND WITHOUT ANY RECOURSE TO THE VENDOR, THE PROPOSAL TRUSTEE OR ANY OF THEIR DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS, OTHER THAN FOR KNOWING AND INTENTIONAL FRAUD. THE PURCHASER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE PURCHASER’S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE VENDOR OR THE PROPOSAL TRUSTEE, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Purchaser acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Vendor or the Proposal Trustee in this Agreement or in any instrument furnished in connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, ownership, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded.

**ARTICLE 5  
PRE-CLOSING AND POST-CLOSING COVENANTS OF THE PARTIES**

**Section 5.1 Access by Purchaser and Proposal Trustee.**

Subject to applicable Law, from the date hereof until the Closing, the Vendor shall (i) upon reasonable notice, permit the Purchaser and its partners and Affiliates, its and their respective employees, agents, counsel, accountants or other representatives, lenders, potential lenders and potential investors to have reasonable access during normal business



hours to (A) the premises of the Vendor, (B) the Purchased Assets, including all Books and Records and all minute books and corporate records of the Vendor and (C) the Assumed Contracts; and (ii) furnish to the Purchaser or its partners, employees, agents, counsel, accountants or other representatives, lenders, potential lenders and potential investors such financial and operating data and other information with respect to the Purchased Assets and the Vendor (to the extent such data or information is in the Vendor's possession or, using commercially reasonable efforts, can be obtained by the Vendor) as the Purchaser from time to time reasonably requests.

Subject to applicable Law, following the Closing, the Purchaser shall (i) upon reasonable notice, permit the Proposal Trustee and its employees, agents, counsel or other representatives, to have reasonable access during normal business hours to (A) the premises of the Purchaser, (B) the Purchased Assets, including all Books and Records and (C) the Assumed Contracts; and (ii) furnish to the Proposal Trustee or its partners, employees, agents, counsel or other representatives, such financial and operating data and other information with respect to the Purchased Assets and the Vendor (to the extent such data or information is in the Purchaser's possession or, using commercially reasonable efforts, can be obtained by the Purchaser) in each case of (i) and (ii) as the Proposal Trustee from time to time reasonably requests for the purpose of, and in connection with, the administration of the NOI Proposal and any bankruptcy proceedings.

**Section 5.2      Actions to Satisfy Closing Conditions.**

- (1)      The Vendor shall use its commercially reasonable efforts to take or cause to be taken all such actions so as to ensure compliance with all of the conditions set forth in Section 6.1.
- (2)      The Purchaser shall use its commercially reasonable efforts to take or cause to be taken all such actions so as to ensure compliance with all of the conditions set forth in Section 6.2.

**Section 5.3      Transfer of the Purchased Assets.**

The Vendor shall take all necessary steps and proceedings to permit good title to the Purchased Assets to be duly and validly transferred and assigned to the Purchaser at the Closing pursuant to the Approval and Vesting Order and this Agreement, free from all Liens other than Permitted Liens.

**Section 5.4      Notices and Requests for Consents**

- (1)      The Vendor shall use commercially reasonable efforts to obtain or cause to be obtained, at its expense, all consents, approvals and waivers that are required by the terms of the Consent Required Contracts in order to complete the transactions contemplated by this Agreement. Such consents, approvals and waivers will be upon such terms as are acceptable to the Purchaser, acting reasonably.
- (2)      The Vendor shall provide notices (in form and substance acceptable to the Purchaser, acting reasonably) that are required by the terms of the Assumed Contracts in

connection with the transaction contemplated pursuant to the Approval and Vesting Order and this Agreement.

- (3) As soon as practicable, the Purchaser shall advise the Vendor in writing of the Consent Required Contracts for which the Purchaser requires the Vendor to seek an Assignment Order.

**Section 5.5 Filings and Authorizations.**

- (1) Each of the Purchaser and the Vendor, as promptly as practicable after the execution of this Agreement, shall (i) make, or cause to be made, all filings and submissions under all Laws applicable to it, that are required for it to consummate the purchase and sale of the Purchased Assets in accordance with the terms of this Agreement, and (ii) use its reasonable best efforts to obtain, or cause to be obtained, all Authorizations necessary or advisable to be obtained by it in order to consummate such transfer, and (iii) use its reasonable best 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.

**Section 5.6 Court Approval.**

- (1) The Vendor shall seek the approval of the Court to the transactions contemplated by this Agreement in accordance with the following:
  - (a) Promptly upon execution of this Agreement, the Vendor shall seek approval of this Agreement.
  - (b) As soon as practicable, the Vendor shall file motion materials seeking the issuance of the Approval and Vesting Order.
  - (c) As soon as practicable, the Purchaser shall advise the Vendor and the Proposal Trustee in writing of the Consent Required Contracts for which the Purchaser requires the Vendor to seek an Assignment Order.
  - (d) The Vendor and the Purchaser shall cooperate with filing and prosecuting the motion for issuance and entry of the Approval and Vesting Order and any Assignment Orders required pursuant to Section 2.5(3), and the Vendor shall deliver to the Purchaser prior to filing, and as early in advance as is practicable to permit adequate and reasonable time, for the Purchaser and its counsel to review and comment, copies of all of the Vendor's proposed pleadings, motions and other material papers to be filed by the Vendor in connection with such motions and proposed orders and relief requested therein and any challenges thereto.
  - (e) The Vendor, in consultation with the Purchaser, shall determine all Persons required to receive notice of the motions for the Approval and Vesting Order and any Assignment Order under applicable Laws and the requirements of

the BIA, the Court and any other Person determined necessary by the Vendor or the Purchaser.

- (f) If the Approval and Vesting Order or any other order (including the Assignment Order) relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing, re argument or stay shall be filed with respect thereto), the Vendor shall take all commercially reasonable steps, and use reasonable best efforts to defend against such appeal, petition or motion, and the Purchaser agrees to cooperate in such efforts. Each of the Parties hereby agrees to use its reasonable best efforts to obtain an expedited resolution of such appeal.
- (g) Prior to Closing, the Vendor shall, from time to time, at the request of the Purchaser, request such further order or orders from the Court as the Purchaser may reasonably request as necessary to give effect to this Agreement and the transactions contemplated hereby. The terms of any such requested orders shall be satisfactory to the Vendor and the Purchaser, each acting reasonably. Upon any such request, each of the Vendor and the Purchaser, acting reasonably, shall cooperate with each other, as necessary or as may be reasonably requested, in order to obtain such further order or orders.

**Section 5.7 Tax Credits, Power of Attorney.**

- (a) The Parties will coordinate and cooperate in exchanging information and supplying assistance that is reasonably requested in connection with this Section 5.7 including providing each other with advance copies and reasonable opportunity to comment on and participate in all communication with and information supplied to any Governmental Entity, and all information and communication received from any Governmental Entity. Without limiting the foregoing, in connection with any OIMDTC Credits, the Vendor shall provide assistance to the Purchaser as and when reasonably requested by the Purchaser and co-operate with the Purchaser in connection with any filings related thereto, any audits in connection therewith or any information or forms required to be supplied or filed. In connection with any OIMDTC Credits in respect of which the application therefore is to be filed subsequent to the Closing Date, the Purchaser, as the transferee of all rights related thereto, shall file such application and the Vendor shall provide such assistance as is requested by the Purchaser in connection therewith.
- (b) The Vendor grants to the Purchaser full power and authority to collect, demand, give receipts for, receive and recover the OIMDTC Credit or any part thereof and to take any other measure or to do any other act or thing which the Vendor would be entitled to take or do in respect of the OIMDTC Credit but for this Agreement, in the name of the Purchaser, or in the name of and as agent for the Vendor as the Purchaser, as applicable, may elect, and to enable the Purchaser to exercise such power and authority the Vendor hereby appoints the Purchaser or any one of them as the attorney of the Vendor to

execute such deeds, notices and other documents as may be necessary to collect and demand payment of the OIDMTC Credit.

### **Section 5.8 Receipt in Trust**

If at any time the Vendor, the Proposal Trustee or any future trustee in bankruptcy receives any payment from any governmental entity on account of OIDMTC Credits, the Vendor hereby declares that such amount will be held by the Vendor as trustee in trust for the Purchaser. The Vendor shall provide immediate notice and payment of such amount, but not later than seven days following receipt of the funds, to the Purchaser of receipt of any OIDMTC Credits.

### **Section 5.9 Use of Business Name.**

As soon as practicable following Closing, and prior to any assignment in bankruptcy, the Vendor shall discontinue use of business names in which the words "Fuel Industries", "Fuel Technologies", "FuelPlay", "Fuel Games", "Fuel Entertainment", "MishMosh" or any of them, are used and change the names of the Vendor to names that do not include "Fuel Industries", "Fuel Technologies", "FuelPlay", "Fuel Games", "Fuel Entertainment" and "MishMosh". Notwithstanding any provision to the contrary in this Agreement, the Vendor, the Proposal Trustee, and any trustee in bankruptcy appointed in respect of the Vendor shall be permitted to use the names "Fuel Industries", "Fuel Technologies", "FuelPlay", "Fuel Games", "Fuel Entertainment" and "MishMosh" to the extent necessary for the administration of the Vendor's commercial proposal process under the BIA or any subsequent bankruptcy. Forthwith after Closing, each of the Vendor or the Proposal Trustee shall take all steps necessary to change the Vendor's (and cause any subsidiary or affiliate to change its) corporate names to names which do not include the words Fuel Industries, Fuel Technologies, Fuel Entertainment, Fuel Games, MishMosh or FuelPlay, which may include, if necessary, seeking an order of the Court to effect such change.

## **ARTICLE 6 CONDITIONS OF CLOSING**

### **Section 6.1 Conditions for the Benefit of the Purchaser.**

The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement were true and correct as of the date of this Agreement and are true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Vendor shall have executed and delivered a certificate of a senior officer to that effect. Upon the delivery of such certificate, the representations and warranties of the Vendor in

Section 4.1 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.

- (b) **Performance of Covenants.** The Vendor shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to the Closing, and the Vendor shall have executed and delivered a certificate of an authorized representative to that effect.
- (c) **Occupancy Rights and Occupation Agreement.** The Purchaser shall have the right to occupy the Leased Premises, subject to payment of rent for the occupation period, through the Vendor or the Proposal Trustee's right to occupy the premises for a period of a maximum of 90 days following the commencement of the NOI Proposal and the Vendor or the Proposal Trustee shall have delivered to the Purchaser an occupation agreement in form satisfactory to the Purchaser, acting reasonably.
- (d) **Employees.** Those employees the Purchaser designates as key employees shall have accepted the Purchaser's offer of employment on terms required by the Purchaser.
- (e) **Deliveries.** The Vendor shall have delivered or caused to be delivered to the Purchaser the following in form and substance satisfactory to the Purchaser acting reasonably:
  - (i) a certificate of status, compliance, good standing or like certificate with respect to the Vendor issued by appropriate government officials of its jurisdiction of incorporation;
  - (ii) the certificates referred to in Section 6.1(a) and Section 6.1(b);
  - (iii) the originals of the Books and Records that are in the Vendor's possession or that can be obtained using commercially reasonable efforts, including all Tax Returns pertaining to corporate income Taxes of the Fuel Companies for the previous five (5) years prior to the Closing Date, and all documentation and materials filed in support of its applications for the OIDMTC Credits;
  - (iv) such documents as are required relating to the OIDMTC Credits, including an irrevocable direction with respect thereto; and
  - (v) such other necessary deeds, conveyances, assurances, transfers and assignments, including any confirmation of assignment of Intellectual Property for filing purposes with the Canadian Intellectual Property Office or any United States intellectual property filing office or similar filing office in any relevant jurisdiction, and any other instruments necessary or reasonably required to transfer the Purchased Assets to

the Purchaser in accordance with this Agreement and the Approval and Vesting Order.

- (f) **No Legal Action.** No action or proceeding will be pending or threatened by any Person (other than the Vendor or the Purchaser), and there is no order or notice from any Governmental Entity, to (or seeking to) enjoin, restrict or prohibit, on a temporary or permanent basis any of the transactions contemplated by this Agreement or imposing any terms or conditions on the transactions contemplated by this Agreement, the Business or the business of the Purchaser or otherwise limiting the right of the Purchaser to conduct the Business after Closing on substantially the same basis as heretofore operated.

## **Section 6.2 Conditions for the Benefit of the Vendor.**

The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion.

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement were true and correct as of the date of this Agreement and are true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect. Upon delivery of such certificate, the representations and warranties of the Purchaser in Section 4.2 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.
- (b) **Performance of Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to Closing and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect.
- (c) **Deliveries.** The Purchaser shall have delivered or caused to be delivered to the Vendor the following in form and substance satisfactory to the Vendor, acting reasonably:
  - (i) a certificate of status, compliance, good standing or like certificate with respect to the Purchaser issued by appropriate government official of the jurisdiction of its incorporation;
  - (ii) the certificates referred to in Section 6.2(a) and Section 6.2(b); and
  - (iii) the Purchaser shall have paid to the Proposal Trustee for the Vendor, in trust, an amount equal to the amounts required to be paid in (A) Section 3.2(a) for any and all other amounts and claims which rank in priority to the interest of the Purchaser pursuant to the Chou Loan

Agreements, which claims are listed in Schedule 6.2(c)(iii) (each a "Priority Payable") and (B) Section 3.2(b).

- (d) **Proceedings.** All proceedings to be taken in connection with the transactions contemplated in this Agreement and any Ancillary Agreement are reasonably satisfactory in form and substance to the Vendor, acting reasonably, and the Vendor shall have received copies of all the instruments and other evidence as it may reasonably request in order to establish the consummation of such transactions and the taking of all proceedings in connection therewith.

### **Section 6.3 Conditions for the Benefit of the Purchaser and the Vendor.**

The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the benefit of both the Vendor and the Purchaser and may be jointly waived, in whole or in part, by the Vendor and the Purchaser.

- (a) **Approval and Vesting Order.** The Approval and Vesting Order shall have been obtained and shall not have been appealed, set aside, varied or stayed or, if appealed or stayed, all appeals shall have been dismissed and all stays shall have been lifted, respectively.
- (b) **No Legal Action.** No action or proceeding will be pending or threatened by any Person (other than the Proposal Trustee, the Vendor or the Purchaser) and there is no order or notice from any Governmental Entity, in each case, to (or which seeks to) enjoin, restrict or prohibit, on a temporary or permanent basis any of the transactions contemplated by this Agreement or imposing any terms or conditions on the transactions contemplated by this Agreement.

## **ARTICLE 7 CLOSING**

### **Section 7.1 Date, Time and Place of Closing.**

Closing will take place on the Closing Date at 11:00 am ET at the offices of Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario or at such other place, on such other date and at such other time as may be agreed upon in writing between the Vendor and the Purchaser.

### **Section 7.2 Closing Procedures.**

- (1) Subject to satisfaction or waiver by the relevant Party of the conditions of closing, on the Closing Date, the Vendor shall deliver actual possession of the Purchased Assets and the instruments of conveyance described in Section 6.1, and upon such deliveries the Purchaser shall pay or satisfy the Purchase Price in accordance with Section 3.2. The Vendor shall deliver the Proposal Trustee's Certificate to the Purchaser confirming the satisfaction of all conditions under this Agreement,

payment of the Purchase Price and the vesting of the Purchased Assets pursuant to the Approval and Vesting Order. The Closing shall be deemed completed upon such deliveries.

- (2) The Vendor shall file a copy of the Proposal Trustee's Certificate with the Court as soon as practicable following Closing.

## ARTICLE 8 TERMINATION

### Section 8.1 Termination Rights.

- (1) This Agreement will be terminated automatically, without any action by either Party, if the Approval and Vesting Order shall not have been granted by **August 31, 2017**, or such later date as may be agreed to be the Parties.
- (2) This Agreement may, by Notice in writing given on or prior to the Closing Date, be terminated:
  - (a) by mutual consent of the Vendor and the Purchaser;
  - (b) by the Purchaser, if:
    - (i) the Approval and Vesting Order shall fail, once granted, to be in full force and effect or shall have been amended, modified, reversed or dismissed without the prior written consent of the Purchaser;
    - (ii) there has been a material breach of this Agreement by the Vendor and where such breach is capable of being cured, such breach has not been waived by the Purchaser in writing or cured within five (5) Business Days following written Notice of such breach by the Purchaser; or
    - (iii) any of the conditions in Section 6.1 have not been satisfied and it becomes reasonably apparent that any of such conditions will never be satisfied (other than as result of the failure of the Purchaser to perform any of its material obligations) and the Purchaser has not waived such condition in writing at or prior to Closing;  
  
in the opinion of the Purchaser, acting reasonably, there has been a material adverse change in the business, operations, assets, liabilities or financial condition of the Business or the Vendor except for (i) the commencement of the NOI Proposal as contemplated herein;
  - (c) by the Vendor, if:
    - (i) there has been a material breach of this Agreement by Purchaser and where such breach is capable of being cured, such breach has not been waived by the Vendor in writing or cured within five (5) Business Days following written Notice of such breach by the Vendor; or



- (ii) any of the conditions in Section 6.2 have not been satisfied and it becomes reasonably apparent that any of such conditions will never be satisfied (other than as result of the failure of any of the Vendor to perform any of its material obligations) and the Vendor has not waived such condition at or prior to Closing.

**Section 8.2 Effect of Termination.**

The rights of termination under this Article 8 are in addition to any other rights the respective Party may have under this Agreement or otherwise, and the exercise of a right of termination by a Party will not constitute an election of remedies. If this Agreement is terminated pursuant to Section 8.1, this Agreement will be of no further force or effect; provided, however, that (i) this Section 8.2 (*Effect of Termination.*), and Article 9 (*MISCELLANEOUS*) and provisions that by their nature should survive, will survive the termination of this Agreement, and (ii) the termination of this Agreement will not relieve any Party from any liability for any breach of this Agreement occurring prior to termination.

**ARTICLE 9  
MISCELLANEOUS**

**Section 9.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “**Notice**”) must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:

- (a) to the Purchaser at:

2587485 Ontario Ltd.  
110 Sheppard Avenue East  
Suite 301  
Toronto, ON M2N 6Y8

Attention: Tracey Chou  
Telephone: (416) 214-0675  
Email: tracy@choufunds.com  
Facsimile: (416) 214-1733

with a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attention: Liz Pillon  
Telephone: (416) 869-5623

Email: lpillon@stikeman.com  
Facsimile: (416) 947-0866

(b) to the Vendor at:

Fuel Technologies Inc.  
c/o Dentons Canada LLP  
99 Bank Street  
Suite 1420  
Ottawa, ON K1P 1H4

Attention: Phil Rimer  
Telephone: (613) 783-9634  
Facsimile: (613) 783-9690  
Email: philip.rimer@dentons.com

(c) to the Proposal Trustee at:

Richter LLP  
Bay Wellington Tower  
181 Bay Street  
Suite 3320  
Toronto, ON M5J 2T3

Attention: Paul van Eyk  
Telephone: (416) 485-4592  
Facsimile: (416) 488-3765  
Email: pvaneyk@richter.ca

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (ii) if sent by facsimile or email, on the Business Day following the date of confirmation of transmission by the originating facsimile or email. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party.

## **Section 9.2 Time of the Essence.**

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

**Section 9.3 Announcements.**

No press release, public statement or announcement or other public disclosure with respect to this Agreement or the transactions contemplated in this Agreement may be made prior to Closing except with the prior written consent and joint approval of both the Vendor and the Purchaser, or if required by Law or a Governmental Entity. Where such disclosure is required by Law or a Governmental Entity, the Party required to make such disclosure will use its commercially reasonable efforts to obtain the approval of the other Party as to its form, nature and extent of the disclosure. After the Closing, any disclosure by the Vendor may be made only with the prior written consent and approval of the Purchaser unless such disclosure is required by Law or a Governmental Entity, in which case the Vendor shall use its commercially reasonable efforts to obtain the approval of the Purchaser as to the form, nature and extent of the disclosure.

**Section 9.4 Third Party Beneficiaries.**

Except as otherwise provided in this Agreement, (i) the Vendor and the Purchaser intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties and (ii) no Person, other than the Parties, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person.

**Section 9.5 Expenses.**

Except as otherwise expressly provided in this Agreement, each Party will pay for its own costs and expenses (including the fees and expenses of legal counsel, accountants and other advisors) incurred in connection with this Agreement or any Ancillary Agreements and the transactions contemplated by them.

**Section 9.6 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser.

**Section 9.7 Waiver.**

No waiver of any of the provisions of this Agreement or any Ancillary Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's acceptance of any certificate delivered on Closing or failure or delay in exercising any right under this Agreement will not operate as a waiver of that. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

**Section 9.8 Entire Agreement.**

This Agreement together with the Ancillary Agreements, (i) constitutes the entire agreement between the Parties; (ii) supersedes all prior agreements or discussions of the Parties; and (iii) sets forth the complete and exclusive agreement between the Parties, in all cases, with respect to the subject matter herein.

**Section 9.9 Successors and Assigns.**

- (1) Upon execution of the Agreement by the Parties, it will be binding upon and enure to the benefit of the Vendor, the Purchaser and their respective successors and permitted assigns.
- (2) Except as provided in this Section 9.9, neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party. Upon giving Notice to the Vendor at any time on or prior to the Closing Date, the Purchaser may assign this Agreement or any of its rights and/or obligations under this Agreement to:
  - (a) any of its Affiliates, provided that such Affiliate and the Purchaser shall be jointly and severally liable with respect to all of the obligations of the Purchaser, including the representations, warranties, covenants, indemnities and agreements of the Purchaser;
  - (b) a lender or lenders as continuing collateral security for obligations owed to it or them; or
  - (c) any Person that acquires all or substantially all of the assets of the Purchaser.

**Section 9.10 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 9.11 Governing Law.**

- (1) This Agreement is governed by and will be interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Ontario courts situated in the City of Toronto (and appellate courts therefrom) and waives objection to the venue of any proceeding in such court or that such court provides an inappropriate forum.

**Section 9.12 Counterparts.**

This Agreement may be executed (including by electronic means) in any number of counterparts, each of which (including any electronic transmission of an executed signature page), is deemed to be an original, and such counterparts together constitute one and the same instrument.

*[Remainder of page intentionally left blank. Signature pages follow.]*

**IN WITNESS WHEREOF** the Parties have executed this Asset Purchase Agreement.

**FUEL INDUSTRIES INC.**

By: \_\_\_\_\_

Authorized Signing Officer

**FUEL TECHNOLOGIES INC.**

By: \_\_\_\_\_

Authorized Signing Officer

**2587485 ONTARIO LTD.**

By: \_\_\_\_\_

Authorized Signing Officer

**Schedule 1.1(f)**  
**Leased Properties**

Premises located at municipal address of 7 Hinton Avenue, Suite 100, Ottawa, Ontario

**Schedule 2.1**  
**Permitted Liens**

1. Liens arising under the Loan Documents or related to the Loan Agreements.
2. Liens existing in favour of Dell Financial Services Canada Ltd. in respect of computer equipment.
3. Liens existing in favour of LBEL Inc. relating to a telephone system and accessories.



**Schedule 2.1(a)**  
**Assumed Contracts**

1. The Loan Agreement and all Loan Documents.
2. Consultant Company General Agreement between Fuel Industries Inc. and Cantor Futures Exchange L.P. dated March 30, 2016
3. Schedule 2 to Consultant Company General Agreement between Fuel Industries Inc. and Cantor Futures Exchange L.P. dated December 15, 2016.
4. Master Supplier Services Agreement between Fuel Industries Inc. and Microsoft dated October 19, 2015
5. Master Vendor Agreement between Fuel Industries Inc. and Warner Bros Digital, a division of Warner Bros. Technical Solutions Inc. dated December 16, 2016
6. Master Services Agreement for Digital Transactions (with PII) between Fuel Industries Inc. and NBC Universal Media LLC dated September 2, 2016
7. App Development Agreement between Fuel Industries Inc. and Tween Brands Inc. dated June 30, 2016
  - a. Associated Statement of Work dated January 5, 2017 (Content)
  - b. Associated Statement of Work dated December 21, 2016 (Managed Hosting)
  - c. Associated Statement of Work dated January 30, 2017 (Justice App Maintenance)
8. Master Services Agreement between Fuel Industries Inc. and McDonald's Europe Inc. dated December 19, 2013
9. Master Services Agreement between Fuel Industries Inc. and National Association for Stock Car Auto Racing Inc. dated July 1, 2015
10. Agreement between Fuel Industries Inc. and the United States Fund for UNICEF dated December 20, 2016
11. Master Agency Services Agreement for Creative; Media and Interactive Services between Fuel Industries Inc. and the Coca-Cola Company dated April 30, 2013
12. Assignment Agreement between Fuel Industries Inc. and Atomic Toybox Entertainment Inc. dated June 22, 2017

13. Insertion Order between Fuel Industries and Amazon Services LLP dated October 31, 2016
14. Statement of Work Agreement between Fuel Industries Inc. and Star Stable Ltd. dated April 19, 2017
15. Statement of Work between Fuel Industries Inc. and CEC Entertainment Inc. dated January 9, 2017
16. Master Services Agreement between Fuel Industries Inc. and A9.com, Inc. dated November 18, 2016
17. Master Services Agreement for Digital Transactions (NO PII) between Sprout Media Productions, LLC and Fuel Industries, Inc. dated July 14, 2017
18. Insertion Order between Fuel Industries and Amazon Services LLC dated May 1, 2017
19. Acceleration Nation 2017 Scope of Work Agreement between Fuel Industries Inc. and National Association for Stock Auto Racing, Inc. dated January 6, 2017
20. Amendment #1 to the Master Services Agreement between Fuel Industries Inc. and National Association for Stock Auto Racing, Inc. dated January 5, 2017
21. 2014 Agency Master Services Agreement for Creative, media, Interactive, Promotions, Experiential and Public Relations Services between Fuel Industries Inc. and the Coca-Cola Company dated January 1, 2014
22. Covered Vendor Agreement between Fuel Industries Inc. and Martha Stuart Living Omnimedia Inc. dated November 30, 2016

*Leases*

23. Commercial Lease Agreement between Fuel Industries Inc. and Dell Financial Services Canada dated June 28, 2013
24. Commercial Lease Agreement between Fuel Industries Inc. and Dell Financial Services Canada dated May 17, 2013
25. Commercial Lease Agreement between Fuel Industries Inc. and Dell Financial Services Canada dated September 2, 2014
26. Master Subscription Services Agreement between Fuel Inc. and Swivelfly Inc. dated March 17, 2016

27. Commercial Lease Agreement between Fuel Industries Inc. and Dell Financial Services Canada dated April 14, 2014
28. Commercial Lease Agreement between Fuel Industries Inc. and Dell Financial Services Canada dated April 14, 2015
29. Lease Agreement between Fuel Industries Inc. and LBEL Inc. dated November 15, 2016

as each such agreement maybe amended, modified or supplemented from time to time.

**Schedule 6.2(c)(iii)  
Priority Payables**

[NIL].