

**RICHTER**

Richter Advisory Group Inc.  
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**ELEMENTA GROUP INC.**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS RECEIVER OF  
ELEMENTA GROUP INC.**

**FEBRUARY 16, 2016**

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

IN THE MATTER OF THE RECEIVERSHIP OF  
ELEMENTA GROUP INC.

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF THE  
PROPERTIES, ASSETS AND UNDERTAKING OF  
ELEMENTA GROUP INC.**

**February 16, 2016**

## Introduction

1. On November 30, 2015, the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), issued an interim order (the “**Interim Order**”) authorizing Richter Advisory Group Inc. (“**Richter**”) to take possession of Elementa Group Inc.’s (“**Elementa**” or the “**Company**”) computer server and certain boxes containing notes and other records referable to the data on the server (the “**Computer and Other Records**”), on an interim basis, as interim custodian pending the return of the application by Bennett Jones LLP (“**Bennett Jones**”) for the appointment of a receiver over the property, assets and undertakings of Elementa. A copy of the Interim Order is attached as **Appendix “A”** to this report.
2. On December 21, 2015, (the “**Date of Appointment**”), the Court issued an order (the “**Appointment Order**”) appointing Richter as receiver (the “**Receiver**”) pursuant to section 243 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended, (the “**BIA**”) and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. 43, as amended, without security, of all of the properties, assets and undertakings (the “**Property**”) of Elementa. A copy of the Appointment Order is attached as **Appendix “B”** to this report.

## Purpose of this Report

3. This is the first report of the Receiver (the “**First Report**”), the purpose of which is to provide information to this Court in respect of the following:
  - (a) a limited summary of certain background information about Elementa;
  - (b) the activities of Richter and the Receiver subsequent to the granting of the Interim Order and the Appointment Order, respectively;
  - (c) the terms of an Agreement of Purchase and Sale dated February 12, 2016 (the “**Stalking Horse APS**”) between the Receiver and Bradam Canada Inc. (“**Bradam**” or the “**Stalking Horse Bidder**”) for the sale of substantially all of Elementa’s business and assets which, subject to the approval of this Court, would act as the stalking horse sale agreement (the “**Stalking Horse Bid**”);

- (d) the Receiver's proposed process for the sale of the Property (the "**Sales Process**"), including the bidding procedures to be used in connection with the Sales Process;
- (e) the reasons why the Receiver believes that the Stalking Horse Bid and the Sales Process should be approved by this Court; and
- (f) the Receiver's recommendation that this Court make an order(s);
  - (i) approving the Stalking Horse Bid and the Sales Process; and
  - (ii) approving the First Report and the activities of the Receiver as set out therein.

#### **Terms of Reference**

4. In preparing this First Report, the Receiver has relied upon unaudited financial and other information previously prepared by the Company and/or its representatives as well as other information supplied by Bennett Jones, the Company's former management and others (collectively, the "**Information**"). The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of the evidence provided to this Honourable Court, in relation to the relief being sought herein. The Receiver has not, however, audited 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 Canadian Institute of Chartered Accountants Handbook and, as such, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
5. The information contained in this First Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Receiver.
6. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

## General Background to the Receivership Proceedings

7. Elementa, which was incorporated pursuant to the *Business Corporations Act* (Ontario), is an early stage development company that owns and controls intellectual property rights to a waste conversion process to efficiently and economically convert municipal solid waste into clean synthetic gas, which has properties and utility values similar to natural gas. The synthetic gas and resultant heat can be used to power turbines, engines or fuel cells for the generation of electricity, distilled into ethanol or hydrogen or used as process heat and gas (natural gas replacement). The Company's registered head office is leased premises located at 509 Glendale Avenue E., Suite 302, Niagara-on-the-Lake, Ontario (the "**Premises**").
8. Elementa is the sole limited partner of Elementa Algoma LP, an Ontario limited partnership, whose general partner is Elementa Algoma Inc. The shares of Elementa Algoma Inc. are wholly owned by Elementa Holdings Ltd. and the shares of Elementa Holdings Ltd. are wholly owned by Elementa. A copy of Elementa's corporate chart is attached as **Appendix "C"** to this report.
9. Commencing in or about 2003, the Company began raising capital for the construction of a pilot plant to test and develop a process to convert waste material into a clean energy source in an efficient and cost effective manner. The Company was successful in raising sufficient funds to construct a pilot plant in Sault Ste. Marie, Ontario ("**SSM**"), which facility began processing unsorted municipal solid waste in or about October 2007. The pilot plant, which the Receiver understands underwent third party verification and received Ontario Ministry of Environment and Climate Change approval, provided Elementa the opportunity to both test and optimize various aspects of its proprietary process.
10. Based on the successful results from its pilot plant, Elementa entered into discussions with several municipalities and industrial partners for the construction of full-scale facilities. These discussions culminated in Elementa Algoma LP (the vehicle which would develop the Project, as hereinafter defined) becoming a party to certain contracts in relation to the planned construction of a municipal waste processing facility to produce electricity in SSM (the "**Project**").
11. For the purposes of the Project, Elementa entered into a Waste Supply and Reformation Agreement with the Corporation of the City of Sault Ste. Marie dated October 26, 2009, as amended, assigned and novated from time to time (collectively, the "**Waste Agreement**").

12. Subsequent to entering into the Waste Agreement, Elementa Algoma LP entered into an energy from waste contract for the Project (the “**EFW Contract**”) with the Ontario Power Authority (now the Independent Electricity System Operator (“**IESO**”)) dated December 18, 2013.
13. In addition to the above and notwithstanding its financial difficulties, Elementa also secured the site for the Project by arranging for the purchase of the land for the Project site (the “**Project Lands**”) from the Corporation of the City of Sault Ste. Marie by 2124732 Ontario Inc. (“**212**”), a corporation owned by a shareholder and creditor of Elementa. Following its purchase of the Project Lands, 212 entered into a lease with Elementa Algoma LP for the Project Lands (the “**Lease**”). The Waste Agreement, the EFW Contract and the Lease are collectively referred to herein as the “**SSM Project Contracts**”.
14. The SSM Project Contracts contain certain deadlines for the construction and commercial operation of the Project. Pursuant to one such contract, the construction of the Project must be commenced on or before May 1, 2016. The undertaking to construct the Project required Elementa to raise significant capital (approximately \$50 – \$55 million). Unfortunately, Elementa was unsuccessful in raising sufficient funding to adequately address its capital needs and realize value from the SSM Project Contracts. Ultimately, due to its inability to raise sufficient funds to continue operations and advance the Project, Elementa was forced to lay off its workforce. The employment of the last two employees was terminated on October 6, 2015. As at the Date of Appointment, it was the Receiver’s understanding that Elementa was not an operating business, had no employees and no source of revenue.
15. According to the Company’s most recent internal, unaudited financial statements, as at December 31, 2014, the Property consisted of the following:

<b>Assets</b>	<b>Net Book Value (\$000s)</b>
Cash and Cash Equivalents	15
HST Accounts Receivable	23
Due From Shareholders	150
Sault Ste Marie Commercial Design	865
Fixed Assets	78
<b>Total</b>	<b>1,131</b>

Note: The above amounts represent book values of the Company’s assets as detailed in the Company’s book and records and do not necessarily represent the sale or liquidation value of the Property.

16. As Elementa had no employees or active business operations at the Date of Appointment, the Receiver was forced to rely on the Company's books and records, which were not current or complete, and other available documents to generate a list of Elementa's creditors.
17. According to a search of the Personal Property Security Registration System (Ontario), as at the Date of Appointment, the parties holding security on the Property (collectively, the "**Secured Creditors**") as well as the approximate amount of their respective claims against Elementa, were as follows:

Bennett Jones LLP	\$	3,000,000
Her Majesty in Right of Ontario (Ministry of Finance)		unknown
2124732 Ontario Inc.		unknown
Gary Blokhuis D.B.A. Blokhuis Holdings		unknown
Sharon D'Amico		unknown
David D'Amico		unknown

18. In addition to the amounts owed by Elementa to its Secured Creditors, according to the Company's books and records, Elementa has accrued and unpaid unsecured obligations totaling approximately \$7 million.

#### **Activities of Richter and the Receiver**

19. As noted previously in this First Report, on November 30, 2015, the Court granted the Interim Order which authorized Richter to take possession of Elementa's Computer and Other Records, on an interim basis, pending further order of the Court. On the same date, Richter took possession of the Company's Computer and other Records.
20. Subsequent to the Date of Appointment, the Receiver's activities have included:
  - (a) sending the prescribed notice, in accordance with Sections 245(1) and 246(1) of the BIA, within 10 days of the issuance of the Appointment Order, to all known creditors of the Company;
  - (b) establishing a website at [www.richter.ca/en/insolvency-cases/e/elementa-group-inc](http://www.richter.ca/en/insolvency-cases/e/elementa-group-inc), where all materials filed with the Court, and all orders made by the Court in connection with the receivership proceedings, will be available in electronic form;



- (c) arranging for the closing of Elementa's bank accounts and opening a new bank account under the Receiver's name;
- (d) attending at the Premises, including discussions with the landlord (and its counsel) to, among other things, review and inspect the Premises and take possession of certain of Elementa's books and records and other Property located at the Premises;
- (e) arranging for the redirection of Elementa's mail from the Premises to the Receiver's offices;
- (f) corresponding with third parties, including certain former employees and directors/officers of Elementa, that the Receiver had been advised may have Elementa files/documents or other Elementa assets in their possession;
- (g) communicating with representatives of SSM regarding the Project and other matters in connection with Elementa and the receivership proceedings;
- (h) communicating with representatives of the IESO regarding the EFW Contract and other matters in connection with Elementa and the receivership proceedings;
- (i) communicating with representatives of the Canada Revenue Agency in connection with Elementa and the receivership proceedings;
- (j) communicating with representatives of the Ontario Ministry of the Environment and Climate Change in connection with Elementa and the receivership proceedings;
- (k) communicating with certain prospective purchasers regarding Elementa, the Property, the receivership proceedings and their interest in submitting a stalking horse bid or participating in the Sales Process;
- (l) communicating with counsel for 212 regarding the Project Lands and other matters in connection with the receivership proceedings;
- (m) considering processes to market Elementa's business and/or assets, including developing the Sales Process and negotiating the Stalking Horse Bid;

- (n) preparing the Teaser Letter (as hereinafter defined), the form of Confidentiality Agreement (as hereinafter defined) and the list of prospective purchasers;
- (o) corresponding and communicating with Bennett Jones LLP, Elementa's primary and first-ranking secured creditor;
- (p) responding to calls and enquiries from creditors and other stakeholders regarding Elementa and the receivership proceedings; and
- (q) preparing this First Report.

### **Stalking Horse Bid**

21. The Receiver, Bradam and their respective counsel have negotiated the terms and provisions of the Stalking Horse Bid, a summary of which is as follows (all terms not otherwise defined herein shall have the meanings as defined in the Stalking Horse APS):

- (a) the purchased assets include all assets, undertakings and properties of Elementa, other than the Excluded Assets, acquired for or used in relation to the Company's business. Specifically, the purchased assets include Elementa's shares in Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd. as well as, but not limited to the following:
  - (i) the Inventory;
  - (ii) the Intellectual Property;
  - (iii) the Equipment;
  - (iv) all insurance policies and all claims to proceeds thereunder;
  - (v) any websites or other internet-based branding or marketing;
  - (vi) the Assumed Contracts;
  - (vii) the Books and Records;
  - (viii) the Licenses;
  - (ix) the Company's goodwill; and
  - (x) other assets as detailed in the Stalking Horse APS (collectively, the "**Purchased Assets**");

- (b) the Purchased Assets specifically exclude: cash, cash equivalents, pre-paid expenses, refunds, including, without limitation, insurance refunds and GST/HST rebates as well as any of the Purchased Assets the Stalking Horse Bidder elects to exclude from the Stalking Horse Bid upon written notice to the Receiver;
- (c) the Purchase Price payable by the Stalking Horse Bidder for the Purchased Assets is \$1,500,000;
- (d) the Stalking Horse Bidder is to pay a deposit in the amount of \$150,000 (the “**Deposit**”) to be held in trust by the Receiver’s counsel. The Stalking Horse Bidder is required to pay the Deposit to the Receiver on or before February 18, 2015;
- (e) the payment of a break-up fee in the amount of \$50,000 (the “**Break-Up Fee**”) to the Stalking Horse Bidder in the event that it is not the Winning Bidder. The Break-Up Fee of \$50,000 represents approximately 3.3% of the purchase price for the Purchased Assets and is inclusive of the Stalking Horse Bidder’s direct expenses in negotiating and finalizing the Stalking Horse APS. The Receiver is of the view that the Break-Up Fee is reasonable in the circumstances, consistent with amounts generally seen in insolvency proceedings, and largely represents an expense reimbursement in the event that the Stalking Horse Bidder is not the Winning Bidder. Further, in the Receiver’s view, the Break-Up Fee will not discourage Potential Bidders (as hereinafter defined) from submitting an offer that is superior to the Stalking Horse Bid;
- (f) the Stalking Horse Bid is scheduled to close on or before April 8, 2016;
- (g) the Stalking Horse Bid is subject to certain conditions, the following of which are the only material conditions precedent to the transaction:
  - (i) Bradam being selected as the Winning Bidder in accordance with the Sales Process discussed below; and
  - (ii) the Court approving the Stalking Horse Bid and granting a Vesting Order in favour of the Stalking Horse Bidder for the Purchased Assets.

22. In the Receiver's view, the terms of the Stalking Horse Bid are consistent with standard insolvency transactions, including that the transaction is to be completed on an "as is, where is" basis and contains only basic conditions, which are reasonable in the circumstances. A copy of the Stalking Horse APS is attached hereto as **Appendix "D"**.

### **Proposed Sales Process and Bidding Procedures**

23. The Receiver notes that prior to the Date of Appointment, Elementa did not actively market the Company's assets. The Receiver does, however, understand that in or about July 2015 Elementa retained Kyudoka Capital Corporation as its advisor to assist Elementa in securing financing for its operations, including the Project (the "**Investment Solicitation Process**"). The Receiver further understands that although the Investment Solicitation Process generated interest from several parties, the Investment Solicitation Process did not result in any firm commitments to invest in or otherwise finance Elementa's operations, including the Project. The Receiver also understands that the Company attempted to canvass the market for potential debtor in possession financiers in support of an abortive NOI proceeding. This was abandoned when there was a purported change in the constitution of the Company's board resulting in this receivership, however, the Receiver understands that the process did reveal that there were several prospective lenders who were interested in exploring such an opportunity with a view to owning the Property or parts thereof.
24. Given the recent unsuccessful Investment Solicitation Process, the abortive NOI proceeding undertaken by the Company, and the approaching deadline for the commencement of construction for the Project, the Receiver in consultation with its counsel developed the Sales Process as a means of establishing a benchmark for the Purchased Assets and providing a forum for prospective purchasers to present a bid(s) superior to that contemplated by the Stalking Horse Bid on a timeline to meet the financial and timing exigencies of these circumstances. Among other things, the Sales Process includes bidding procedures (the "**Bidding Procedures**") that incorporate the Stalking Horse Bid and the ability of the Receiver to conduct an auction (the "**Auction**") if qualified and competitive bids for the Purchased Assets are received. The Bidding Procedures are attached hereto as **Appendix "E"**.

25. The Sales Process and Bidding Procedures are summarized as follows:
- (a) as soon as possible following the issuance of a Court order approving the Sales Process and the Bidding Procedures, the Receiver will distribute an initial offering summary (the “**Teaser Letter**”) and form of confidentiality agreement (the “**Confidentiality Agreement**”) to a list of prospective purchasers and investors (“**Potential Bidders**”), which list has already been developed by the Receiver;
  - (b) Potential Bidders that wish to commence due diligence will be required to sign the Confidentiality Agreement. Once a Confidentiality Agreement has been signed by a Potential Bidder (now an “**Interested Party**”), they will receive access to an electronic data room that has been populated by the Receiver. The Receiver will facilitate due diligence efforts, including responding to questions from Interested Parties;
  - (c) Interested Parties will be provided with a copy of the Stalking Horse APS and will be required to submit offers in the form of the Stalking Horse APS. Any changes and/or modifications to the Stalking Horse APS are to be indicated on a blackline to the Stalking Horse APS (including, if applicable, any modifications made to reflect the Property or parts thereof sought to be purchased), which is to be submitted along with the execution version of the agreement;
  - (d) after completion of the due diligence period, each Interested Party is required to submit an offer to acquire all or part of the Property to the Receiver by no later than 12:00 p.m. (EST) on March 21, 2016 (the “**Bid Deadline**”);
  - (e) the minimum aggregate consideration of a bid(s) for all of the Purchased Assets must be at least \$1,650,000 (the “**Minimum Purchase Price**”). However, if an Interested Party is submitting a bid for less than all of the Purchased Assets, such bid is not subject to the Minimum Purchase Price;
  - (f) all offers must be accompanied by a deposit payable to the Receiver, in trust, in an amount equal to at least 10% of the aggregate purchase price of the subject bid;
  - (g) all offers must be on terms no less favourable and no more burdensome or conditional than the Stalking Horse APS;

- (h) all offers must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder's obligation to complete the transaction that are not otherwise contained in the Stalking Horse APS;
- (i) all offers must contain evidence satisfactory to the Receiver of the bidder's financial ability to close the proposed transaction by the closing date;
- (j) the Receiver shall have discretion to consult and negotiate with any participating bidder with respect to their bid;
- (k) once all bids are clarified, the Receiver shall review all bids and determine, in its reasonable judgment, those bidders, if any, that are qualified to participate in the Auction ("**Qualified Bidders**");
- (l) in the event that there is no Qualified Bidder other than the Stalking Horse Bidder, the Receiver shall bring a motion as soon as reasonably possible after the Bid Deadline for approval of the Stalking Horse APS and an order to vest the right, title and interest of Elementa in the Purchased Assets in the Stalking Horse Bidder and proceed with the closing of the Stalking Horse Bid forthwith;
- (m) in the event that there is more than one Qualified Bidder (the Stalking Horse Bidder is automatically deemed to be a Qualified Bidder), the Receiver will send notice to any Qualified Bidders, on or before March 23, 2016, advising of: (i) the date, time and location of the Auction, (ii) a copy of the opening bid (the "**Opening Bid**"), and (iii) the procedures pursuant to which the Auction is to be conducted;
- (n) Qualified Bidders must notify the Receiver, in writing, by no later than March 24, 2016, of their intention to participate in the Auction;
- (o) if the only Qualified Bidder electing to participate in the Auction is the bidder that submitted the Opening Bid (the "**Threshold Bidder**"), the Threshold Bidder shall be deemed to be the successful bidder, subject to Court approval;
- (p) in circumstances where more than one Qualified Bidder elects to participate in the Auction, the Auction shall take place on March 25, 2016;

- (q) bidding at the Auction shall begin with the Opening Bid and each subsequent round of bidding shall continue in minimum increments of \$100,000 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction (the “**Minimum Overbid Increment**”);
  - (r) if at the end of any round of bidding an Auction participant fails to submit an overbid, such Auction participant will not be eligible to participate in the next round of the Auction. The Receiver, however, reserves the right to establish such timelines and protocols for the Auction as it considers appropriate, in its discretion, to better promote the goals of the Bidding Procedures and facilitate the Auction, provided that the adoption of any rule that materially deviates from the Bidding Procedures shall require an order of the Court; and
  - (s) upon conclusion of the Auction, the Auction shall be closed and the Receiver shall declare the last Opening Bid the successful bid, subject to approval of this Honourable Court.
26. The proposed Sales Process and Bidding Procedures contemplate a 30-day period to market the Property to Potential Bidders. In the Receiver’s view, this timeline is sufficient to allow interested parties to perform due diligence and to submit offers. In addition, the Receiver does not have access to sufficient funding to support a lengthy sale process.
27. The duration of the proposed Sales Process and the existence of the Stalking Horse Bid should create certainty for all stakeholders. As noted previously in this First Report, the SSM Project Contracts contain certain fast approaching deadlines to commence construction of the Project that, in the Receiver’s view, do not support a lengthy sale process. In the circumstances, it is the Receiver’s view that 30-days is sufficient time for Potential Bidders to conduct due diligence on the Property.
28. The Sales Process appears reasonable in that it will provide a benchmark for the Purchased Assets and provide a forum and a deadline to permit and encourage any serious alternative bidders to come forward with firm purchase offers.
29. Further, the Receiver is of the view that the proposed Sales Process exposes the Property to the market for a reasonable time, is transparent and is designed to obtain the highest and best value for the Property given the Company’s current circumstances and stated timeline.

**Recommendation**

30. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the Order(s) granting the relief detailed in paragraph 3(f) of this Report.

All of which is respectfully submitted this 16<sup>th</sup> day of February, 2016.

**Richter Advisory Group Inc.  
in its capacity as Receiver of  
Elementa Group Inc.**

Per:



Adam Sherman, MBA, CIRP  
Senior Vice President



Pritesh Patel, MBA, CFA, CIRP  
Vice President



TAB A

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

THE HONOURABLE MR. ) MONDAY, THE 30<sup>TH</sup> DAY  
JUSTICE HAINEY ) OF NOVEMBER, 2015

B E T W E E N:

**BENNETT JONES LLP**

Applicant

-and-

**ELEMENTA GROUP INC.**

Respondent

**ORDER**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Richter Advisory Group Inc. ("**Richter**") as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Elementa Group Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eden Oliver sworn November 27, 2015 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for Leonard Zwierschke and Jayson Zwierschke ( together, the "**Respondents**"), counsel for John Ashbourne, and counsel for Richter,

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Application is hereby adjourned to December 21, 2015 at 9:00 a.m. for one hour, to be heard by Justice Hainey in order to enable the Respondents to respond to the merits of the Application to appoint the Receiver which response is not to be an assessment of Bennett Jones' legal accounts.
3. THIS COURT ORDERS that responding materials to the Application are to be served by December 10, 2015 and that the parties are to appear before Justice Hainey on December 10, 2015 at 9:30 a.m. for 10 minutes, to provide a progress report on the matter.
4. THIS COURT FURTHER ORDERS that Richter is to take possession of the server and certain boxes containing notes and records referable to the data on the server on an interim basis, (the "Property") as interim custodian until further order of this Court, and that Mr. John Ashbourne, the Chairman of the Board of Directors of the Debtor, shall cooperate in providing Richter with possession of the Property.
5. THIS COURT ORDERS that Richter shall incur no liability or obligation as a result of carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

Approved as to form & content.

*[Signature]*  
LAWYER FOR LEONARD ZWIERSCHKE  
AND JAYSON ZWIERSCHKE  
BRENT MARSHALL  
Barrister, Solicitor, Notary Public

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**BENNETT JONES LLP**  
Applicant/Plaintiff

– and –

**ELEMENTA GROUP INC.**  
Respondent/Defendant

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**Court File No. CV-15-11198-00CL**

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

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Proceeding commenced at TORONTO

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**ORDER**

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**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario M5X 1A4

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Lawyers for the Applicant  
Bennett Jones LLP

Court File Number: CV-15-11198-000

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

BENNETT JONES LLP  
Plaintiff(s)

AND

ELEMENTA GROUP INC.  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

① This application & affidavit received in adjourned & December 21/15 at 9 AM before Me for all fees. The parties and also to appear before Me on December 10, 2015 at 9:30 AM for 10 minutes & give Me a progress

Date

Judge's Signature

Additional Pages \_\_\_\_\_

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

report

(2) In the interim, the proposed Receiver, Rickles Advisory Group Inc ("Rickles") is to take interim possession of the Respondent's ~~that~~ <sup>SECRET</sup> documents in the possession of John Ashbourne who is to cooperate in providing interim possession to Rickles of the same.

(3) Further, Rickles is to take possession of certain boxes containing notes and

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

records referred to the  
data on the ~~handwritten~~ <sup>SECURE</sup>  
an an system being  
for Ashwood is to  
cooperate in process of  
public court process  
of these books.

(4) The adjournment is  
being granted at the  
request of Mr  
Marshall who  
represents the  
two Zwierschke  
brothers to enable  
them to respond to  
the application to  
appoint a receiver.  
I have made it  
clear to Mr Marshall

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

That their response is  
not to amount to  
an amendment of  
Bennett Jones' legal  
accountants.

⑤ Referred in D out  
as an interim  
custodian of the  
Sinner and the  
bases of documents  
with further order  
of the Court.

⑥ Responding Holmby  
to be served by  
December 10/2015

November 30/15

Haining J



TAB B

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. JUSTICE  
GLENN A. HAINEY

) Monday, THE 21st DAY  
) OF DECEMBER, 2015

JUSTICE

BETWEEN



**BENNETT JONES LLP**

Applicant

-and-

**ELEMENTA GROUP INC.**

Respondent

**ORDER  
(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Richter Advisory Group Inc. ("Richter") as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Elementa Group Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eden Oliver sworn November 27, 2015 and the Exhibits thereto, the affidavit of Jayson Zwierschke sworn December 9, 2015 and on hearing the submissions of counsel for the Applicant and the Respondent and on reading the consent of Richter to act as the Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS AND DECLARES that pursuant to section 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceedings thereof (the “**Property**”).

## **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "**eligible financial contract**" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.



## **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge in an amount not exceeding \$200,000 (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

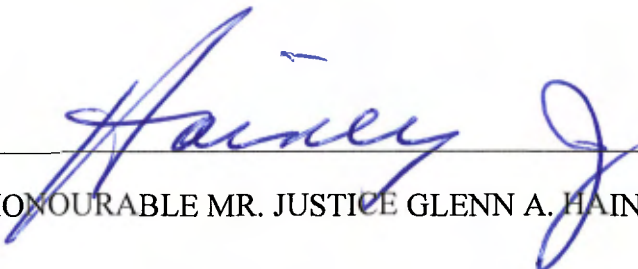
28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
\_\_\_\_\_  
THE HONOURABLE MR. JUSTICE GLENN A. HAINES

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

 DEC 21 2015

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "**Receiver**") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Order**") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

33. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

34. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

35. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

36. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

37. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

38. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:



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

Proceeding commenced at TORONTO

**ORDER  
(appointing Receiver)**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Gavin H. Finlayson (#44126D)**  
Email: [finlaysong@bennettjones.com](mailto:finlaysong@bennettjones.com)

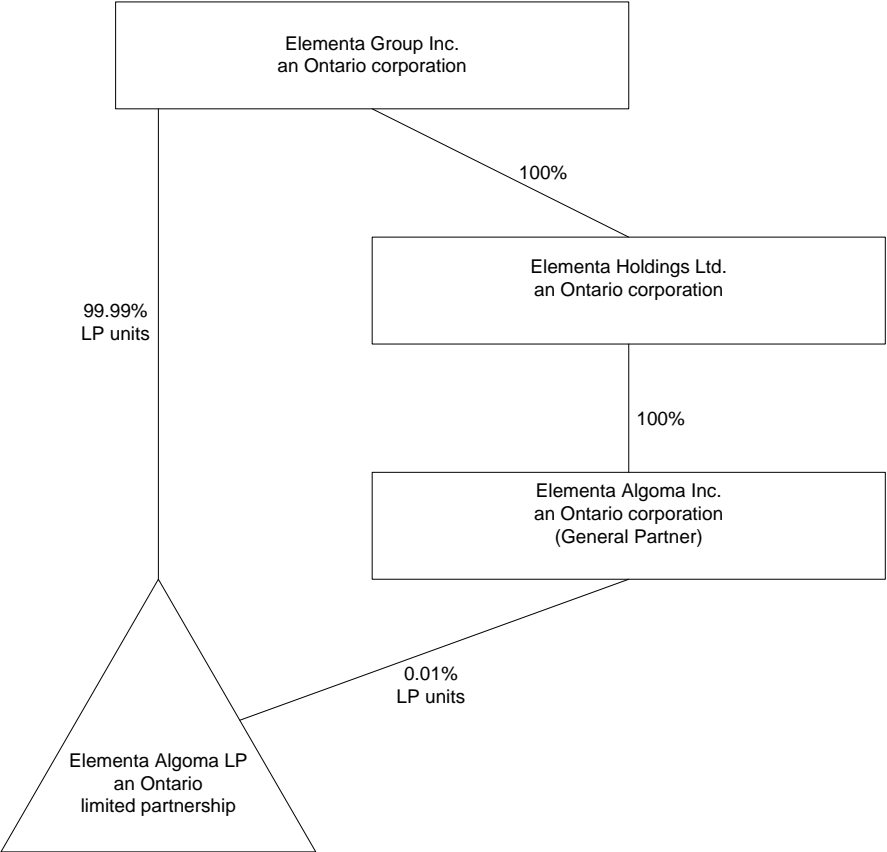
**Danish Afroz (#65786B)**  
Email: [afrozd@bennettjones.com](mailto:afrozd@bennettjones.com)

Tel. 416 863 1200  
Fax 416 863 1716

Lawyers for the Applicant  
Bennett Jones LLP

T A B C


Elementa Corporate Structure – June 19, 2013



9256156 v.1

TAB D

**AGREEMENT OF PURCHASE AND SALE**

  
THIS AGREEMENT is made as of the 12<sup>th</sup> day of February, 2016.

**BETWEEN:**

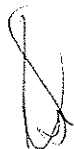
**RICHTER ADVISORY GROUP INC.,**  
in its capacity as Court-Appointed Receiver of  
Elementa Group Inc.  
and not in its personal capacity  
(the "Vendor")

- and -

**BRADAM CANADA INC.**  
(the "Purchaser")

**WHEREAS:**

- A. Elementa Group Inc. ("Elementa") is an early stage development company that owns and controls intellectual property rights to a steam reformation method of reforming carbonaceous municipal waste into synthesis gas;
- B. Elementa is the sole limited partner of Elementa Algoma LP, an Ontario limited partnership whose general partner is Elementa Algoma Inc. The shares of Elementa Algoma Inc. are wholly owned by Elementa Holdings Ltd., and the shares of Elementa Holdings Ltd. are wholly owned by Elementa;
- C. Elementa Algoma LP is a party to certain contracts in relation to a planned construction of a municipal waste processing facility to produce electricity in the City of Sault Ste. Marie (the "Project"). For the purposes of the Project, Elementa entered into a waste supply and reformation agreement with the Corporation of the City of Sault Ste. Marie on October 26, 2009, as amended, assigned and novated from time to time (collectively, the "Waste Agreement");
- D. On December 18, 2013, an energy form waste contract for the Project was entered into between Elementa Algoma LP and the Ontario Power Authority (now the Independent Electricity System Operator) (the "PPA"). Elementa Algoma LP secured the site for the Project by arranging for the purchase of the land for the site from The Corporation of the City of Sault Ste. Marie by 2124732 Ontario Inc., and by Elementa Algoma LP entering into a lease with 2124732 Ontario Inc. (the "Lease") (the Waste Agreement, the PPA and the Lease are collectively referred to as the "SSM Project Contracts");
- E. On December 21, 2015, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an order (the "Appointment Order") appointing Richter Advisory Group Inc. ("Richter") receiver (the "Receiver") over the assets, undertakings and properties of Elementa acquired for,



or used in relation to, the business carried on by Elementa, including all proceeds thereof (the "Property");

- F. The Vendor will bring a motion for the Sales Process Order (as hereinafter defined) to authorize the Vendor to enter into this Agreement and conduct a sales process with respect to the Purchased Assets (as hereinafter defined);
- G. The Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the respective right, title and interest of Elementa in and to the Purchased Assets on the terms and conditions set out herein, subject to the terms of this Agreement and subject to the issuance by the Court of an order of this Court authorizing the Vendor to complete this Agreement in the name of the Vendor, confirming the *Bulk Sales Act* (Ontario) does not apply to the transaction and to the vesting of the Purchased Assets in the Vendor free and clear of all claims or encumbrances whatsoever.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Two (\$2.00) Dollars now paid by each of the Vendor and Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto covenant and agree as follows:

#### ARTICLE 1 – DEFINITIONS

**1.1 Definitions.** The following terms will have the following meanings:

- (a) "Acceptance Date" means the date that this Agreement is executed by each of the parties hereto;
- (b) "Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate;
- (c) "Agreement" means this agreement, as it may be supplemented, amended, restated or replaced from time to time by written agreement between the parties;
- (d) "Assumed Contracts" has the meaning ascribed thereto in Section 2.9 hereof;
- (e) "Bid Deadline" has the meaning ascribed to that term in the Sales Process Order and the Bidding Procedures appended thereto;
- (f) "Bidding Procedures" are those procedures governing the sale process conducted by the Receiver for the sale of the Property and which are appended to the Sales Process Order;
- (g) "Books and Records" means all books, records, files and papers Related to the Business in the Vendor's possession or control;
- (h) "Break-Up Fee" shall have the meaning ascribed thereto in Section 6.1(a) hereof;
- (i) "Business" means the operation collectively by Elementa and its Subsidiaries of developing, owning and controlling intellectual property rights to a steam reformation method of reforming carbonaceous municipal waste into synthesis gas;




- (j) **"Business Day"** means any day that is not a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (k) **"Contracts"** means the right, title and interest of Elementa, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be, to and in any contract, license, sublicense, the SSM Project Contracts, all pending and/or executory contracts, agreements, leases and arrangements Related to the Business to or by which Elementa, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be, or any of the Purchased Assets or Business is bound or affected, not including any non-disclosure arrangements entered into by Elementa either leading up to or during the course of the receivership;
- (l) **"Closing Date"** or **"Closing"** means the date which is three (3) Business Days immediately following the date upon which the Vesting Order is granted or such other date as the Vendor and the Purchaser shall mutually agree upon, but in no event later than **April 8, 2016**;
- (m) **"Deposit"** shall have the meaning ascribed thereto in Section 2.3(a) hereof;
- (n) **"ETA"** means the *Excise Tax Act* (Canada);
- (o) **"Employee Liabilities"** means all Liabilities relating to employees or former employees of the Business, including but not limited to statutory termination pay, statutory severance pay, pay in lieu of notice, any other damages relating to any termination of employment of any such employee or former employee, all salary, wages, bonuses, commissions, vacations and vacation pay, and any other compensation, benefits or perquisites relating to such employees or former employees;
- (p) **"Equipment"** means the furniture, fixtures and equipment of Elementa, which includes, without limitation, all computers, computer servers and pilot project equipment, wherever located;
- (q) **"Excluded Assets"** has the meaning ascribed thereto in Section 2.6 hereof;
- (r) **"Excluded Liabilities"** means any Liabilities not expressly assumed by this Agreement, including without limitation any Employee Liabilities;
- (s) **"Intellectual Property"** means the right, title and interest of Elementa to all patents, pending patents (including without limitation, the right to use, market and sell), trademarks, trade names, service marks, trade dress, industrial designs, and copyrights rights (including, without limitation, the right to use, reproduce, modify, distribute, publicly display and publicly perform copyrighted work), mask work rights, know-how, ideas, moral rights, rights of publicity, rights of privacy, authors' rights and applications for registration of any of the foregoing, and to the extent assignable, the databases, data collections and source code, and the URL's and domain names, and all goodwill associated with any of the foregoing, and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the laws of Canada, the United States or any other state, country or jurisdiction throughout the world, including, without limitation all telephone and facsimile numbers and the intellectual property listed or described in Schedule A;



- (t) **"Inventory"** means the right, title and interest of Elementa, to all goods and supplies that are held for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, related to the Business, as of midnight on the night immediately prior to the Closing Date ;
- (u) **"ITA"** means the *Income Tax Act* (Canada);
- (v) **"Liabilities"** means any liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), obligation or indebtedness, including without limitation, any liability for Taxes;
- (w) **"Licenses"** means the respective right, title and interest of Elementa, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be, to all licenses, all domestic and foreign governmental and regulatory permits, licenses and approvals, filings, authorizations, approvals or indicia of authority Related to the Business or necessary for the conduct of the Business;
- (x) **"Person"** is to be broadly interpreted and includes any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, authority or other entity however designated or constituted;
- (y) **"Purchase Price"** means the consideration payable by the Purchaser for the transfer of the respective right, title and interest of Elementa to the Purchased Assets in accordance with Section 2.2 hereof;
- (z) **"Purchased Assets"** means collectively, all assets, undertakings and properties of Elementa, wherever located, known or unknown, which for clarity includes the partnership units or shares of, as applicable, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., acquired for or used in Relation to the Business, including, without limitation, the following:
  - (i) the Inventory;
  - (ii) the Intellectual Property, to the extent transferrable;
  - (iii) the Equipment;
  - (iv) all insurance policies and all claims to proceeds or refunds thereunder, to the extent assignable, excluding directors' & officers' insurance maintained by Elementa;
  - (v) all claims, deposits, prepaid expenses, prepayments, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature, prepaid expenses, except to the extent that any of the foregoing relate to Excluded Assets or Excluded Liabilities;
  - (vi) any websites or other internet-based branding or marketing;





- (vii) all personal information, within the meaning of applicable privacy legislation, to the extent such information can be transferred to the Purchaser without the consent of any individual which has not been obtained (it being agreed that the Vendor has no obligation to seek such consent);
  - (viii) the Assumed Contracts, to the extent transferrable;
  - (ix) the Books and Records;
  - (x) the Licenses;
  - (xi) the Receivables;
  - (xii) the goodwill attaching to the Business;
  - (xiii) all rights of Elementa under any confidentiality, non-competition, invention or other similar agreements with current or former employees and independent contractors to the extent that such rights are transferrable;
  - (xiv) all warranties and guarantees Related to the Business;
  - (xv) the Securities; and
  - (xvi) all other assets of any kind or nature whatsoever related to the Business, but excluding the Excluded Assets.
- (aa) **"Purchaser's Solicitors"** means the firm of **Torkin Manes LLP**, Barristers and Solicitors, 151 Yonge St., Suite 1500, Toronto, ON M5C 2W7 (Attention: Fay Sulley), Telephone No. (416) 777- 5419, Telecopier No. 1 (888)- 587- 5769;
- (bb) **"Receivables"** means the right, title and interest of Elementa, to all refunds, credits and claims relating to taxes, accounts receivable, bills receivable, trade accounts, book debts, loans made by Elementa, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be, to any of its respective shareholders and/or any other Person(s), and choses-in-action, now or hereafter due or owing to Elementa, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be, Related to the Business together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing;
- (cc) **"Receiver's Certificate"** has the meaning ascribed thereto in Section 8.2 hereof;
- (dd) **"Receiver's Charge"** has the meaning set out in the Appointment Order;
- (ee) **"Receiver's Borrowings Charge"** has the meaning set out in the Appointment Order;
- (ff) **"Related to the Business"** means, directly or indirectly, used in, arising from, or relating in any manner to the Business and/or the Purchased Assets;
- (gg) **"Rights"** has the meaning ascribed thereto in Section 9.12 hereof;
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- (hh) "Sales Process Order" means an order to be sought from the Court as soon as practicable upon terms acceptable to the parties hereto, each acting reasonably, that alone or in combination, among other things, authorizes the Vendor to enter into this Agreement and to conduct a sales process for the right, title and interest of Elementa to the Property and sets out a competitive bidding process and procedures, which form of order with Bidding Procedures is attached as Schedule "C" hereto ;
- (ii) "Securities" means all the issued and outstanding shares, limited partnership units or interests, or other equity or similar interest in any shares of Elementa Holdings Ltd., Elementa Algoma Inc. and Elementa Algoma LP;
- (jj) "Stalking Horse Bid" has the meaning ascribed thereto in Section 6.1(a) hereof;
- (kk) "Subsidiaries" means all subsidiaries or other entities owned by Elementa, including without limitation, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd.;
- (ll) "Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, goods and services, value added, capital, capital gains, withholding, excise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax and any interest, fines and penalties, imposed by any Authority and whether disputed or not;
- (mm) "Vendor's Knowledge" means to the best of the knowledge, information and belief of the Vendor, its officers, directors, employees, agents and representatives, in all instances, without independent verification;
- (nn) "Vendor's Solicitors" means the firm of Goldman Sloan Nash & Haber LLP, Barristers and Solicitors, 480 University Avenue, Suite 1600, Toronto, Ontario M5G 1V2 (Attention: Mario Forte), Telephone No. (416) 597-6477, Telecopier No. (416) 597-3370;
- (oo) "Vesting Order" means an order to be sought from the Court vesting the right, title and interest in the Purchased Assets of Elementa, and to the extent permitted by the court, Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be, in the Purchaser or its permitted assignee and confirming that the *Bulk Sales Act* (Ontario), does not apply, which order shall be in form and substance acceptable to the Purchaser, acting reasonably; and
- (pp) "Winning Bid(s)" has the meaning ascribed thereto in the Sales Process Order and the Bidding Procedures appended thereto.

**1.2 Schedules.** The following are the Schedules attached to this Agreement:

Schedule "A":	Patents/Pending Patents
Schedule "B":	List of Assumed Contracts
Schedule "C":	Sales Process Order

**1.3 Interpretation.** In and for the purpose of this Agreement, except as otherwise expressly provided:



- (a) "this Agreement" means this agreement as may from time to time be supplemented or amended, and includes the Schedules;
- (b) all references in this Agreement to designated Articles, Sections, subsections, paragraphs, clauses or Schedules are to the designated Articles, Sections, subsections, paragraphs, clauses or Schedules of or attached to this Agreement;
- (c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, subsection, paragraph or clause;
- (d) the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (e) the singular of any term includes the plural, and vice versa, the use of any term is generally applicable to any gender and where applicable, a body corporate, the word "or" is not exclusive and the word "including" is not limiting (whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto); and
- (f) all dollar amounts referred to in this Agreement are stated in Canadian Dollars and any payment contemplated by this Agreement shall be made by cash, certified cheque, wire transfer or any other method that provides immediately available funds.

**1.4 Governing Law.** This Agreement will be governed by and interpreted, and the rights and remedies of the parties hereto determined, in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereto hereby agree and attorn to the jurisdiction of the Court.

## ARTICLE 2 – TRANSFER, PURCHASE PRICE AND PAYMENT

**2.1 Agreement.** The Purchaser hereby agrees to purchase the Purchased Assets from the Vendor and the Vendor hereby agrees to sell the Purchased Assets to the Purchaser, subject to the terms and conditions set forth herein.

**2.2 Purchase Price.** The purchase price payable by the Purchaser to the Vendor (or as it may otherwise direct) for the Purchased Assets shall be the aggregate of \$1,500,000.00 (the "Purchase Price").

**2.3 Payment of Purchase Price.** The Purchaser shall satisfy the Purchase Price as follows:

- (a) by payment to the Vendor, in Trust, within three (3) Business Days following the Acceptance Date, a sum equal to One Hundred and Fifty Thousand (\$150,000.00) Dollars in lawful money of Canada (the "Deposit") by way of a certified cheque drawn on a solicitor's trust account from a Canadian chartered bank (a "Bank") listed in Schedule 1 to the *Bank Act* (Canada) (a "Certified Cheque"), wire transfer using the Large Value Transfer System administered by the Canadian Payments Association (a "Wire Transfer"), or bank draft drawn on a Bank purchased by the Purchaser's solicitor (a "Bank Draft"), to be credited against the Purchase Price on Closing; and



- (b) the balance of the Purchase Price for the Purchased Assets by payment of such amount to the Vendor or as the Vendor may direct on the Closing Date by Certified Cheque, Wire Transfer or Bank Draft.

**2.4 Allocation of Purchase Price.** The Vendor and the Purchaser hereby acknowledge and agree that the Purchase Price shall be allocated amongst the Purchased Assets as the parties hereto may mutually agree prior to Closing, each acting reasonably. The Purchaser and the Vendor shall follow such allocations in determining and reporting their liabilities for any Taxes and without limitation, shall file their respective income tax returns prepared in accordance with such allocations. Provided that nothing herein shall require the Vendor or the Trustee to file any income tax returns that it is not otherwise required to file.

**2.5 Deposit.** The Deposit shall be held by the Vendor in an interest-bearing account and shall be:

- (a) credited to the Purchaser against the Purchase Price on the Closing Date if the purchase and sale of the Purchased Assets is completed pursuant to this Agreement; or
- (b) refunded to the Purchaser without deduction if the purchase and sale of the Purchased Assets is not completed pursuant to this Agreement, if the purchase and sale of the Purchased Assets is not completed as a result of the Vendor accepting another bid for the Purchased Assets pursuant to the Sales Process Order; or
- (c) retained by the Vendor as liquidated damages, if the purchase and sale of the Purchased Assets is otherwise not completed pursuant to this Agreement, as a result of the Purchaser's breach hereunder, without prejudice to any other rights and remedies it may have under this Agreement or at law or in equity as a result of such non-completion.

**2.6 Excluded Assets.** Save and except as otherwise expressly set out herein, cash, cash equivalents, pre-paid expenses, refunds, including, without limitation, insurance refunds and GST /HST rebates, shall not form part of the Purchased Assets and, the Purchaser may, at its option exclude any of the Purchased Assets (collectively, the "Excluded Assets") from the transaction contemplated hereby at any time prior to Closing upon delivery of prior written notice to the Vendor, whereupon such Excluded Assets shall be deemed not to form part of the Purchased Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

**2.7 Capacity of Vendor.** The Vendor is entering into this Agreement solely in its capacity as receiver of the assets, undertakings and properties of Elementa and not in its personal or any other capacity and the Vendor and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its said capacity as receiver of the assets, undertakings and properties of Elementa and shall not apply to its personal property and assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.

**2.8 Acknowledgment.** The Purchaser acknowledges that it has been provided with access to the following materials, as may be in the Vendor's possession, for the purposes of review by the Purchaser and, if desired, making photocopies or scanned copies at the Purchaser's expense:

- (a) **Contracts:** copies of the Contracts;



- (b) **Intellectual Property:** copies of patents, pending patents, trademarks, trade names, service marks, trade dress, industrial designs, license agreements, copyrights and applications for registration of any of the foregoing; and
- (c) **Other:** any other documentation and/or information in the possession of the Vendor pertaining to the Purchased Assets and/or the Business which the Purchaser may reasonably request.

The Purchaser acknowledges that the Vendor makes no representation and/or warranty as to the accuracy, completeness, correctness, fitness for purpose or comprehensiveness of the foregoing materials, and any information contained therein, or as to the Purchaser's entitlement to use or rely on same, and that the Purchaser shall be required to make its own investigations to satisfy itself in this regard.

**2.9 Assumed Contracts.** Save and except as hereinafter set out, the Purchaser shall give notice to the Vendor in writing, at least five (5) Business Days prior to the Closing Date, of those Contracts that it elects to assume on Closing (which Contracts shall be referred to as the "Assumed Contracts"). This Agreement and any document delivered under this Agreement will not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third party if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract, in which event, the provisions of Section 9.12 hereof shall govern.

**2.10 Assumed Obligations.** On Closing, the Purchaser shall assume and become liable for, and shall pay, satisfy, assume, discharge, observe, perform and fulfill, as applicable, the obligations under the Assumed Contracts, to the extent attributable to the period from and after Closing. Save and except as hereinbefore set out in this Section 2.10 and as provided in Section 2.2, the Purchaser shall not assume or be obligated or responsible to pay, perform, satisfy or otherwise discharge any liabilities of the Vendor, or the Business, whether incurred prior to or subsequent to the Closing Date, including without limitation, the Excluded Liabilities.

### ARTICLE 3-- COMPLETION, POSSESSION AND ADJUSTMENTS

**3.1 Completion.** The completion of the transaction contemplated by this Agreement will occur on the Closing Date, or such other date as may be agreed to in writing by the Vendor and the Purchaser, and the place of Closing will be the offices of the Vendor's Solicitors, or such other location as the parties may mutually agree upon.

**3.2 Possession.** The Purchaser may take possession of the Purchased Assets immediately following Closing. The Purchaser acknowledges that certain of the Purchased Assets may be in the possession and/or control of third parties, and that all expenses associated with recovering the Purchased Assets shall be at the Purchaser's sole expense and there shall be no abatement in the Purchase Price as a result of the same.

**3.3 No Adjustments.** There shall be no adjustments to the Purchase Price in respect of any matter whatsoever.

**3.4 Risk.** The Purchased Assets will be at the Vendor's risk until the Vendor's certificate (as contemplated by the Vesting Order) is delivered to the Purchaser's Solicitors on the Closing Date and thereafter at the Purchaser's risk. Pending completion, the Vendor will hold all insurance policies and any proceeds derived therefrom in trust for the parties as their respective interests may appear and in the event of loss or damage to the Purchased Assets occurring before such time by reason of fire, tempest,

lightning, earthquake, flood or other act of God, explosion, riot, civil commotion, insurrection, war or otherwise howsoever, the amount of such insurance proceeds paid or payable to the Vendor with respect thereto will be applied in reduction of the Purchase Price and the transfer of the Purchased Assets to the Purchaser will proceed in the manner described herein and without any reduction or adjustment to the Purchase Price or any other change in the terms of this Agreement.

**ARTICLE 4 – VENDOR’S REPRESENTATIONS AND WARRANTIES**

**4.1 Vendor’s Representations and Warranties.** The Vendor represents and warrants to the Purchaser as follows:

- (a) the Vendor is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation, and subject to the Vendor obtaining the Sales Process Order and the Vesting Order, it has full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein; and
- (b) the Vendor is not a “non-resident” for the purposes of the ITA.

**4.2 Survival of Representations and Warranties.** The representations and warranties contained in Section 4.1 hereof or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing and, notwithstanding the Closing, shall continue in full force and effect for the benefit of the Purchaser, until the earlier of (i) the date of the Vendor’s discharge as Receiver; and (ii) the expiry of a period of twelve (12) months from the Closing Date, after which time the Vendor shall be released from all obligations in respect of such representations and warranties except with respect to any claims asserted by the Purchaser in writing (setting out in reasonable detail the nature of the claim and the appropriate amount thereof) before the expiration of such period.

**ARTICLE 5 – PURCHASER’S COVENANTS, REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS**

**5.1 Purchaser’s Covenants.** The Purchaser covenants and agrees that it will effective on and after the Closing Date, assume and be fully responsible for:

- (i) all obligations which are to be observed or performed from and after completion of this transaction under the Assumed Contracts; and
- (ii) any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement, but not including the Excluded Liabilities.

**5.2 Purchaser’s Representations and Warranties.** The Purchaser hereby represents and warrants to the Vendor as follows, as applicable:

- (i) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets and the Purchaser has full power, authority and capacity to enter into this Agreement and carry out the transaction contemplated herein;
- (ii) all necessary action on the part of the Purchaser has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the transaction contemplated herein;

- (iii) no consent or approval of or registration, declaration or filing with any Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of any of its obligations hereunder;
- (iv) the Purchaser will be a "registrant" under Part IX of the ETA as of the Closing Date and will notify the Vendor of its registration number prior to such time, and the Purchaser shall indemnify the Vendor with respect to the amount of any HST exigible in respect of the transaction contemplated by this Agreement should the Purchaser not pay such amount on Closing; and
- (v) the Purchaser is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada).

**5.3 Survival of Representations and Warranties.** The representations and warranties contained in Section 5.2 hereof or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, for a period of twelve (12) months from the Closing Date, after which time the Purchaser shall be released from all obligations in respect of such representations and warranties except with respect to any claims asserted by the Vendor in writing (setting out in reasonable detail the nature of the claim and the appropriate amount thereof) before the expiration of such period.

**5.4 Purchaser's Acknowledgements.** Save as otherwise provided herein, the Purchaser hereby acknowledges and agrees as follows:

- (a) it is relying entirely upon its own investigations and inspections in entering into this Agreement and has satisfied itself with respect to such investigations and inspections;
- (b) there is no representation, warranty or condition, express or implied, statutory or otherwise, of any kind as to the Purchased Assets or Elementa including, without limitation, that the present use or future intended use by the Purchaser of the Purchased Assets is or will be lawful or permitted, and/or relating in any way to the condition or state of repair of the Purchased Assets or to title, outstanding liens or charges, description, fitness for purpose, merchantability, quantity, condition, defect (patent or latent), value, and/or quality thereof;
- (c) it is purchasing the Purchased Assets on an "as is, where is" basis without any warranties or representations of any kind, it being understood that certain of the Purchased Assets may be in the possession and/or control of third parties, and including for certainty, as to accuracy, completeness, fitness for purpose or non-infringement of intellectual property rights;
- (d) the Vendor shall have no liability or obligation with respect to the value, state, condition, location or extent of the Purchased Assets, whether or not the matter is within the Vendor's Knowledge;
- (e) any information provided by the Vendor describing the Purchased Assets has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete or accurate or correct and none of such information forms a part of this Agreement;



- (f) no adjustment shall be allowed to the Purchaser for changes to the Purchased Assets from the Acceptance Date to the Closing Date;
- (g) the Vendor shall not be required to furnish or produce any document, record, survey or evidence of title with respect to the Purchased Assets, except those in its possession; and
- (h) the Vendor has no knowledge as to whether physical share certificates for any of the Securities may be available and/or in the possession of the Debtors.

The Purchaser further acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they exist on the Closing Date and that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted or will have conducted prior to Closing such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply to this transaction of purchase and sale and have been waived by the Purchaser.

**ARTICLE 6 – SALE PROCESS, CONDITIONS OF CLOSING AND PATENT CONDITION**

**6.1 Sale Process.** As soon as practicable following the Purchaser's agreement in principle to this Agreement, the Receiver will bring a motion for the Sales Process Order seeking, among other things, approval of:

- (a) the Receiver's execution of this Agreement and the Purchaser as the stalking horse bidder (the "Stalking Horse Agreement") for total consideration of \$1,500,000.00 (the "Stalking Horse Bid") so as to set a minimum floor price in respect of the sale process for the Purchased Assets and including a Break-Up Fee in the amount of \$50,000.00;
- (b) the process for the solicitation of offers or proposals for the acquisition of the Property or any parts thereof and the Bidding Procedures in respect thereof and appended to the Sales Process Order which may include an auction to be commenced in the circumstances and on the terms more specifically set out in the Sales Process Order and the Bidding Procedures appended thereto. Accordingly, the Bidding Procedures shall govern the solicitation by the Receiver of Bids that are superior to that contemplated by the Stalking Horse Agreement and the proposed sale of the Purchased Assets;
- (c) in consideration for the Purchaser's expenditure of time and money in acting as the initial bidder in the stalking horse bid and the preparation and negotiation of this Agreement and subject to the terms and conditions of this Agreement and of the Sale Process Order, upon the termination of this Agreement by the Vendor or the closing of a sale and transfer, or a series of sales and transfers, of substantially all of the Purchased Assets to one or more third parties other than the Purchaser (an "Alternative Transaction"), the Vendor shall pay the Purchaser from the proceeds of an Alternative Transaction a break-up fee (the "Break-Up Fee") equal to \$50,000.00; and
- (d) payment of the Break-Up Fee shall be made by the Vendor upon Court-approval of said payment after consummation of the Alternative Transaction. Upon payment of the Break-Up Fee to the Purchaser, the parties shall have no further obligations to the other under this Agreement.





**6.2 Purchaser's Conditions.** The Purchaser shall not be obliged to complete the transaction contemplated hereunder unless, on or before the Closing Date, the following conditions shall have been satisfied:

- (a) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with or performed by the Vendor, and all representations and warranties of the Purchaser are true and correct as of the Closing Date as though made on and as of that date;
- (b) the Purchaser becomes the Winning Bidder as contemplated in the Sales Process Order;
- (c) the making of the Vesting Order by the Court approving the sale by the Vendor to the Purchaser of the Purchased Assets in accordance with this Agreement and vesting the right, title and interest in the Purchased Assets of Elementa, and to the extent permitted by the court Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be in the Purchaser, or to such other entities as the Purchaser may designate, free and clear of any claims;
- (d) the Vesting Order shall not have been stayed, set aside or varied in any material respect; and
- (e) no stay shall be effective in respect of the Closing nor any order restraining or prohibiting Closing shall have been made by the Court.

**6.3 Vendor's Conditions.** The Vendor shall not be obliged to complete the transaction contemplated hereunder unless, on or before the Closing Date, the following conditions shall have been satisfied:

- (a) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed by the Purchaser, and all representations and warranties of the Purchaser are true and correct as of the Closing Date as though made on and as of that date;
- (b) the Purchaser becomes the Winning Bidder as contemplated in the Sales Process Order;
- (c) the making of the Vesting Order by the Court approving the sale by the Vendor to the Purchaser of the Purchased Assets in accordance with this Agreement and vesting the right, title and interest in the Purchased Assets of Elementa, and to the extent permitted by the court Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., as the case may be in the Purchaser, free and clear of any claims;
- (d) the Vesting Order shall not have been stayed, set aside or varied in any material respect; and
- (e) no stay shall be effective in respect of the Closing nor any order restraining or prohibiting Closing shall have been made by the Court.

**6.4 Court Approval.** The Purchaser hereby further acknowledges and agrees that this Agreement and the contemplated sale of the Purchased Assets are subject to the condition (not capable of waiver) that prior to Closing the Vendor shall have obtained the Vesting Order from the Court. The Vendor shall diligently pursue such application or applications and shall promptly notify the Purchaser of the

disposition thereof. The Purchaser, at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Vesting Order. If the Court shall not have granted the Vesting Order on or before April 30, 2016 or any extension thereof as may have been mutually agreed to between the parties hereto, this Agreement shall be automatically terminated and neither party shall have any further obligation to the other respecting this Agreement.

**6.5 Non-Fulfillment.** If any of the conditions contained in this Article 6 shall not have been fulfilled or performed on or before the date provided for satisfaction of such condition(s) and the party or parties entitled to waive the same, if capable of waiver, shall not have done so, this Agreement shall be deemed to be terminated without further act by the Vendor or the Purchaser and the further obligations of the Vendor and the Purchaser under this Agreement shall terminate, and the Deposit shall be returned to the Purchaser, together with any interest accrued thereon, and neither party shall have any further obligations or liabilities hereunder.

#### ARTICLE 7- PREPARATION OF CLOSING DOCUMENTS

**7.1 Delivery of Closing Documents by Vendor.** On or before the Closing Date, the Vendor will cause the Vendor's Solicitors to deliver to the Purchaser's Solicitors the following items, duly executed by the Vendor (if applicable) and in registrable form wherever appropriate, to be dealt with pursuant to Article 8 of this Agreement:

- (a) a copy of the Vesting Order and the Receiver's Certificate;
- (b) a statement showing the amounts secured under the Receiver's Charge and the Receiver's Borrowings Charge as of the Closing Date, if any;
- (c) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of the Assumed Contracts;
- (d) delivery of the Books and Records;
- (e) an assignment of all patents or patent applications, as the case may be, in registrable form;
- (f) assignment of Intellectual Property Rights;
- (g) a general conveyance, executed by the Vendor, conveying to the Purchaser all of the right, title and interest of the Receiver, if any, in and to the Purchased Assets, pursuant to the Vesting Order;
- (h) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of all warranties and guarantees relating to the Purchased Assets, to the extent transferrable;
- (i) the certificate(s) representing the Securities, duly endorsed by the Vendor in blank if in the Vendor's possession or control;
- (j) a certificate of a senior officer of the Vendor declaring that the Vendor is not a "non-resident" for the purposes of Section 116 of the ITA;

- (k) a certificate of a senior officer of the Vendor certifying that each of the warranties and representations of the Vendor set out herein are true and accurate on the Closing Date except as disclosed therein and that the Vendor has complied with and performed all the terms, covenants and agreements set out herein to be complied with or performed by the Vendor on or before the Closing Date;
- (l) to the extent applicable, the joint elections contemplated by Sections 9.5 and 9.6 hereof;
- (m) articles of amendment changing the corporate name of Elementa so that it does not include the word "Elementa" nor any variation thereof or names that could be confused therewith to the extent permitted by law or the Court; and
- (n) such other certificates, documents and/or instruments as the Purchaser may reasonably request.

**7.2 Delivery of Closing Documents by Purchaser.** On or before the Closing Date, the Purchaser will cause the Purchaser's Solicitors to deliver to the Vendor's Solicitors the following items, duly executed by the Purchaser (if applicable), to be dealt with in accordance with Article 8:

- (a) the balance of the Purchase Price for the Purchased Assets in accordance with the provisions of Section 2.3(b) hereof;
- (b) a certificate of a senior officer of the Purchaser certifying that each of the warranties and representations of the Purchaser set out herein are true and accurate on the Closing Date except as disclosed therein;
- (c) an assignment by the Vendor and assumption by the Purchaser, effective as of the Closing Date, of the Assumed Contracts;
- (d) an assignment by the Vendor and assumption by the Purchaser, effective as of the Closing Date, of all warranties and guarantees Related to the Business, to the extent transferrable;
- (e) to the extent applicable, the joint elections contemplated by Sections 9.5 and 9.6 hereof, and otherwise the amount of any HST required to be paid on Closing in connection with the Purchaser's purchase of the Purchased Assets, other than those for which it may self-assess and indemnify the Vendor, and, to the extent the responsibility of the Purchaser, all other Taxes in connection with the Purchaser's purchase of the Purchased Assets;
- (f) the HST statutory declaration and indemnity contemplated by Section 9.5 of this Agreement;
- (g) a certificate of a senior officer of the Purchaser certifying that each of the warranties and representations of the Purchaser set out herein are true and accurate on the Closing Date except as disclosed therein and that the Purchaser has complied with and performed all the terms, covenants and agreements set out herein to be complied with or performed by the Purchaser on or before the Closing Date; and
- (h) any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor or the Vendor's Solicitors.



**ARTICLE 8 – CLOSING PROCEDURE**

**8.1 Purchaser Deliveries.** By 12:00 p.m. on the Closing Date, the Purchaser will deliver in escrow to the Vendor's Solicitors, a Certified Cheque, Wire Transfer or Bank Draft payable to the Vendor or as the Vendor may direct in the amount due to the Vendor pursuant to Section 2.3(c) hereof, as adjusted pursuant to Section 3.3 hereof, and the documents referred to in Section 7.2 hereof, such Certified Cheque, Wire Transfer or Bank Draft and documents to be released in accordance with Section 8.3 hereof.

**8.2 Vendor Deliveries.** On the Closing Date, the Vendor will deliver in escrow to the Purchaser's Solicitors, the documents and items referred to in Section 7.1 hereof, such documents and items to be released in accordance with Section 8.3 hereof. Upon receipt of such Purchaser Deliveries, the Vendor shall cause the Vendor's solicitors to file a Receiver's certificate (the "Receiver's Certificate") with the Court, substantially in the form of the certificate scheduled to the Court's model approval and vesting order, confirming in part that the transaction contemplated by this Agreement has been completed and payment of the Purchase Price has been received.

**8.3 Closing.** Immediately following delivery of the items referred to in Sections 8.1 and 8.2 hereof and the filing with the Court of the Receiver's Certificate, the Purchaser shall cause the Purchaser's Solicitors to register the Receiver's Certificate and, upon registration, the balance due on Closing, documents and items delivered in escrow pursuant to this Article and listed in Sections 7.1, 7.2, 8.1 and 8.2 hereof shall be released from escrow.

**8.4 Concurrent Requirements.** It is a condition of this Agreement that all requirements of this Article 8 are concurrent requirements and it is specifically agreed that nothing will be completed on the Closing Date until everything required to be paid, executed, delivered and registered on the Closing Date has been so paid, executed, delivered and registered.

**ARTICLE 9 – GENERAL**

**9.1 Time.** Time is of the essence and will remain of the essence notwithstanding the extension of any of the dates hereunder.

**9.2 No Waiver.** No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as may be limited herein, either party may, in its sole discretion, exercise any and all rights, powers, remedies and recourses available to it under this Agreement or any other remedy available to it and such rights, powers, remedies and recourses may be exercised concurrently or individually without the necessity of making any election.

**9.3 Tender.** It is agreed that any tender of documents or money may be made upon the respective solicitors for the parties and that it will be sufficient to tender a solicitor's certified trust cheque rather than cash.

**9.4 Fees and Expenses.** Each party will pay its own legal fees incurred in connection with the transaction contemplated hereunder.

**9.5 HST Election.** The Vendor and the Purchaser shall jointly elect under section 167(1) of the ETA to have subsection 167(1.1) apply to the sale of the Purchased Assets to the Purchaser such that no HST shall be payable in respect of such sale. The Vendor and the Purchaser shall take all necessary actions in

order to complete and file such valid joint election on or before the date on which the Purchaser must submit its HST return for the reporting period in which the Closing occurs. Provided that notwithstanding the foregoing, the Parties hereto hereby acknowledge and agree that any HST applicable to the sale of the Purchased Assets shall be in addition to the Purchase Price. On or before the Closing Date, the Purchaser or its permitted assignee or designee as the beneficial owner(s) of the Purchased Assets shall deliver to the Vendor a statutory declaration of a senior officer of the Purchaser or such beneficial owner(s), attaching thereto evidence of said party's HST registration number from the relevant Authority, and whereby such officer certifies that such party's HST registration number remains in full force and effect and that such party will be the legal and/or beneficial owner of the Purchased Assets. The Purchaser and any beneficial owner(s) of the Purchased Assets shall further indemnify and save harmless the Vendor from any and all HST, penalties, costs, interest or other amounts which may be payable by or assessed against the Vendor under the ETA as a result of or in connection with such parties' failure to remit any HST applicable in this transaction to the applicable Authorities.

**9.6 Section 22 Election.** The Purchaser and the Vendor shall execute jointly an election in prescribed form under Section 22 of the ITA in respect of the Receivables and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date. The Vendor shall not be liable for any income tax that may be payable as a result of this election. Provided that nothing herein shall require the Vendor or Elementa to file any income tax returns that it is not otherwise required to file.

**9.7 Entire Agreement.** This Agreement and the agreements, instruments and other documents entered into pursuant to this Agreement set forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect to the matters herein and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement.

**9.8 Amendment.** This Agreement may be altered or amended only by an agreement in writing signed by the parties hereto.

**9.9 Further Assurances.** Each of the parties hereto will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions in this Agreement.

**9.10 Notices.** Any demand or notice which may be given pursuant to this Agreement will be in writing and delivered or telecopied to the parties addressed as follows:

to the Purchaser:

Bradam Canada Inc.

c/o BRADAM GROUP LLC  
Corporate Office  
7904 Interstate Court  
North Ft. Myers FL 33917

Attention: Rick Finkbeiner  
email: rick@bradamgroup.com



with a copy to:

Torkin Manes LLP  
151 Yonge St., Suite 1500  
Toronto, ON M5C 2W7

Attention: Fay Sulley  
Telecopier: 1 (888)- 587- 5769  
E-mail: [fsulley@torkinmanes.com](mailto:fsulley@torkinmanes.com)

to the Vendor:

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Adam Sherman  
Telecopier: (416) 488-3765  
E-mail: [asherman@richter.ca](mailto:asherman@richter.ca)

with a copy to:

Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

Attention: Mario Forte  
Telecopier: (416) 597-3370  
E-mail: [forte@gsnh.com](mailto:forte@gsnh.com)

Attention: Sanja Sopic  
Telecopier: (416) 597-3370  
E-mail: [sopic@gsnh.com](mailto:sopic@gsnh.com)

or at such other address as either party may specify in writing to the other. The time of giving and receiving any such notice will be deemed to be on the day of delivery or transmittal or if such day is not a Business Day, the first Business Day thereafter.

**9.11 Assignment.** The Purchaser may not assign its interest in this Agreement to any other person without the prior written consent of the Vendor, which consent may not be unreasonably withheld or delayed. Whether or not this Agreement is assigned as aforesaid, the Vendor acknowledges and agrees that the Purchaser shall be entitled, prior to the Vendor serving the Notice of Motion for the Vesting Order, to direct title to any of the Purchased Assets to an Affiliate of the Purchaser, any of its shareholders and/or any Affiliates of such shareholders, as the Purchaser may direct in writing, and in such event, the Vendor shall seek the Vesting Order in accordance with the Purchaser's direction. In this regard, the Vendor agrees to endeavour to provide the Purchaser with a minimum of five (5) Business Days' notice of its intention to serve the Notice of Motion for the Vesting Order. In no event shall any assignment or direction for title to the Purchased Assets relieve the Purchaser of any of its obligations under this Agreement to and including Closing and the Purchaser shall remain jointly and severally liable

with any such assignee or Affiliate for the performance of all of the terms and conditions on the part of the Purchaser to be performed pursuant to the terms and conditions of this Agreement including the execution of all closing documents.

**9.12 Non-Transferable and Non-Assignable Purchased Assets.** To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "Rights") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any applicable law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until (i) such approval, consent or waiver has been obtained, or (ii) an order from the Court has been obtained by the Vendor transferring all such Rights to the Purchaser, provided that the Purchaser shall first fund all costs and expenses and all payments to third parties and other amounts required to be paid or expended in connection with seeking such order. After the Closing and until all such Rights are transferred to the Purchaser, the Vendor shall until it is discharged by the Court as Receiver:

- (a) hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (d) enforce, at the request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall until it is discharged by the Court as Receiver, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Rights are received by the Purchaser. The Vendor shall until it is discharged by the Court as Receiver promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendor taken pursuant to this Section.

**9.13 Counterparts.** This Agreement may be executed in any number of original counterparts, with the same effect as if all the parties had signed the same document, and will become effective when one or more counterparts have been signed by all of the parties and delivered to each of the other parties. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the reference date set out above and accepted on the date of the last signature, and only one of which need be produced for any purpose.

**9.14 Binding Effect.** This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties, as applicable.

**9.15 Execution by Facsimile or PDF.** This Agreement may be executed by the parties and transmitted by facsimile (via telecopier) or PDF (via email) and, if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

**9.16 Severability.** Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable to the extent of such avoidance, prohibition or unenforceability without invalidating or otherwise limiting or impairing the other provisions of this Agreement.

**9.17 Confidentiality.** The Purchaser agrees that all non-public information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and shall not without the Vendor's prior written consent be disclosed to any third party. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser further agrees that unless and until the terms of this Agreement become public knowledge in connection with the Sales Process Order and/or the Vesting Order, the Purchaser shall keep such terms confidential and shall not disclose the same to anyone except the Purchaser's Solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

**9.18 Solicitors as Agents and Tender.** Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of closing documents and the balance of the Purchase Price may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

**9.29 Media Releases.** Save and except as hereinafter set out, neither party to this Agreement may discuss with the media, issue any press release or other public announcement or release information with respect to this Agreement to the public unless same has been pre-approved in writing by the other party, provided the foregoing shall not apply to Court filings including reports by the Receiver. Notwithstanding the foregoing, the parties hereto hereby agree that upon the issuance by the Court of the Sales Process Order, either party hereto may issue an announcement or another form of notice to the customers of the Business, in such a form as may be acceptable to the other party, acting reasonably, advising that a sales process has been commenced for the sale of the Purchased Assets and upon the successful completion of same, the Purchaser, if it is the Winning Bidder, intends to continue with the construction of a municipal waste processing facility to produce electricity in the City of Sault Ste. Marie, Ontario.

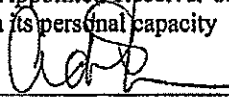
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IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.


**RICHTER ADVISORY GROUP INC.** in its capacity  
as Court-Appointed Receiver of Elementa Group Inc.,  
and not in its personal capacity

Per:   
Name: ADAM SHERMAN  
Title: SENIOR VICE PRESIDENT

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation.

**BRADAM CANADA INC.**

Per:   
Name: RICHARD N. FINKBEINER  
Title: Authorized Signing Officer  
CEO

Per: \_\_\_\_\_  
Name:  
Title: Authorized Signing Officer


I/We have the authority to bind the Corporation.

**SCHEDULE "A"**  
**PATENTS/PENDING PATENTS**

Next Due Date	Applicant	Application No.	Registration No.	Country	Status
20170118	Enquest Power Corporation*	200680002624.0	200680002624.0	CN	Issued
20170118	Elementa Group Inc.	2,581,288		CA	Pending; Response to be filed April 26/16
20170118	Enquest	PI00606737.9		BR	Pending
20210118	Elementa	MX/a/2007/008729	293,487	MX	Issued
20170118	Elementa Group Inc.	556611	556611	NZ	Issued
20170118	Enquest Power Corp.	2007130998	2424277	RU	Issued
20170118	Elementa	2007/06523	2007-06523	ZA	Issued
20170214	Elementa	2007-550648	5474302	JP	Issued
	Elementa Group Inc	2013-253252		JP	Withdrawn
20170118	Elementa	200705278-0	134401	SG	Issued
20161216	Enquest	10-2007-7018874	10-1343979	KR	Issued
	Enquest Power Corporation	10-2013-0102646		KR	Withdrawn
20170118	Elementa	1877520	602006038765.2	DE	Issued
	Elementa Group Inc.	1877520	1877520	EP	Issued
20170118	Elementa Group Inc.	1877520	1877520	FR	Issued
20170118	Elementa Group Inc.	1877520	1877520	UK	Issued
20170118	Elementa Group Inc.	1877520	1877520	AT	Issued
20170118	Elementa Group Inc.	1877520	1877520	CZ	Issued
20170118	Elementa Group Inc.	1877520	1877520	ES	Issued
20170118	Elementa Group Inc.	1877520	1877520	IT	Issued
20170118	Elementa Group	1877520	1877520	PO	Issued

	Inc.				
20170118	Elementa Group Inc.	1877520	1877520	RO	Issued
20170118	Elementa Group Inc.	1877520	1877520	SK	Issued
20180314	Enquest Power Corporation	11/718,597	7,794,689	US	Issued
20190322	Elementa Group Inc.	12/881,057	9,139,787	US	Issued
	Enquest Power Corporation	2006207788		AU	Lapsed
	Elementa Group Inc.	2011250716		AU	Ceased

\*Elementa Group Inc. was incorporated under the name Enquest Power Corporation on January 30, 2003 pursuant to the *Business Corporations Act (Ontario)* ("OBCA"). Its name was changed to Elementa Group Inc. pursuant to Articles of Amendment effective on October 29, 2008.



**SCHEDULE "B"**  
**ASSUMED CONTRACTS**

1. Waste supply and reformation agreement between Elementa Group Inc. and the Corporation of the City of Sault Ste. Marie dated October 26, 2009, as amended by a waste supply and reformation amending agreement dated July 15, 2013, a waste supply and reformation second amending agreement dated January 20, 2014, an assignment and novation agreement dated January 20, 2014 between Elementa Group Inc., as assignor, Elementa Algoma LP, as assignee, and The Corporation of the City of Sault Ste. Marie, as third party, and a waste supply and reformation third amending agreement dated May 11, 2015;
2. Energy waste contract dated December 18, 2013 between Elementa Algoma LP and the Ontario Power Authority (now the Independent Electricity System Operator);
3. Lease between 2124732 Ontario Inc. and Elementa Algoma Inc., as general partner for and on behalf of Elementa Algoma LP, with respect to the lands and premises described as PIN 31613-0305 - PT SEC 4 AWENGE PT1, 1R12416, Sault Ste. Marie, Ontario which have been leased by 2124732 Ontario Inc. to Elementa Algoma Inc.; and
4. Such other agreements and contracts as may be identified by the Purchaser.



**SCHEDULE "C"**

Commercial List File No. CV-15-11198-00CL

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

THE HONOURABLE ) FRIDAY, THE 19TH  
JUSTICE )  
 ) DAY OF FEBRUARY, 2016

IN THE MATTER OF THE RECEIVERSHIP OF  
ELEMENTA GROUP INC.

**ORDER**

**THIS MOTION**, made by Richter Advisory Group Inc. ("**Richter**") in its capacity as the Court-appointed Receiver (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties (collectively, the "**Property**") of Elementa Group Inc. ("**Elementa**") for an order substantially in the form included in the Receiver's Motion Record, amongst other things, approving a stalking horse agreement of purchase and sale and related bidding procedures and approving the First Report of the Receiver dated February •, 2016 (the "**First Report**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and appendices thereto, and on hearing the submissions of counsel for the Receiver, and Bradam Canada Inc. (the "**Stalking Horse Bidder**"), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of • sworn February •, 2016, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and the Motion Record is hereby abridged and service thereof is hereby validated so that this motion is properly returnable today and further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall



have the respective meanings ascribed to them in the Stalking Horse Agreement or the Bidding Procedures (as such terms are defined below), as the case may be.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to enter into an agreement to sell substantially all of the assets, property and undertakings of Elementa (collectively, the "Purchased Assets") to the Stalking Horse Bidder, substantially in the form of the agreement attached as Appendix "•" to the First Report (the "Stalking Horse Bid" or "Stalking Horse Agreement"), and such agreement, subject to the terms of this Order, is hereby approved and accepted for the purpose of conducting the Stalking Horse Sales Process (as such term is defined below) in accordance with this Order and the Bidding Procedures (as such term is defined below).

4. **THIS COURT ORDERS** that the sales and bidding procedures described in the First Report and attached hereto as Schedule "A" (the "Bidding Procedures") and the sales process and auction described therein (collectively, the "Stalking Horse Sales Process") be and are hereby approved and the Receiver is hereby authorized and directed to conduct the Stalking Horse Sales Process.

5. **THIS COURT ORDERS** that to qualify as a Qualified Bid, a bid must be received from on or before 5:00 p.m. (Toronto time) on March 21, 2016 (the "Bid Deadline") and must be considered by the Receiver, in its sole discretion, to be a Qualified Bid, as defined in the Bidding Procedures. The Stalking Horse Bid shall be considered a Qualified Bid.

6. **THIS COURT ORDERS** that in addition to the Bidding Procedures, the following Stalking Horse Sales Process with respect to the Property be and is hereby approved as follows:

- (a) the Receiver shall solicit potential purchasers to submit bids by:
  - (i) sending out an official offering summary (the "Teaser Letter") to parties who may be interested in purchasing the Property as identified by the Receiver (the "Potential Bidders"), to notify them of the existence of the Stalking Horse Sales Process and invite the Potential Bidders to make an offer to acquire all or any part of the Property as soon as reasonably practicable after issuance of this Order;



- (ii) sending a form of confidentiality agreement (the “Confidentiality Agreement”) to Potential Bidders as identified by the Receiver, along with the Teaser Letter;
  - (iii) providing to any Potential Bidders who execute the Confidentiality Agreement on terms satisfactory to the Receiver: (1) access to an electronic data room established by the Receiver containing relevant information relating to Elementa and its Property, and (2) an electronic copy of the Stalking Horse Bid;
- (b) any interested purchaser shall submit a formal offer to purchase the Property in the form of the Stalking Horse Agreement (with a copy blacklined against the Stalking Horse Agreement), and an aggregate purchase price at least equal to the Stalking Horse Bid, plus an additional sum of \$150,000.00, and a deposit equal to at least 10% of the aggregate purchase price under the subject bid by way of Certified Cheque, Bank Draft or Wire Transfer payable to the Receiver in trust on or before the Bid Deadline;
- (c) the Receiver shall review any bids received by the Bid Deadline and determine if there are one or more Qualified Bids;
- (d) if there is no Qualified Bid other than the Stalking Horse Bid, the Receiver shall bring a motion as soon as reasonably possible after the Bid Deadline for approval of the Stalking Horse Agreement and an order to vest the right, title and interest of Elementa in the Purchased Assets in the Stalking Horse Bidder and proceed with closing the transaction forthwith;
- (e) if there are one or more Qualified Bids apart from the Stalking Horse Bid, the Receiver shall send out invitations on March 23, 2016, or as reasonably practicable, to all persons who have submitted Qualified Bids and to the Stalking Horse Bidder (the “Auction Notice”), inviting them to attend an auction (the “Auction”) to be conducted by the Receiver at 10:00 a.m. (Toronto time) on March 25, 2016, at the offices of the Receiver, or otherwise as may be determined

by the Receiver, in its sole discretion. The Auction Notice shall include, amongst other things: (a) the date, time and location of the Auction; (b) a copy of the most favourable Qualified Bid (the "Opening Bid") as determined in accordance with the Bidding Procedures; and (c) the procedures pursuant to which the Auction is to be conducted;

- (f) if the bidder of a Qualified Bid intends to participate in the Auction, it must advise the Receiver of such intention in writing at least one (1) Business Day prior to the Auction (a "Participation Notice"). If at least two (2) Participation Notices are received, the Auction will take place and shall be conducted in accordance with the procedures set out in the Bidding Procedures;
- (g) the Receiver may establish such timelines and protocols for the Auction as it considers appropriate, in its discretion, which will not be inconsistent with the terms of this Order or the Bidding Procedures; and
- (h) the "Winning Bidder" shall be: (1) if there are no bids at the Auction, the bidder with the Opening Bid; or (2) the bidder with the highest bid received at the Auction as determined in accordance with the Bidding Procedures (the "Winning Bid").

7. **THIS COURT ORDERS** that upon acceptance of the Winning Bid, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Receiver in accordance with the Bidding Procedures, and the following shall take place:

- (a) within seven (7) Business Days after the completion of the Auction, the Receiver shall make a motion to this Court for an order to approve the Winning Bid and to vest the right, title and interest of Elementa in the Property in the Winning Bidder, and proceed with closing the transaction forthwith; and
- (b) if the Winning Bidder fails to comply with the terms and conditions of the Winning Bid, or any of them, all deposits shall be forfeited to the Receiver on account of liquidated damages, without prejudice to all other rights and remedies the Receiver may have under the Winning Bid or at law or in equity as a result of





such failure to comply, and the Property subject to the Winning Bid may be resold by the Receiver. In that event, the Receiver may in its sole discretion accept the Back-Up Bid, as defined in the Bidding Procedures. Upon acceptance of the Back-Up Bid, there shall be a binding agreement of purchase and sale between the bidder of the Back-Up Bid and the Receiver in accordance with the Bidding Procedures, and if necessary the Receiver may in its sole discretion in such acceptance extend the Closing Date to a date no later than April 30, 2016. The Receiver shall make a motion to this Court, within seven (7) Business Days after its acceptance of the Back-Up Bid, for an order to approve the Back-Up Bid and to vest the right, title and interest of Elementa in the Property in the purchaser thereunder, and proceed with closing the transaction forthwith.


8. **THIS COURT ORDERS** that in connection with the Stalking Horse Sales Process and pursuant to clause 7(3) (c) of the *Personal Information Protection and Documents Act* (Canada), the Receiver may disclose personal information of identifiable individuals to Potential Bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each Potential Bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Receiver or in the alternative shall destroy all such information and certify such destruction to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by Elementa, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

9. **THIS COURT ORDERS** that the Receiver and its counsel be and they hereby are authorized to serve or send, or cause to be served or sent, this Order (including any of the materials referred to in this Order and other materials relating to the Stalking Horse Sales Process), any other materials and orders in these proceedings, and any notices or correspondence, by commercial electronic messages to electronic addresses, attaching true copies thereof, of Elementa's creditors and other interested parties (including prospective purchasers or bidders to



the extent necessary or desirable to provide information and material with respect to the Stalking Horse Sales Process), and their advisers. For greater certainty, any such service or sending shall be deemed to be in satisfaction of a legal or judicial obligation, or the provision of notice of an existing or pending right, legal or juridical obligation or court order, within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DOS).

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**SCHEDULE "A"**  
**BIDDING PROCEDURES**

**Background**

(i) On December 21, 2015, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an order (the "Appointment Order") appointing Richter Advisory Group Inc. ("Richter") receiver (the "Receiver") over the assets, undertakings and properties (the "Property") of Elementa Group Inc. ("Elementa" or the "Company") acquired for, or used in relation to the business carried on by Elementa, including all proceeds thereof.

On or about February 19, 2016, the Receiver will bring a motion for an order (the "Sales Process Order") with the Court seeking, among other things, approval of:

- (i) the Receiver's execution of an agreement of purchase and sale of substantially all assets of the Company (the "Purchased Assets") between the Receiver and Bradam Canada Inc. (the "Stalking Horse Bidder") dated February XX, 2016 (the "Stalking Horse Agreement") for total consideration of \$1,500,000.00 (the "Stalking Horse Bid") so as to set a minimum floor price in respect of the sale process for the Purchased Assets; and
- (ii) the process for the solicitation of offers or proposals for the acquisition of the Property or any parts thereof (each a "Bid", and each party who submits a Bid, a "Bidder"), including approval of the bidding procedures detailed herein (the "Bidding Procedures").

Accordingly, these Bidding Procedures shall govern the solicitation by the Receiver of Bids that are superior to that contemplated by the Stalking Horse Agreement and the proposed sale of the Purchased Assets.

Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

**Bidding Procedures**

These Bidding Procedures provide for one phase of bidding in which to solicit binding offers to purchase all or part of the Property. In the event that the Receiver determines that the results of any Bids received satisfy the conditions for an auction, as set out below, the Receiver shall conduct an auction in accordance with the procedures set out in Section 9 below.

**1. Assets for Sale**

The Receiver is soliciting Bids for the Property, or any parts thereof, that are superior to that contemplated by the Stalking Horse Agreement. For the purposes of the Bidding Procedures, the Property shall collectively include substantially all of the assets, undertakings and properties of Elementa, which for clarity includes the shares of Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., acquired for or used in relation to Elementa's business.

**2. Solicitation**

The Receiver has prepared: (a) a list of potential bidders for the Assets (the "Potential Bidders"), including both strategic and financial parties who may be interested in acquiring the Property; (b) an initial offering summary (the "Teaser Letter") to notify Potential Bidders of the existence of this solicitation process and invite the Potential Bidders to make an offer to acquire all or any part of the Property; and (c) a form of confidentiality agreement (the "Confidentiality Agreement").



The Receiver shall commence the solicitation process as soon as practical upon receipt of the Sales Process Order, by sending the Teaser Letter and the Confidentiality Agreement to the Potential Bidders.

**3. Access to Due Diligence Materials**

Interested parties that execute and deliver to the Receiver the Confidentiality Agreement shall receive access to an electronic data room established by the Receiver to provide Potential Bidders with relevant information relating to the Company and its Property, and a copy of the Stalking Horse Agreement (the "Due Diligence Access"). Each party's Due Diligence Access shall terminate upon the earliest of the following events to occur:

- (i) Such party does not submit a Bid by the Bid Deadline (as defined below);
- (ii) Such party submits a Bid by the Bid Deadline but the Receiver determines that such party does not constitute a Qualified Bidder (as defined below);
- (iii) Such party does not participate in the Auction (as defined below); or
- (iv) At the conclusion of the Auction.

Notwithstanding that a party's Due Diligence Access may continue until the end of the Auction, the Receiver shall not be obligated to furnish any additional due diligence information after the Bid Deadline.

The Receiver will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access in accordance with Section 3. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Property and does not make any representations or warranties as to the information or materials provided, except to the extent of any representations or warranties provided for in the relevant agreement(s) with the Winning Bidder(s) (as defined below).

**4. Due Diligence from Bidders**

Each Bidder shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by a Bidder to comply with requests for additional information could be the basis for the Receiver to determine that a Bidder is not a Qualified Bidder (as defined below).

**5. As is, where is**

Any sale of the Property will be completed on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or the Company or their respective agents, professionals, advisors, or otherwise, except to the extent set forth in the relevant agreement(s) with the Winning Bidder(s).

**6. Bidding Deadlines**

All Bids must be submitted in accordance with the terms of these Bidding Procedures so that they are received by the Receiver no later than 12pm EST on March 21, 2016 (the "Bid Deadline"). A Bid received by the Receiver after the Bid Deadline shall not constitute a Qualified Bid (as defined below).

Written copies of the Bids shall be delivered via e-mail or by personal delivery to the Receiver at:



Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Adam Sherman  
E-mail: [asherman@richter.ca](mailto:asherman@richter.ca)

with a copy to the Receiver's counsel at:

Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

Attention: Mario Forte  
E-mail: [forte@gsnh.com](mailto:forte@gsnh.com)

**7. Bid Requirements**

To participate in the process detailed by these Bidding Procedures and to otherwise be considered for any purpose hereunder, a Bidder must deliver a Bid to the Receiver by the Bid Deadline which satisfies each of the following conditions:

- (i) Identification: The Bid must identify the Bidder and representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated transaction;
- (ii) Form and Content: The Bid must be in the form of the Stalking Horse Agreement and executed by the Bidder (each, a "Proposed Purchase Agreement"). Any changes and modifications to the Stalking Horse Agreement are to be indicated on a blackline to the Stalking Horse Agreement (including, if applicable, any modifications made to reflect the Property or parts thereof sought to be purchased), which is to be submitted along with the executed version;
- (iii) Minimum Consideration: The aggregate consideration of a Bid that includes all of the Purchased Assets must provide a cash purchase price of at least \$1,650,000.00 (the "Minimum Purchase Price"). The Minimum Purchase Price is the aggregate of: (a) the Stalking Horse Bid; (b) the Break-Up Fee (as defined in the Stalking Horse Agreement) of \$50,000.00; and (c) \$100,000.00. In the event that the Bid is for less than all of the Purchased Assets, such Bid shall not be subject to the Minimum Purchase Price; provided, however, that such Bid must be capable of being paired by the Receiver with one or more other Bids which in the aggregate provide for a cash purchase price of at least the Minimum Purchase Price;
- (ii) Good-Faith Deposit: The Bid must be accompanied by a cash deposit equal to at least ten percent (10%) of the total cash purchase price contemplated by the Bid (the "Good Faith Deposit"), and the Good Faith Deposit shall be paid to the Receiver, to be held by the Receiver in trust in accordance with these Bidding Procedures;
- (iii) Financial Wherewithal: The Bid must include evidence satisfactory to the Receiver of the Bidder's financial ability to close by the Closing Date (as defined below);
- (iv) Closing Date: The Bid must contain a binding commitment by the Bidder to close on the terms

and conditions set forth in the Proposed Purchase Agreement as soon as practicable after satisfaction or waiver of all conditions, provided that such closing must take place by no later than April 30, 2016 (the "Closing Date");

- (v) Irrevocable. The Bid must be accompanied by a letter which confirms that the Bid may be accepted by the Receiver, by the Receiver countersigning the Proposed Purchase Agreement, and is irrevocable and capable of acceptance until the earlier of: (a) the day on which the Bidder is notified that the Bid is not a Qualified Bid (as defined below); (b) the day on which a Winning Bid or Winning Bids are selected, if the Bid is neither a Winning Bid nor a Back-Up Bid (as defined below) selected on such day; (c) if the Bid is the Back-Up Bid, then the day on which the Winning Bid(s) closes; and (d) April 30, 2016 (the "Termination Date");
- (vi) No Representations and Warranties. A Bid shall include an "as is, where is" clause substantially on the same terms as the "as is, where is" clause set out in the Stalking Horse Agreement;
- (vii) Contingencies. The Bid may not be conditional on obtaining financing, or obtaining assignments on any leases or contracts of the Company or its affiliates, or any internal approval, or on the outcome or review of due diligence. Any other contingencies associated with the Bid may not, in the opinion of the Receiver, in the aggregate, be more burdensome or conditional than those set forth in the Stalking Horse Agreement;
- (viii) No Fees Payable to Bidder. The Bid may not request or entitle the Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Bid, a Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its Bid or these Bidding Procedures; and
- (ix) Other Information. A Bid shall contain such other information reasonably requested by the Receiver.

#### 8. Designation as Qualified Bidder

The Receiver may discuss, negotiate or seek clarification of any Bid. A Bidder may not modify, amend or withdraw its Bid without the written consent of the Receiver. Any such modification, amendment or withdrawal of a Bid by a Bidder without the written consent of the Receiver shall result in a forfeiture of such Bidder's Good-Faith Deposit.

After any clarifying discussions or negotiations, the Receiver shall review all Bids and other documentation and information submitted by the Bidders, and shall determine, in its sole discretion, those Bidders, if any, that are qualified to participate in an auction (the "Qualified Bidders" and the Bid of each Qualified Bidder, a "Qualified Bid"). All Bids will be considered, but the Receiver reserves the right to reject any and all Bids.

Notwithstanding anything else in the Bidding Procedures, the Stalking Horse Bidder is deemed to be a Qualified Bidder and the Stalking Horse Bid is deemed to be a Qualified Bid for all purposes and at all times.

#### 9. Auction

If the Receiver determines that there are no Qualified Bids (other than the Stalking Horse Agreement), then:



- (i) there will be no auction;
- (ii) the Stalking Horse Agreement shall be declared the Winning Bid (as defined below) for the Purchased Assets; and
- (iii) the Receiver shall seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Motion (as defined below).

If the Receiver determines that there is at least one Qualified Bid for all of the Purchased Assets (other than the Stalking Horse Bid) or a combination of non-overlapping Qualified Bids for less than all of the Purchased Assets (an "Aggregated Bid"), and such Qualified Bid or Aggregated Bid provides the Minimum Purchase Price, the Receiver shall conduct an auction to determine the highest and/or best Qualified Bid or Aggregated Bid (the "Auction").

If the Auction is to take place, then within two (2) business days after the Bid Deadline, the Receiver shall send written notice to all Qualified Bidders with respect to whether such Bidder is a Qualified Bidder and invite the Qualified Bidder to participate in the Auction (the "Auction Notice"). The Auction Notice shall include, amongst other things: (a) the date, time and location of the Auction; (b) a copy of the Opening Bid (as defined below); and (c) the procedures pursuant to which the Auction is to be conducted.

In all cases, the Receiver shall post notice of such facts on its website established in connection with the receivership of the Company, at: <http://www.richter.ca/en/folder/insolvency-cases/e/elementa-group-inc>

If a Qualified Bidder intends to participate in the Auction, it must advise the Receiver of such intention in writing at least one (1) business day prior to the Auction (a "Participation Notice"). If at least two (2) Participation Notices are received, the Auction will take place and shall be conducted in accordance with the following procedures:

- (i) Participation at the Auction. The Receiver and its professionals shall direct and preside over the Auction. Only Qualified Bidders are eligible to participate in the Auction. Each Qualified Bidder must have present or available, the individual or individuals with the necessary decision making authority to submit Overbids (as defined below) and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of each of the Qualified Bidders and the Receiver shall be permitted to attend the Auction;
- (ii) Rounds. Bidding at the Auction shall be conducted in rounds. The Qualified Bid or Aggregated Bid with the highest and/or best value shall constitute the opening bid (the "Opening Bid") for the first round of bidding. The highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. The Receiver, in its sole discretion, shall determine what constitutes the Opening Bid for each round. An Aggregated Bid may be an Opening Bid in the first round. A combination of non-overlapping Overbids (an "Aggregated Overbid") may also be an Opening Bid in any subsequent round, if such Aggregated Overbid is determined by the Receiver, in its sole discretion, to be the highest and/or best Overbid. In each round, a Qualified Bidder may submit no more than one Overbid. The Receiver reserves the right to impose time limits for the submission of Overbids. For clarity, the Stalking Horse Bid or any Overbid made by the Stalking Horse Bidder may form part of an Aggregated Bid or

Aggregated Overbid;

- (iii) Failure to Submit an Overbid. If, at the end of any round of bidding, a Qualified Bidder or Aggregated Bidder (other than the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) fails to submit an Overbid, then such Qualified Bidder may not participate in the next round of bidding at the Auction. Any Qualified Bidder or Aggregated Bidder that submits an Overbid or Aggregated Overbid during a round (including the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction;
- (iv) Overbids. All Bids made during the Auction shall be "Overbids". Overbids will be submitted in a form to be determined by the Receiver, in its sole discretion, including further revised and executed Proposed Purchase Agreements. The identity of each Qualified Bidder and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders participating in the Auction. The Receiver shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Winning Bid(s) (as defined below) and the Back-Up Bid(s) (as defined below). To be considered an "Overbid", a Bid made during the Auction must satisfy the following criteria:
  - (a) Minimum Consideration. The amount of purchase price consideration of any Overbid shall not be less than the purchase price consideration of the Opening Bid of the applicable round of bidding plus \$100,000.00 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction (the "**Minimum Overbid Increment**"), provided, however, that if an Overbid relates to less than all of the Purchased Assets then the purchase price consideration of such Overbid need only be the purchase price consideration of such Bidder's prior Bid plus \$100,000.00 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction; and
  - (b) Remaining terms are the same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in Section 7 above; provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (vii) hereof). To the extent not previously provided (which shall be determined by the Receiver), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to the Receiver demonstrating such Qualified Bidder's ability (including financial ability) to close the transaction contemplated by its Overbid;
- (v) Announcing Highest Overbids. At the end of each round of bidding, the Receiver, with the assistance of its advisors, shall: (a) immediately review each Overbid made in such round; (b) identify the highest and/or best Overbid or Aggregated Overbid; and (c) announce the terms of such highest and/or best Overbid or Aggregated Overbid to all Qualified Bidders entitled to participate in the next round of bidding. Such highest and/or best Overbid or Aggregated Overbid shall be the Opening Bid for the next round of the Auction;
- (vi) Adjournments. The Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (a) facilitate discussions between the Receiver and individual Qualified Bidders, including any discussion, negotiation or clarification of any Overbid; (b) allow individual Qualified Bidders to consider how they wish to





proceed; (c) consider and determine the current highest and/or best Overbid or Aggregated Overbid at any given time during the Auction; (d) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require, in its reasonable business judgment, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (e) subject to such rules and guidelines as the Receiver may consider appropriate, facilitate any appropriate consultation by the Receiver and/or Qualified Bidders with third party stakeholders;

- (vii) Closing the Auction. If, in any round of bidding, no Overbid or Aggregated Overbid is made, the Auction shall be closed and the Receiver shall, with the assistance of its advisors: (a) declare the last Opening Bid as the winning Bid(s) (the "**Winning Bid(s)**") and the party or parties submitting such Winning Bid(s), the "**Winning Bidder(s)**"; (b) immediately review the other Overbids or Aggregated Overbids made in the previous round (or the Qualified Bids and Aggregated Bids if no Overbids were made at the Auction) and identify and record the next highest and/or best Overbid or Aggregated Overbid (or Qualified Bid or Aggregated Bid) (the "**Back-Up Bid(s)**" and the party or parties submitting such Back-Up Bid(s), the "**Back-Up Bidder(s)**"); and (c) advise the Winning Bidder(s) and the Back-Up Bidder(s) of such determinations and all other Qualified Bidders that they are not a Winning Bidder or a Back-Up Bidder.

To the extent not already provided, the Winning Bidder(s) and the Back-Up Bidder(s) shall each, within two (2) business days of the conclusion of the Auction, provide the Receiver with an additional cash deposit to increase its original Good Faith Deposit to equal at least ten percent (10%) of the total cash purchase price contemplated by its Winning Bid or Back-Up Bid, as applicable, to be held by the Receiver in trust as such party's "Good Faith Deposit" in accordance with these Bidding Procedures. For greater certainty, the preceding sentence applies equally to the Stalking Horse Bidder if the Stalking Horse Bidder submits an Overbid which is determined to be a Winning Bid or Back-Up Bid;

- (viii) Consent to Jurisdiction as Condition to Bid. All Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder's transaction documents, as applicable;
- (ix) Break-Up Fee. In the event that the Stalking Horse Bidder is not the Winning Bidder, the Break-Up Fee of \$50,000.00 shall be payable to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement from the proceeds received upon closing the Winning Bid or Back-Up Bid, as applicable; and
- (x) No Collusion. Each Qualified Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behaviour with respect to the submissions of Overbids. The Receiver may permit discussions between Qualified Bidders at the Auction, subject to such rules and guidelines as the Receiver considers appropriate.

#### 10. Receiver's Reservation of Rights

In addition to the other reservations of rights set out herein, the Receiver reserves the right in its



reasonable discretion to: (a) waive strict compliance with any one or more of the Bid requirements specified herein, and deem such non-compliant Bids to be Qualified Bids, provided that such non-compliance is not material in nature; (b) reject any or all Bids if, in the Receiver's reasonable business judgment, no Bid is for fair and adequate consideration; and (c) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures and facilitate the Auction, provided that the adoption of any rule that materially deviates from these Bidding Procedures shall require an order of the Court.

**11. Sale Motion**

The Receiver shall, within seven (7) business days of the conclusion of the Auction, or if there is no Auction, within seven (7) business days of the Bid Deadline, serve notice of a motion seeking approval of the Winning Bidder(s) and the sale of the applicable Property to the Winning Bidder(s) free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Winning Bidder(s) (the "Sale Motion"). At the Sale Motion, the Receiver may also seek, in its sole discretion, conditional approval of the Back-Up Bid(s) authorizing the Receiver to close the Back-Up Bid(s) if the Winning Bid(s) is/are not closed by the Closing Date.

**12. Closing the Winning Bid**

The Receiver and the Winning Bidder(s) shall take all reasonable steps to complete the sale transaction contemplated by the Winning Bid(s) as soon as possible after the Winning Bid(s) are approved by the Court. Notwithstanding the foregoing, in the event that there is more than one Winning Bid, the Receiver reserves the right to impose a condition in each Winning Bid that the obligation of the Receiver to complete the sale transaction contemplated by each Winning Bid is conditional upon the completion of the transaction(s) contemplated by each other Winning Bid. The Receiver will be deemed to have accepted the Winning Bid(s) only when the Winning Bid(s) has/have been approved by the Court. If the transaction(s) contemplated by the Winning Bid(s) has/have not closed by the Closing Date or the Winning Bid(s) is/are terminated for any reason prior to the Closing Date, the Receiver may elect, in its sole discretion to seek to complete the transaction(s) contemplated by the Back-Up Bid(s), and upon making such election, the Receiver will seek Court approval of the Back-Up Bid(s) (if such approval has not already been obtained) and promptly seek to close the transaction(s) contemplated by the Back-Up Bid(s) after such Court approval. The Back-Up Bid(s) will be deemed to be the Winning Bid(s) and the Receiver will be deemed to have accepted the Back-Up Bid(s) only when the Back-Up Bid(s) has/have been approved by the Court and the Receiver has made such election.

**13. Return of Good Faith Deposit**

- (i) All Good Faith Deposits shall be held in an interest-bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with this Section 13;
- (ii) Good Faith Deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidders two (2) business days after the day on which the Bidder is notified that it is not a Qualified Bidder;
- (iii) Good Faith Deposits of all Qualified Bidders other than the Winning Bidder(s) and the Back-Up Bidder(s) shall be returned to such Qualified Bidders two (2) business days after the day on which one or more Winning Bidders is selected;
- (iv) The Good Faith Deposit(s) of the Winning Bidder(s) shall be applied to the purchase price of

such transaction(s) at closing. If the Winning Bid(s) fail(s) to close by the Termination Date because of a breach or failure to perform on the part of the Winning Bidder(s), the Receiver shall be entitled to retain the Good Faith Deposit of the applicable Winning Bidder(s) as part of its damages resulting from the breach or failure to perform by the applicable Winning Bidder(s). The Good Faith Deposit of the Winning Bidder(s) shall otherwise be returned to the Winning Bidder(s) in accordance with the terms of the Winning Bid(s);

- (v) If the Back-Up Bid(s) has/have not been deemed to be a Winning Bid(s), the Good Faith Deposit(s) of the Back-Up Bidder(s) shall be returned to the Back-Up Bidder(s) as soon as practicable after the earlier of: (a) the closing of the transaction(s) contemplated by the Winning Bid(s); (b) the date on which the Receiver provides written notice to the Back-Up Bidder(s) that the Receiver will not elect to complete the transaction(s) contemplated by the Back-Up Bid(s); and (c) the Termination Date; and
- (vi) If a Back-Up Bid is deemed to be a Winning Bid, the Good Faith Deposit of such Back-Up Bidder shall be applied to the purchase price of such transaction at closing. If a Back-Up Bid fails to close by the Termination Date because of a breach or failure to perform on the part of such Back-Up Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of such Back-Up Bidder as part of its damages resulting from the breach or failure to perform by such Back-Up Bidder. The Good Faith Deposit of a Back-Up Bidder shall otherwise be returned to the applicable Back-Up Bidder in accordance with the terms of its Back-Up Bid.



**IN THE MATTER OF THE RECEIVERSHIP OF  
ELEMENTA GROUP INC.**

Commercial List File No. CV-15-11198-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at  
Toronto**

**ORDER  
(Stalking Horse and Sales Process)**

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the Court appointed Receiver of Elementa Group Inc.



# T A B L E

## BIDDING PROCEDURES

### Background

On December 21, 2015, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an order (the “**Appointment Order**”) appointing Richter Advisory Group Inc. (“**Richter**”) receiver (the “**Receiver**”) over the assets, undertakings and properties (the “**Property**”) of Elementa Group Inc. (“**Elementa**” or the “**Company**”) acquired for, or used in relation to the business carried on by Elementa, including all proceeds thereof.

On or about February 19, 2016, the Receiver will bring a motion for an order (the “**Sales Process Order**”) with the Court seeking, among other things, approval of:

- (i) the Receiver’s execution of an agreement of purchase and sale of substantially all assets of the Company (the “**Purchased Assets**”) between the Receiver and Bradam Canada Inc. (the “**Stalking Horse Bidder**”) dated February 12, 2016 (the “**Stalking Horse Agreement**”) for total consideration of \$1,500,000.00 (the “**Stalking Horse Bid**”) so as to set a minimum floor price in respect of the sale process for the Purchased Assets; and
- (ii) the process for the solicitation of offers or proposals for the acquisition of the Property or any parts thereof (each a “**Bid**”, and each party who submits a Bid, a “**Bidder**”), including approval of the bidding procedures detailed herein (the “**Bidding Procedures**”).

Accordingly, these Bidding Procedures shall govern the solicitation by the Receiver of Bids that are superior to that contemplated by the Stalking Horse Agreement and the proposed sale of the Purchased Assets.

Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

### Bidding Procedures

These Bidding Procedures provide for one phase of bidding in which to solicit binding offers to purchase all or part of the Property. In the event that the Receiver determines that the results of any Bids received satisfy the conditions for an auction, as set out below, the Receiver shall conduct an auction in accordance with the procedures set out in Section 9 below.

#### **1. Assets for Sale**

The Receiver is soliciting Bids for the Property, or any parts thereof, that are superior to that contemplated by the Stalking Horse Agreement. For the purposes of the Bidding Procedures, the Property shall collectively include substantially all of the assets, undertakings and properties of Elementa, which for clarity includes the shares of Elementa Algoma LP, Elementa Algoma Inc. and Elementa Holdings Ltd., acquired for or used in relation to Elementa’s business.

#### **2. Solicitation**

The Receiver has prepared: (a) a list of potential bidders for the Assets (the “**Potential Bidders**”), including both strategic and financial parties who may be interested in acquiring the Property; (b) an initial offering summary (the “**Teaser Letter**”) to notify Potential Bidders of the existence of this solicitation process and invite the Potential Bidders to make an offer to acquire all or any part of the Property; and (c) a form of confidentiality agreement (the “**Confidentiality Agreement**”).

The Receiver shall commence the solicitation process as soon as practical upon receipt of the Sales Process Order, by sending the Teaser Letter and the Confidentiality Agreement to the Potential Bidders.

### **3. Access to Due Diligence Materials**

Interested parties that execute and deliver to the Receiver the Confidentiality Agreement shall receive access to an electronic data room established by the Receiver to provide Potential Bidders with relevant information relating to the Company and its Property, and a copy of the Stalking Horse Agreement (the “**Due Diligence Access**”). Each party’s Due Diligence Access shall terminate upon the earliest of the following events to occur:

- (i) Such party does not submit a Bid by the Bid Deadline (as defined below);
- (ii) Such party submits a Bid by the Bid Deadline but the Receiver determines that such party does not constitute a Qualified Bidder (as defined below);
- (iii) Such party does not participate in the Auction (as defined below); or
- (iv) At the conclusion of the Auction.

Notwithstanding that a party’s Due Diligence Access may continue until the end of the Auction, the Receiver shall not be obligated to furnish any additional due diligence information after the Bid Deadline.

The Receiver will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access in accordance with Section 3. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Property and does not make any representations or warranties as to the information or materials provided, except to the extent of any representations or warranties provided for in the relevant agreement(s) with the Winning Bidder(s) (as defined below).

### **4. Due Diligence from Bidders**

Each Bidder shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by a Bidder to comply with requests for additional information could be the basis for the Receiver to determine that a Bidder is not a Qualified Bidder (as defined below).

### **5. As is, where is**

Any sale of the Property will be completed on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or the Company or their respective agents, professionals, advisors, or otherwise, except to the extent set forth in the relevant agreement(s) with the Winning Bidder(s).

### **6. Bidding Deadlines**

All Bids must be submitted in accordance with the terms of these Bidding Procedures so that they are received by the Receiver no later than 12pm EST on March 21, 2016 (the “**Bid Deadline**”). A Bid received by the Receiver after the Bid Deadline shall not constitute a Qualified Bid (as defined below).

Written copies of the Bids shall be delivered via e-mail or by personal delivery to the Receiver at:

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Adam Sherman  
E-mail: [asherman@richter.ca](mailto:asherman@richter.ca)

with a copy to the Receiver's counsel at:

Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

Attention: Mario Forte  
E-mail: [forte@gsnh.com](mailto:forte@gsnh.com)

## 7. Bid Requirements

To participate in the process detailed by these Bidding Procedures and to otherwise be considered for any purpose hereunder, a Bidder must deliver a Bid to the Receiver by the Bid Deadline which satisfies each of the following conditions:

- (i) **Identification.** The Bid must identify the Bidder and representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated transaction;
- (ii) **Form and Content.** The Bid must be in the form of the Stalking Horse Agreement and executed by the Bidder (each, a "**Proposed Purchase Agreement**"). Any changes and modifications to the Stalking Horse Agreement are to be indicated on a blackline to the Stalking Horse Agreement (including, if applicable, any modifications made to reflect the Property or parts thereof sought to be purchased), which is to be submitted along with the executed version;
- (iii) **Minimum Consideration.** The aggregate consideration of a Bid that includes all of the Purchased Assets must provide a cash purchase price of at least \$1,650,000.00 (the "**Minimum Purchase Price**"). The Minimum Purchase Price is the aggregate of: (a) the Stalking Horse Bid; (b) the Break- Up Fee (as defined in the Stalking Horse Agreement) of \$50,000.00; and (c) \$100,000.00. In the event that the Bid is for less than all of the Purchased Assets, such Bid shall not be subject to the Minimum Purchase Price; provided, however, that such Bid must be capable of being paired by the Receiver with one or more other Bids which in the aggregate provide for a cash purchase price of at least the Minimum Purchase Price;
- (iv) **Good-Faith Deposit.** The Bid must be accompanied by a cash deposit equal to at least ten percent (10%) of the total cash purchase price contemplated by the Bid (the "**Good Faith Deposit**"), and the Good Faith Deposit shall be paid to the Receiver, to be held by the Receiver in trust in accordance with these Bidding Procedures;
- (v) **Financial Wherewithal.** The Bid must include evidence satisfactory to the Receiver of the Bidder's financial ability to close by the Closing Date (as defined below);
- (vi) **Closing Date.** The Bid must contain a binding commitment by the Bidder to close on the terms and conditions set forth in the Proposed Purchase Agreement as soon as practicable after satisfaction or waiver of all conditions; provided that such closing must take place by no later than April 30, 2016 (the "**Closing Date**");
- (vii) **Irrevocable.** The Bid must be accompanied by a letter which confirms that the Bid may be accepted by the Receiver, by the Receiver countersigning the Proposed Purchase Agreement, and is irrevocable and capable of acceptance until the earlier of: (a) the day on which the Bidder is notified that the Bid is not a Qualified Bid (as defined below); (b) the day on which a Winning Bid or Winning Bids are selected, if the Bid is neither a



Winning Bid nor a Back-Up Bid (as defined below) selected on such day; (c) if the Bid is the Back-Up Bid, then the day on which the Winning Bid(s) closes; and (d) April 30, 2016 (the “**Termination Date**”);

- (viii) No Representations and Warranties. A Bid shall include an “as is, where is” clause substantially on the same terms as the “as is, where is” clause set out in the Stalking Horse Agreement;
- (ix) Contingencies. The Bid may not be conditional on obtaining financing, or obtaining assignments on any leases or contracts of the Company or its affiliates, or any internal approval, or on the outcome or review of due diligence. Any other contingencies associated with the Bid may not, in the opinion of the Receiver, in the aggregate, be more burdensome or conditional than those set forth in the Stalking Horse Agreement;
- (x) No Fees Payable to Bidder. The Bid may not request or entitle the Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Bid, a Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its Bid or these Bidding Procedures; and
- (xi) Other Information. A Bid shall contain such other information reasonably requested by the Receiver.

## **8. Designation as Qualified Bidder**

The Receiver may discuss, negotiate or seek clarification of any Bid. A Bidder may not modify, amend or withdraw its Bid without the written consent of the Receiver. Any such modification, amendment or withdrawal of a Bid by a Bidder without the written consent of the Receiver shall result in a forfeiture of such Bidder’s Good-Faith Deposit.

After any clarifying discussions or negotiations, the Receiver shall review all Bids and other documentation and information submitted by the Bidders, and shall determine, in its sole discretion, those Bidders, if any, that are qualified to participate in an auction (the “**Qualified Bidders**” and the Bid of each Qualified Bidder, a “**Qualified Bid**”). All Bids will be considered, but the Receiver reserves the right to reject any and all Bids.

Notwithstanding anything else in the Bidding Procedures, the Stalking Horse Bidder is deemed to be a Qualified Bidder and the Stalking Horse Bid is deemed to be a Qualified Bid for all purposes and at all times.

## **9. Auction**

If the Receiver determines that there are no Qualified Bids (other than the Stalking Horse Agreement), then:

- (i) there will be no auction;
- (ii) the Stalking Horse Agreement shall be declared the Winning Bid (as defined below) for the Purchased Assets; and
- (iii) the Receiver shall seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Motion (as defined below).

If the Receiver determines that there is at least one Qualified Bid for all of the Purchased Assets (other than the Stalking Horse Bid) or a combination of non-overlapping Qualified Bids for less than all of the Purchased Assets (an “**Aggregated Bid**”), and such Qualified Bid or Aggregated Bid provides the Minimum Purchase Price, the Receiver shall conduct an auction to determine the highest and/or best Qualified Bid or Aggregated Bid (the “**Auction**”).

If the Auction is to take place, then within two (2) business days after the Bid Deadline, the Receiver shall send written notice to all Qualified Bidders with respect to whether such Bidder is a Qualified Bidder and invite the Qualified Bidder to participate in the Auction (the “**Auction Notice**”). The Auction Notice shall include, amongst other things: (a) the

date, time and location of the Auction; (b) a copy of the Opening Bid (as defined below); and (c) the procedures pursuant to which the Auction is to be conducted.

In all cases, the Receiver shall post notice of such facts on its website established in connection with the receivership of the Company, at: <http://www.richter.ca/en/folder/insolvency-cases/e/elementa-group-inc>

If a Qualified Bidder intends to participate in the Auction, it must advise the Receiver of such intention in writing at least one (1) business day prior to the Auction (a "**Participation Notice**"). If at least two (2) Participation Notices are received, the Auction will take place and shall be conducted in accordance with the following procedures:

- (i) Participation at the Auction. The Receiver and its professionals shall direct and preside over the Auction. Only Qualified Bidders are eligible to participate in the Auction. Each Qualified Bidder must have present or available, the individual or individuals with the necessary decision making authority to submit Overbids (as defined below) and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of each of the Qualified Bidders and the Receiver shall be permitted to attend the Auction;
- (ii) Rounds. Bidding at the Auction shall be conducted in rounds. The Qualified Bid or Aggregated Bid with the highest and/or best value shall constitute the opening bid (the "**Opening Bid**") for the first round of bidding. The highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. The Receiver, in its sole discretion, shall determine what constitutes the Opening Bid for each round. An Aggregated Bid may be an Opening Bid in the first round. A combination of non-overlapping Overbids (an "**Aggregated Overbid**") may also be an Opening Bid in any subsequent round, if such Aggregated Overbid is determined by the Receiver, in its sole discretion, to be the highest and/or best Overbid. In each round, a Qualified Bidder may submit no more than one Overbid. The Receiver reserves the right to impose time limits for the submission of Overbids. For clarity, the Stalking Horse Bid or any Overbid made by the Stalking Horse Bidder may form part of an Aggregated Bid or Aggregated Overbid;
- (iii) Failure to Submit an Overbid. If, at the end of any round of bidding, a Qualified Bidder or Aggregated Bidder (other than the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) fails to submit an Overbid, then such Qualified Bidder may not participate in the next round of bidding at the Auction. Any Qualified Bidder or Aggregated Bidder that submits an Overbid or Aggregated Overbid during a round (including the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction;
- (iv) Overbids. All Bids made during the Auction shall be "Overbids". Overbids will be submitted in a form to be determined by the Receiver, in its sole discretion, including further revised and executed Proposed Purchase Agreements. The identity of each Qualified Bidder and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders participating in the Auction. The Receiver shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Winning Bid(s) (as defined below) and the Back-Up Bid(s) (as defined below). To be considered an "Overbid", a Bid made during the Auction must satisfy the following criteria:
  - (a) Minimum Consideration. The amount of purchase price consideration of any Overbid shall not be less than the purchase price consideration of the Opening Bid of the applicable round of bidding plus \$100,000.00 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction (the "**Minimum Overbid Increment**"); provided, however, that if an Overbid relates to less than all of the Purchased Assets then the purchase price consideration of such Overbid need only be the purchase price consideration of such Bidder's prior Bid plus \$100,000.00 or

such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction; and

- (b) Remaining terms are the same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in Section 7 above; provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (vii) hereof). To the extent not previously provided (which shall be determined by the Receiver), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to the Receiver demonstrating such Qualified Bidder's ability (including financial ability) to close the transaction contemplated by its Overbid;
- (v) Announcing Highest Overbids. At the end of each round of bidding, the Receiver, with the assistance of its advisors, shall: (a) immediately review each Overbid made in such round; (b) identify the highest and/or best Overbid or Aggregated Overbid; and (c) announce the terms of such highest and/or best Overbid or Aggregated Overbid to all Qualified Bidders entitled to participate in the next round of bidding. Such highest and/or best Overbid or Aggregated Overbid shall be the Opening Bid for the next round of the Auction;
- (vi) Adjournments. The Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (a) facilitate discussions between the Receiver and individual Qualified Bidders, including any discussion, negotiation or clarification of any Overbid; (b) allow individual Qualified Bidders to consider how they wish to proceed; (c) consider and determine the current highest and/or best Overbid or Aggregated Overbid at any given time during the Auction; (d) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require, in its reasonable business judgment, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (e) subject to such rules and guidelines as the Receiver may consider appropriate, facilitate any appropriate consultation by the Receiver and/or Qualified Bidders with third party stakeholders;
- (vii) Closing the Auction. If, in any round of bidding, no Overbid or Aggregated Overbid is made, the Auction shall be closed and the Receiver shall, with the assistance of its advisors: (a) declare the last Opening Bid as the winning Bid(s) (the "**Winning Bid(s)**" and the party or parties submitting such Winning Bid(s), the "**Winning Bidder(s)**"); (b) immediately review the other Overbids or Aggregated Overbids made in the previous round (or the Qualified Bids and Aggregated Bids if no Overbids were made at the Auction) and identify and record the next highest and/or best Overbid or Aggregated Overbid (or Qualified Bid or Aggregated Bid) (the "**Back-Up Bid(s)**" and the party or parties submitting such Back-Up Bid(s), the "**Back-Up Bidder(s)**"); and (c) advise the Winning Bidder(s) and the Back-Up Bidder(s) of such determinations and all other Qualified Bidders that they are not a Winning Bidder or a Back-Up Bidder.

To the extent not already provided, the Winning Bidder(s) and the Back-Up Bidder(s) shall each, within two (2) business days of the conclusion of the Auction, provide the Receiver with an additional cash deposit to increase its original Good Faith Deposit to equal at least ten percent (10%) of the total cash purchase price contemplated by its Winning Bid or Back-Up Bid, as applicable, to be held by the Receiver in trust as such party's "Good Faith Deposit" in accordance with these Bidding Procedures. For greater certainty, the preceding sentence applies equally to the Stalking Horse Bidder if the Stalking Horse Bidder submits an Overbid which is determined to be a Winning Bid or Back-Up Bid;

- (viii) Consent to Jurisdiction as Condition to Bid. All Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder's transaction documents, as applicable;

- (ix) Break-Up Fee. In the event that the Stalking Horse Bidder is not the Winning Bidder, the Break-Up Fee of \$50,000.00 shall be payable to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement from the proceeds received upon closing the Winning Bid or Back-Up Bid, as applicable; and
- (x) No Collusion. Each Qualified Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behaviour with respect to the submissions of Overbids. The Receiver may permit discussions between Qualified Bidders at the Auction, subject to such rules and guidelines as the Receiver considers appropriate.

#### **10. Receiver's Reservation of Rights**

In addition to the other reservations of rights set out herein, the Receiver reserves the right in its reasonable discretion to: (a) waive strict compliance with any one or more of the Bid requirements specified herein, and deem such non-compliant Bids to be Qualified Bids; provided that such non-compliance is not material in nature; (b) reject any or all Bids if, in the Receiver's reasonable business judgment, no Bid is for fair and adequate consideration; and (c) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures and facilitate the Auction, provided that the adoption of any rule that materially deviates from these Bidding Procedures shall require an order of the Court.

#### **11. Sale Motion**

The Receiver shall, within seven (7) business days of the conclusion of the Auction, or if there is no Auction, within seven (7) business days of the Bid Deadline, serve notice of a motion seeking approval of the Winning Bidder(s) and the sale of the applicable Property to the Winning Bidder(s) free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Winning Bidder(s) (the "**Sale Motion**"). At the Sale Motion, the Receiver may also seek, in its sole discretion, conditional approval of the Back-Up Bid(s) authorizing the Receiver to close the Back-Up Bid(s) if the Winning Bid(s) is/are not closed by the Closing Date.

#### **12. Closing the Winning Bid**

The Receiver and the Winning Bidder(s) shall take all reasonable steps to complete the sale transaction contemplated by the Winning Bid(s) as soon as possible after the Winning Bid(s) are approved by the Court. Notwithstanding the foregoing, in the event that there is more than one Winning Bid, the Receiver reserves the right to impose a condition in each Winning Bid that the obligation of the Receiver to complete the sale transaction contemplated by each Winning Bid is conditional upon the completion of the transaction(s) contemplated by each other Winning Bid. The Receiver will be deemed to have accepted the Winning Bid(s) only when the Winning Bid(s) has/have been approved by the Court. If the transaction(s) contemplated by the Winning Bid(s) has/have not closed by the Closing Date or the Winning Bid(s) is/are terminated for any reason prior to the Closing Date, the Receiver may elect, in its sole discretion to seek to complete the transaction(s) contemplated by the Back-Up Bid(s), and upon making such election, the Receiver will seek Court approval of the Back-Up Bid(s) (if such approval has not already been obtained) and promptly seek to close the transaction(s) contemplated by the Back-Up Bid(s) after such Court approval. The Back-Up Bid(s) will be deemed to be the Winning Bid(s) and the Receiver will be deemed to have accepted the Back-Up Bid(s) only when the Back-Up Bid(s) has/have been approved by the Court and the Receiver has made such election.

#### **13. Return of Good Faith Deposit**

- (i) All Good Faith Deposits shall be held in an interest-bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with this Section 13;

- (ii) Good Faith Deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidders two (2) business days after the day on which the Bidder is notified that it is not a Qualified Bidder;
- (iii) Good Faith Deposits of all Qualified Bidders other than the Winning Bidder(s) and the Back-Up Bidder(s) shall be returned to such Qualified Bidders two (2) business days after the day on which one or more Winning Bidders is selected;
- (iv) The Good Faith Deposit(s) of the Winning Bidder(s) shall be applied to the purchase price of such transaction(s) at closing. If the Winning Bid(s) fail(s) to close by the Termination Date because of a breach or failure to perform on the part of the Winning Bidder(s), the Receiver shall be entitled to retain the Good Faith Deposit of the applicable Winning Bidder(s) as part of its damages resulting from the breach or failure to perform by the applicable Winning Bidder(s). The Good Faith Deposit of the Winning Bidder(s) shall otherwise be returned to the Winning Bidder(s) in accordance with the terms of the Winning Bid(s);
- (v) If the Back-Up Bid(s) has/have not been deemed to be a Winning Bid(s), the Good Faith Deposit(s) of the Back-Up Bidder(s) shall be returned to the Back-Up Bidder(s) as soon as practicable after the earlier of: (a) the closing of the transaction(s) contemplated by the Winning Bid(s); (b) the date on which the Receiver provides written notice to the Back-Up Bidder(s) that the Receiver will not elect to complete the transaction(s) contemplated by the Back-Up Bid(s); and (c) the Termination Date; and
- (vi) If a Back-Up Bid is deemed to be a Winning Bid, the Good Faith Deposit of such Back-Up Bidder shall be applied to the purchase price of such transaction at closing. If a Back-Up Bid fails to close by the Termination Date because of a breach or failure to perform on the part of such Back-Up Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of such Back-Up Bidder as part of its damages resulting from the breach or failure to perform by such Back-Up Bidder. The Good Faith Deposit of a Back-Up Bidder shall otherwise be returned to the applicable Back-Up Bidder in accordance with the terms of its Back-Up Bid.

**IN THE MATTER OF THE RECEIVERSHIP OF  
ELEMENTA GROUP INC.**

Commercial List File No. CV-15-11198-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at  
Toronto**

**MOTION RECORD OF THE RECEIVER  
(Stalking Horse and Sales Process)**

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