

RICHTER

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Court File No. 31-2131992

SHOP.CA NETWORK INC.

**SECOND REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
SHOP.CA NETWORK INC.**

JULY 13, 2016

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

**IN THE MATTER OF THE NOTICE OF INTENTION OF
SHOP.CA NETWORK INC.**

**SECOND REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE
NOTICE OF INTENTION OF
SHOP.CA NETWORK INC.**

JULY 13, 2016

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I. INTRODUCTION

1. This report (the “**Second Report**”) is filed by Richter Advisory Group Inc. (“**Richter**”), in its capacity as proposal trustee (the “**Trustee**”) in connection with the Notice of Intention to Make a Proposal (“**NOI**”) filed by SHOP.CA Network Inc. (“**SHOP.CA**” or the “**Company**”) on June 7, 2016 (the “**Filing Date**”) under Section 50.4 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”).
2. On June 9, 2016, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**June 9 Order**”) approving, among other things, the sale process (the “**Bid Process**”) the Company intended to have the Trustee carry out as well as extending the stay of proceedings and the time for the Company to file a Proposal to July 15, 2016 (the “**Stay Period**”). A copy of the June 9 Order is attached hereto as **Appendix “A”**.
3. To date, the Trustee has filed one report in respect of the Company’s NOI. A copy of this report (without appendices), dated June 8, 2016 (the “**First Report**”), which among other things, provided background information on the Company, the Administrative Charge, the proposed key employee retention agreements, and the Bid Process is attached hereto as **Appendix “B”**.

II. PURPOSE OF REPORT

4. The purpose of this Second Report is to provide this Court with information pertaining to:
 - (a) the activities of the Trustee since the Filing Date;
 - (b) the Company’s actual cash flows for the period from May 29, 2016 to July 9, 2016, including a comparison of actual results to forecast;
 - (c) the results of the Court-approved Bid Process;
 - (d) the terms of the Asset Purchase Agreement (the “**APA**”) dated July 8, 2016 between the Company and Transformational Capital Corp. (“**TCC**” or the “**Purchaser**”) for the sale of substantially all of the Company’s assets (the “**Transaction**”), subject to approval by this Court; and

- (e) the Company's request for an extension of the Stay Period to July 20, 2016 (the "**Extension**"); and
- (f) the recommendation by the Trustee that this Court issue an order:
 - (i) approving the Transaction, and authorizing and directing the Company to execute such documents and take such additional steps as are necessary to complete the Transaction;
 - (ii) vesting in the Purchaser, as at closing, all of the Company's right, title, and interest, if any, in and to all of the purchased assets as identified in the APA, free and clear of all liens, charges, security interests and other encumbrances, other than permitted encumbrances as identified in the APA (the "**Approval and Vesting Order**");
 - (iii) extending the Stay Period to July 20, 2016; and
 - (iv) approving the First Report, the Second Report and the activities and conduct of the Trustee as set out therein.

III. QUALIFICATIONS

- 5. In preparing this Second Report, the Trustee has relied upon unaudited financial information prepared by the Company's representatives, the Company's books and records, and discussions with the Company's representatives and its legal counsel (collectively, the "**Information**").
- 6. In accordance with industry practice, except as described in this Second Report:
 - (a) Richter has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - (b) future-oriented financial information relied upon in preparing this Second Report is based on management's assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

7. Unless otherwise noted, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

IV. ACTIVITIES OF THE TRUSTEE

8. To date, the Trustee is of the view that the Company has provided the Trustee with its full co-operation and unrestricted access to its premises, books and records. The Trustee's activities since the Filing Date have included:
- (a) attending at the Company's premises periodically to meet with its management and employees with respect to the NOI proceedings;
 - (b) assisting the Company with the preparation of the cash flow forecast included in the First Report (the "**Filing Cash Flow**"), including the review of the underlying assumptions;
 - (c) implementing procedures for the monitoring of the Company's receipts and disbursements and for the ongoing reporting of variances to the Filing Cash Flow;
 - (d) issuing the prescribed notice to SHOP.CA's creditors advising of the filing of the Company's NOI, as required under the BIA;
 - (e) establishing a website at <http://www.richter.ca/en/folder/insolvency-cases/s/shop-ca-network-inc>, where all materials filed with the Official Receiver and the Court in connection with the Company's NOI proceedings are available in electronic format;
 - (f) responding to calls and enquiries from the Company's employees, merchants, vendors and other stakeholders regarding the Company's NOI, and assisting the Company with negotiating payment terms for continued services subsequent to the Filing Date, as required;
 - (g) preparing the First Report and attending before this Court for the June 9 Order;
 - (h) drafting of the teaser, non-disclosure agreement and other materials related to the Bid Process, including populating the electronic data room;

- (i) contacting prospective interested parties in connection with the Bid Process, including facilitating due diligence efforts and regularly updating the electronic data room as appropriate;
- (j) providing regular updates to the Company and its board of directors in connection with the Bid Process;
- (k) assisting the Company in negotiating the APA with the Purchaser;
- (l) assisting the Company with the preparation of the Revised Cash Flow; and
- (m) preparing the Second Report.

V. ACTUAL RECEIPTS AND DISBURSEMENTS FOR THE PERIOD ENDING JULY 9, 2016

9. Set out below is a summary of the Company's actual cash flow for the period from May 29, 2016 to July 9, 2016 as compared to the Filing Cash Flow:

SHOP.CA Networks Inc.			
Cash Flow Variance Analysis			
6 Weeks Ended July 9th	Forecast	Actual	Variance
(\$000's)	09-Jul	09-Jul	\$
Cash Receipts	699	641	(58)
<u>Cash Disbursements</u>			
Merchant Payments	(644)	(532)	112
Payroll & Benefits	(468)	(463)	4
SG&A	(260)	(113)	147
Professional Fees	(374)	(364)	10
HST	(8)	11	20
KERA	(222)	(221)	1
Contingency	(60)	-	60
Total Disbursements	(2,036)	(1,682)	355
Net Cash Flow	(1,337)	(1,040)	297

10. As reflected in the above summary table, the Company generated approximately \$641,000 of cash receipts as compared to forecasted receipts of approximately \$699,000 while disbursing

approximately \$1,682,000 as compared to forecasted disbursements of approximately \$2,036,000. This resulted in the Company generating a net cash outflow of approximately \$1,040,000, as at July 9, 2016, a favourable variance of approximately \$297,000 as compared to forecast. We note this variance was primarily related to lower than forecast merchant payments and SG&A, a portion of which is related to timing and expected to reverse during the week ending July 16, 2016.

11. Pursuant to the June 9 Order, the Company transferred approximately \$221,000 to the Company's counsel, Stikeman Elliott LLP ("**Stikeman**"), to be held, in trust, to secure payment under the key employee retention agreements (the "**KERAs**"). On July 7, 2016, Stikeman received confirmation from the Trustee that the Company's Chief Executive Officer satisfied the conditions contained in the KERA and released the Incentive Payment (as defined in the KERA) to him thereunder. As at the date of this Second Report, Stikeman was holding, in trust, the Incentive Payments (plus applicable employer withholding and remittances) in connection with the KERAs for the Company's Chief Financial Officer and its Chief Technology Officer. The Incentive Payments under these KERAs will become payable upon the closing of the Transaction.
12. The Trustee is of the view that the Company is acting in a manner consistent with the Filing Cash Flow and as at the date of this Second Report, there have been no material adverse changes to the Company's operations since the Filing Date.

VI. RESULTS OF THE BID PROCESS

13. As detailed in the First Report, the Bid Process provided a means for testing the market, gauging interest in the Company and/or its assets and determining whether a transaction that would result in realizations greater than liquidation value was available. The Trustee has been fully involved in all aspects of the Bid Process to date to ensure that the marketing process was fair and reasonable, and that all prospective interested parties were given the ability to make an offer for the Company and/or its assets.
14. A summary of the Bid Process and its results are as follows:
 - (a) on June 8, 2016, the Trustee began to contact prospective interested parties (the "**Interested Parties**") to advise of the opportunity to acquire the assets and/or operations of the Company. The list of Interested Parties was developed with the assistance of the

Company and included parties that had previously expressed an interest in the Company through its previous marketing efforts prior to the Filing Date;

- (b) each Interested Party was provided with a copy of the initial offering summary (the “**Teaser Letter**”) and a form of non-disclosure agreement (the “**NDA**”). In total, 393 parties were contacted by the Trustee, of which 240 were strategic buyers and 153 were financial buyers;
- (c) of the 393 parties contacted, 20 executed the NDA and were provided with access to the electronic data room (the “**Data Room**”) established by the Trustee, with the assistance of the Company, where relevant information relating to the Company and its operations was made available;
- (d) throughout the course of the Bid Process, the Trustee, with the assistance of the Company, facilitated due diligence efforts by, among other things, coordinating meetings between Interested Parties and management of the Company, and updating the Data Room as new information became available;
- (e) Interested Parties were required to submit binding offers for the Company’s business and/or assets to the Trustee on or before 12pm EST on June 30, 2016 (the “**Bid Deadline**”);
- (f) on June 20, 2016, the Trustee deposited a template asset purchase agreement in the Data Room, which was to form the basis of all offers submitted to the Trustee;
- (g) prior to the Bid Deadline, the Trustee received 2 offers (the “**Offers**”) to purchase substantially all of the assets of the Company, including the Offer from TCC. TCC and the other bidder each provided the Trustee with a cash deposit equal to 10% of the proposed purchase price;
- (h) the Trustee, in consultation with the Company and Stikeman, reviewed the Offers with the Company’s board of directors (the “**Board**”) on June 30, 2016. The Board instructed the Trustee to seek clarification and negotiate certain terms with TCC and the other bidder with respect to their Offers; and

- (i) on or before July 4, 2016, the Offers were further refined and resubmitted to the Trustee. However, on July 5, 2016, the other bidder advised the Trustee that it had decided to withdraw its Offer and requested the return of its cash deposit, at which point the Board directed the Trustee and Stikeman to engage with TCC to finalize the APA, as discussed in greater detail below. The Trustee is making arrangements to return the deposit to the other bidder as requested.

VII. THE TRANSACTION

- 15. As noted above, the APA contemplates the sale of substantially all of the assets of SHOP.CA and the Transaction represents the only viable alternative to a liquidation of the Company's assets through bankruptcy proceedings.
- 16. The key elements of the Transaction are as follows:
 - (a) the Purchaser is acquiring on an "as is, where is" basis, substantially all of the Company's undertakings, property and assets that relate to or are used in connection with the Company, including all accounts receivables, equipment, furniture and fixtures, intellectual property and goodwill associated with the Company, including use of the name "SHOP.CA" (collectively the "**Purchased Assets**");
 - (b) the entire purchase price will be paid by applying, on closing, the Deposit (as defined in the APA), representing the full purchase price for the Purchased Assets, delivered by the Purchaser to the Company's counsel during the negotiation of the APA;
 - (c) the Purchaser will offer employment to 5 of the Company's existing employees (the "**Transferred Employees**") on substantially the same terms and conditions as they are currently employed by SHOP.CA;
 - (d) the Transaction is scheduled to close within 3 business days of the Court issuing an order approving the APA and the Transaction and, upon closing, vesting free and clear title in and to the Purchased Assets in favour of the Purchaser, which is expected to occur on or before July 20, 2016 (the "**Closing Date**");

- (e) the Purchaser will assume liabilities and obligations in respect of the Transferred Employees accruing after the Closing Date and any transfer taxes payable in connection with the Transaction;
 - (f) the Transaction is conditional on the Court issuing the Approval and Vesting Order, and on the Company terminating all employees other than the Transferred Employees on or prior to the Closing Date; and
 - (g) once the Transaction closes, the Trustee will file a certificate with the Court confirming the Transaction has been completed.
17. On July 8, 2016, the Board approved the APA and the terms and conditions thereof.
18. Attached hereto as **Appendix "C"** is a redacted copy of the APA between the Company and the Purchaser. In the event that the Court grants the Approval and Vesting Order, but the Transaction does not close, the Trustee is of the view that efforts to remarket the Company's assets may be impaired if the unredacted APA is made public at this time. In the circumstances, the Trustee believes that it is appropriate for the unredacted APA to be filed with the Court on a confidential basis and sealed until the closing of the Transaction, or upon further order of this Court.
19. The Purchased Assets do not include the real property lease for the Company's current premises. The Trustee and Company believe there may be some additional value to the real property lease and are in the process of determining an appropriate realization strategy.

VIII. COMPANY'S REQUEST FOR AN EXTENSION

20. The current Stay Period expires on July 15, 2016.
21. The Company is seeking an extension of the Stay Period to July 20, 2016 to permit the Company time to close the Transaction described above.
22. As the Company's Filing Cash Flow only covered the period to July 16, 2016, the Company, with the assistance of the Trustee, has prepared a revised statement of cash flow for the period from July 10, 2016 to July 20, 2016 (the "**Revised Cash Flow**"). The Revised Cash Flow is set out below:

SHOP.CA Networks Inc.			
Revised Cash Flow			
Period ending July 20th	Forecast	Forecast	Total
(\$000's)	16-Jul	20-Jul	\$
Cash Receipts	15,000	-	15,000
<u>Cash Disbursements</u>			
Merchant Payments	(79,259)	-	(79,259)
Payroll & Benefits	(278,798)	(18,200)	(296,998)
SG&A	(76,714)	-	(76,714)
Professional Fees	(206,670)	-	(206,670)
HST	(8,000)	-	(8,000)
KERA	-	-	-
Contingency	(10,000)	(5,000)	(15,000)
Total Disbursements	(659,442)	(23,200)	(682,641)
Net Cash Flow	(644,442)	(23,200)	(667,641)
Bank Balance			
Opening	686,681	42,239	686,681
Net Cash Flow	(644,442)	(23,200)	(667,641)
Ending Bank Balance	42,239	19,040	19,040

23. The major changes in the underlying assumptions in the Revised Cash Flow as compared to the Filing Cash Flow are as follows:

- (a) on July 8, 2016, the Company terminated the majority of its staff (the “**Terminated Employees**”) in an effort to minimize costs prior to the Closing Date. As at July 9, only a small number of critical employees (the “**Critical Employees**”) who are assisting in maintaining operations to the Closing Date, and the Transferred Employees, remain on payroll. Pursuant to the APA, the Critical Employees will be terminated on or prior to the Closing Date. As noted in the First Report, it is the Company’s intention to pay the accrued pre-filing vacation pay to all employees during the week ending July 16, 2016;
- (b) the Transaction is scheduled to close on or before July 20, 2016; and

- (c) in order to provide an orderly transition of the Purchased Assets to the Purchaser, the Company is in the process of establishing procedures and cut-off periods in advance of the Closing Date to ensure customer orders and payments to merchants are appropriately aligned, and disruptions to customer experience are minimized. As a result, the Company has forecast lower cash receipts in the Revised Cash Flow.
24. On July 12, 2016, the Company received notice from Moneris Solutions Corporation (“**Moneris**”) that, effective immediately, Moneris would no longer provide the Company with 100% of daily settlement funds until such time that Moneris has established a reserve in the amount of \$20,000. The Trustee is working with the Company to determine what impact, if any, this will have on the Revised Cash Flow, but the Company does not consider it to be material at this point in time.
25. The Revised Cash Flow indicates that the Company will have sufficient liquidity to fund operations and the costs of these NOI proceedings up to July 20, 2016, if the Extension is granted.
26. After expiry of the Extension, if granted by the Court, SHOP.CA will be deemed to have made an assignment into bankruptcy as a consequence of not filing a proposal within the time period granted by the Court. As such, the assessment of claims and distribution of proceeds to creditors will be addressed through the bankruptcy.
27. The Trustee is of the view that the Extension is appropriate in the circumstances and supports the Company’s request for the following reasons:
- (a) the Company has acted and is acting in good faith and with due diligence;
 - (b) it will allow the Transaction, if approved by this Court, sufficient time to close;
 - (c) it is the Trustee’s view that the Extension will not prejudice or adversely affect any group of creditors; and
 - (d) the Revised Cash Flow indicates that SHOP.CA should have sufficient liquidity to continue to fund operations through the period ending July 20, 2016.

IX. CONCLUSION AND RECOMMENDATION

28. The Trustee is of the opinion that the Transaction satisfies the factors to be considered, pursuant to section 65.13(4) of the BIA. In particular, the Trustee is of the view that:
- (a) the Bid Process was fair and reasonable in the circumstances, and was approved by the Trustee and the Court;
 - (b) the Transaction would be substantially more beneficial to the Company's creditors as compared to the alternatives (i.e. sale or liquidation under a bankruptcy). As such, absent the sale of the Purchased Assets to TCC, there is considerable risk that there would be minimal recovery to the Company's creditors from the Purchased Assets;
 - (c) the consideration received for the Purchased Assets in light of the Bid Process and the results thereof is reasonable and fair considering that the majority of the Company's value is related its intellectual property and other intangible assets, which may have limited market value in a liquidation;
 - (d) The Company's limited liquidity substantially eliminates an opportunity to further market the business for sale without putting the Transaction at risk. This opportunity was already widely marketed prior to the Filing Date, and again by the Trustee as part of the Bid Process, and therefore all likely potential purchasers have already been provided with an opportunity to bid on the assets;
 - (e) the Transaction will have a positive effect on the creditors and other interested parties. The Transaction is the best opportunity to maximize recoveries for the creditors and provides the greatest benefit to all stakeholders, including the Transferred Employees and the Company's merchants and vendors; and
 - (f) the Company and its management are acting in good faith and with due diligence.
29. Based on the foregoing, the Trustee respectfully recommends that this Court issue an order granting the relief detailed in paragraph 4(f) of this Second Report.

All of which is respectfully submitted this 13th day of July, 2016.

Richter Advisory Group Inc.
in its capacity as Proposal Trustee of
SHOP.CA Network Inc.

Per:



Paul van Eyk, CA-CIRP, CA-IFA, LIT
Senior Vice President



Pritesh Patel, MBA, CFA, CIRP
Vice President

APPENDIX A

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE PENNY)

THURSDAY, THE 9th
DAY OF JUNE, 2016

NAF

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF SHOP.CA NETWORK INC., a
corporation incorporated pursuant to the laws of the Canada,
with a head office in the City of Toronto, in the Province of
Ontario

BID PROCESS AND ADMINISTRATION ORDER

THIS MOTION, made by SHOP.CA Network Inc. ("SHOP.CA") the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") for an order, among other things, (a) extending the time for SHOP.CA to file a proposal to July 15, 2016; (b) approving the sale process (the "Bid Process"); (c) approving the Key Employee Retention Agreements (the "KERAs") and payment arrangements; and (d) granting the Administration Charge (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert S. Lee sworn June 8, 2016 (the "Lee Affidavit") and the exhibits thereto and the First Report dated June 8, 2016 (the "First Report") of the Richters Advisory Group Inc., in its capacity as proposal trustee of SHOP.CA (the "Proposal Trustee") and on hearing the submissions of counsel for SHOP.CA, counsel for the Proposal Trustee and all other counsel appearing on the counsel slip.

SERVICE

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

APPROVAL OF THE BID PROCESS

2. **THIS COURT ORDERS** that the Bid Process in respect of SHOP.CA's assets, business and property, as set out in paragraphs 29 - 33 of the First Report, is hereby approved and that the Proposal Trustee is hereby authorized and empowered to take such steps as are necessary or desirable to carry out the Bid Process, provided that any definitive agreement to be executed by SHOP.CA in respect of any transaction resulting therefrom shall require further approval of this Court.

STAY EXTENSION

3. **THIS COURT ORDERS** that the time for SHOP.CA's filing a proposal (the "Proposal Period"), and the stay of proceedings herein, is hereby extended in accordance with subsection 50.4(9) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3, as amended (the "BIA"), to and including July 15, 2016.

APPROVAL OF THE KERAS

4. **THIS COURT ORDERS** that the Key Employee Retention Agreements (the "KERAs") attached as Confidential Exhibit "A" of the Lee Affidavit are hereby ratified and that SHOP.CA is hereby authorized and empowered to perform its obligation thereunder and to make the payments in accordance with the terms set out the KERAs.

5. **THIS COURT ORDERS** that the funds adequate to satisfy the Incentive Payments (as that term is defined in the KERAs) minus any deferred amounts shall be paid by

SHOP.CA to Stikeman Elliott LLP, as counsel to SHOP.CA ("**Company's Counsel**"), to be held in trust for the beneficiaries of the KERAs. The amounts owing under the KERAs shall be paid by Company's Counsel to the beneficiaries of the KERAs upon satisfaction of the conditions contained in the KERAs as determined by the Proposal Trustee or upon further Order of this Court.

6. **THIS COURT ORDERS** if after 10 business days of the expiry of the Proposal Period (i) the conditions contained in the KERAs are not satisfied; and (ii) the funds held by Company's Counsel on account of the Incentive Payments have not otherwise been paid to the beneficiaries of the KERAs, the funds held by Company's Counsel on account of the Incentive Payments shall be paid to the Proposal Trustee.

CONFIDENTIALITY

7. **THIS COURT ORDERS** that the unredacted versions of the KERAs filed with the Court shall not form part of the public record and shall be kept confidential and under seal until further Order of this Court.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and Company's Counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by SHOP.CA as part of the costs of these proceedings. SHOP.CA is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and Company's Counsel on a weekly basis or as such accounts are otherwise rendered.

9. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee

and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and Company's Counsel shall be entitled to the benefit of and are hereby granted a first ranking charge (the "**Administration Charge**") on SHOP.CA's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), which charge shall not exceed \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee, counsel to the Proposal Trustee and Company's Counsel, both before and after SHOP.CA filing its Notice of Intention to Make a Proposal under the BIA.

11. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and such charge shall rank ahead in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, except for the Encumbrances in favour of those that have not been served with notice of this Motion. SHOP.CA and the beneficiaries of the Administration Charge shall be entitled, if necessary, to seek priority ahead of any Encumbrances in favour of any person that have not been served with notice of this Motion and that are likely to be affected by such priority.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed,

registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency (expressly or impliedly) made herein; (b) any motion(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such motion(s); (c) any assignments for the general benefit of creditors made or deemed to have been made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds SHOP.CA, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Administration Charge nor the payments made in accordance with the KERAs shall create or be deemed to constitute a breach by SHOP.CA of any Agreement to which it is a party;
- (b) none of the employees who are parties to the KERAs or chargees entitled to the benefit of the Administration Charge shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from SHOP.CA making payments in accordance with the KERAs, the creation of the Administration Charge or the execution, delivery or performance of any related documents; and

- (c) the payments made by SHOP.CA pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

14. **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 ‘<http://www.richter.ca/en/folder/insolvency-cases/s/shop-ca-network-inc>’.

15. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Proposal Trustee 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 SHOP.CA’s creditors or other interested parties at their respective addresses as last shown on the records of SHOP.CA 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.

16. **THIS COURT ORDERS** that the Proposal Trustee, SHOP.CA and their respective counsel, are at liberty to service or distribute this Order, any materials and orders as may be reasonably required in these proceedings including any notices, or other correspondence, by forwarding true copies thereof by electronic message to SHOP.CA's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

17. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the business of SHOP.CA and shall not, in carrying out the Bid Process, otherwise fulfilling its obligations hereunder or under the BIA, be deemed to have taken possession or control of the business of SHOP.CA or the Property, or any part thereof.

18. **THIS COURT ORDERS** that that the Proposal Trustee shall provide any creditor of SHOP.CA with information provided by SHOP.CA in response to reasonable requests for information made in writing by such creditor addressed to the Proposal Trustee. The Proposal Trustee shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Proposal has been advised by SHOP.CA or Company's Counsel is confidential, the Proposal Trustee

shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Proposal Trustee and the SHOP.CA may agree.

19. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment, carrying out of the Bid Process, in respect of any determination regarding release of payments under the KERAs or carrying out any provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

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

21. **THIS COURT ORDERS** that any interested party (including SHOP.CA and the Proposal Trustee) may apply to this court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF SHOP.CA NETWORK INC.**, a corporation incorporated pursuant to the laws of
the Canada, with a head office in the City of Toronto, in the Province of Ontario

Estate / Court File No. 31-2131992

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

Proceeding commenced at Toronto

BID PROCESS AND ADMINISTRATION ORDER

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Lawyers for the Applicant

APPENDIX B

RICHTER

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SHOP.CA NETWORK INC.

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
SHOP.CA NETWORK INC.**

JUNE 8, 2016

Court File No. _____

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

**IN THE MATTER OF THE NOTICE OF INTENTION OF
SHOP.CA NETWORK INC.**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE
NOTICE OF INTENTION OF
SHOP.CA NETWORK INC.**

JUNE 8, 2016

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APPENDICIES

APPENDIX "A" –	CERTIFICATE OF FILING ISSUED BY SUPERINTENDENT OF BANKRUPTCY
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APPENDIX "C" –	BID PROCESS TEASER DOCUMENT
APPENDIX "D" –	CASH FLOW FORECAST FOR THE PERIOD MAY 29, 2016 TO JULY 16, 2016

I. INTRODUCTION

1. This report (the "**Report**") is filed by Richter Advisory Group Inc. ("**Richter**"), in its capacity as proposal trustee (the "**Trustee**") in connection with the Notice of Intention to Make a Proposal ("**NOI**") filed by SHOP.CA Network Inc. ("**SHOP.CA**" or the "**Company**") on June 7, 2016 (the "**Filing Date**") under Section 50.4 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the "**BIA**"). A copy of the Certificate of Filing issued by the Superintendent of Bankruptcy is attached hereto as **Appendix "A"**.
2. Richter was previously retained by the Company to act as financial advisor to assist management and the board of directors to review strategic alternatives available to the Company as part of its ongoing divestiture and restructuring process.

II. PURPOSE OF REPORT

3. The purpose of this Report is to provide this Court with information pertaining to:
 - (a) background on the Company, including its corporate history, operations, financial position and creditors;
 - (b) the Company's proposed post-filing strategy, including the outline of a sales process (the "**Bid Process**") the Company proposes to have the Trustee carry out;
 - (c) the Company's projected cash flows for the period from May 29, 2016 to July 16, 2016 (the "**Cash Flow Forecast**");
 - (d) the proposed Administrative Charge (as defined herein);
 - (e) the proposed key employee retention agreements (the "**KERAs**");
 - (f) the Company's request for an extension of the time required to file its proposal (the "**Extension**") to July 15, 2016; and
 - (g) the recommendation by the Trustee that this Court issue an order:
 - (i) Approving the Bid Process, and authorizing the Company and Trustee to take such additional steps as are necessary to implement the same;

- (ii) Approving the terms of the Administrative Charge, and proposed priority ranking of such charge;
- (iii) Approving the terms of the KERAs and the payment by the Company in respect of the KERAs to Stikeman Elliott LLP (the “**Company’s Counsel**”), in trust, for the Executives (as defined herein); and
- (iv) Approving the Company’s request for an Extension to July 15, 2016.

III. QUALIFICATIONS

- 4. In preparing this Report, the Trustee has relied upon unaudited financial information prepared by the Company’s representatives, the Company’s books and records, and discussions with the Company’s representatives and its legal counsel (collectively, the “**Information**”).
- 5. In accordance with industry practice, except as described in this Report:
 - (a) Richter has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - (b) future-oriented financial information relied upon in preparing this Report is based on management’s assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.
- 6. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars.

IV. BACKGROUND

Company Overview

- 7. SHOP.CA operates a multi-merchant online marketplace, www.shop.ca (the “**Website**”), that offers Canadian consumers shopping experience through a selection of brands, service, and a loyalty program that has hundreds of thousands of active members. The Company sells consumer

products in a wide range of categories such as baby, jewelry, home and garden, kitchen appliances, electronics and apparel.

8. SHOP.CA was incorporated on September 11, 2009 under the *Canada Business Corporations Act* and the Company's registered office and principal place of business is located at 70 Peter Street, 2nd Floor, Toronto, Ontario.
9. Unlike most retailers, SHOP.CA does not maintain inventory or warehouses as order fulfillment is completed by the Company's merchant partners, who ship goods directly to SHOP.CA's customers after an order is placed. Merchants sign agreements with SHOP.CA to list their products for sale through the Website and are responsible for managing their own product inventory. SHOP.CA completes transactions with customers and purchases the goods from its merchant partners at a discounted and mutually agreed percentage of the selling price.
10. Payment transactions on the Website are processed by either Moneris Solutions Corporation ("**Moneris**"), for all major credit cards and debit cards, or PayPal, Inc. ("**PayPal**"). The Trustee understands that Moneris Interac and PayPal payments are processed in real time (i.e. at the time of order), whereas all other Moneris transactions are processed at the time of delivery from the merchant to the customer.
11. The Trustee understands that in 2014, SHOP.CA entered into an exclusive strategic partnership with Aimia Canada Inc. ("**Aimia**"), which has been a significant source of customer acquisition for the Company. Aimia runs the Aeroplan loyalty program ("**Aeroplan Miles**"). The Agreement with Aimia allows the Company's customers to earn Aeroplan Miles on purchases on the Website and also allows Aimia's members the ability to redeem Aeroplan Miles for SHOP.CA gift cards that can be used to purchase merchandise on the Website. The Company makes payments to Aimia on a monthly basis in respect of Aeroplan Miles earned by customers on purchases through the Website, which Aimia then credits to its members account.
12. Prior to the Filing Date, the Trustee understands SHOP.CA employed approximately 40 full-time salaried employees as well as 1 individual (the current CEO) under a consulting contract. None of the employees are unionized and the Company does not sponsor a pension plan for any of its employees.

Historical Financial Results

13. Set out below is a summary of the Company's historical financial results for: (i) the fiscal period ending 2013; (ii) the fiscal period ending 2014; (iii) the fiscal period ending 2015 (unaudited); and (iv) year-to-date ("YTD") April 30, 2016 (unaudited).

SHOP.CA Network Inc.				
Income Statement				
(\$000s)				
	Four months ended April 30, 2016	Year ended December 31, 2015	Year ended December 31, 2014	Year ended December 31, 2013
Total Revenue	\$ 3,072	\$ 23,260	\$ 27,377	\$ 21,854
Cost of Sales	(2,645)	(20,353)	(24,785)	(20,512)
Gross Margin	\$ 427	\$ 2,907	\$ 2,592	\$ 1,342
Total Costs and Expenses	(2,573)	(22,590)	(24,321)	(17,886)
Income from operations	\$ (2,146)	\$ (19,683)	\$ (21,729)	\$ (16,544)
Depreciation/Amortization	(44)	(189)	(144)	(72)
Investment Income	-	149	208	77
Net Loss	\$ (2,190)	\$ (19,723)	\$ (21,665)	\$ (16,539)
Other comprehensive loss				
Unrealized fair value (loss)/gain on investments	-	(97)	22	(2)
Comprehensive loss	\$ (2,190)	\$ (19,820)	\$ (21,643)	\$ (16,541)

14. As detailed in the table above, the Company has experienced significant net losses over the past three fiscal years as it incurred expenses aimed at increasing its customer base and establishing its e-commerce infrastructure and platform. The Trustee understands that in Q4 2015, management implemented a number of cost savings initiatives such as headcount reductions, marketing spend decreases, and a reduction of contracted services in an effort to reduce the Company's cash burn and net operating loss. Despite these efforts, the Company has not been able to achieve profitability, and YTD 2016, the Company's revenues were approximately 50% lower than the same period in 2015.

15. Below is a summary of the Company's unaudited balance sheet as at April 30, 2016:

SHOP.CA Network Inc.			
Balance Sheet			
As at April 30, 2016			
(\$000s)			
ASSETS		LIABILITIES AND SHAREHOLDER'S EQUITY	
Current Assets		Current Liabilities	
Cash & Investments	\$ 2,253	Accounts Payable & Accruals	\$ 1,478
Accounts receivable	213	Taxes Payable	78
SRED Receivable	-	Customer Payments (Orders to Ship)	250
Inventory	38	Returns & Rewards Liability	181
Taxes Receivable	78	Total Current Liabilities	\$ 1,987
Prepaid expenses	208	Long Term Liabilities	-
Total Current Assets	\$ 2,790	Total Liabilities	\$ 1,987
Non-Current Assets		Equity	
Fixed Assets, net	\$ 217	Share Capital	72,325
Intangible Assets	1,050	Share based payment reserve	2,187
		Retained Earnings (Deficit)	(72,442)
Total Assets	\$ 4,057	Total Equity	\$ 2,070
		Total Liabilities & Stockholders' Equity	\$ 4,057

16. The April 30, 2016, balance sheet reflects that the Company has an accumulated retained earnings deficit of approximately \$72 million. The Trustee understands that based on management's most recent forecasts, SHOP.CA's existing cash reserves will be depleted by August 2016 if the Company continues as a going concern and does not obtain additional capital through an equity injection, which historically has been the primary source of capital for the Company. The Trustee understands that SHOP.CA's shareholders are not in a position to invest additional capital into the Company at this time. Without the continued support of its shareholders, the Company will not be able to continue to fund its operations beyond the near term. As noted later in this Report, the Trustee understands the Company explored the possibility of obtaining additional financing during its previous marketing efforts, but did not receive any indications of interest.

17. Furthermore, the April 30, 2016 balance sheet does not reflect potential contingent liabilities related to termination obligations owed to the Company's employees and certain contractual arrangements, which if the Company were not to continue as a going concern, could result in up to approximately \$2 million of additional liabilities.

18. As detailed later in this Report, the Company attempted to find an acquirer for its business and/or assets prior to the Filing Date but was unable to secure any binding commitments. The Trustee is of the view that any additional time is unlikely to result in a transaction outside of a proceeding, and would only further erode the Company's limited liquidity position.
19. As a result of the reoccurring financial losses, SHOP.CA has exhausted its liquidity and with no ability to raise additional equity, has elected to file an NOI to restructure the Company.

Creditors

20. A copy of the creditor list included in the NOI filing is attached as **Appendix "B"**.
21. The Trustee understands that the Company does not have any long term liabilities or secured debt. The Trustee notes Toronto-Dominion Bank ("TD") had registered a security interest against the Company according to a *Personal Property Security Act* (Ontario) search result as at June 6, 2016. The Trustee understands that the Company does not have any outstanding indebtedness owed to TD other than in respect corporate credit cards. The Trustee understands TD previously provided a letter of credit on behalf of SHOP.CA but the letter of credit was cancelled in the fall of 2015.
22. The Company advises that all employee related amounts are current, and all required remittances of employee withholdings and sales taxes (HST, PST, QST) have been made when due.
23. The Company estimates that it had total trade payables and accruals of approximately \$1.1 million as at May 30, 2016, of which approximately \$160,000 related to accrued vacation pay for the Company's employees.
24. The Trustee understands it is the Company's intention to pay the accrued pre-filing vacation pay to its employees during these proceedings, subject to such obligation being assumed as part of a transaction resulting from the Bid Process. The Company has provided for this payment in the Cash Flow Forecast.

V. OBJECTIVES OF THE NOI PROCEEDINGS

25. The primary objectives of the Company's NOI filing are to:
 - (a) facilitate the ongoing operations of the Company;

- (b) restructure the Company's operations; and
- (c) implement the Bid Process with a view to identifying one or more parties to execute a going concern sale in order to maximize the value of the business for the benefit of the Company's stakeholders, including employees, trade creditors, customers and shareholders.

VI. PROPOSED SALES PROCESS

Previous Marketing Efforts

- 26. The Trustee understands that SHOP.CA has been extensively marketed to a number of strategic and financial parties over the past year leading up to the Filing Date, either informally by management or through the assistance of a financial advisor as noted below.
- 27. In August 2015, SHOP.CA retained the services of Scotia Capital Inc. and Canaccord Genuity Corp. to assist in exploring strategic alternatives, including raising additional capital and a possible sale of the Company. The Trustee understands over 25 parties were contacted as part of this process, and while several parties expressed interest, these efforts did not result in any binding commitments or a transaction.
- 28. The Trustee understands that, since early May 2016, management of SHOP.CA had reached out to approximately 17 parties, including some that were not canvassed as part of the previous sales process, about their potential interest in acquiring the Company and/or its assets. Management held discussions with a number of parties and 3 parties submitted non-binding letters of intent. The Company, however, was unable to finalize a binding commitment or transaction prior to the Filing Date.

Bid Solicitation Process

- 29. In light of the Company's limited liquidity and its previous marketing efforts as described above, the Company, in consultation with the Trustee, developed the expedited Bid Process as a means of testing the market, maintaining the goodwill of the Company (which is largely tied to its employees), gauging interest in the Company and/or its assets, and determining whether a transaction that would result in greater than liquidation value is available.

30. The purpose of the Bid Process is to identify one or more purchasers for the Company's business and/or assets. In order to provide third parties with an opportunity to bid on the Company's assets, the Trustee proposes to aggressively market the Company's assets to third parties for a period of approximately 23 days. As noted below, the proposed timelines, while compressed, are reasonable in the circumstances given the Company's previous marketing efforts, and are reflective of the Company's limited liquidity and the Cash Flow Forecast.
31. The Trustee is aware that management remains in continued discussions with certain parties that expressed interest in the Company prior to the Filing Date. The Trustee has been advised that these parties have signed a non-disclosure agreement and, upon approval of the Bid Process, the Trustee will support the Company in reaching out to these parties and advise them of the Bid Process and associated timelines.
32. The key aspects of the Bid Process are as follows:
 - (a) in advance of the date of the herein motion, on June 8, 2016, the Trustee distributed an initial offering summary (the "**Teaser Letter**") and form of non-disclosure agreement (the "**NDA**") to a list of interested parties (the "**Interested Parties**"), which list had been developed by the Trustee and the Company. A copy of the Teaser Letter is attached hereto as **Appendix "C"**. The Trustee, together with the Company, will continue to identify any other Interested Parties who may wish to participate in the Bid Process and will provide a copy of the Teaser Letter and NDA accordingly;
 - (b) Interested Parties that wish to commence due diligence will be required to sign the NDA. No formal confidential information memorandum will be prepared as the Trustee has established an electronic data room (the "**Data Room**") to provide Interested Parties with access to relevant information relating to the Company and its operations. Once a NDA has been signed, the Interested Party will receive access to the Data Room;
 - (c) Interested Parties will be required to submit binding offers (the "**Offers**") to the Trustee by 12pm EST on June 30, 2016 (the "**Bid Deadline**"). At least one week prior the Bid Deadline, the Trustee will deposit a template agreement in the Data Room, which will form the basis of all Offers to be submitted to the Trustee;

- (d) Interested Parties that submit an Offer (the “**Offerors**”) will be required to provide a deposit payable to the Trustee, in trust, in an amount equal to 10% of the purchase price. To be considered by the Trustee, all Offers are to be on an “as is, where is” basis and shall remain open for acceptance by the Company for a period of at least 10 business days from the Bid Deadline;
 - (e) the acceptability of any Offer received is to be determined by the Trustee, in consultation with the Company;
 - (f) if no satisfactory Offers are received by the Bid Deadline, then the Trustee, in consultation with the Company, will consider whether to continue the Bid Process, and the Trustee will advise the Court accordingly;
 - (g) the Trustee, with the assistance of the Company, shall have discretion to consult and negotiate with any Offeror with respect to their Offer;
 - (h) once all Offers are clarified, the Trustee will provide its recommendation to the Company’s board of directors with respect to selecting an Offer to consummate a transaction (the “**Recommended Offer**”), and the Trustee shall promptly notify all of the Offerors;
 - (i) once the terms and conditions of the Recommended Offer have been finalized, and the Company’s board of directors has approved of the Recommended Offer, the Recommended Offer shall be submitted to this Court for approval, with closing to occur as soon as practical thereafter;
 - (j) the Bid Process contemplates that the Trustee is not required to accept the highest, best or any Offer; and
 - (k) the Trustee, in consultation with the Company, shall have the right to make minor amendments to the Bid Process, including extending the timelines set forth in the Bid Process and described herein without further approval of the Court, provided the aggregate extension of the Bid Process shall not exceed 10 days without Court approval.
33. The Trustee notes that while the proposed time-frame is condensed, the Trustee is of the view that the deadlines proposed in the Bid Process are reasonable given the previous efforts to market the

Company, the Company's current liquidity constraints, and the breadth of information on the Company and its operations already contained within the public domain. The Trustee will report back to this Court if facts or circumstances require the Company or the Trustee to re-evaluate the time periods or the Bid Process based on facts or circumstances at that time.

VII. THE COMPANY'S CASH FLOWS FOR THE PERIOD ENDING JULY 16, 2016

34. SHOP.CA, with the assistance of the Trustee, has prepared a cash flow forecast of its receipts and disbursements for the period from May 29, 2016 to July 16, 2016. The Cash Flow Forecast is attached hereto as **Appendix "D"**. The Trustee has reviewed the assumptions supporting the Cash Flow Forecast and believes the assumptions to be reasonable.

35. The Cash Flow Forecast assumes that the Company's merchant partners continue to support and work with the Company after the Filing Date, and that customers continue to place orders and transact based on (or near) historical patterns.

36. As shown in the Cash Flow Forecast, and based on the assumptions detailed in the notes thereto, the Company projects it will have sufficient liquidity to fund its operations through to July 16, 2016.

VIII. PROPOSED ADMINISTRATION CHARGE

37. The Company proposes a first ranking charge in favour of its legal counsel, the Trustee and the Trustee's legal counsel to assist in these NOI proceedings (the **"Insolvency Professionals"**) in an amount not to exceed \$200,000, charging all of the assets of the Company as security for the professional fees and disbursements incurred both before and after the Filing Date (the **"Administration Charge"**).

38. SHOP.CA was only able to provide the Insolvency Professionals with minimal retainer fees for their services as the Company needs its available cash to fund its operations during these NOI proceedings. Depending upon the timing of cash receipts and disbursements, cash may not be available to pay ongoing professional fees on a timely basis and hence the reason the Administrative Charge is being sought.

39. The quantum of the Administration Charge sought by the Company was determined in consultation with the Trustee. The creation of the Administration Charge is commonplace in similar proceedings as is the proposed priority of the Administration Charge.

IX. PROPOSED KEY EMPLOYEE RETENTION AGREEMENTS

40. The Company believes that additional incentives are required to ensure that certain employees determined to be critical to the Company's operations and the proposed Bid Process are willing to continue their employment with SHOP.CA in its current circumstances through the Bid Process.

41. To ensure the retention of key executives during these NOI proceedings, namely the Company's current Chief Executive Officer, its Chief Financial Officer, and its Chief Technology Officer (the "**Executives**"), the Company, in consultation with the Trustee, has formulated and is seeking this Court's approval of the key employee retention agreements (the "**KERAs**").

42. The Trustee understands that the Executives have intimate knowledge of the Company's processes and operations, its intellectual property and technology, and were intimately involved in the Company's previous solicitation efforts. Additionally, the Executives would be essential to facilitating due diligence efforts with Interested Parties and their continued employment would be critical to the success of the Bid Process.

43. On May 6, 2016, SHOP.CA's board of directors reviewed and approved the proposed KERAs and the terms and conditions thereof.

44. The key aspects of the proposed KERAs are summarized below:

(a) the Incentive Payment (as defined in the KERAs) payable under each KERA represents between 3 and 6 months of salary, in the aggregate amount of approximately \$210,000 for the Executives;

(b) on the KERAs for the Chief Financial Officer and the Chief Technology Officer, the Incentive Payment will be payable upon the earliest of (the "**Payment Date**"): (i) a Change of Control (as defined in the KERAs) or a liquidation of all or substantially all of the assets of SHOP.CA; and (ii) the completion of the implementation of a proposal under the BIA, as approved and sanctioned by the Court;

- (c) on the KERA for the Chief Executive Officer, the Payment Date becomes the Bid Deadline, upon completion of review and evaluation of the Offers. As consideration for the Payment Date to be fixed, the Chief Executive Officer has agreed to reduce the quantum of the Incentive Payment, remain as a director throughout the NOI proceedings, and forego any payment on account of services rendered for acting as an officer or director of the Company after the Bid Deadline; and
 - (d) at any time on or prior to the Payment Date, the Executive must not have resigned, been terminated with cause, or at any time prior to the Payment Date failed to perform his duties and responsibilities diligently, faithfully, and honestly.
45. The KERAs also contemplated a success payment if a transaction could be completed outside of an insolvency proceeding. Upon the filing of the NOI, the success payments contemplated by the KERAs are no longer applicable.
46. To secure payment under the proposed KERAs, the Company is seeking this Court's approval for the authority to pay the Incentive Payments (plus applicable employer withholding and remittances) to the Company's Counsel to be held, in trust, for the Executives. The Incentive Payments shall be paid to the Executives upon satisfaction of the terms outlined in the KERAs as determined by the Trustee. If the conditions in the KERAs are not satisfied 10 days subsequent to the Extension, Company's Counsel will remit the funds held in trust to the Trustee for the benefit of SHOP.CA's general creditors.
47. Based on the foregoing, the Trustee is of the view that the proposed KERAs appear to be appropriate and reasonable in order to preserve the Company's operations and maintain going concern value during the Bid Process and, accordingly, the Trustee supports the Company's request for approval of the KERAs and the proposed payment arrangements.

X. COMPANY'S REQUEST FOR AN EXTENSION

48. The Company is seeking an extension of the time to file a proposal to July 15, 2016 to permit the Trustee time to undertake the Bid Process described above.
49. The Trustee supports the Company's request for the Extension for the following reasons:

- (a) the Company is acting in good faith and with due diligence in taking steps to facilitate a sale of its operations;
- (b) it is the Trustee's view that an extension will not prejudice or adversely affect any group of creditors;
- (c) the Cash Flow Forecast indicates that SHOP.CA should have sufficient liquidity to continue to fund operations through the period ending July 16, 2016;
- (d) at least 30 days will be required to establish whether there is any serious interest in acquiring the Company and/or its assets; and
- (e) given its limited resources, this would permit the Company to avoid the costs incurred in re-attending before this Court prior to July 7, 2016 solely for the purpose of seeking a short extension of the stay until after the Offers have been reviewed.

50. While it is too early to say whether a viable proposal will be presented by the Company to its creditors, in the Trustee's view, the Company's request for the Extension is appropriate in the circumstances, as the current extension request more properly reflects the timeframe by which the Trustee will be able to provide this Court with a meaningful update on the progress of the Bid Process.

51. The Trustee will continue to monitor the developments of any potential sale transaction(s) in respect of the Bid Process and will advise the Court accordingly in accordance with its mandate.

XI. CONCLUSION AND RECOMMENDATION

52. The Trustee is of the view that the Bid Process is reasonable in the circumstances, balances the search for a prospective purchaser with the Company's liquidity constraints and the costs associated with administering a sale process of this nature, and should provide Interested Parties with sufficient time to evaluate the Company and to make an offer in respect of the business and/or its assets.

53. Accordingly, the Trustee is of the view that the relief requested by the Company, including the Extension, is necessary, commercially reasonable and justified. The Trustee is also of the view

that granting the relief requested will provide the Company with the best opportunity to undertake a going concern sale or other restructuring thereby preserving value for the benefit of the SHOP.CA's stakeholders.

All of which is respectfully submitted this 8th day of June, 2016.

**Richter Advisory Group Inc.
in its capacity as Proposal Trustee of
SHOP.CA Network Inc.**

Per:



Paul van Eyk, CA·CIRP, CA·IFA
Senior Vice President



Pritesh Patel, MBA, CFA, CIRP
Vice President

APPENDIX C

SHOP.CA NETWORK INC.

as Vendor

and

TRANSFORMATIONAL CAPITAL CORP.

as Purchaser

ASSET PURCHASE AGREEMENT

July 8, 2016

STIKEMAN ELLIOTT LLP

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ASSET PURCHASE AGREEMENT dated June 30, 2016 between SHOP.CA NETWORK INC. (the "Vendor") and TRANSFORMATIONAL CAPITAL CORP. (the "Purchaser").

WHEREAS ON June 7, 2016, the Vendor filed a notice of intention to make a proposal (the "NOI") under the *Bankruptcy and Insolvency Act* (the "BIA"); and

WHEREAS the Vendor wishes to sell certain assets and to assign certain liabilities and the Purchaser has agreed to purchase such assets and assume such liabilities upon the terms and conditions contained in this Agreement.

In consideration of the above and for other good and valuable consideration, the parties agree as follows.

ARTICLE 1 INTERPRETATION

- 1.1 **Definitions.** As used in this Agreement, the following terms have the following meanings:
- (a) **"Agreement"** means this asset purchase agreement, including all schedules annexed hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof;
 - (b) **"Approval and Vesting Order"** means an approval and vesting order of the Court in a form and substance satisfactory to the Vendor and the Purchaser, each acting reasonably, approving this Agreement and vesting in the Purchased Assets, and to the Purchaser free and clear of and from any and all Encumbrances other than Permitted Encumbrances;
 - (c) **"Approval Date"** means July 15, 2016, the date on which the Vendor will seek approval of the Approval and Vesting Order and Assignment Orders;
 - (d) **"Business"** means the business operated by the Vendor, consisting of the operation of a multi-merchant, virtual inventory marketplace allowing customers to purchase from an assortment of merchants in one location;
 - (e) **"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Toronto, Ontario;
 - (f) **"Closing Date"** means (i) the date that is three Business Days following the day on which the last of the conditions of Closing set out in Article 8 (other than those conditions that by their nature can only be satisfied as of the Closing Date) have been satisfied or waived by the appropriate party, or (ii) such earlier or later date as the parties may agree in writing;
 - (g) **"Court"** means the Ontario Superior Court of Justice (Commercial List);

- (h) **"Cure Payments"** means the outstanding payment obligations of the Vendor under the Assumed Contracts, if any;
- (i) **"Employee Plans"** means all the employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers or employees of the Vendor maintained, sponsored or funded by the Vendor, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered;
- (j) **"Encumbrances"** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, right of first refusal or first offer, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature which, in substance, secures payment or performance of an obligation, and any contract, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing;
- (k) **"Governmental Entity"** means (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international, multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above;
- (l) **"Intellectual Property"** means domestic and foreign intellectual property rights including: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) copyrights, copyright registrations and applications for copyright registration; (iii) mask works, mask work registrations and applications for mask work registrations; (iv) designs, design registrations, design registration applications and integrated circuit topographies and (v) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing.
- (m) **"Laws"** means any principle of common law and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws; (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity; and (iii) to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity;
- (n) **"Ordinary Course"** means, with respect to the Vendor, an action consistent with the past practices of the Vendor prior to the filing of the NOI and taken in the ordinary course of the normal day-to-day business and operations of the Vendor, provided that such action is in compliance, in all material respects, with applicable Laws;

- (o) **"Outside Date"** means July 31, 2016;
- (p) **"Permitted Encumbrances"** means only those Encumbrances that are agreed to by the Purchaser in writing;
- (q) **"Person"** includes an individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;
- (r) **"Proposal Trustee"** means Richter Advisory Group Inc. in its capacity as the proposal trustee of the Vendor pursuant to the BIA;
- (s) **"Real Property Lease"** means the lease entered into by the Vendor in respect of the Business;
- (t) **"Tax" or "Taxes"** means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers' compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party; and
- (u) **"Time of Closing"** means 8:00 a.m. (Toronto time) on the Closing Date.
- (v) **"Transferred Employees"** means those employees who accept the Purchaser's offer of employment pursuant to Section 5.1(a).
- (w) **"Vendor's Solicitors"** means Stikeman Elliott LLP, counsel to the Vendor.

1.2 Other Defined Terms. In addition to the defined terms in Section 1.1, each of the following capitalized terms shall have the meaning ascribed thereto in the corresponding Section:

TERM	REFERENCE
Assignment Orders.....	Section 2.5(c)
Assumed Contracts	Section 2.1(c)
Assumed Liabilities	Section 2.3
Additional Contracts	Section 2.1(d)
BIA	Recitals
Closing.....	Article 9
CRA.....	Section 2.2(c)
ETA	Section 4.1
NOI	Recitals
Notice.....	Section 13.1
Purchased Assets	Section 2.1
Purchase Price	Section 3.1
Purchaser	Appearances
Transfer Taxes	Section 4.2
Vendor.....	Appearances

1.3 Number and Gender. In this Agreement, unless the context otherwise requires, words importing the singular shall include the plural and vice versa, words importing the use of either gender shall include both genders and neuter.

1.4 Date for Any Action. If the date on which any action is required to be taken hereunder by a party is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

1.5 Currency. Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada and "\$" refers to Canadian dollars.

1.6 Sections and Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified Article, Section or Schedule of or to this Agreement.

1.7 Certain Phrases, etc. In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". In the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

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

ARTICLE 2 PURCHASE AND SALE

- 2.1 **Purchased Assets.** Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor on the Closing Date, effective as of the Time of Closing, the following undertakings, property and assets of the Vendor that relate to or are used in connection with the operation of the Business (collectively, the "**Purchased Assets**") free and clear of all Encumbrances (other than Permitted Encumbrances):
- (a) all right, title and interest of the Vendor in and to the Intellectual Property owned by or licensed to the Vendor and used in the Business, including the name "SHOP.CA" and the goodwill associated with any of the foregoing;
 - (b) all movable property and all equipment, fixtures and computer hardware located in or used in connection with the Business;
 - (c) the benefit of the contracts, agreements and understandings that relate to the Business and that are listed in Schedule 2.1(c) (the "**Assumed Contracts**");
 - (d) the option, exercisable at the sole discretion of the Purchaser, to assume the benefit of any other contracts, agreements and understandings that relate to the Business (the "**Additional Contracts**"). A list of such Additional Contracts, if any, shall be provided by the Purchaser to the Vendor no less than five days prior to the Closing Date;
 - (e) all accounts receivable, notes receivable and other debts due or accruing due to the Vendor in connection with the Business;
 - (f) all prepaid expenses in connection with the Assumed Contracts and Additional Contracts;
 - (g) subject to Section 2.2(e), all information in any form relating to, or used in connection with, the Business, including but not limited to, social media accounts including passwords and usernames, google analytics, all databases used in connection with the Business, domains, technology platforms, books of account, financial and accounting information and records, personnel records, sales and purchase records, customer and supplier lists, business reports, operating guides and manuals, plans and projections, marketing and advertising materials and all other documents, files, correspondence and other information (whether in written, printed, electronic or computer printout form, or stored on computer discs or other data and software storage and media devices);
 - (h) all orders, authorizations, approvals, licenses or permits of a Governmental Entity, owned, held or used by the Vendor in connection with the Business to the extent that they are transferable; and

- (i) the goodwill of the Business, including the exclusive right of the Purchaser to (i) represent itself as carrying on the Business in continuation of and in succession to the Vendor, and (ii) use any words indicating that the Business is carried on, together with the rights, if any, to telephone and facsimile numbers used in connection with the Business.

2.2 Excluded Assets. The Purchased Assets shall not include the following undertakings, property and assets of the Vendor:

- (a) all cash on hand, cash equivalents and bank deposits;
- (b) the leasehold interests of the Vendor in and to the Real Property Lease;
- (c) any and all amounts that may be due to the Vendor from Canada Revenue Agency ("CRA") or any provincial tax authorities;
- (d) all contracts, agreements and understandings to which the Vendor is a party other than the Assumed Contracts and the Additional Contracts, if any; and
- (e) the corporate records, minute books, tax records and returns, and other records having to do with the corporate organization of the Vendor; all personnel records that the Vendor is required by applicable Law to retain in its possession; and all other files, data, information and materials of the Vendor not specifically related to or used in connection with the Business.

2.3 Assumed Liabilities. Subject to the terms and conditions of this Agreement, the Purchaser agrees that it will, as and from the Closing Date, effective as of the Time of Closing, assume, discharge, perform, pay and fulfill all of the obligations and liabilities relating to the Purchased Assets (collectively, the "Assumed Liabilities"), including:

- (a) all obligations and liabilities under the Assumed Contracts and the Additional Contracts, if any, subject to Section 2.5(d);
- (b) all liabilities and obligations in respect of the Transferred Employees pursuant to Article 5; and
- (c) any Transfer Taxes payable by the Purchaser pursuant to Section 4.2 in respect of the Purchased Assets.

2.4 Excluded Liabilities.

Other than the Assumed Liabilities and except as provided in this Agreement, the Purchaser shall not assume and shall have no obligation to discharge any liability or obligation of the Vendor or in connection with the Purchased Assets, whether known or unknown, direct, indirect, absolute, contingent, or otherwise arising out of facts, circumstances or events, in existence on or prior to the Time of Closing. Without limiting the generality of the foregoing, the Purchaser shall not assume and shall have no obligation in

respect of (i) any of the Excluded Assets; (ii) liabilities of the Vendor for Taxes other than Transfer Taxes payable by the Purchaser pursuant to Section 4.2; (iii) liabilities of the Vendor in respect of the Real Property Lease; and (vi) liabilities of the Vendor in respect of the termination of the Vendor's employees and any Employee Plans.

2.5 Contracts.

- (a) Nothing in this Agreement shall be construed as an attempt to assign any Assumed Contract or Additional Contract which is not assignable in whole or in part without the consent or approval of the other party or parties thereto, unless such consent or approval has been given or the Court has issued the Assignment Order.
- (b) The Vendor and the Purchaser shall use reasonable commercial efforts to obtain the consents pertaining to the assignment of the Assumed Contracts prior to the Approval Date. For greater certainty, the Vendor is under no obligation to pay any money, incur any obligations, commence any legal proceedings (other than as set forth below with respect to the Assignment Order), or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain any consents. Without limiting the generality of the foregoing, the Purchaser will cooperate in obtaining the consents, approvals and waivers including providing information of the Purchaser as is reasonably requested by a third party in order to grant its consent.
- (c) In the event that the consents relating to any Assumed Contracts are not obtained by the Approval Date, the Vendor shall use commercially reasonable efforts to obtain an order (the "Assignment Order") of the Court satisfactory to the Vendor and the Purchaser assigning such Assumed Contracts to the Purchaser. For greater certainty, the Vendor shall be under no obligation to obtain an Assignment Order with respect to any Additional Contract.
- (d) Subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Payments related to the Assumed Contracts on Closing.

2.6 Wrong Pocket.

- (a) Any amounts that the Purchaser receives after Closing under Assumed Contracts or Additional Contracts that relate to the time period up to and including the Closing Date and any amounts that the Purchaser receives under any Excluded Contracts shall be paid to the Vendor by the Purchaser promptly following receipt and no later than seven (7) days following receipt.
- (b) Any amounts that the Vendor receives after Closing that are received under Assumed Contracts or Additional Contracts that relate to the time period after the Closing Date shall be paid to the Purchaser by the Vendor promptly following receipt and no later than seven (7) days following receipt. For greater certainty, to

the extent that the Purchaser becomes responsible for any payments to merchants in relation to products shipped after the Closing Date but for which the Vendor has received funds prior to the Closing Date, such amounts shall be deemed to relate to the time period after the Closing Date and shall be paid to the Purchaser by the Vendor pursuant to this Section 2.6(b).

ARTICLE 3 PURCHASE PRICE

3.1 Deposit.

- (a) The Vendor acknowledges receipt from the Purchaser of a deposit in the amount of [REDACTED] paid to the Vendor's Solicitors in trust.
- (b) The deposit will be applied on Closing in satisfaction of an equivalent amount of the Purchase Price. If the Closing does not occur for any reason other than a breach by the Purchaser of its representations, warranties or covenants under this Agreement, the full amount of the deposit together with all accrued interest received by the Vendor's Solicitors, if any, shall be immediately returned to the Purchaser.
- (c) If the Closing does not occur because the Purchaser breached any of its representations, warranties or covenants under this Agreement, the Deposit shall become the property of, and may be retained by, the Vendor as liquidated damages (and not as a penalty) to compensate it for the expenses incurred and opportunities foregone as a result of the failure of the transaction to close. In such event, the Vendor may exercise any other rights or remedies that it may have against the Purchaser in respect of any default by the Purchaser.

3.2 Purchase Price. The aggregate consideration (the "Purchase Price") payable by the Purchaser to the Vendor in respect of the Purchased Assets is:

- (a) [REDACTED] (less the amount of any Cure Payments); plus
- (b) the assumption by the Purchaser of the Assumed Liabilities, exclusive of all applicable Transfer Taxes.

3.3 Payment of Purchase Price. The Purchase Price shall be satisfied by the Purchaser on the Closing Date:

- (a) as to the amount of the deposit under Section 3.1(a), by application of such amounts;
- (b) as to the dollar value of the Assumed Liabilities, by the Purchaser assuming such Assumed Liabilities; and
- (c) as to the balance, by the Purchaser paying to or to the order of the Vendor such amount by wire transfer of immediately available funds.

3.4 Allocation of Purchase Price. The Vendor and the Purchaser shall report the sale and purchase of the Purchased Assets for all federal, provincial and local Tax

purposes in a manner consistent with an allocation of the Purchase Price among the Purchased Assets to be determined at the discretion of the Purchaser, acting reasonably.

ARTICLE 4 TAX MATTERS

- 4.1 ETA Election.** Provided that such election is available under applicable Law, the Purchaser and the Vendor shall, on each of the Closing Date, elect jointly under subsection 167(1) of the *Excise Tax Act* (Canada) (the "ETA") and under any similar provision of any applicable provincial legislation, in the form prescribed for the purposes of each such provision, in respect of the sale and transfer of the Purchased Assets and the Purchaser shall file such elections with CRA and any other applicable provincial tax authorities within the time and in the manner required by the applicable Law.
- 4.2 Transfer Taxes.** Subject to any available exemptions as contemplated by Sections 4.1, the Purchaser shall be liable for and shall pay all federal and provincial sales taxes (including any Goods and Services Tax and retail sales taxes) and all other similar taxes and duties, fees or other like charges of any jurisdiction ("Transfer Taxes") properly payable in connection with the transfer of the Purchased Assets by the Vendor to the Purchaser.
- 4.3 Indemnity for Transfer Taxes.** The Purchaser shall indemnify and hold the Vendor (and its shareholders, directors, officers and employees) harmless from and against any taxes payable under the ETA or any applicable provincial legislation and in any case any penalty or interest in respect thereof which may be payable by or assessed against the Vendor as a result of or in connection with the Vendor's failure to collect the applicable taxes payable under the ETA or applicable provincial legislation on the sale of the Purchased Assets, including any Transfer Taxes and any taxes arising as a result of any failure or refusal by the responsible tax authority to accept any election or on the basis that such election was inapplicable, invalid or not properly made.

ARTICLE 5 EMPLOYEE MATTERS

- 5.1 Offers to Certain Employees.**
- (a) The Purchaser shall offer new employment agreements effective as of the Closing Date to the employees listed on Schedule 5.1(a), at least three days prior to the Closing Date, on terms and conditions which are substantially similar to the terms under which such employees are currently employed by the Vendor. The Vendor shall co-operate with the Purchaser in the orderly transfer of the employees on Closing. For greater certainty, the Vendor shall, upon request, assist in the Purchaser's efforts to make such offers as contemplated by this Section 5.1(a), provided that for greater certainty, the acceptance of employment by any employee is not a condition of closing hereunder.

- (b) The Vendor shall not attempt in any way to discourage any employees from accepting the offer of employment made by the Purchaser.

5.2 Employee Plan.

- (a) The Purchaser shall not assume any of the Employee Plans or liability for accrued benefits or any other liability under or in respect of any of the Employee Plans. The Transferred Employees shall, as of the Closing Date, cease to accrue further benefits under the Employee Plans. The Purchaser agrees that it shall permit such Employees to participate in benefit plans, substantially similar to such benefit plans currently offered to the Transferred Employees by the Vendor, if any, sponsored by the Purchaser (such plans to be called the “**Replacement Plans**”). The Purchaser shall cause each Replacement Plan to recognize the prior service of each Transferred Employee rendered to the Vendor for purposes of eligibility to participate, vesting and entitlement to benefits under such Replacement Plans but not for the purpose of benefit accrual. The Purchaser shall waive all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the employees under any Replacement Plans except and only to the extent that any Transferred Employees were subject to such pre-existing conditions, exclusions and waiting periods under the Employee Plans and shall provide each Transferred Employee with credit for any co-payments and deductibles paid prior to the Closing Date (in the calendar year of such start date) in satisfying any applicable deductible or out of pocket requirements under any Replacement Plans.

5.3 Employee Liability.

- (a) Without limiting the Purchaser’s obligations in respect of the Transferred Employees who accept the Purchaser’s offer of employment, the Purchaser shall be responsible for:
 - (i) All liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of all employees who accept the Purchaser’s offer of employment, for the period prior to, on and after the Closing Date;
 - (ii) All severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Purchaser of the employment of any Transferred Employee;
 - (iii) All liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the employees in the Business arising on or subsequent to the Closing Date;
 - (iv) All employment-related claims, penalties and assessments in respect of the Business arising out of matters which occur on or subsequent to the Closing Date.

- (b) For purposes of Section 5.3(a)(iii), the date on which a benefit claim, if any, is incurred will be:
 - (i) in the case of a death claim, the date of death;
 - (ii) in the case of a short term disability claim, long term disability claim or a life insurance premium waiver claim, the date of the first incidence of disability, illness, injury or disease that first qualifies an individual for benefits or to commence a qualifying period for benefits;
 - (iii) in the case of extended health care benefits, including, without limitation, dental and medical treatments, the date of treatment or the date of purchase of eligible medical or dental supplies; and
 - (iv) in the case of a claim for drug or vision benefits, the date the prescription was filled.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

- 6.1 Vendor's Representations and Warranties.** The Vendor represents and warrants as follows to the Purchaser at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the purchase of the Purchased Assets and the assumption of the Assumed Liabilities:
- (a) **Incorporation and Qualification.** The Vendor is a corporation incorporated and existing under the laws of Canada and has the corporate power to enter into and perform its obligations under this Agreement;
 - (b) **Authorization.** The execution and delivery of and performance by the Vendor of this Agreement and the consummation of the transactions contemplated by it have been authorized by all necessary corporate action on the part of the Vendor;
 - (c) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding agreement of the Vendor, enforceable against it in accordance with its terms subject only to (A) as of the date hereof, any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction and (B) as of the Closing Date, the issuance of the Approval and Vesting Order;
 - (d) **No Options, etc.** Except for the Purchaser's right under this Agreement, no person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase from the Vendor of any of the Purchased Assets;

- (e) **Residence.** The Vendor is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); and
 - (f) **Registration.** The Vendor is a registrant within the meaning of Part IX of the ETA and its registration number is 84774 8464 RT0001.
- 6.2 **Purchaser's Representations and Warranties.** The Purchaser represents and warrants as follows to the Vendor at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Vendor is relying on such representations and warranties in connection with the sale by the Vendor of the Purchased Assets:
- (a) **Incorporation and Qualification.** The Purchaser is a corporation incorporated and existing under the laws of British Columbia and has the corporate power to enter into and perform its obligations under this Agreement;
 - (b) **Corporate Authority.** The execution and delivery of and performance by the Purchaser of this Agreement and the consummation of the transactions contemplated by it have been authorized by all necessary corporate action on the part of the Purchaser;
 - (c) **No Violation or Breach.** The execution and delivery of and performance by the Purchaser of this Agreement:
 - (i) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or a conflict with, or allow any Person to exercise any rights under, any of the terms or provisions of its constating documents or by-laws;
 - (ii) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or a conflict with, or allow any other Person to exercise any rights under, any agreements, contracts or instruments to which the Purchaser is a party; and
 - (iii) do not and will not result in the violation of any applicable Law;
 - (d) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser enforceable against it in accordance with its terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and

- (e) **Registration.** The Purchaser is a registrant within the meaning of Part IX of the ETA and its registration number is _____.

ARTICLE 7 COVENANTS

- 7.1 **Actions to Satisfy Closing Conditions.** The Vendor and the Purchaser agree to take all such actions as are within their control and shall use their commercially reasonable efforts to take, or cause to be taken, all other actions and make all such other filings and submissions, and obtain such authorizations, which are necessary or advisable in order to fulfil their obligations under this Agreement, it being understood that all matters dealing with consents to the Assumed Contracts are dealt with in Section 2.5.
- 7.2 **Access.** Subject to applicable Laws, as of the date hereof and until the Closing Date, the Vendor shall (i) upon reasonable notice, permit the Purchaser and its employees, agents, counsel, accountants or other representatives, to have reasonable access during normal business hours to (A) the Purchased Assets, including all books and records whether retained by the Vendor or otherwise, (B) all contracts and leases to which the Vendor is a party, and (C) the senior personnel of the Vendor, in all cases so long as the access does not unduly interfere with the ordinary conduct of the Business and so long as a representative of the Proposal Trustee or the Vendor is present; and (ii) furnish to the Purchaser or its employees, agents, counsel, accountants or other such representatives such financial and operating data and other information with respect to the Purchased Assets as the Purchaser from time to time reasonably requests.
- 7.3 **Access to Books and Records.** For a period of 6 years from the Closing Date or for such longer period as may be required by Law, the Purchaser will retain all original books and records relating to the Purchased Assets that are transferred to the Purchaser under this Agreement. So long as any such books and records are retained by the Purchaser pursuant to this Agreement, the Vendor, the Proposal Trustee, any receiver or bankruptcy trustee appointed in respect of Vendor and their respective representatives shall have the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. The Purchaser has the right to have its representatives present during any such inspection.

ARTICLE 8 CONDITIONS OF CLOSING

- 8.1 **Conditions for the Benefit of both Parties.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date:

- (a) **No Court Orders.** No provision of any applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect;
- (b) **Approval and Vesting Order.** The Approval and Vesting Order shall have been issued and entered and not be the object of any appeal or motion seeking permission to appeal and the operation and effect of such order shall not have been stayed, amended, modified, reversed or dismissed at the Closing Date; and
- (c) **Consents.** The counterparties to the Assumed Contracts, if any, shall have consented to their assignment to the Purchaser in accordance with the terms thereof or Assignment Orders in respect thereof shall have been obtained. For greater certainty, no consent to the assignment of any Additional Contract shall be a condition hereunder.

8.2 Conditions for the Benefit of the Purchaser.

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

- (a) **Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date;
- (b) **Covenants.** The Vendor shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date; and
- (c) **Employees.** On or before the Closing Date, the Vendor shall terminate all employees other than the Transferred Employees who have accepted employment with the Purchaser. The Purchaser shall not assume any liabilities in respect of employees who are not Transferred Employees, all such liabilities remaining with the Vendor.

8.3 Conditions for the Benefit of the Vendor.

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

- (a) **Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date; and

- (b) **Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date.

**ARTICLE 9
CLOSING**

- 9.1 **General.** The completion of the transactions of purchase, sale and assumption contemplated by this Agreement (the “Closing”) shall take place on the Closing Date, at the Time of Closing at such place as agreed upon in writing by the parties.

**ARTICLE 10
AS IS, WHERE IS**

- 10.1 **No other representation and warranty.** The representations and warranties given by the Vendor in Article 6 are the sole and exclusive representations and warranties of the Vendor in connection with this Agreement and the transactions contemplated by it. Except for the representations and warranties given by the Vendor in Article 6, the Purchaser did not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied (by operation of law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith.
- 10.2 **“AS IS, WHERE IS”.** Except for the representations and warranties given by the Vendor in Article 6, the Purchaser takes the Purchased Assets in an “as is” condition and a “where is” basis. The Purchaser has relied solely upon its own independent review, investigation and/or inspection of any documents and/or assets and liabilities to be assumed in connection with the purchase of the Purchased Assets and the assumption of the Assumed Liabilities and is a sophisticated party capable of making its own assessments in respect to the subject matter forming part of this Agreement.

**ARTICLE 11
RISK OF LOSS**

- 11.1 **General.** If, prior to the Closing all or any material part of the Purchased Assets are destroyed or damaged by fire or any other casualty or are appropriated, expropriated or seized by any Governmental Entity, the Purchaser shall have the option, exercisable by notice in writing given within four Business Days of the Purchaser receiving notice in writing from the Vendor of such destruction, damage, expropriation or seizure:
- (a) to reduce the Purchase Price by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair, by an amount equal to the book value of the assets forming part of the Purchased Assets so damaged or destroyed and to complete the purchase, provided that all proceeds of insurance are paid to the Vendor immediately upon receipt;

- (b) to complete the transaction contemplated in this Agreement without reduction of the Purchase Price, in which event all proceeds of any insurance or compensation for expropriation or seizure will be payable to the Purchaser and all right and claim of the Vendor to any such amounts not paid by the Closing Date will be assigned to the Purchaser; or
- (c) to terminate this Agreement and not complete the transactions contemplated by this Agreement, in which case all obligations of the parties will terminate immediately upon the Purchaser giving notice as required herein.

ARTICLE 12 TERMINATION

12.1 Termination of Agreement. This Agreement may, by notice in writing given prior to or on the Closing Date be terminated:

- (a) by mutual consent of the Vendor and the Purchaser;
- (b) by the Purchaser if:
 - (i) the Vendor is petitioned into bankruptcy under the BIA;
 - (ii) the Approval and Vesting Order shall fail, once granted, to be in full force and effect or shall have been amended, modified, reversed or dismissed without the prior written consent of the Purchaser;
 - (iii) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Vendor set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Sections 8.1 and 8.2 not to be satisfied, and such conditions are incapable of being satisfied by the Outside Date, as reasonably determined by the Purchaser; or
 - (iv) an event has occurred as a result of which the conditions in Section 8.2 are not capable of being satisfied by the Outside Date, as reasonably determined by the Purchaser;
- (c) by the Vendor if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Purchaser set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Sections 8.1 and 8.3 not to be satisfied, and such conditions are incapable of being satisfied by the Outside Date, as reasonably determined by the Vendor; or
- (d) by either party if the Closing or has not occurred by the end of the day on the Outside Date, provided that a party may not terminate this Agreement under this Section 12.1(d) if the failure to perform any one or more of its obligations or covenants under this Agreement to be performed, or the breach of any of its representations and warranties under this Agreement, has been the cause of, or resulted in, the Closing not occurring by the Outside Date.

12.2 Effect of Termination. In the event that the Agreement is terminated in accordance with Section 12.1, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without liability to the Purchaser and the Vendor; provided however that in no event shall any termination of this Agreement relieve any party hereto of any liability for any willful or intentional breach of this Agreement by such party.

**ARTICLE 13
MISCELLANEOUS**

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

(i) to the Vendor at:

Attention:
Facsimile:

with a copy to

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

Attention: Martin Langlois
Facsimile: 416 947-0866

with a copy to the Proposal Trustee:

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

Attention: Pritesh Patel
Facsimile: 416 488-3765

(ii) to the Purchaser at:

Transformation Capital Corp.
1500 West Georgia Street, Suite 1300
Vancouver, BC V6G 2Z6
Attention: Kia Besharat

Email: kia.besharat@gmail.com

with a copy to:

Dumoulin Black LLP
595 Howe Street, Floor 10
Vancouver, BC V6C 2T5
Attention: Justin Kates
Email: jkates@dumoulinblack.com

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

- 13.2 Survival of Representations and Warranties.** The representations and warranties contained in this Agreement shall not survive the Closing.
- 13.3 Time of the Essence.** Time is of the essence in this Agreement.
- 13.4 Enurement.** This Agreement becomes effective when executed by the Vendor and the Purchaser. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors, legal representatives and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by either party without the prior written consent of the other party. Notwithstanding the foregoing, the Purchaser may assign or transfer all or any part of its rights and obligations under this Agreement to a wholly owned subsidiary of the Purchaser without written consent, provided that no such assignment or transfer shall relieve the Purchaser of its obligations under this Agreement.
- 13.5 Entire Agreement.** This Agreement and the other documents executed in connection herewith constitutes the entire agreement between the parties with respect to the transactions contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have

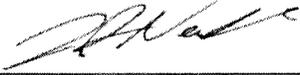
not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

- 13.6 **Waiver.** No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.
- 13.7 **Amendments.** This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser.
- 13.8 **Further Assurances.** From and after the Closing Date, each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Purchased Assets and the Assumed Liabilities to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.
- 13.9 **Severability.** If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.
- 13.10 **Governing Law.** This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 13.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

[signature page follows]

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

SHOP.CA NETWORK INC.

By: 

Name: Trevor Newell

Title: president

TRANSFORMATIONAL CAPITAL
CORP.

By: 

Name:

Title: Kiu Besharat

Director

Schedule 2.1(c)
ASSUMED CONTRACTS

Nil.

Schedule 5.1(a)
OFFERS OF EMPLOYMENT

[REDACTED]