

ASSET PURCHASE AGREEMENT (SAMPLE)

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ASSET PURCHASE AGREEMENT

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT made as of the _____ day of _____
19____

BETWEEN:

[name of purchaser corporation], a corporation
incorporated under the laws of the Province of
Saskatchewan,
(the "Purchaser")

OF THE FIRST PART

AND:

[name of vendor corporation], a corporation
incorporated under the laws of Saskatchewan,
(the "Vendor")

OF THE SECOND PART

AND:

[name of third party, if any], of the City of _____,
in the Province of Saskatchewan,
(the "Shareholder")

OF THE THIRD PART

WHEREAS:

1. The Vendor carries on the business of [description];
2. The Vendor wishes to sell, and the Purchaser wishes to purchase, the undertaking and all of the assets of such business upon the terms and subject to the conditions hereinafter contained;
3. The Shareholder controls the Vendor.

[A] THE PARTIES AGREE AS FOLLOWS:

OR

[B] NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained and the sum of One (\$1.00) Dollar of lawful money of Canada and other good and valuable consideration paid by each of the parties hereto to each of the other parties hereto (the receipt and sufficiency of which are hereby acknowledged), it is agreed among the parties hereto as follows:

OR

[e] NOW THEREFORE in consideration of the premises and the mutual agreements and covenants herein contained, the parties hereto hereby covenant and agree as follows:

ARTICLE 1

INTERPRETATION

1.1 DEFINED TERMS:

In this Agreement and in the schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions will have the following meanings:

[A] (a) "Affiliate" of any person means any corporation which, directly or indirectly, is controlled by, controls or is under direct or indirect common control with such person:

OR

[B] (a) "Affiliate" means affiliates as defined in The Business Corporations Act of Saskatchewan [or appropriate statute];

(b) "arm's length" will have the meaning ascribed to such term under the Income Tax Act, S.C. 1970-71-72, c. 63 (Canada);

(c) "Assumed Contracts" means all contracts, agreements, orders, commitments and other engagements by or with third parties relating to the Business which are included in the Purchased Assets including, without limitation, the Customer Contracts and the Leases;

(d) "Assumed Liabilities" means the liabilities of the Vendor which are to be assumed by the Purchaser pursuant to section 2.4 hereof;

[A] (e) "[Audited] Financial Statements" means the audited consolidated financial statements of the Vendor as at and for the fiscal year [date], consisting of a balance sheet, an income statement, a statement of changes in financial position and [name of any other statement, e.g., statement of retained earnings and deficit] together with the notes thereto and the opinion of the Vendor's auditors thereon, a copy of which is attached hereto as Schedule "A", all prepared in accordance with generally accepted accounting principles consistently applied;

OR

[B] (e) "[Audited] Financial Statements" means the audited consolidated financial statements of the Vendor as at and for the fiscal years ended on [date] in each of the years to, inclusive, including the balance sheets, income statements, statements of changes in financial position, and [name of any other statement, e.g., statement of retained earnings and deficit] together with the notes to such financial statements [and the opinion of the Vendor's auditors on such financial statements], copies of which are attached hereto as Schedule "A", all prepared in accordance with generally accepted accounting principles, consistently applied:

(f) "[Audited] Statements Date" means [date of [Audited] Financial Statements];

(g) "Business" means the business carried on by the Vendor which primarily involves [description];

[A] (h) "Business Day" means any day other than a day which is a Saturday, a Sunday or a statutory holiday in [city], [province];

OR

[B] (h) "Business Day" means any day on which the Main Branch of the [name] Bank in [city], [province] is open for business;

(i) "Closing Date" means [date], or such other date as the Vendor and Purchaser may agree upon;

(j) "Closing Time" means [time] in [city] on the Closing Date or such other time on the Closing Date as the parties hereto may agree upon;

(k) "Condition" of the Business means the condition of the assets, liabilities, operations, activities, earnings, prospects, affairs or financial position of the Business:

(l) "Control" means, with respect to any corporation, the ownership of more than fifty (50%) percent of the voting shares of that corporation, including any shares which are voting only upon the occurrence of a contingency where such contingency has occurred and is continuing;

(m) "Customer Contracts" means any and all agreements entered into between the Vendor and one or more third parties relating to the sale or provision of goods or services by the Vendor to such third parties in connection with the

Business, including unfilled orders, commitments and other engagements by or with such third parties, all of which are listed in Schedule "B" attached hereto;

- (n) "Encumbrances" means mortgages, charges, pledges, security interests, liens, encumbrances, actions, claims, demands and equities of any nature whatsoever or howsoever arising and any rights or privileges capable of becoming any of the foregoing;
- (o) "Excluded Assets" means those assets of the Business referred to in section 2.3 hereof;
- (p) "generally accepted accounting principles" means the accounting principles so described and promulgated by the Canadian Institute of Chartered Accountants which are applicable as at the date on which any calculation made hereunder is to be effective or as at the date of any financial statements referred to herein, as the case may be;
- (q) "Interim Financial Statements" means the unaudited consolidated financial statements of the Vendor as at and for the [number] month period ended [date] consisting of a balance sheet, an income statement and a statement of changes in financial position together with the notes thereto, a copy of which is attached hereto as Schedule "c";
- (r) "Interim Period" means the period from and including the date of this Agreement to and including the Closing Date;
- (s) "Leased Premises" means all premises leased by the Vendor under the Leases;
- (t) "Leases" means the leases and the agreements to lease under which the Vendor leases any real property, as listed in Schedule "0" attached hereto;
- (u) "Licence Rights" means all licence and distribution rights relating to the Business described in Schedule "E" attached hereto;
- (v) "person" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, government, governmental agency or board or commission or authority, and any other form of entity or organization;
- (w) "Purchase Price" means the sum of \$., which is the amount payable by the Purchaser to the Vendor for all of the Purchased Assets, as provided herein;

- (x) "Purchased Assets" means the undertaking and assets of the Business which are to be sold by the Vendor to the Purchaser pursuant to section 2.1 hereof;
- (y) "Real Properties" means the real properties owned by the Vendor, which are described in Schedule "F" attached hereto;
- (z) ["Statement of Purchased Assets and Assumed Liabilities" means the statement prepared pursuant to paragraph 2.6(c) hereof]; and
- (aa) "Warranty Claim" means a claim made by either the Purchaser or the Vendor based on or with respect to the inaccuracy or non-performance or non-fulfilment or breach of any representation or warranty made by the other party contained in this Agreement or contained in any document or certificate given in order to carry out the transactions contemplated hereby.

1.2 BEST OF KNOWLEDGE:

Any reference herein to "the best of the knowledge" of the Vendor and the Shareholder will mean the actual knowledge of the Vendor and the Shareholder and the knowledge which they would have had if they had conducted a diligent inquiry into the relevant subject matter.

1.3 SCHEDULES:

The schedules [listed in the Table of Contents to this Agreement and] which are attached to this Agreement are incorporated into this Agreement by reference and are deemed to be part hereof.

1.4 CURRENCY:

Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.

1.5 CHOICE OF LAW AND ATTORNMENT:

This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein.

- [A] The parties agree that the courts of the Province of Saskatchewan will have non-exclusive jurisdiction to determine all disputes and claims arising between the parties.

OR

[BJ The parties agree that the courts of the Province of Saskatchewan will have exclusive jurisdiction to determine all disputes and claims arising between the parties.

1.6 INTERPRETATION NOT AFFECTED BY HEADINGS OR PARTY DRAFTING:

The division of this Agreement into articles, sections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer to this Agreement and the schedules hereto and not to any particular article, section, paragraph, subparagraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto. Each party hereto acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

1.7 NUMBER AND GENDER:

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- (a) words in the singular number include the plural and such words shall be construed as if the plural had been used; .
- (b) words in the plural include the singular and such words shall be construed as if the singular had been used; and
- (c) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

1.8 TIME OF ESSENCE:

Time shall be of the essence hereof.