

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Contribution and Assumption Agreement		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Longyear Canada, ULC		04/12/2007	Unlimited Liability Company: ALBERTA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Boart Longyear Canada		
<b>Street Address:</b>	1111 Main Street West		
<b>City:</b>	North Bay		
<b>State/Country:</b>	CANADA		
<b>Postal Code:</b>	P1B 2W4		
<b>Entity Type:</b>	PARTNERSHIP: ONTARIO		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2413411	LASEROD	
Registration Number:	2268289	SECAN	
<b>CORRESPONDENCE DATA</b>			
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<b>DOMESTIC REPRESENTATIVE</b>			
<b>Name:</b>			

**CH \$65.00 2413411**

**900169031**

**TRADEMARK  
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Address Line 4:

NAME OF SUBMITTER:	David J. Ford
Signature:	/david j ford/
Date:	08/10/2010

Total Attachments: 26  
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**CONTRIBUTION AND ASSUMPTION AGREEMENT**

**by and between**

**LONGYEAR CANADA, ULC**

**- AND -**

**BOART LONGYEAR ALBERTA LIMITED**

**- AND -**

**BOART LONGYEAR CANADA**

**April 12, 2007**

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**THIS CONTRIBUTION AND ASSUMPTION AGREEMENT** made the 12 day of April, 2007.

**BETWEEN:**

**LONGYEAR CANADA, ULC**, an unlimited liability corporation incorporated under the laws of Alberta (“**Longyear**”)

- and -

**BOART LONGYEAR ALBERTA LIMITED**, a corporation incorporated under the laws of Alberta (“**CanSubCo**”)

- and -

**BOART LONGYEAR CANADA**, an Ontario partnership formed by Longyear and CanSubco (the “**Partnership**”)

**BACKGROUND:**

Longyear and CanSubCo formed the Partnership under the laws of the Province of Ontario on March 15, 2007, to carry on the Businesses described in the partnership agreement forming the Partnership. Longyear agreed to contribute by transfer and assignment to the Partnership, certain of Longyear’s assets, subject to the assumption by the Partnership of certain of Longyear’s liabilities.

**IN CONSIDERATION** of the background and the respective covenants contained in this Agreement (the sufficiency of which are hereby acknowledged), the Parties hereto agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise indicated, the following words or expressions shall have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise and “controlled” shall have a similar meaning.

“**Agreement**” means this agreement, including the Background and Schedules to this agreement, as the same may be amended, supplemented or restated from time to time.

**“Applicable Law”** in respect of any Person, property, transaction or event, means all present and future Canadian (federal, provincial and municipal) and foreign laws, statutes, regulations, treaties, judgments and decrees applicable to that Person, property, transaction or event and all applicable official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having or purporting to have authority over that Person, property, transaction or event.

**“Assumed Liabilities”** has the meaning ascribed thereto in Section 2.4.

**“Assumed Contingent Liabilities”** means collectively: (i) the *Occupational Health and Safety Act* (Ontario) charges against Longyear in respect of Kidd Creek Mine, Timmins, Ontario and Hoyle Pond Mine, Timmins, Ontario; and (ii) the labour and employment claims against Longyear, valued on the date hereof to be ██████████ in the aggregate.

**“Business”** means the business that Longyear has carried on as of and prior to the date hereof (which includes any business carried on by any predecessor corporation to Longyear) including the business of manufacturing, distributing and marketing of diamond drilling and percussion drilling products and the provision of drilling services to the mineral exploration, mining, geotechnical, environmental monitoring, water and energy industries, and construction industry.

**“Business Day”** means any day other than a Saturday, Sunday or a day which is a civic or statutory holiday in Toronto, Ontario.

**“Capital Contribution”** means the Fair Market Value of the Contributed Assets contributed to the Partnership by Longyear less the Fair Market Value of the Assumed Liabilities assumed by the Partnership from Longyear as described in Article 3.

**“Claim”** means any demand, action, suit, proceeding, claim, grievance, arbitration, assessment, reassessment, judgment or settlement or compromise relating thereto.

**“Closing”** means the completion of the transfer, assignment and delivery to, and the acceptance of such transfer, assignment and delivery by the Partnership of the Contributed Assets and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with the transfer and acquisition of the Contributed Assets.

**“Closing Date”** means the date hereof, or such other Business Day as the Parties agree in writing as the date the Closing shall take place.

**“Closing Time”** means \_\_\_\_\_ on the Closing Date.

**“Contributed Assets”** has the meaning ascribed thereto in Section 2.2.

**“Fair Market Value”** means the highest price available in an open and restricted market between informed and prudent parties, acting at arm’s length and under no compulsion to act, expressed in terms of money or money's worth.

**“Governmental Authority”** means any domestic or foreign government whether federal, provincial, state or municipal and any governmental or regulatory agency, authority, tribunal or commission of any kind whatsoever.

**“Generally Accepted Accounting Principles”** means generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which any calculation or determination is required to be made in accordance with generally accepted accounting principles, and where the Canadian Institute of Chartered Accountants includes a recommendation in its Handbook concerning the treatment of any accounting matter, such recommendation shall be regarded as the only generally accepted accounting principle applicable to the circumstances that it covers.

**“GST”** means all goods and service taxes, sales taxes levied by the federal government of Canada, value added taxes or multi-stage taxes and all provincial sales taxes integrated with such federal taxes, assessed, rated or charged upon the Partnership or payable by the Partnership in respect of the Closing.

**“ITA”** means the *Income Tax Act* (Canada).

**“Loss”** means any and all loss, liability, damage, cost or expense resulting from or arising out of any Claim, including the costs and expenses of any action, suit, proceeding, demand, assessment, reassessment, judgment, settlement or compromise relating thereto and all interest, punitive damages, fines and penalties and reasonable legal fees and expenses incurred in connection therewith, including loss of profits and consequential damages.

**“Partner”** means the holder of a Partnership Interest on the date hereof being Longyear and CanSubCo collectively.

**“Partnership”** means Boart Longyear Canada, an Ontario partnership and its permitted assigns.

**“Partnership Agreement”** means the partnership agreement dated March 15, 2007 between Longyear and CanSubCo governing the affairs of the Partnership, as amended from time to time.

**“Partnership Interest”** means the interests of a Partner in the Partnership which shall be determined as a fraction and expressed as a percentage. The numerator of such fraction is equal to the aggregate amount of all capital contributions made or acquired by such Partner and the denominator of which is equal to the aggregate amount of all capital contributions made or acquired by all of the Partners, less in each case any distributions or transfers of capital contributions (arising from the transfer of a Partnership Interest or portion thereof), made prior to any such calculation.

**“Party”** means each of Longyear, CanSubCo and the Partnership and **“Parties”** means all of such parties collectively.

**“Person”** means any individual, sole proprietorship, partnership, limited partnership, corporation or company, with or without share capital, limited liability company, unlimited company, trust, joint venture, syndicate, any governmental authority or any incorporated or unincorporated entity



or association of any nature and includes a natural Person in his or her capacity as trustee, executor, administrator or other legal representative.

**“Plans”** means all pension, retirement, profit sharing, bonus, deferred compensation, severance or termination pay, supplemental unemployment benefit, salary continuation, life or other insurance, health, welfare, dental, legal, disability, vacation, and each other employee benefit plan, program or arrangement, including any stock option, stock purchase or other stock compensation plan, program, or arrangement, sponsored or maintained by Longyear for the benefit of any of its employees or former employees.

**“QST Act”** means the *Sales Tax Act* (Quebec).

**“Taxes”** means all taxes and related governmental charges (including assessments, charges, duties, rates, fees, imposts, levies or other governmental charges and interest, penalties or additions associated therewith) including Canadian federal, provincial, municipal and local, foreign or other income, franchise, capital, real property, personal property, tangible, withholding, payroll, employer health, transfer, sales, use, consumption, excise, anti-dumping, countervail and value added taxes, all other taxes of any kind for which any of the Partners may have any liability imposed by Canada or any province, municipality, country or foreign government or subdivision or agency thereof, whether disputed or not and all Canada Pension Plan contributions and employment insurance premiums.

## **1.2 Headings and Table of Contents**

The division of this Agreement into articles and sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The article, section, subsection and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and are not to be considered part of this Agreement. All uses of the words **“hereto”**, **“herein”**, **“hereof”**, **“hereby”** and **“hereunder”** and similar expressions refer to this Agreement and not to any particular Section or portion of it.

## **1.3 References**

Unless otherwise specified, references in this Agreement to Articles, Sections and Schedules are to articles and sections of, and schedules to, this Agreement.

## **1.4 Number and Gender; extended meanings**

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term **“including”** shall be interpreted to mean **“including without limitation”** and shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it.

### **1.5 Governing Law**

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed by, and are to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario and the Parties hereby submit and attorn to the non-exclusive jurisdiction of the courts of such Province.

### **1.6 Conflict**

If there is a conflict between any provision of this Agreement and the Partnership Agreement or any other document contemplated by or delivered under or in connection with this Agreement, the relevant provision of this Agreement shall prevail.

### **1.7 Severability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision shall not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

### **1.8 Statutory References**

Unless otherwise provided herein, each reference to an enactment is deemed to be a reference to that enactment, and to the regulations made under that enactment, each as amended or re-enacted from time to time.

### **1.9 Currency**

All statements or references to dollar amounts in this Agreement are to lawful money of Canada.

### **1.10 No Third Party Beneficiaries**

Nothing in this Agreement is intended expressly or by implication to, or shall, confer upon any Person other than the Parties, their respective successors and permitted assigns any rights or remedies of any kind.

## **ARTICLE 2 CONTRIBUTION OF ASSETS**

### **2.1 Contribution of Contributed Assets**

- (a) As of and with effect from the Closing Time on the Closing Date, subject to and upon the terms and conditions of this Agreement and in reliance upon the representations and warranties contained in this Agreement, Longyear hereby

transfers, assigns and delivers to the Partnership and the Partnership hereby accepts the transfer, assignment and delivery from Longyear of, all of the Contributed Assets of Longyear, subject to the assumption by the Partnership of all of the Assumed Liabilities.

- (b) The transfer, assignment and delivery of the Contributed Assets to the Partnership by Longyear shall be accounted for as a Capital Contribution to the Partnership equal to the Fair Market Value of the Contributed Assets transferred, assigned and delivered by Longyear, less an amount equal to the Fair Market Value of the Assumed Liabilities.
- (c) At or before the Closing Time, Longyear will cause all necessary steps to be taken in order to permit the Contributed Assets to be duly transferred, assigned and delivered to the Partnership.
- (d) At the Closing Time, Longyear will deliver to the Partnership, as applicable, good and valid title to and exclusive possession of the Contributed Assets, subject to any existing encumbrances.

## 2.2 Contributed Assets

Subject to Section 2.5, the Contributed Assets (the “**Contributed Assets**”) shall be all of the rights, interest, properties and assets owned or used by Longyear, wherever located, including the following:

- (a) the goodwill on the Closing Date, including the following:
  - (i) the exclusive right of the Partnership to represent itself as carrying on the Business in continuation of and in succession to Longyear;
  - (ii) the full benefit of all unfilled orders received by Longyear; and
  - (iii) all contracts, engagements or commitments to which Longyear is entitled, including the full benefit of all forward commitments for supplies or materials whether or not there are any contracts with respect thereto;
- (b) the beneficial ownership of all of the real property (specifically excluding, however, the legal title thereof) (the “**Owned Premises**”);
- (c) the leasehold interests of Longyear in the lands (the “**Leased Premises**”) together with all leasehold improvements related thereto or forming part thereof (collectively, the “**Leases**”);
- (d) all plants, buildings, structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) forming part of the Owned Premises or the Leased Premises;

- (e) all fixed assets and tangible personal property owned or used by Longyear, including all machinery, surface drills, underground drills, percussive drills, rotary drills, surface tractors, underground tractors, trucks and other mobile equipment, equipment, fixtures, furniture and furnishings and all tools, drills, moulds, dies, motor vehicles, transportation, packing and delivery equipment and supplies;
- (f) all right, title and interest in the network and computer hardware and the telephone system;
- (g) all inventories of raw materials, work-in-progress, stock in trade, supplies, accessories, merchandise and raw, semi-finished and finished materials and products, packaging and advertising and publicity materials, whether on consignment or not;
- (h) any loan receivables and non-trade receivables owing to Longyear and the full benefit of all security, if any, for such receivables;
- (i) all accounts receivable, book debts or other debts due or accruing due to Longyear from customers on the Closing Date and the full benefit of all securities, if any, for such accounts or debts (collectively, the “**Accounts Receivable**”);
- (j) all intellectual property rights and technical information including any and all trade-marks, trade names, brand names, designs, graphics, logos and other commercial symbols, whether registered or not; all copyright, whether registered or not; industrial designs or similar rights, whether registered or not; integrated circuit topographies or similar, whether registered or not; patents, the inventions claimed therein and all applications therefor, including patents which may be issued out of such applications (including divisions, reissues, renewals, re-examinations, continuations, continuations in part and extensions), applied for or registered in any jurisdiction; licenses, sub-licenses and franchises; trade secrets, research data, designs, technical information, specifications and confidential information; computer system, computer programs, computer software and rights related thereto, including all related code, specifications, documentation, revisions, enhancements, and modifications thereto, in whatever form and media including source and object code, electronic data, processing systems, programs specifications, algorithms, and operating and training manuals; all websites, domain names and telephone and facsimile numbers, where applicable, all renewals, modifications and extensions of any of the above; and all right, title and interest in and to all know-how;
- (k) all right, title and interest to licences and distribution rights issued to Longyear by a third party or related parties (written or oral), instruments, contracts, agreements and equipment leases (collectively, the “**Contracts**”);
- (l) all deposits and prepaid expenses which have been paid for by Longyear in advance of the period for which the related goods and services have been

delivered or performed as of the Closing Time, including those with any public utility or any municipal, governmental or other public authority, to the extent the same are transferable;

- (m) all books, records including employment records, books of account, sales and purchase records, lists of suppliers and customers, credit and pricing information, formulae, business, engineering and consulting reports, research and development information, and plans and projections and all other documents, files, records, correspondence, and all other data and information, financial or otherwise, including all data and information stored electronically or on computer related media;
- (n) all customer lists, files, data and information relating to customers and prospective customers as of the Closing Time;
- (o) all right and interest in and to all licenses issued to Longyear by any Governmental Authority which are transferable, with or without the consent of such Governmental Authority (collectively, the “**Licenses**”);
- (p) the full benefit of all warranties, warranty rights, guarantees, indemnities, undertakings and similar covenants (implied, express or otherwise) against manufacturers or sellers which apply to any of the Contributed Assets and all security received by Longyear therefor;
- (q) all cash, bank balances, moneys in possession of banks and other depositories, term deposits and similar cash property of, or owned or held by or for the account of, Longyear at the Closing Time; and
- (r) all other rights, benefits, interests, properties and assets of Longyear to any instruments, contracts, agreements and leases, of whatever nature or kind.

### **2.3 Non-Assignable Contributed Assets**

The beneficial right and interest in and to any Contributed Assets, including Contracts, Leases or Licenses, for which legal title is not assignable under Applicable Law, or is assignable only after registration of the Partnership in the relevant jurisdiction where such Contributed Assets are located has been effected, consents or approvals to the assignment have been obtained or filings with the relevant authorities have been made and such registrations have not been effected, consents or approvals have not been obtained or filings have not been made as at the Closing Time, shall be transferred to the Partnership as of and with effect from the Closing Time on the Closing Date; provided however that until such registrations have been effected, consents or approvals have been obtained or filings have been made, bare legal title to such Contributed Assets shall remain with Longyear and be held in trust for the Partnership by Longyear and the covenants and obligations thereunder shall be performed by the Partnership in the name of Longyear, and all benefits and obligations existing thereunder shall be for the account of the Partnership. The Parties shall co-operate and use commercially reasonable efforts to obtain all required consents as soon as practicable.

## 2.4 Assumption of Liabilities

Subject to Section 2.6, as of and with effect from the Closing Time on the Closing Date, the Partnership hereby assumes all liabilities and obligations of Longyear including all liabilities of Longyear of whatever nature and kind, arising out of or associated with the ownership of the Contributed Assets or the operation of the Business prior to the Closing Date, whether such liabilities become known prior to or after, or are asserted prior to or after, the Closing Date (collectively, the “Assumed Liabilities”). Subject to Section 2.6, without limiting the foregoing, the Assumed Liabilities shall include the following, each as of the Closing Time:

- (a) any liability in respect of products or sold or services rendered by Longyear prior to the Closing Date;
- (b) trade payables including, to Affiliates;
- (c) rebates payable;
- (d) current payables including insurance premiums, local improvements, water and hydro rates, cost of fuel, rentals and rental deposits, common area maintenance charges;
- (e) all liabilities and obligations under the Contracts, Leases and Licences and any other amounts payable to third parties;
- (f) liabilities in connection with the employees of Longyear, including, without limitation, all notices of termination, termination pay and severance pay obligations pursuant to common law and/or all other Applicable Laws; and liabilities for post employment benefits of former employees of the Business; and
- (g) the Assumed Contingent Liabilities.

## 2.5 Excluded Assets

Notwithstanding Section 2.2, the following shall not form part of the Contributed Assets and shall not be sold, transferred, assigned or conveyed by Longyear to the Partnership hereunder:

- (a) the equity interest in BLY Ghana Limited, BLI Zambia Limited, Boart Longyear S.A. (Chile), Connors S.A. (Chile), Rentas de Exploracion I Limitada (Chile), Boart Longyear RUS (Russia), BLY Mali S.A., Boart Longyear S.A. (Peru) and Boart Longyear (R.D.C.) S.P.R.L.;
- (b) all assets owned or leased by Longyear and located in Burkina Faso; and
- (c) assets of Longyear in respect of deferred or future income taxes as may be determined under Generally Accepted Accounting Principles.

**2.6 Excluded Liabilities**

Notwithstanding Section 2.4, the following shall not form part of the Assumed Liabilities and shall not be transferred, assigned or conveyed by Longyear to the Partnership or assumed by the Partnership hereunder:

- (a) liabilities of Longyear in respect of deferred or future income taxes as may be determined under Generally Accepted Accounting Principles;
- (b) liabilities in connection with the former employees of the Business, except as expressly provided herein, required pursuant to Applicable Laws pertaining to labour and employment or as may exist under the Plans; and
- (c) liabilities and obligations of Longyear of whatever nature and kind, arising out of or associated with the ownership of the assets described in Section 2.5(b) or the operation of the Business in Burkina Faso, whether such liabilities are absolute, contingent, known or unknown.

**2.7 Assumption of Plans**

In consideration of the Contributed Assets, the Partnership shall assume sponsorship of the Plans and shall take such steps as may be necessary to give effect to such sponsorship, including the making and filing with the applicable Governmental Authorities of all amendments to the Plans and related funding arrangements, as applicable.

**2.8 Contingent Liability Indemnification**

Subject to the limits set forth in this Section 2.8, Longyear hereby agrees to indemnify, defend and save harmless CanSubCo from and against any and all Loss suffered or incurred by CanSubCo, as a direct or indirect result of, or arising in connection with or related in any manner whatsoever to any failure by the Partnership to satisfy and discharge the Assumed Contingent Liabilities; provided that the cumulative indemnification obligation of Longyear under this Section 2.8 shall in no event exceed the value of the Assumed Contingent Liabilities as at the date hereof, being ██████████

**ARTICLE 3  
PARTNERSHIP INTEREST AND CONSIDERATION FOR THE CONTRIBUTED  
ASSETS**

**3.1 Partnership Interest and Capital Contribution**

The Partnership shall acknowledge receipt at the Closing Time on the Closing Date of the Capital Contribution of Longyear to the Partnership pursuant to the transfer, assignment and delivery of the Contributed Assets as contemplated herein and the Partnership shall increase the Partnership Interest of Longyear by increasing the capital account maintained by the Partnership for Longyear based on the Fair Market Value of the Contributed Assets contributed by Longyear, net of the Fair Market Value of the Assumed Liabilities assumed by Partnership.

### **3.2 Adjustments**

- (a) The Parties acknowledge that it is their intention that the consideration received by Longyear for the Contributed Assets contributed to the Partnership by Longyear be an amount equal to the Fair Market Value of such Contributed Assets at the Closing Date, such that no benefit be conferred on Longyear hereto or any other Person.
- (b) The Parties agree that should the Canada Revenue Agency or any other relevant taxing authority determine or propose to assess or reassess any Party on the basis that the increase in the capital account maintained by the Partnership for Longyear as a consequence of the contribution of the Contributed Assets by Longyear to the Partnership is not equal to the Fair Market Value of the Contributed Assets contributed to the Partnership by Longyear at the Closing Date net of the Fair Market Value of the Assumed Liabilities, subject to each of the Parties exhausting or waiving its rights to objection or appeal from any assessment or reassessment by such taxing authority, the capital account of Longyear shall be increased or decreased, effective as of the Closing Date, as determined by agreement with such taxing authority or by a final and binding decision of a court of competent jurisdiction *nunc pro tunc*.

### **3.3 Allocation of Capital Contribution**

The Parties shall allocate the two components of consideration received by Longyear, consisting of the assumption of the Assumed Liabilities and the increase in the capital account of Longyear maintained by the Partnership, among the Contributed Assets in such proportion and to such Contributed Assets as agreed between the Partnership and Longyear.

## **ARTICLE 4 CANADIAN INCOME TAX ELECTIONS, ETC.**

### **4.1 Rollover Election**

The Parties intend, that the Contributed Assets, other than the Accounts Receivable, that are eligible for such election be transferred on a tax-deferred basis by Longyear pursuant to Subsection 97(2) of the ITA. Longyear and the Partnership agree to file jointly elections pursuant to Subsection 97(2) of the ITA in the prescribed form and within the prescribed time whereby the proceeds of disposition to Longyear and the cost thereof to the Partnership in respect of each item of the Contributed Assets that is eligible for such election shall be an amount as is determined by Longyear. In no event shall the aggregate elected amount in respect of a Contributed Asset be less than \$1.00. Longyear and the Partnership agree jointly to file corresponding elections under the corresponding provisions of any applicable provincial income tax legislation. Longyear shall be responsible for preparing and filing all such elections.

### **4.2 Section 167 Election**

Longyear and the Partnership shall each execute and file a joint election under Section 167 of the *Excise Tax Act* (Canada) such that no GST is payable by the Partnership in



respect of the acquisition of the Contributed Assets. The Partnership shall file such election within the time prescribed by the *Excise Tax Act* (Canada).

#### **4.3 Section 22 Election**

Longyear and the Partnership shall each execute and file a joint election under Section 22 of the ITA and the corresponding provisions of any other applicable taxing statute or regulation, within the prescribed time periods, in respect of the Accounts Receivable.

#### **4.4 Other**

- (a) The Partnership shall pay to the appropriate government authority, as applicable, all sales and transfer Taxes, land transfer taxes, registration charges and transfer fees, if any, applicable in respect of the transfer, assignment and delivery of the Contributed Assets under this Agreement and, upon the reasonable request of Longyear, the Partnership shall furnish proof of such payment;
- (b) the Partnership and Longyear agree to elect jointly in prescribed form pursuant to Section 75 of the QST Act so that no QST is payable by the Partnership in respect of the transfer, assignment and delivery of the Contributed Assets. The Partnership shall file such election within the time prescribed by the QST Act. The Partnership shall be liable for and shall pay any taxes payable or file any required elections or applications pursuant to any provincial legislation imposing similar value added, land transfer taxes, or multi-stage taxes in connection with the transfer, assignment and delivery of the Contributed Assets under this Agreement;
- (c) subject to Section 2.6, the Partnership shall assume all other Taxes which arise from or in connection with the operation of the Business prior to the Closing Date;
- (d) in the event that any Party is required to pay and does pay any sales or transfer Taxes in respect of the transfer, assignment and delivery of Contributed Assets that are by the terms of this Agreement payable by another Party, such other Party shall indemnify and hold harmless the Party so making the payment for the amount so paid, including penalties and interest; and
- (e) each of the Parties agrees to execute such other joint election or elections as may be required to complete the transactions contemplated hereby.

#### **4.5 Section 20(24) Election**

If agreed by the Parties, the Parties shall each execute and file a joint election under Section 20(24) of the ITA and the corresponding provisions of any other applicable taxing statute or regulation, within the prescribed time periods, in respect of amounts paid for undertaking future obligations.

**ARTICLE 5  
REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and Warranties of Longyear**

- (a) Longyear represents and warrants to the Partnership and acknowledges that the Partnership has in reliance thereon entered into this Agreement, that as at the date hereof:
- (i) it is an unlimited liability company duly incorporated, organized and validly subsisting under the laws of its jurisdiction of incorporation or continuance, as the case may be;
  - (ii) it has the corporate power and capacity to, and has taken all corporate action necessary to, enter into, execute and deliver this Agreement and to perform its obligations hereunder;
  - (iii) it has all necessary corporate power, authority and capacity to carry on its business as it is now carried on by it and to own or lease and operate its property and assets;
  - (iv) except to the extent disclosed in writing to the Partnership, it is not a party to, bound by or subject to any mortgage, lease, agreement, instrument, charter or by-law provision, statute, regulation, order, judgment, decree or law which would be violated, contravened, breached by, or under which any default would occur as a result of the execution and delivery of this Agreement or the consummation of any of the transactions contemplated hereby;
  - (v) it is not a non-resident of Canada within the meaning of the ITA;
  - (vi) this Agreement has been duly executed and delivered by it;
  - (vii) it has been carrying on the Business and transfers ownership, possession or use of substantially all of the assets required to carry on the Business to the Partnership pursuant hereto;
  - (viii) it is a registrant for the purposes of the goods and services tax provided for under the *Excise Tax Act* (Canada) and it is a registrant for the purposes of the QST Act; and
  - (ix) it is the beneficial owner of the real property included in the Contributed Assets with good and marketable title thereto and all other Contributed Assets with good and valid title thereto, free and clear of any title defects or encumbrances, except as disclosed in writing to the Partnership.
- (b) The representations and warranties set forth in Section 5.1(a) shall survive the Closing and shall remain in full force and effect for the benefit of the Partnership.

**5.2 Representations and Warranties of the Partnership**

- (a) The Partnership represents and warrants to Longyear and acknowledges that Longyear has in reliance thereon entered into this Agreement, that as at the date hereof:
- (i) the Partnership is a partnership, duly formed and validly existing under the laws of the Province of Ontario and the Partnership has registered its firm name in the Province of Ontario as required under Applicable Law;
  - (ii) the Partnership has all requisite power and authority to execute and deliver this Agreement and to do all acts and things and to perform its obligations as are required or contemplated under this Agreement;
  - (iii) the Partnership has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder;
  - (iv) this Agreement has been duly executed and delivered by the Partners on behalf of the Partnership;
  - (v) the Partnership is a registrant for the purposes of the goods and services tax provided for under the *Excise Tax Act* (Canada) and it is a registrant for the purposes of the QST Act; and
  - (vi) the consummation by the Partnership of the transactions contemplated by this Agreement will not conflict with the provisions of the Partnership Agreement, and will not result in the breach of any term, or provision of, or constitute a default under any judgment, decree, indenture, mortgage or other agreement or instrument to which the Partnership is a party or by which it is bound. The Partnership is not in default with respect to any agreement or instrument evidencing indebtedness for money borrowed or in the performance, observation or fulfillment of any covenant or condition in relation to any such agreement or instrument.
- (b) The representations and warranties set forth in Section 5.2(a) shall survive the Closing and shall remain in full force and effect for the benefit of Longyear.

**ARTICLE 6  
GENERAL**

**6.1 Termination**

At any time prior to the Closing Time, either Party can terminate this Agreement by serving notice to the other Party in accordance with Section 6.4. Upon serving such notice, this Agreement shall be terminated and each Party shall be released from any and all rights and obligations arising out of or in connection with this Agreement.

**6.2 Employees**

- (a) As soon as practicable after the Closing Date, but effective as at the Closing Time Longyear shall assign to the Partnership and the Partnership shall assume the Plans sponsored or maintained by Longyear, including all rights, obligations, assets and liabilities thereunder, in respect of those employees employed by Longyear as at the Closing Time and their spouses, beneficiaries or dependants, as applicable, but excluding any former employees of Longyear and their spouses, beneficiaries or dependants, as applicable, except as expressly provided herein, required under employment or labour relations laws or the registered pension plan of Longyear.
- (b) In order to effect such assignment and assumption, Longyear and the Partnership agree to take such steps, prepare and execute such documents and seek such approvals of applicable Governmental Authorities as may be necessary or desirable, as soon as practicable. The Partnership further accepts all responsibilities that existed as of the Closing Time or may in the future exist with respect to the Plans.
- (c) All employees employed by Longyear on the Closing Date shall be employed by the Partnership effective as of the Closing Time on the same terms and conditions under which such employees are employed by Longyear, as the case may be, immediately prior to the Closing Time. In particular, and without limiting the generality of the foregoing, the Partnership shall recognize the prior service of all employees employed by Longyear immediately prior to the Closing Time for all purposes including entitlements on termination of employment pursuant to the common law and/or all other Applicable Law.

**6.3 Bulk Sales Act**

The Partnership shall not require Longyear to comply with the provisions of the *Bulk Sales Act* (Ontario) or such other comparable legislation in other jurisdictions as may be applicable in other jurisdictions in connection with the transfer of the Contributed Assets.

**6.4 Notices**

All notices, requests, demands or other communications by the terms required or permitted to be given by one Party to another shall be given in writing by personal delivery, fax or by registered mail, postage prepaid, addressed to such other Party or delivered to such other Party as follows:

(a) Longyear at:

1111 Main Street West  
North Bay, Ontario  
P1B 2W4

Attention: Peter F. M. Newton  
Facsimile No.: (705) 474-4588

(b) CanSubCo at:

1111 Main Street West  
North Bay, Ontario  
P1B 2W4

Attention: Peter F. M. Newton  
Facsimile No.: (705) 474-4588

(c) Partnership at:

1111 Main Street West  
North Bay, Ontario  
P1B 2W4

Attention: Peter F. M. Newton  
Facsimile No.: (705) 474-4588

or to any other address, fax number or Person that the Party designates. Any notice, request, demand or other communications if delivered personally or by courier or sent by prepaid registered mail, will be deemed to have been given when actually received, if transmitted by fax before 3:00 p.m. (Toronto, Ontario time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by fax after 3:00 p.m. (Toronto, Ontario time), will be deemed to have been given on the Business Day after the date of the transmission.

**6.5 Further Assurances**

The Parties shall sign such further and other documents, cause such meetings to be held, and exercise their vote and influence to do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.

**6.6 Time of the Essence**

Time shall be of the essence of this Agreement and of every part of it and no extension or variation of this Agreement shall operate as a waiver of this provision.

**6.7 Entire Agreement**

This Agreement together with any agreements and other documents to be delivered pursuant hereto, constitutes the entire Agreement and understanding among the Parties pertaining to the subject matter referred to herein and supersedes all prior agreements, negotiations, understandings and commitments, whether oral or written, previously entered into by them in respect thereto, all of which are hereby terminated and of no further force or effect. There are no representations, warranties, conditions or other agreements, express or implied, statutory or otherwise, between the Parties in connection with the subject matter hereof, except as specifically set forth herein.

**6.8 No Assignment**

This Agreement shall not be assigned by any Party without the express prior written consent of the other Parties.

**6.9 Successors and Assigns**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successors by reason of amalgamation or statutory arrangement of a Party with one or more companies) and permitted assigns.

**6.10 Waiver**

No waiver by a Party of any breach, failure or default in performance by any other Party and no failure, refusal or neglect by a Party to exercise any right hereunder or to insist upon strict compliance with or performance of any obligations hereunder, shall constitute a waiver by such Party of its rights at any time, or, thereafter to require strict compliance with the provisions hereof.

**6.11 Amendment**

No amendment or other modification to this Agreement shall be valid or binding upon the Parties unless such amendment or modification is in writing signed by all of the Parties.

**6.12 Severance**

If any clause or portion of any such covenant or restriction should be unenforceable or declared invalid for any reason, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of the covenant and such unenforceable or invalid portion shall be severable from the remainder of this Agreement.

**6.13 Counterpart**


This Agreement may be executed in two or more counterparts, each of which when so executed, shall be deemed to be an original and all such counterparts, taken together, shall constitute one and the same Agreement.

**6.14 Facsimile Execution**

To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Parties by facsimile transmission. That Party shall be deemed to have executed this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Parties the counterpart of this Agreement executed by such Party.

TO WITNESS their agreement, the Parties have duly executed this Agreement as of the date set forth above.

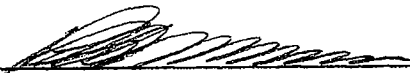
LONGYEAR CANADA, ULC

By:   
Name: Peter F.M. Newton  
Title: Secretary

By: \_\_\_\_\_  
Name:  
Title:

BOART LONGYEAR ALBERTA LIMITED

By: \_\_\_\_\_  
Name:  
Title:

By:   
Name:  
Title:


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**TO WITNESS** their agreement, the Parties have duly executed this Agreement as of the date set forth above.

**LONGYEAR CANADA, ULC**

By: \_\_\_\_\_  
Name:  
Title:

By:  \_\_\_\_\_  
Name: *Ronald A. Sellwood*  
Title: *President*

**BOART LONGYEAR ALBERTA LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



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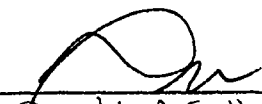
**LONGYEAR CANADA, ULC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

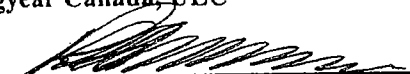
**BOART LONGYEAR ALBERTA LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

By:  \_\_\_\_\_  
Name: *Ronald A. Sellwood*  
Title: *President*

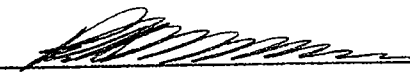
BOART LONGYEAR CANADA, by its  
partners:

Longyear Canada, ULC

By:   
Name: Peter F.M. Newton  
Title: Secretary

By: \_\_\_\_\_  
Name:  
Title:

Boart Longyear Alberta Limited

By:   
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BOART LONGYEAR CANADA**, by its  
partners:

**Longyear Canada, ULC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Boart Longyear Alberta Limited**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: *Ronald A. Sellwood*  
Title: *President*

**BOART LONGYEAR CANADA**, by its  
partners:

**Longyear Canada, ULC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: *Donald A. Sellwood*  
Title: *President*

**Boart Longyear Alberta Limited**

By: \_\_\_\_\_  
Name:  
Title:

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