

- (b) neither Tahera nor Benachee shall take any action, refrain from taking any action or permit any action to be taken or not taken that could reasonably be expected to preclude, delay or have an adverse effect on the Arrangement or would render, or may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect and each of Tahera and Benachee shall take all commercially reasonable actions to give effect to the transactions contemplated by this Agreement, the Arrangement and the CCAA Approval Order;
- (c) Benachee shall, and Tahera shall cause Benachee to, use its reasonable commercial efforts (within the context of the transactions contemplated herein and the CCAA Proceedings) to maintain and preserve its business organization and each of Tahera and Benachee shall keep Fund apprised of all material developments relating thereto, and notwithstanding the foregoing, neither Tahera nor Benachee shall, directly or indirectly, do anything that would or could require the approval of its creditors, shareholders or a court (except as contemplated herein or pursuant to the CCAA Approval Order), or an amendment to the CCAA Approval Order, Interim Order, Information Circular or Plan of Arrangement except, in each case, to the extent such would not preclude, delay or have an adverse effect on the Arrangement or adversely affect the benefits to be received under the Arrangement by Fund or its securityholders;
- (d) neither Tahera nor Benachee shall, directly or indirectly, do or permit to occur any of the following: (i) amend its constituting documents; (ii) declare, set aside or pay any dividend or other distribution or payment (whether in cash, shares or property) in respect of its securities owned by any Person; (iii) issue, grant, sell or pledge or agree to issue, grant, sell or pledge any securities or securities convertible into or exchangeable or exercisable for, or otherwise evidencing a right to acquire, securities of it; (iv) redeem, purchase or otherwise acquire any of its outstanding securities, except as permitted hereunder; (v) split, combine or reclassify any of its securities; (vi) adopt a plan of liquidation or resolutions providing for its liquidation, dissolution, merger, consolidation or reorganization; (vii) propose or initiate any operations in respect of its business or assets; (viii) authorize or make any expenditures in respect of its business or assets; (ix) surrender, terminate, amend or alter any of its assets; (x) enter into any new debt transactions or amend (or agree to amend or waive) any existing debt arrangements; (xi) alter or enter in to any employment or consulting contracts; or (xii) enter into or modify any contract, agreement, commitment or arrangement with respect to any of the foregoing except, in each case, to the extent such would not preclude, delay or have an adverse effect on the Arrangement or adversely affect the benefits to be received under the Arrangement by Fund or its securityholders;
- (e) Benachee shall not grant any officer, director, employee or consultant any increase in compensation in any form or take any action with respect to any new "change of control", severance, retention, bonus or termination payments, policies or arrangements for any directors, officers, employees or consultants, nor adopt or make any contribution to any bonus, profit sharing, option, pension, retirement, deferred compensation, insurance, incentive compensation, other compensation or other similar plan from a trust fund or arrangement for the benefit of directors, officers, employees or consultants;
- (f) each of Tahera and Benachee shall promptly notify Fund orally and in writing of any Material Adverse Change or Material Adverse Effect (actual, anticipated, contemplated or, to its knowledge threatened) or of any change in any representation or warranty provided by it in this Agreement, and shall in good faith discuss with Fund any change, effect, fact, circumstance, occurrence or event (actual, anticipated, contemplated, or, to its knowledge threatened) which is of such a nature that there may be a reasonable question as to whether notice need to be given to Fund pursuant hereto;

- (g) each of Tahera and Benachee will, within two Business Days of receiving from a taxing authority any audit inquiry, assessment, reassessment, confirmation or variation of an assessment or reassessment, indication that a tax assessment or reassessment is being considered or is pending, request for filing of a waiver or extension of time or any other notice in writing relating to Taxes, interest, penalties, income, losses or other tax deductions of Benachee (an "Assessment"), deliver to Fund a copy thereof together with a statement setting out, to the extent then determinable, an estimate of the obligations, if any, of Benachee, on the assumption that such Assessment is valid and binding;
- (h) each of Tahera and Benachee will use its reasonable commercial efforts to obtain the consent of third parties (if required) to the transactions contemplated hereby and provide the same to Fund in a timely manner;
- (i) each of Tahera and Benachee shall use its reasonable commercial efforts to satisfy or cause satisfaction of the conditions set forth in Sections 5.1, 5.2 and 5.3 as soon as reasonably possible to the extent that the satisfaction of the same is within its control;
- (j) each of Tahera and Benachee will carry out the terms of the CCAA Approval Order, Interim Order and the Final Order, to the extent applicable to it, provided that nothing requires it to consent to any material modification of this Agreement or the transactions contemplated by the CCAA Approval Order, or its obligations hereunder and thereunder;
- (k) each of Tahera and Benachee will provide notice to Fund of any formal Creditors' meeting and allow Fund's representatives to attend such meeting unless such attendance is prohibited by the Creditors;
- (l) except for non-substantive communications with securityholders and Creditors, each of Tahera and Benachee will furnish promptly to Fund or Fund's counsel, a copy of each notice, report, schedule or other document delivered, filed or received by it in connection with: (i) the Arrangement, CCAA Proceedings or CCAA Approval Order; (ii) any formal meeting of Creditors; (iii) any filings under Applicable Laws and any dealings with Government Entities in connection with the transactions contemplated hereby and the CCAA Proceedings, except in each case above, to the extent same relates to Tahera and would not preclude, delay or have an adverse effect on the Arrangement or adversely affect the benefits to be received under the Arrangement by Fund or its securityholders;
- (m) each Tahera and Benachee will make all necessary filings and applications under Applicable Laws required to be made on its part in connection with the transactions contemplated herein, including, without limitation, those necessary or desirable to obtain the listing on the TSX of Benachee Shares issued or issuable pursuant to the Arrangement, provided that the listing fees shall be paid by Fund, and shall take all commercially reasonable action necessary to be in compliance with such Applicable Laws;
- (n) Benachee shall use its reasonable commercial efforts to assist Fund to obtain the approval of the TSX to the issuance of the Benachee Shares and the preferred shares of Benachee and to the listing of the Benachee Shares (including the Benachee Shares issuable upon conversion of such preferred shares) to be issued pursuant to the Arrangement on the TSX and acceptance of notice by the TSX of the Arrangement and the transactions contemplated thereby;
- (o) each of Tahera and Benachee will assist Fund in the preparation of the Information Circular and provide to Fund, in a timely manner, all information (including, without limitation, audited

financial statements if required under Canadian Securities Laws) as may be reasonably requested by Fund with respect to Tahera and Benachee and their directors and officers for inclusion in the Information Circular and any amendments or supplements thereto, in each case complying in all material respects with all Applicable Laws on the date of issue thereof and to enable Fund to meet the standard referred to in Section 3.1(m) with respect to Fund, the Arrangement and the transactions to be considered at the Fund Meeting;

- (p) Except as disclosed in the Disclosure Letter, Benachee shall have paid in full, to the extent not compromised under the transactions contemplated by the CCAA Approval Order, all Taxes accruing due on or before the Effective Time;
- (q) each of Tahera's and Benachee's affairs and business shall be conducted in the usual and ordinary course within the context of the CCAA Proceedings as currently conducted and except to the extent same would not preclude, delay or have an adverse effect on the Arrangement or adversely affect the benefits to be received under the Arrangement by Fund or its securityholders.

3.3 Covenants of Tahera and Benachee – Other Transactions

- (a) Each of Tahera and Benachee shall immediately cease and cause to be terminated all solicitations, initiations, encouragements, discussions and negotiations with any parties conducted before the date of this Agreement with respect to any Acquisition Proposal, if any, including, without limitation, through any advisors or other parties on its behalf, and shall immediately request the return or destruction of all information provided to any third parties who have entered into a confidentiality agreement with Tahera or Benachee relating to an Acquisition Proposal and shall use all reasonable commercial efforts to ensure that such requests are honoured.
- (b) Neither Tahera nor Benachee shall, directly or indirectly, do or authorize or permit any of the officers, directors, employees or consultants of Tahera or Benachee or any agent, financial advisor, expert or other Person acting on behalf of Tahera or Benachee to:
 - (i) solicit, initiate or knowingly facilitate or encourage (including, without limitation, by way of furnishing information or entering into any form of agreement, arrangement or understanding) the initiation or continuation of any inquiries, discussions, negotiations, proposals or offers from any Person or group of Persons "acting jointly or in concert" (within the meaning of MI 62-104) which constitutes, or may reasonably be expected to lead to (in either case whether in one transaction or a series of transactions): (A) an acquisition of any outstanding securities of Benachee or Tahera; (B) a transaction substantially similar to that contemplated by this Agreement; (C) any acquisition of a substantial amount of the assets of Benachee; (D) an amalgamation, arrangement (corporate or creditor), merger, consolidation, joint venture, partnership or other business combination involving Benachee or Tahera; (E) any take-over bid, issuer bid, exchange offer, recapitalization, liquidation, dissolution, reorganization or similar transaction involving Benachee and Tahera; or (F) any other transaction, the consummation of which would or could reasonably be expected to impede, interfere with, prevent or delay the transactions contemplated by this Agreement (including, without limitation, the Plan of Arrangement and CCAA Approval Order) or which would or could reasonably be expected to materially reduce the benefits of the Arrangement to Fund except, in the case of paragraphs (A) through (E), for any transaction which could not reasonably be expected to preclude, delay or have an adverse effect on the Arrangement or adversely affect the benefits to be received under the Arrangement by Fund or its securityholders

(any such inquiry or proposal in respect of any of the foregoing being an "Acquisition Proposal");

- (ii) enter into or participate in any discussions or negotiations regarding an Acquisition Proposal, or, except pursuant to the CCAA Approval Order, in respect of a sale of any assets of Benachee, furnish to any other Person any information with respect to the business, properties, operations, prospects or conditions (financial or otherwise) of Benachee in connection with an Acquisition Proposal or otherwise cooperate in any way with, or assist or participate in, facilitate or knowingly encourage, any effort or attempt of any other Person to do or seek to do any of the foregoing;
- (iii) waive, or otherwise forbear in the enforcement of, or enter into or participate in any discussions, negotiations or agreements to waive or otherwise forbear in respect of, any rights or other benefits of Tahera or Benachee under confidential information agreements, including, without limitation, any "standstill provisions" thereunder except to the extent same could not reasonably be expected to preclude, delay or have an adverse effect on the Arrangement or adversely affect the benefits to be received under the Arrangement by Fund or its securityholders; or
- (iv) accept, recommend, approve or enter into an agreement to implement an Acquisition Proposal.

3.4 Mutual Covenants

From the date hereof until the earlier of the Effective Date and the Termination Date, each of Fund, AGII, Tahera and Benachee will use its reasonable commercial efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder and to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under Applicable Laws to complete the Arrangement, including using reasonable commercial efforts:

- (a) to obtain all necessary waivers, consents and approvals required to be obtained by it from other parties to loan agreements, leases and other contracts;
- (b) to obtain all necessary consents, approvals and authorizations as are required to be obtained by it under Applicable Law;
- (c) to effect all necessary registrations and filings and submissions of information requested by Governmental Entities required to be effected by it in connection with the Arrangement and the CCAA Approval Order;
- (d) to prepare and deliver all documents and take all actions required to implement the Arrangement at the Effective Time;
- (e) to effect all necessary registrations and filings and submissions of information requested by Governmental Entities required to be effected by it in connection with the Arrangement, and each of the Fund, Tahera and Benachee will use its reasonable commercial efforts to cooperate with the other in connection with the performance by the other of their obligations under this Section 3.4;
- (f) to cooperate with the Other Party and its advisors in structuring the Arrangement in an effective manner, and, in respect of Benachee and Tahera, assist the Other Party and its advisors in making

such investigations and inquiries with respect to Benachee in that regard, as the Other Party and its advisors shall consider necessary, acting reasonably, provided that such Party shall not be obligated to consent or agree to any structuring that, in its opinion, acting reasonably: (i) would prejudice its securityholders, in the case of the Fund, or its creditors, in the case of Benachee and Tahera; (ii) would prevent, delay or have an adverse effect on the Arrangement; or (iii) would have an adverse effect on the benefits to be received under the Arrangement by such party or its securityholders, in the case of the Fund, or its creditors, in the case of Benachee and Tahera; and

- (g) to obtain and maintain the approvals which must be obtained from Governmental Entities, if any, including making as promptly as practicable all filings and submissions that are required or are otherwise advisable in order to obtain such approvals and will reasonably cooperate with each other in the preparation of such filings and submissions and the provision of any supplemental information that may be requested or required by Governmental Entities including: (i) providing each other with drafts of documentation for review and reasonable comment prior to submission with Governmental Entities; and (ii) keeping each other informed as to developments regarding the obtaining of such regulatory approvals.

and each of Fund, AGII, Tahera, and Benachee will use its reasonable commercial efforts to cooperate with the other in connection with the performance by the other of their obligations under this Section 3.4 including, without limitation, continuing to provide reasonable access to information and to maintain ongoing communications as between officers of AGII and Tahera and Benachee.

3.5 Provision of Information; Access

From and after the date hereof, Tahera and Benachee shall provide Fund and its representatives access, during normal business hours and at such other time or times as the Fund may reasonably request, to their respective premises, books, contracts, records, computer systems, properties, employees, consultants and management personnel and shall furnish promptly to Fund all information concerning its business, properties and personnel as the Fund may reasonably request in the context of completing the Arrangement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Tahera

Tahera hereby represents and warrants to and in favour of Fund and AGII as follows and acknowledges that Fund and AGII are relying upon such representations and warranties in connection with the matters contemplated by this Agreement:

- (a) each of Tahera and Benachee is a corporation duly incorporated or amalgamated and validly existing under the Laws of Canada and has the requisite corporate power and authority to own its assets as now owned and to carry on its business as now conducted. Copies of the constating documents of Tahera and its Benachee provided to Fund, together with all amendments to date, are accurate and complete as of the date hereof and have not been amended or superseded.
- (b) subject to obtaining the CCAA Approval Order, each of Tahera and Benachee has the requisite corporate power and authority to execute this Agreement, and has the corporate power and authority to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation by each of Tahera and Benachee of the Arrangement have been duly authorized by the President of 2192640 Ontario Ltd. in its capacity as Chief Restructuring Officer

as authorized under the CCAA Proceedings and, subject to receipt of the CCAA Approval Order and the Final Order, no other proceedings on the part of either Tahera or Benachee is necessary to authorize this Agreement, the Arrangement or the transactions contemplated herein. This Agreement has been duly executed and delivered by each of Tahera and Benachee and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, subject to obtaining the CCAA Approval Order and subject to the qualification that such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other Laws of general application relating to or affecting rights of creditors and that equitable remedies, including specific performance, are discretionary and may not be ordered.

- (c) except as contemplated by this Agreement and subject to receipt of the CCAA Approval Order:
 - (i) neither the execution and delivery of this Agreement by Tahera and Benachee nor the consummation of the Arrangement and the transactions contemplated by the CCAA Approval Order, nor compliance by Tahera and Benachee with any of the provisions hereof will: (A) violate, conflict with, or result in a breach of any provision of, require any consent, approval or notice under, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of the articles, by-laws, or other constituting document of Tahera and Benachee; or (B) violate any judgment, ruling, order, writ, injunction, determination, award, decree, statute, ordinance, rule or regulation applicable to either Tahera or Benachee or any of its properties or assets (except, in the case of each of clauses (A) and (B) above, for such violations, conflicts, breaches, defaults, terminations, accelerations which, or any consents, approvals or notices which if not given or received, would not have any Material Adverse Effect); or (C) cause the suspension or revocation of any authorization, consent, approval or license currently in effect which would have a Material Adverse Effect; and
 - (ii) other than in connection with or in compliance with the provisions of Applicable Laws or which are required to be filed post-Arrangement, and except for obtaining the Final Order: (A) there is no legal impediment to Tahera's and Benachee's consummation of the Arrangement and the transactions contemplated by the CCAA Approval Order; and (B) no filing or registration with, or authorization, consent or approval of, any domestic or foreign public body or authority is required of Tahera or Benachee in connection with the consummation of the Arrangement and the transactions contemplated by the CCAA Approval Order, except for such filings or registrations which, if not made, or for such authorizations, consents or approvals which, if not received, would not have a Material Adverse Effect.
- (d) other than those subject to CCAA Proceedings, there are no Claims in existence or pending or, to the knowledge of Tahera or Benachee, threatened or for which there is a reasonable basis, affecting or that would reasonably be expected to affect Benachee, or affecting or that would reasonably be expected to affect any of its property or assets at law or equity or before or by any Governmental Entity which Claim involves a possibility of any judgement against, or Losses or Liabilities of, Benachee which, if successful, would have a Material Adverse Effect.
- (e) as of the date hereof, the authorised capital of Benachee consists of an unlimited number of Benachee Shares, of which 22,251,135.067072 are issued and outstanding. Tahera is the legal beneficial owner of all of the outstanding shares of Benachee with good title thereto free and clear of any and all encumbrances except encumbrances in favour of CAZ pursuant to the Benachee CAZ Debt Security (as defined in the Plan of Arrangement). There are no options, warrants or

other rights, shareholder rights plans, agreements or commitments of any character whatsoever requiring the issuance, sale or transfer by Benachee of any securities of Benachee or any securities convertible into, or exchangeable or exercisable for, or otherwise evidencing a right to acquire, any securities or interests of Benachee. All outstanding securities of Benachee have been duly authorized and validly issued, are fully paid and non-assessable and are not subject to, nor were they issued in violation of, any pre-emptive rights;

- (f) Benachee does not have any Subsidiaries;
- (g) Benachee is not a "reporting issuer" or equivalent in any province of Canada and no securities of Benachee are listed or posted for trading on any stock exchange;
- (h) to the best of Tahera's and Benachee's knowledge, each of Tahera's and Benachee's corporate records and minute books are true and correct in all material respects and contain the minutes of all meetings and all resolutions of the directors and shareholders thereof;
- (i) Benachee has duly and timely filed in the prescribed manner and within the prescribed time with all appropriate Governmental Entities all income Tax Returns that it is required to file in respect of any income Taxes in respect of any provision in applicable tax legislation, for all fiscal and other reporting periods ending prior to the date hereof, and all of which are, to the best of Tahera's and Benachee's knowledge, true, correct and complete in all material respects;
- (j) Benachee has complied with all registration, reporting, collection and remittance requirements in respect of all federal and provincial sales tax legislation including but not limited to the *Excise Tax Act* (Canada). Each of Tahera and Benachee has made available to Fund all invoices, purchase orders and all such other documents as are necessary to report any claim for input tax credits or refunds claimed or to be claimed by Benachee pursuant to the *Excise Tax Act* (Canada) that have been requested by Fund;
- (k) To the best of its ability, Benachee has made available to the Fund copies of all Tax Returns and all elections, designations, audit undertakings, notices of determination of loss, working papers, calculations and schedules relating thereto for all fiscal and other reporting periods for which the relevant limitation period in any tax legislation has not expired, together with all communications relating thereto from any Governmental Entity and the response, if any, from Benachee to such communications, where such information has been requested by the Fund;
- (l) to the best of Benachee's knowledge, Benachee has withheld from each payment made to any of its present or former employees, officers and directors, and to all Persons who are non-residents of Canada for the purposes of the Tax Act, all amounts required by law and will continue to do so until the Effective Time and, furthermore, has remitted such withheld amounts within the prescribed periods to the appropriate Governmental Entity and will continue to do so until the Effective Time. Benachee has remitted all Taxes payable by it in respect of its employees and has or will have remitted such amounts to the proper Governmental Entity within the time required under the applicable legislation;
- (m) there are no assessments or reassessments of any Taxes of Benachee that have been issued and are outstanding, or pursuant to which there are any amounts owing and no reduction in deductions, credits, the federal tax account balances set forth in the Disclosure Letter or other amounts claimed by Benachee ("**Reported Amounts**") in its Tax Returns has been proposed. No Governmental Entity has challenged, disputed or questioned Benachee in respect of Taxes, Reported Amounts or any Tax Returns filed under any statute providing for Taxes. Benachee is