

I hereby certify this to be a true copy of  
ORDER (APPROVAL OF SALE AND  
the original INVESTMENT SOLICITATION PROCESS)

Dated this 29th day of July, 2024

Stephanie Beaumont  
for Clerk of the Court



COURT FILE NUMBER 2401-09688

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c C-36, AS  
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF DELTA 9 CANNABIS INC.,  
DELTA 9 LOGISTICS INC., DELTA 9 BIO-TECH INC.,  
DELTA 9 LIFESTYLE CANNABIS CLINIC INC. and  
DELTA 9 CANNABIS STORE INC.

APPLICANTS DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC.,  
DELTA 9 BIO-TECH INC., DELTA 9 LIFESTYLE  
CANNABIS CLINIC INC. and DELTA 9 CANNABIS  
STORE INC.

DOCUMENT ORDER (APPROVAL OF SALE AND INVESTMENT  
SOLICITATION PROCESS)

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT MLT AIKINS LLP  
222 - 3rd Avenue S.W.  
Calgary, AB T2P 0B4  
Attention: Ryan Zahara / Kaitlin Ward  
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Fax Number: 403.508.4349  
File No.: 0136555.00034

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DATE ON WHICH ORDER WAS PRONOUNCED: JULY 24, 2024

LOCATION OF HEARING OR TRIAL: EDMONTON, ALBERTA

NAME OF JUDGE WHO MADE THIS ORDER: THE HONOURABLE ASSOCIATE  
CHIEF JUSTICE NIELSEN

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UPON the application of Delta 9 Cannabis Inc. ("D9 Parent"), Delta 9 Logistics Inc. ("Logistics"), Delta 9 Bio-Tech Inc. ("Bio-Tech"), Delta 9 Lifestyle Cannabis Clinic Inc. ("Lifestyle"), and Delta 9 Cannabis Store Inc. ("Store", and collectively with D9 Parent, Logistics, Bio-Tech, and Lifestyle, the "Applicants" or "Delta 9") for, among other things, an amended and

restated initial order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") and for an Order approving a sales and investment solicitation process (the "**Application**"); **AND UPON** having read the Application, the Second Affidavit of John Arbuthnot IV sworn and filed on July 18, 2024, the Second Supplemental Affidavit of John Arbuthnot IV, sworn and filed on July 22, 2024, the Affidavit of Mark Townsend sworn on July 19, 2024 and filed on July 22, 2024, the Confidential Affidavit of Danielle Christiansen sworn on July 24, 2024 and the Affidavit of Service of Regie Agcaoili sworn July 23, 2024; **AND UPON** having read the First Report of the monitor, Alvarez & Marsal Canada Inc. (the "**Monitor**"), dated July 22, 2024 and the Confidential Appendices appended thereto, and the Bench Brief of the Applicants, filed on July 22, 2024; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Plan Sponsor, 2759054 Ontario Inc., o/a Fika Herbal Goods (the "**Plan Sponsor**") and counsel for any other parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE**

1. Service of notice of the Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of the Application, and time for service of the Application is abridged to that actually given.

#### **APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS**

2. The Sales and Investment Solicitation Process (the "**SISP**") attached hereto as **Schedule "A"** is hereby approved and the Monitor, with the assistance of Bio-Tech and, if deemed necessary by the Monitor, a Sales Advisor (as defined in the SISP), are hereby authorized and empowered to proceed, carry out, and implement the SISP and all corresponding sales, marketing, or tendering processes, including any and all actions related thereto, substantially in accordance with the SISP.
3. The Monitor, Bio-Tech, and the Sales Advisor(s) are further hereby authorized and empowered to take such steps as they consider necessary or appropriate in carrying out each of their obligations under the SISP, subject to approval of this Court being obtained before the completion of any transaction(s) resulting from the SISP.
4. The Monitor, the Applicants, the Sales Advisor and any interested person, including for clarity the Plan Sponsor, are hereby authorized and empowered to apply to this

Honourable Court to amend, vary, or seek any advice, directions, or the approval or vesting of any transactions, in connection with the SISP.

5. Service of this Order shall be deemed good and sufficient by serving all interested parties to this Comeback Application by posting a copy of this Order on the Monitor's website: <https://www.alvarezandmarsal.com/Delta9>.
6. Service of this Order shall be deemed good and sufficient regardless of whether service is effected by PDF copy attached to an email, facsimile, personal delivery, courier or regular mail. Service is deemed to be effected the next business day following transmission or delivery of this Order.



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The Honourable Associate Chief Justice Nielsen  
Justice of the Court of King's Bench of Alberta

July 26, 2024

**Schedule "A"**

**Sale and Investment Solicitation Process**

## SALE AND INVESTMENT SOLICITATION PROCESS

### DELTA 9 GROUP

#### INTRODUCTION

1. On July 15, 2024, Delta 9 Cannabis Inc. ("**D9 Parent**"), Delta 9 Bio-Tech Inc. (the "**Vendor**"), Delta 9 Cannabis Store Inc. ("**Store**"), Delta 9 Lifestyle Cannabis Clinic Inc. ("**Lifestyle**") and Delta 9 Logistics Inc. ("**Logistics**", and together with Delta Parent, the Vendor, Delta Retail and Delta Lifestyle, the "**Debtors**") commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA Proceedings**") and Alvarez & Marsal Canada Inc. was appointed Monitor of the Vendor (in such capacity, the "**Monitor**") pursuant to an initial order (the "**Initial Order**") granted by Justice D.R. Mah.
2. The Vendor, *inter alios*, has entered into a binding term sheet with 2759054 Ontario Inc. o/a Fika Herbal Goods ("**Fika**") dated July 12, 2024 (the "**Term Sheet**") related to the Restructuring (as defined in the Term Sheet) of the Debtors pursuant to one or more plans of arrangement (collectively, the "**Plans**" and each a "**Plan**") sponsored by Fika. Fika has also committed to providing interim financing (in such capacity, the "**Interim Lender**") to the Debtors up to a maximum aggregate principal amount of \$16,000,000, plus interest, costs and expenses and all other amounts payable thereunder (as applicable, the "**Interim Financing**").
3. On July 24, 2024, the Debtors intend to make an application to the Court for an amended and restated order (the "**ARIO**") and an Order (the "**SISP Order**" and together with the Initial Order and the ARIO, the "**CCAA Orders**"), among other things, authorizing the Monitor, with the assistance of: (i) the Vendor; and/or (ii) if deemed necessary, one or more sales advisor(s) (each, a "**Sales Advisor**") to be engaged by the Monitor on customary terms for such engagement, to conduct a sale and investment solicitation process (the "**SISP**") for the property, assets and undertakings of the Vendor as further described herein.
4. The Monitor intends on providing all qualified interested parties with an opportunity to participate in the SISP.
5. This document (the "**SISP Procedure**") outlines the SISP, which is comprised of one phase and, if required, an auction.
6. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency. Unless otherwise indicated herein, any event that occurs on a day that is not a business day in the Province of Alberta (each, a "**Business Day**") shall be deemed to occur on the next Business Day. All references to time shall be to the current time in Calgary, Alberta. Capitalized terms not otherwise defined in this SISP Procedure shall have the meanings set forth in the materials filed by the Debtors in support of the SISP Procedure or the reports of the Monitor.

#### OPPORTUNITY

7. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of Vendor's assets and business operations (the "**Opportunity**"). The Opportunity may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Vendor as a going concern, or a sale of all, substantially all, or one or more components of Vendor's assets (the "**Property**") and business operations (the "**Business**") as a going concern or otherwise.

8. Any sale of the Property or investment in the Business of the Vendor will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Vendor, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Vendor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to CCAA Orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in the definitive agreement and such CCAA Orders.

## **TIMELINE**

9. The following table sets out the key milestones under the SISP which are as follows:

<b>Milestone</b>	<b>Deadline</b>
Bio-Tech to create list of Known Potential Bidders	July 26, 2024
Monitor to prepare and have available for Potential Bidders the Data Room	July 26, 2024
Monitor to distribute Teaser Letters and NDAs to Known Potential Bidders	July 31, 2024
Bid Deadline	October 28, 2024
Auction (if required)	October 30, 2024
Transaction Approval Application Hearing (if required)	November 4 - 8, 2024
Closing Date Deadline	November 12, 2024

The dates set out in the SISP may be extended by the Monitor with the consent and approval of the Vendor, the Interim Lender and SNDL Inc. ("SNDL").

## **SOLICITATION OF INTEREST: NOTICE OF THE SISP**

10. As soon as reasonably practicable, but in any event by no later than the timeline set out in Section 9:
- (a) the Monitor, with the advice of any Sales Advisor, and in consultation with the Vendor, will prepare a list of Potential Bidders (as defined herein), including:
    - (i) parties that have approached the Vendor, the Monitor or the Sales Advisor indicating an interest in the Opportunity; and
    - (ii) local and international strategic and financial parties who the Monitor, in consultation with the Vendor and any Sales Advisor, believe may be interested in purchasing all or part of the Business and Property or investing in the Vendor pursuant to the SISP,
 (collectively, "**Known Potential Bidders**");
  - (b) the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Vendor, considers appropriate) (the "**Notice**")

to be published in the National Post, Insolvency Insider and any other industry publication, website, newspaper or journal as the Monitor, in consultation with any Sales Advisor and the Vendor, considers appropriate, if any;

- (c) the Vendor will issue a press release with Canada Newswire setting out the information contained in the Notice and such other relevant information which the Vendor, in consultation with the Monitor, consider appropriate designating dissemination in Canada; and
  - (d) the Monitor, in consultation with the Vendor and any Sales Advisor, will prepare:
    - (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and
    - (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor, the Vendor and their respective counsel (an "**NDA**").
11. The Monitor shall send the Teaser Letter and NDA to each Known Potential Bidder by no later than the timeline set out in Section 9 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Vendor or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

#### ***Qualified Bidders***

12. Any party who wishes to participate in the SISP (each, a "**Potential Bidder**"), must deliver to the Monitor:
- (a) an executed NDA which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof;
  - (b) a letter setting forth the Potential Bidder's: (i) identity; (ii) contact information; and (iii) full disclosure of its direct and indirect principals; and
  - (c) a form of financial disclosure and credit quality support or enhancement that allows the Monitor to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate: (i) the acquisition of all, substantially all or a portion of the Property (each, a "**Sale Proposal**"); or (ii) an investment in, restructuring, reorganization or refinancing of the Business or the Vendor (each, an "**Investment Proposal**"), as applicable.
13. If the Monitor, in its sole discretion, determines that a Potential Bidder has:
- (a) delivered the documents contemplated in Section 12 above; and
  - (b) the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP,
- then such Potential Bidder will be deemed to be a "**Qualified Bidder**".

14. At any time during the SISP, the Monitor may, in its reasonable business judgment and after consultation with the Vendor, SNDL and the Interim Lender, eliminate a Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP, will no longer be a Qualified Bidder for the purposes of this SISP, and shall have no further recourse as against the Vendor or the Monitor in respect thereof.

### ***Due Diligence***

15. The Monitor, with the assistance of the Vendor, shall prepare a data room with additional information considered relevant to the Opportunity, including a form of purchase agreement. The Vendor, the Monitor and their respective advisors make no representation or warranty whatsoever as to the information (including as to the accuracy or completeness of such information) made available pursuant to the SISP, including in the data room, except to the extent expressly contemplated in any definitive sale or investment agreement with a successful bidder ultimately executed and delivered by the Vendor.
16. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Vendor.
17. The Monitor, in consultation with the Vendor, shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence material and information relating to the Property and Business as it or the Monitor and any Sales Advisor deem appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Monitor, in its reasonable business judgment and after consulting with the Vendor, may agree.
18. The Monitor and any Sales Advisor shall designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. Neither the Vendor nor the Monitor shall be obligated to furnish any information relating to the Property or Business to any person other than to Qualified Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Vendor, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information.

## **PHASE 1: BINDING BIDS**

### ***Formal Binding Bids***

19. Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Vendor or their Property or Business shall submit a binding offer (a "**Binding Bid**") that complies with all of the following requirements to the Monitor at the address specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than the timeline set out in Section 9 and as may be further modified with the consent of the Monitor, SNDL and the Interim Lender from time to time (the "**Bid Deadline**"):
  - (a) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in the Vendor or their Property or Business and is

consistent with any necessary terms and conditions established by the Monitor and the Vendor and communicated to Qualified Bidders;

- (b) the bid includes a letter stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined herein), provided that if such Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- (c) the bid includes duly authorized and executed transaction agreements, substantially in the form provided in the data room, including the purchase or subscription price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
- (d) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Monitor to make a determination as to the Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (e) the bid is not conditioned on: (i) the outcome of unperformed due diligence by the Qualified Bidder, apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld from the Qualified Bidder; or (ii) obtaining financing, but may be conditioned upon the Vendor receiving the required approvals or amendments relating to the licences required to operate the Business, if necessary;
- (f) the bid does not include a request for or entitlement to any break fee, expense reimbursement or other similar type payment if the bid is not selected as the Successful Bid (as defined herein);
- (g) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
- (h) for a Sale Proposal, the bid includes payment of a non-refundable deposit in the form of a wire transfer to a trust account specified by the Monitor (a "**Deposit**") in an amount not less than 10% of the Purchase Price by the Bid Deadline;
- (i) for an Investment Proposal, the bid includes payment of a Deposit in the amount of not less than 10% of the total new investment contemplated in the bid by the Bid Deadline;
- (j) the bid includes acknowledgements and representations by the Qualified Bidder that the Qualified Bidder:
  - (i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Vendor prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld from the Qualified Bidder);
  - (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and

- (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Vendor or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Vendor;
- (k) the bid and Deposit are received by the Bid Deadline;
- (l) the bid contemplates closing the transaction set out therein no later than the timeline set out in Section 9.

### ***Assessment of Binding Bids***

20. Following the Bid Deadline, the Monitor, together with any Sales Advisor, the Vendor, the Interim Lender and SNDL, will assess the Binding Bids received, following which they will designate the most competitive bids that comply with the foregoing requirements to be "**Qualified Bids**". No Binding Bids received shall be deemed to be Qualified Bids without the approval of the Monitor, the Vendor, the Interim Lender and SNDL. Only Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).
21. If at the Bid Deadline, at least one Qualified Bid has been received, the Monitor, in consultation with the Vendor, SNDL and the Interim Lender, will evaluate Qualified Bids based upon several factors including, without limitation:
  - (a) the Purchase Price and the net value provided by such bid;
  - (b) the identity, circumstances and ability of the Qualified Bidder to successfully complete such transactions;
  - (c) the proposed transaction documents;
  - (d) factors affecting the speed, certainty and value of the transaction;
  - (e) the assets included or excluded from the bid;
  - (f) any related restructuring costs; and
  - (g) the likelihood and timing of consummating such transaction.

The Monitor may choose to aggregate separate Binding Bids from unaffiliated Qualified Bidders to create one Qualified Bid if such aggregated Qualified Bid would constitute a superior offer.

### ***Selection of Successful Bid***

22. If at the Bid Deadline, only one Qualified Bid has been received in respect of the Vendor, as determined by the Monitor in consultation with the Vendor, it may be designated as the best bid (the "**Successful Bid**", and, as applicable, the Qualified Bidder making such Successful Bid, the "**Successful Bidder**") and will close in accordance with the terms of the Successful Bid and any applicable Court orders. For certainty, the Monitor and the Vendor are under no obligation to accept any bid or designate any bid a Successful Bid in respect of the Vendor and shall not do so without

the approval of the Interim Lender and SNDL; provided, however, that the approval right of SNDL shall be subject to the Interim Lender's right to overrule SNDL, provided further that:

- (a) if SNDL is in favour of rejecting a bid that the Interim Lender ultimately decides to accept, the Interim Lender will enter into a legally binding agreement with SNDL to pay all amounts owing by the Debtors to SNDL in full; and
  - (b) if SNDL is in favour of accepting a bid that the Interim Lender ultimately decides to reject, the Interim Lender will enter into a legal binding agreement with SNDL to pay the value of such deal to SNDL in partial satisfaction of amounts owing by the Debtors to SNDL.
23. In the event that no bid is designated a Successful Bid in respect of the Vendor, this SISP shall automatically terminate in respect of the Vendor.
24. If the Monitor, in consultation with the Vendor, SNDL and the Interim Lender, determines, in its reasonable discretion, that:
- (a) one or more Qualified Bids have been received for Property not contemplated in the Successful Bid, the Monitor may designate the applicable Qualified Bids as the respective Successful Bids for the applicable Property (as well as any applicable Back-up Bids).
  - (b) one or more Qualified Bids have been received for some or all of the Property, the Monitor may either:
    - (i) designate one or more Qualified Bids as Successful Bids and one or more of the other Qualified Bids as Back-up Bids; or
    - (ii) provide all parties that have made Qualified Bids, the opportunity to make further bids through the auction process set out below (the "**Auction**").

## AUCTION

### *Auction Process*

25. In the event of an Auction, the Monitor shall conduct the Auction commencing at 10:00 a.m. no later than the timeline set out in Section 9 at the offices of the Monitor's legal counsel, at 525. 8 Ave SW #2400, Calgary, AB T2P 1G1, or such other location as shall be timely communicated to all entities entitled to attend at the Auction, which Auction may be adjourned by the Monitor.
26. The Auction shall run in accordance with the following procedures, which shall be adjusted accordingly in the event of any adjournment of the Auction by the Monitor:
- (a) prior to 5:00 p.m. on October 30, 2024, the Monitor will provide unredacted copies of the Qualified Bid(s) which the Monitor believes is/are (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) (the "**Starting Bid**") to all Qualified Bidders that have made a Qualified Bid;
  - (b) prior to 5:00 p.m. on October 30, 2024, each Qualified Bidder that has made a Qualified Bid must inform the Monitor by email whether it intends to participate in the Auction

(the parties who so inform the Monitor that they intend to participate are hereinafter referred to as the "**Auction Bidders**");

- (c) prior to the Auction, the Monitor shall develop a financial comparison model (the "**Comparison Model**") which will be used to compare the Starting Bid and all Subsequent Bids (as defined below) submitted during the Auction, if applicable;
- (d) during the morning of October 30, 2024, the Monitor shall make itself available to meet with each of the Auction Bidders to review the procedures for the Auction, the mechanics of the Comparison Model, and the manner by which Subsequent Bids will be evaluated during the Auction, and the Auction shall be held immediately thereafter;
- (e) only representatives of the Auction Bidders, the Monitor, the Vendor and such other persons as permitted by the Monitor (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person (and the Monitor shall have the discretion to allow such persons to attend by teleconference);
- (f) the Monitor shall arrange to have a court reporter attend the Auction;
- (g) at the commencement of the Auction, each Auction Bidder shall be required to confirm that it has not engaged in any collusion with any other Auction Bidder with respect to the bidding or any sale;
- (h) only the Auction Bidders will be entitled to make a Subsequent Bid (as defined below) at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Qualified Bidder's Qualified Bid, shall nevertheless remain fully enforceable against such Qualified Bidder if it is selected as the Winning Bid (as defined below) or Back-up Bid;
- (i) all Subsequent Bids presented during the Auction shall be made and received in one room and on an open basis. All Auction Bidders will be entitled to be present for all Subsequent Bids at the Auction with the understanding that the true identity of each Auction Bidder at the Auction will be fully disclosed to all other Auction Bidders and that all material terms of each Subsequent Bid will be fully disclosed to all other Auction Bidders throughout the entire Auction;
- (j) all Auction Bidders must have at least one individual present at the Auction with authority to bind such Auction Bidder;
- (k) the Monitor may employ and announce at the Auction such additional procedural rules that are reasonable under the circumstances (including but not limited to, the amount of time allotted to make a Subsequent Bid, requirements to bid in each round, and the ability of multiple Auction Bidders to combine to present a single bid) for conducting the Auction, provided that such rules are (i) not inconsistent with these SISP Procedures, general practice in insolvency proceedings, the CCAA Order, or the SISP Order and (ii) disclosed to each Auction Bidder at the Auction;
- (l) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (each, a "**Subsequent Bid**") that the Monitor, utilizing the Comparison Model, determines is:

- (i) for the first round, a higher or otherwise better offer than the Starting Bid;
- (ii) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below),

in each case by at least the minimum incremental overbid of at least \$100,000. After the first round of bidding and between each subsequent round of bidding, the Monitor shall announce the bid (including the value and material terms thereof) that it believes to be the highest or otherwise best offer (in each round, the "**Leading Bid**"). A round of bidding will conclude after each Auction Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- (m) to the extent not previously provided (which shall be determined by the Monitor), an Auction Bidder submitting a Subsequent Bid must submit, at the Monitor's discretion, as part of its Subsequent Bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Monitor), demonstrating such Auction Bidder's ability to close the transaction proposed by the Subsequent Bid;
  - (n) the Monitor reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction of not more than 24 hours each, to among other things (i) facilitate discussions between the Monitor and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Monitor with such additional evidence as the Monitor, in its reasonable business judgment, may require that that Auction Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing overbid amount;
  - (o) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed;
  - (p) the Auction shall be closed within 2 Business Days of the start of the Auction unless otherwise extended by the Monitor; and
  - (q) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction.
27. At the end of the Auction, the Monitor, with the approval of SNDL and the Interim Lender, shall select the winning bid (the "**Winning Bid**"). Once a definitive agreement has been negotiated and settled in respect of the Winning Bid as selected by the Monitor (the "**Selected Superior Offer**") in accordance with the provisions hereof, the Selected Superior Offer shall be the "**Successful Bid**" hereunder and the person(s) who made the Selected Superior Offer shall be the "**Successful Bidder**" hereunder.
28. Notwithstanding the foregoing, the Monitor may designate one or more Qualified Bids (whether made in the Auction or not) as a "**Back-up Bid**" and the person(s) who made the Back-up Bid shall be a "**Back-up Bidder**" hereunder. A Back-up Bid shall remain enforceable against the Back-up Bidder until either the transaction contemplated by the initial applicable Successful Bid closes (in which case the Back-up Bid shall be deemed to terminate and the Back-up

Bidder shall receive its Deposit back) or the transaction contemplated by the initial Successful Bid does not close, in which case the Monitor may deem the best Back-up Bid to be the Successful Bid for the purposes of the SISP Procedures.

### ***Transaction Approval Application Hearing***

29. Once the Successful Bid has been selected by the Monitor, the Vendor will use best efforts to close the transaction by the closing date set out in Section 9 and the Vendor will bring an application to approve the transaction with the Successful Bidder (the "**Transaction Approval Application**") as soon as reasonably practicable after finalization of the transaction agreement(s).
30. All the Qualified Bids other than the Successful Bid and Back-up Bids, if any, shall be deemed to be rejected on and as of the date of the closing of the transaction contemplated by the Successful Bid.

### ***Confidentiality and Access to Information***

31. All discussions regarding a Sale Proposal, Investment Proposal, Binding Bid or Qualified Bid shall be directed through the Monitor or any Sales Advisor. Under no circumstances should the management or employees of the Vendor be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication may result in exclusion of the interested party from the SISP Procedures.
32. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all current participants relating to the number or identity of Potential Bidders, Qualified Bidders, Qualified Bidders, Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Vendor, the Monitor, any Sales Advisor, and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Vendor, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Qualified Bidders, in which case they shall use reasonable efforts to protect the confidentiality of such party's confidential information.
33. The Monitor may consult with any other parties with a material interest in the CCAA Proceedings regarding the status of and material information and developments relating to the SISP to the extent considered appropriate by the Monitor (taking into account, among other things, whether any particular party is a Potential Bidder, Qualified Bidder or other participant or prospective participant in the SISP or involved in a bid), provided that such parties shall have entered into confidentiality arrangements satisfactory to the Vendor and the Monitor.

### ***Deposits***

34. All Deposits shall be retained by the Monitor in a non-interest-bearing trust account located at a financial institution in Canada selected by the Monitor. The Monitor may waive the requirement of a Deposit if it believes sufficient security or certainty has been provided by a Qualified Bidder.
35. If there is a Qualified Bid that constitutes a Successful Bid, the Deposit paid by the Successful Bidder shall be applied to the consideration to be paid upon closing of the transaction constituting the Successful Bid.

36. The Deposit(s) from all Qualified Bidders submitting Qualified Bids that do not constitute a Successful Bid or a Back-up Bid shall be returned to such Qualified Bidder within five (5) Business Days of the date that the Vendor select a Successful Bid and Back-up Bid, if applicable.
37. If the Qualified Bidder making a Qualified Bid is selected as the Successful Bid and breaches or defaults on its obligation to close the transaction in respect of its Successful Bid, it shall forfeit its Deposit to the Monitor for and on behalf of the Vendor; provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Vendor may have in respect of such breach or default.
38. If the Vendor is unable to complete the Successful Bid as a result of their own actions and not as a result of steps or conditions contained in the Successful Bid (or the actions of the Successful Bidder) then the Deposit shall be returned to the Successful Bidder.

***Supervision of the SISP***

39. The Monitor, with the support of any Sales Advisor, shall oversee the conduct of the SISP in all respects. Without limitation to that supervisory role, the Monitor shall participate in the SISP in the manner set out in this SISP Procedure, the CCAA Orders, the SISP Order and any other order of the Court, and is entitled to receive all information in relation to the SISP. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.
40. The Monitor, in consultation with the Vendor, SNDL and Interim Lender, may waive compliance with any one or more of the requirements of this SISP, including, for greater certainty, waiving strict compliance with any one or more of the requirements specified above and deem a non-compliant bid to be a Qualified Bid.
41. This SISP does not, and shall not be interpreted to, create any contractual or other legal relationship between the Vendor or the Monitor and any Potential Bidder, any Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Vendor.
42. Without limiting the preceding section, the Monitor, and any Sales Advisor, shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Qualified Bidder, the Successful Bidder, any Back-up Bidder, the Vendor, or any other creditor or other stakeholder of the Vendor, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Monitor. By submitting a bid, each Potential Bidder, Qualified Bidder, Successful Bidder and Back-up Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct of the Monitor.
43. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Binding Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
44. Subject to the terms of the Initial Order, the ARIO, and the SISP Order, the Monitor, in consultation with the Vendor, the Interim Lender and SNDL, shall have the right to modify the SISP, if, in its reasonable business judgment, such modification will enhance the process or better achieve the

objectives of the SISP; provided that the service list in the CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

45. In order to discharge its duties in connection with the SISP the Monitor may engage professional or business advisors or agents as the Monitor deems fit in its sole discretion.

***Further Orders***

46. At any time during the SISP, the Monitor or the Vendor may apply to the Court for advice and directions with respect to the discharge of their respective powers and duties hereunder, if any.

## **Schedule "1"**

### **To the Monitor:**

#### **Alvarez & Marsal Canada Inc., the Monitor**

Attention: David Williams  
Email: david.williams@alvarezandmarsal.com

With a copy to:

#### **Burnet, Duckworth & Palmer LLP, legal counsel to the Monitor**

Attention: David LeGeyt/Ryan Algar  
Email: dlegeyt@bdplaw.com / ralgar@bdplaw.com

### **To the Vendor:**

Attention: John Arbuthnot  
Email: john.arbuthnot@delta9.ca

With a copy to:

#### **MLT Aikins LLP, legal counsel to the Vendor**

Attention: Ryan Zahara / Chris Nyberg  
Email: rzahara@mltaikins.com / cnyberg@mltaikins.com