

COURT FILE NUMBER 2301 - 13922

COURT COURT OF KING'S BENCH  
OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF CONNECT FIRST CREDIT UNION LTD.

DEFENDANT OGEN HOLDINGS LTD. AND OGEN LTD.

DOCUMENT **FIRST REPORT OF THE RECEIVER**

**November 16, 2023**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**RECEIVER**

ALVAREZ & MARSAL CANADA INC.  
Bow Valley Square IV  
Suite 1110, 250 - 6<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3H7  
Attention: Orest Konowalchuk  
Telephone: (403) 538-4736  
Email: [okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com)

**COUNSEL TO RECEIVER**

MLT Aikins LLP  
2100, 222 – 3<sup>rd</sup> Avenue SW  
Calgary, Alberta T2P 0B4  
Attention: Catrina Webster/Chris Nyberg  
Phone: (403) 693-5420/(403) 693-2636  
Email: [cwebster@mltaikins.com](mailto:cwebster@mltaikins.com)  
[cnyberg@mltaikins.com](mailto:cnyberg@mltaikins.com)  
File: 0035572.00013

## TABLE OF CONTENTS

INTRODUCTION .....	3
TERMS OF REFERENCE .....	4
BACKGROUND AND OVERVIEW .....	5
INITIAL ACTIVITIES OF THE RECEIVER .....	7
OPERATIONAL UPDATE.....	9
PROPERTY, SECURED CREDITORS AND SECURITY REVIEW .....	11
COMPANY’S APPLICATION.....	12
RECEIPTS & DISBURSEMENTS – NOVEMBER 3, 2023 TO NOVEMBER 14, 2023 .....	16
RECEIVER’S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION .....	16
RECEIVER’S CONCLUSIONS AND RECOMMENDATIONS .....	17

## INTRODUCTION

1. On November 3, 2023 (the “**Receivership Date**”), by order of the Honourable Justice D.R. Mah of the Court of King’s Bench of Alberta (the “**Court**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed receiver and manager (the “**Receiver**”), without security, of all of OGEN Holdings Ltd. (“**OHL**”) and OGEN Ltd.’s (“**OL**”) (collectively, “**OGEN**” or the “**Company**”) current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (other than the Excluded Assets (as defined below), the “**Property**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), and section 13(2) of the *Judicature Act*, RSA 2000, c B-9, and 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 (the “**Receivership Order**”).
2. Amongst other things, the Receivership Order empowers and authorizes, but does not obligate, the Receiver to take possession and control of the Property and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business. The Receivership Order also empowers the Receiver to borrow by way of a receiver’s certificate to the amount of \$750,000 and the whole of the Property is charged by way of a fixed and specific charge to secure such borrowings (the “**Receiver's Borrowings Charge**”).
3. For greater clarity, the Property specifically excludes any of the Company's assets for which any permit or license is issued or may be issued in accordance or connection with the Controlled Substances Legislations (as defined in the Receivership Order) and the Receiver shall not be deemed to be in possession of any Property within the meaning of the Controlled Substances Legislation (the “**Excluded Assets**”).
4. On November 3, 2023, by an order of this Honourable Court (“**Terminating NOI Proceedings Order**”), pursuant to section 57.1 of the BIA, A&M was substituted, in place of KSV Restructuring Inc., as the proposal trustee of OGEN in the proposal proceedings (the “**Proposal Proceedings**”) under court file numbers 25-2958981

- and 25-2988977. Upon A&M, as proposal trustee, filing a certificate in the form attached to the Terminating NOI Proceedings Order, then the time within OGEN may file a proposal to their creditors is immediately terminated in accordance with section 50.4(11) of the BIA and pursuant to section 50(12)(b) of the BIA, the proposal will be deemed to have been refused by OGEN's creditors.
5. The purpose of this first report of the Receiver (the “**First Report**” or “**this Report**”) is to provide this Honourable Court with information in respect of the following:
- a) a brief overview and background of OGEN;
  - b) the initial activities of the Receiver since the Receivership Date; and
  - c) the Company's application seeking authorization from this honourable Court to sell certain of the Excluded Assets, which include cannabis and cannabis products (the collectively, the “**Cannabis Assets**”) with the co-operation of the Receiver in accordance with applicable law (each sale and collectively, the “**Transactions**”);
  - d) the ongoing activities and the Receiver's course of action; and
  - e) the Receiver's conclusions and recommendations.
6. Capitalized words or terms not otherwise defined in this Report are as defined in the Receivership Order.
7. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

8. In preparing this First Report, the Receiver has relied upon: (i) the representations of certain management and other key stakeholders of OGEN; and (ii) financial and other information contained in the Company's books and records, which were

produced and maintained principally by the Company. The Receiver has not performed an audit, review or other verification of such information.

9. The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Company's financial information that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the financial information. Any future oriented financial information relied upon in this Report is based on the Receiver's assumptions regarding future events and actual results achieved will vary from this information and the variations may be materials.

## **BACKGROUND AND OVERVIEW**

### Background

10. OGEN is an Alberta-based company that engages in the business of cultivation and production of cannabis with property and a manufacturing facility and operations located in Calgary, Alberta. The OGEN facility is a purpose-built indoor production facility that is approximately 57,300 sq. ft. in size on a lot that is approximately 2.32 acres (the "**OGEN Facility**"). OHL owns the OGEN Facility and related production equipment, which it leases to OL. OHL does not conduct any activity business operations nor have any employees.
11. OL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Ltd." on April 26, 2013. On June 9, 2020, OL changed its name from Bloom Cultivation Ltd. to OGEN Ltd. OHL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Holdings" on January 12, 2017 and changed its name to OGEN Holdings Ltd. on January 24, 2020.
12. OHL is the sold shareholder of OL. OHL has approximately 15 shareholders, where its two largest shareholders are G. Edwards Holdings Ltd. and Hawksworth

Holdings Ltd. who respectively hold 40.67% and 46.31% of the voting common shares of OHL.

13. As at the Receivership Date, OL had approximately 86 employees and the Receiver terminated 80 and continued to utilize 6 employees to assist in the Receivership Proceedings.
14. OGEN produced high-quality bulk flower and pre-rolls. OGEN held licenses from Health Canada under the Cannabis Act and Cannabis Regulations and holds certain supply agreements with, among regulators and customers, the Alberta Gaming, Liquor and Cannabis Commission, the Ontario Cannabis Retail Corporation and other regulators across Canada.
15. The cannabis industry in Canada is facing numerous financial and operational challenges, including significant regulatory compliance costs, black market competition, and over supply issues. OGEN had not been profitable since its inception and has so far unsuccessfully attempted to restructure its affairs in the Proposal Proceedings.
16. Connect First Credit Union (the “**Lender**”) is the most significant secured creditor of OGEN and as of November 3, 2023, the Company was indebted to the Lender of approximately \$21.9 million. The Company’s next significant creditor is the Canada Revenue Agency with total indebtedness outstanding of approximately \$5 million, of which \$253,000 relates to source deductions and the remaining balance of \$4,730,000 relating to an unsecured excise tax claim.
17. Further background is also contained in the materials filed in support of the Receivership Order, including the Affidavit of Kunle Popoola sworn October 24, 2023 (the “**KP Affidavit**”). These documents and other public filed Court materials in these proceedings have been posted on the Receiver’s website at: <https://www.alvarezandmarsal.com/ogen> (the “**Receiver’s Website**”).

## INITIAL ACTIVITIES OF THE RECEIVER

18. Since the Receivership Date, the Receiver's activities have included, but are not limited to, the following:
- a) taking possession and control of the Property, except for the Excluded Assets;
  - b) conducting a site tour to understand and document the Company's Property and equipment and identifying, with the assistance of certain senior management and the responsible persons, where the Excluded Assets were located on-site;
  - c) acquiring access to the IT systems to obtain the Company's financial records;
  - d) with the oversight of the Responsible Person, obtaining access over the security systems and to terminate external access by former employees to the Company's database;
  - e) terminating employment of all Company employees except for six individuals including the Controller, the building maintenance technician, the Responsible Person, the Master Grower, the Quality Assurance Person, the Head of Security and and Company president whose employment will continue to assist the Receiver in these proceedings;
  - f) attending meetings with certain management and other key stakeholders of OGEN;
  - g) communication with ATB Financial and the Lender to freeze the Company's operating account and have the account set to "deposit only" as well as requesting that the cash on hand be sent to the Receiver's trust account;

- h) communication with certain vendors who visited the Company premises and notifying them of the receivership and discussing the need for services going forward;
- i) communication with former employees with respect to the wage earner protection program (“**WEPP**”) and preparing notices and documentation for each of the terminated employees to file their respective claims;
- j) reviewing Company financials and creditor listings to begin preparing the notice of receiver, required by section 245 and 246 of the BIA (“**Receiver’s Notice to Creditors**”), which will be delivered by the Receiver to all known creditors on November 10, 2023. A copy of the Receiver’s Notice to Creditors have been posted to the Receiver’s Website;
- k) inquiring into the status of insurance and taking steps to acquire adequate insurance coverage;
- l) redirecting mail to the office of the Receiver.
- m) retaining and providing instructions to MLT Aikins LLP (“**MLT Aikins**” or “**Receiver’s Counsel**”), the Receiver’s independent legal counsel, on a variety of matters with respect to the Receivership proceedings, including an independent security review;
- n) various communication with interested parties, exchange companies respecting their interest in the purchase of the Company’s inventory, equipment and building;
- o) multiple communication with the Company’s senior management, Company counsel, the Lender and its legal counsel, respecting operational matters and the Company’s interest to sell its inventory to assist in maximizing relations of the estate; and



- p) notifying the Company's insurance brokers of the Receivership Order and adding the Receiver as the named insured and loss payee.

#### Insurance Coverage

- 19. The Receiver obtained copies of the insurance policies from the Company's insurance broker, which consisted of insurance coverage for commercial general liability of \$10 million, equipment breakdown of \$29 million, and product recall of \$15 million. The Receiver is advised that the monthly payments for the policy is \$16,425.27 and the insurance policy is set to expire on May 30, 2024.

#### **OPERATIONAL UPDATE**

- 20. As at the Receivership Date, the Company was in full production mode and continued to produce various cannabis products. In particular, the Receiver noted and inspected the following:

- a) Early Growth: Approximately 13,000 plants
- b) Late Growth: Approximately 3,000 plants
- c) Dring stage/cure stage: Approximately 725,000 grams of finished goods equivalent.
- d) Bulk: Approximately 350,000 grams
- e) Finished Goods. Approximately \$1,000,000 in potential realization at market value.

- 21. The Receiver, with the assistance of the Responsible Person and the Head of Security, ensure that the security of the OGEN Facility was in place and the only person that had access are the Receiver and those individuals that the Receiver will continue to utilize in the Receivership Proceedings. While the Receiver has access to the entire OGEN Facility, the Receiver has made arrangements with the Responsible Person and Head of Security that it will only enter into those areas

where cannabis products are situated while the Responsible Person or those that have security clearance are on the premises..

22. The Company, with the cooperation of the Receiver, is currently using reasonable efforts to maintain the cannabis products in normal course and practice until it is determined by the Receiver and this Honourable Court whether the Company would be permitted to sell the cannabis product, as discussed in greater detail below, or to transfer or destroy the cannabis product.

### **Employees and Contractors**

23. As at the Receivership Date, OGEN had a total of 86 staff and management. The Receiver terminated 80 of those employees and continued to employ 6 employees, including those persons listed in Section 18(e), to assist the Receiver with administrative matters and upkeep of the building.
24. The Receiver is currently determining the amounts owed to each of the terminated employees for unpaid wages as at the Receivership Date and will work the former employees and Service Canada make the appropriate applications for potential payment under WEPP. In addition, depending on the path forward respecting the sale of the cannabis products by the Company and/or removal or destruction of the cannabis products, the Receiver is evaluating the quantum of resources (individuals) it may require to engage as independent contractors to assist in these roles.

## PROPERTY, SECURED CREDITORS AND SECURITY REVIEW

### Assets

25. Based on Company's books and records, as at the Receivership Date, the books and records include the following:

	Estimated Book Value
Accounts Receivable	892,919
Inventory	7,895,394
Prepaid Expenses	685,835
GST Receivable	10,654
Property and Equipment	28,211,901
<b>Total Book Value of Assets</b>	<b>\$ 37,696,703</b>

*(1) Realizable values may differ from the above estimated book value.*

### Liabilities

26. Based on the Company's books and records at the Receivership Date, the amounts owed to creditors are as follows:

	Amount
Secured Creditors	\$ 21,994,760
Unsecured Creditors	6,580,936
<b>Total Amount</b>	<b>\$ 28,575,696</b>

27. The Receiver notes that the sum of the secured creditor amounts is owed to the Lender and the majority of the unsecured creditor amounts largely consist of amounts owing to CRA (being approximately \$5 million). The Receiver has not undertaken a claims process for unsecured creditors and as such, expresses no opinion on the accuracy or completeness of the amount owed.

## Security Review

28. The Receiver's Counsel has not yet initiated a security review of the Lenders security, related security and mortgage documentation, in its role as independent legal counsel for the proposal trustee in the NOI proceedings. It is anticipated that the Receiver's Counsel will complete its review in the coming weeks but is advised that the Lender has a first ranking security interest over OGEN's personal property.
29. The Receiver is not aware of any other claimant that may have priority over the Lender's security, other than potential "super priority" claims with respect to CRA and the Receiver's Charge as set out in the Receivership Order and prior charges granted in the NOI Proceedings.

## **COMPANY'S APPLICATION**

### **Overview**

30. The Company is seeking from this Honourable Court on the following:
- a) authorizing OGEN to distribute and sell certain Excluded Assets which include cannabis and cannabis products (the "**Cannabis Assets**"), with the cooperation with the Receiver in accordance with applicable law;
  - b) authorizing the Receiver to facilitate access to the OGEN Facility and cooperate with OGEN respecting the sale of the the Cannabis Assets notwithstanding the Cannabis Assets are Excluded Assets in the Receivership Order;
  - c) confirming Mr. Darren Brisebois, as President of OGEN, to be authorized to instruct its legal counsel on behalf of OGEN to facilitate the sale of the Cannabis Assets;
  - d) authorizing the distribution of funds from the Cannabis Assets in accordance with the Receivership Order;

- e) releasing Darren Brisebois, Benoit Milette, and James Brophy (the "**Key Employees**") from any and all claims respecting the sale of the Cannabis Assets and any related destruction or disposal (the "**Release**");
31. As at the Receivership Date, the Receiver was able to confirm that the Company has a significant amount of Cannabis Assets located in the OGEN Facility, as more fully described above. While the Receiver is not in possession or control of the Cannabis Assets pursuant to the Receivership Order, the Receiver has conducted a preliminary review on the estimated cost for destruction and removal of the Cannabis Assets versus the possibility of the Company fulfilling and completing certain sales orders and completing certain late harvest of plants to the bulk stage for possible sale.
32. The Receiver and the Company have received interest from multiple sources on the purchase of the existing Cannabis Assets and received proposals from certain various licensed cannabis companies and reputable brokerages. In addition, the Company received confirmation from the Alberta Liquor and Gaming Commission ("ALGC") that, should the Company be permitted to, given the top quality of the cannabis product, the ALGC would be prepared to continue purchasing all of OGEN's finished goods in the normal course.
33. As a result, the Receiver, with the assistance of existing senior management, prepared a preliminary draft cash flow forecast analysis under two scenarios – (i) a blown down, where the Receiver would assist to facilitate the destruction or removal of all the Cannabis Assets from the OGEN Facility; and (ii) stop all existing new production, destroy all new growth plants, and sell all existing finished goods and bulk inventory.
34. In order to participate in the Transactions outlined above, the Company has advised the Receiver that it requires the Release to cover the Key Employees involved as well as a separate indemnity agreement provided by the Lender. The Key Employees have advised the Receiver that they require reasonable protection to coordinate the sales of the Cannabis Assets as the Company will be unable to

indemnify them should any unforeseen issues arise. The Key Employees are concerned that the Receiver's protections may not extend to them as OGEN employees, and because there is no insurance in place to protect them. The Receiver has reviewed the Release with Receiver's Counsel and the Company and Company's counsel and believes the Release requested is reasonable in the circumstances and supports the approval of the Release.

35. The Company has further advised the Receiver that it understands any excise taxes payable as a result of sales of Cannabis Assets that are packaged and sold after the Receivership Date, will be segregated from the sale proceeds and paid in the ordinary course such that no additional excise liability may accrue as unpaid.
36. The below chart summarizes the preliminary estimate of under both scenarios:

Ogen Ltd. and Ogen Holdings Ltd. Cash Flow Forecast ending February 9, 2024 Scenario 1: Blowdown <i>unaudited, in CAD \$000's</i>		Period Nov 3 to Feb 24 Week 1 to Week 14
Total Cash Receipts		687
Total Expenditures From Operations		(1,133)
Total G&A Costs		(799)
Net Cash Flow		(1,245)

Ogen Ltd. and Ogen Holdings Ltd. Cash Flow Forecast ending February 9, 2024 Scenario 2: Sale and Winddown <i>unaudited, in CAD \$000's</i>		Period Nov 3 to Feb 24 Week 1 to Week 14
Total Cash Receipts		2,879
Total Expenditures From Operations		(1,847)
Total G&A Costs		(939)
Net Cash Flow		93

- a) **Scenario 2 (Blow Down).** In this scenario, it is assumed that the total net costs of approximately \$1.2 million would be incurred, which include a preliminary estimate for professional fees and costs of the Receiver and Receiver's Counsel. It is estimated that the Company would be able to collect approximately \$700,000 in outstanding accounts receivable, with no new sales of its inventory and would be

required to engage numerous independent contractors to assist in the removal, destruction and clean-up of the OGEN Facility respecting the Cannabis Assets. As a result, the Receiver would anticipate seeking an increase to its current Receiver's borrowing from \$750,000 (as permitted in the Receivership Order) to approximately \$1.3 million to address these costs or negotiate and/or make alternative arrangements with either the Lender or Health Canada for the removal of the Cannabis Assets.

- b) **Scenario 2 (Sale and Wind-Down).** In this scenario, it is assumed that the Company would be able to sell its existing finished goods inventory (i.e. product that is already stamped and ready for shipment to the provincial regulatory bodies, such as the ALGC), its bulk inventory and converting its existing late harvest plants to bulk sales, subject to Court approval. Should this scenario be acceptable to this Honourable Court, the preliminary draft cash flow forecast indicates that there should be sufficient cash flow to fund the Receivership Proceedings and cover the costs of the wind-down, clean up and non-operating disbursements of the Company (including professionals and costs) of the estate. The Receiver would be required to borrow up to \$250,000 initial through the issuance of a Receiver's Certificate and during the course of the Receivership Proceedings, these amounts should be paid back to the Lender.

37. The Receiver wishes to reiterate that the preliminary draft cash flow forecasts under both scenarios were prepared in conjunction with the Company's senior management team, and these forecast may be subject to material change. Notwithstanding the foregoing, these preliminary cash flow forecasts are the Receiver's and Company's best estimate at this stage and the Receiver will monitor the collection of receipts and expenditures closely throughout the Receivership Proceedings.

38. Considering the significant financial impact to the estate under both scenarios, the Company, with the support of the Lender, the CRA and Health Canada, believe Scenario 2 should be undertaken and that the Company should be authorized to engage in and complete the sales of its existing inventory to assist in defraying the expected material forecast costs in these proceedings.

#### **RECEIPTS & DISBURSEMENTS – NOVEMBER 3, 2023 TO NOVEMBER 14, 2023**

39. Since the Receivership Date, the Receiver arranged to make two payroll runs for the Company's former and existing staff of approximately \$273,160. The funds were borrowed through the Lender utilizing the Receiver's Certificate, which the Receiver is permitted to borrow up to \$750,000 pursuant to the Receivership Order.
40. The Receiver will be reviewing the cash flow requirements of the Company over the coming weeks to determine if there is a requirement to borrow funds by use of a Receiver's Certificate and this will largely be dependent upon the which scenario is ultimate chosen as part of the Receiver's path forward in the Receivership Proceeding.

#### **RECEIVER'S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION**

41. The Receiver's next steps include but are not limited to:
- a) coordinating with the Company on any sales efforts it may engage in with respect of the sale of the Cannabis Assets, subject to Court approval;
  - b) coordinating (as required) the removal, transfer and/or destruction of any Cannabis Assets, in coordination with Health Canada, CRA and other stakeholders;
  - c) implementing WEPP and notifying all former employees;
  - d) coordinating an audit on source deductions and GST with CRA;



- e) continuing efforts with respect to collecting valid accounts receivable with the Company's customers, including regulators;
- f) continuing communication with and updates to the secured lenders and other stakeholders in the receivership proceedings;
- g) completing other administrative tasks related to the Receivership Proceedings;

#### **RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS**

42. For the foregoing reasons, the Receiver respectfully recommends that this Honourable Court approve the application proposed by the Company.

All of which is respectfully submitted this 16<sup>th</sup> day of November, 2023.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as the Court-appointed Receiver of  
OGEN Holdings Ltd. and OGEN Ltd. and not its  
personal or corporate capacity**

Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President

## TABLE OF CONTENTS

INTRODUCTION .....	3
TERMS OF REFERENCE .....	4
BACKGROUND AND OVERVIEW .....	5
INITIAL ACTIVITIES OF THE RECEIVER .....	7
OPERATIONAL UPDATE.....	9
PROPERTY, SECURED CREDITORS AND SECURITY REVIEW .....	11
COMPANY’S APPLICATION.....	12
RECEIPTS & DISBURSEMENTS – NOVEMBER 3, 2023 TO NOVEMBER 14, 2023 .....	16
RECEIVER’S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION .....	16
RECEIVER’S CONCLUSIONS AND RECOMMENDATIONS .....	17

## INTRODUCTION

1. On November 3, 2023 (the “**Receivership Date**”), by order of the Honourable Justice D.R. Mah of the Court of King’s Bench of Alberta (the “**Court**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed receiver and manager (the “**Receiver**”), without security, of all of OGEN Holdings Ltd. (“**OHL**”) and OGEN Ltd.’s (“**OL**”) (collectively, “**OGEN**” or the “**Company**”) current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (other than the Excluded Assets (as defined below), the “**Property**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), and section 13(2) of the *Judicature Act*, RSA 2000, c B-9, and 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 (the “**Receivership Order**”).
2. Amongst other things, the Receivership Order empowers and authorizes, but does not obligate, the Receiver to take possession and control of the Property and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business. The Receivership Order also empowers the Receiver to borrow by way of a receiver’s certificate to the amount of \$750,000 and the whole of the Property is charged by way of a fixed and specific charge to secure such borrowings (the “**Receiver's Borrowings Charge**”).
3. For greater clarity, the Property specifically excludes any of the Company's assets for which any permit or license is issued or may be issued in accordance or connection with the Controlled Substances Legislations (as defined in the Receivership Order) and the Receiver shall not be deemed to be in possession of any Property within the meaning of the Controlled Substances Legislation (the “**Excluded Assets**”).
4. On November 3, 2023, by an order of this Honourable Court (“**Terminating NOI Proceedings Order**”), pursuant to section 57.1 of the BIA, A&M was substituted, in place of KSV Restructuring Inc., as the proposal trustee of OGEN in the proposal proceedings (the “**Proposal Proceedings**”) under court file numbers 25-2958981

- and 25-2988977. Upon A&M, as proposal trustee, filing a certificate in the form attached to the Terminating NOI Proceedings Order, then the time within OGEN may file a proposal to their creditors is immediately terminated in accordance with section 50.4(11) of the BIA and pursuant to section 50(12)(b) of the BIA, the proposal will be deemed to have been refused by OGEN's creditors.
5. The purpose of this first report of the Receiver (the "**First Report**" or "**this Report**") is to provide this Honourable Court with information in respect of the following:
- a) a brief overview and background of OGEN;
  - b) the initial activities of the Receiver since the Receivership Date; and
  - c) the Company's application seeking authorization from this honourable Court to sell certain of the Excluded Assets, which include cannabis and cannabis products (the collectively, the "**Cannabis Assets**") with the co-operation of the Receiver in accordance with applicable law (each sale and collectively, the "**Transactions**");
  - d) the ongoing activities and the Receiver's course of action; and
  - e) the Receiver's conclusions and recommendations.
6. Capitalized words or terms not otherwise defined in this Report are as defined in the Receivership Order.
7. All references to dollars are in Canadian currency unless otherwise noted.

#### **TERMS OF REFERENCE**

8. In preparing this First Report, the Receiver has relied upon: (i) the representations of certain management and other key stakeholders of OGEN; and (ii) financial and other information contained in the Company's books and records, which were

produced and maintained principally by the Company. The Receiver has not performed an audit, review or other verification of such information.

9. The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Company's financial information that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the financial information. Any future oriented financial information relied upon in this Report is based on the Receiver's assumptions regarding future events and actual results achieved will vary from this information and the variations may be materials.

## **BACKGROUND AND OVERVIEW**

### **Background**

10. OGEN is an Alberta-based company that engages in the business of cultivation and production of cannabis with property and a manufacturing facility and operations located in Calgary, Alberta. The OGEN facility is a purpose-built indoor production facility that is approximately 57,300 sq. ft. in size on a lot that is approximately 2.32 acres (the "**OGEN Facility**"). OHL owns the OGEN Facility and related production equipment, which it leases to OL. OHL does not conduct any activity business operations nor have any employees.
11. OL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Ltd." on April 26, 2013. On June 9, 2020, OL changed its name from Bloom Cultivation Ltd. to OGEN Ltd. OHL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Holdings" on January 12, 2017 and changed its name to OGEN Holdings Ltd. on January 24, 2020.
12. OHL is the sold shareholder of OL. OHL has approximately 15 shareholders, where its two largest shareholders are G. Edwards Holdings Ltd. and Hawksworth

Holdings Ltd. who respectively hold 40.67% and 46.31% of the voting common shares of OHL.

13. As at the Receivership Date, OL had approximately 86 employees and the Receiver terminated 80 and continued to utilize 6 employees to assist in the Receivership Proceedings.
14. OGEN produced high-quality bulk flower and pre-rolls. OGEN held licenses from Health Canada under the Cannabis Act and Cannabis Regulations and holds certain supply agreements with, among regulators and customers, the Alberta Gaming, Liquor and Cannabis Commission, the Ontario Cannabis Retail Corporation and other regulators across Canada.
15. The cannabis industry in Canada is facing numerous financial and operational challenges, including significant regulatory compliance costs, black market competition, and over supply issues. OGEN had not been profitable since its inception and has so far unsuccessfully attempted to restructure its affairs in the Proposal Proceedings.
16. Connect First Credit Union (the “**Lender**”) is the most significant secured creditor of OGEN and as of November 3, 2023, the Company was indebted to the Lender of approximately \$21.9 million. The Company’s next significant creditor is the Canada Revenue Agency with total indebtedness outstanding of approximately \$5 million, of which \$253,000 relates to source deductions and the remaining balance of \$4,730,000 relating to an unsecured excise tax claim.
17. Further background is also contained in the materials filed in support of the Receivership Order, including the Affidavit of Kunle Popoola sworn October 24, 2023 (the “**KP Affidavit**”). These documents and other public filed Court materials in these proceedings have been posted on the Receiver’s website at: <https://www.alvarezandmarsal.com/ogen> (the “**Receiver’s Website**”).

## INITIAL ACTIVITIES OF THE RECEIVER

18. Since the Receivership Date, the Receiver's activities have included, but are not limited to, the following:

- a) taking possession and control of the Property, except for the Excluded Assets;
- b) conducting a site tour to understand and document the Company's Property and equipment and identifying, with the assistance of certain senior management and the responsible persons, where the Excluded Assets were located on-site;
- c) acquiring access to the IT systems to obtain the Company's financial records;
- d) with the oversight of the Responsible Person, obtaining access over the security systems and to terminate external access by former employees to the Company's database;
- e) terminating employment of all Company employees except for six individuals including the Controller, the building maintenance technician, the Responsible Person, the Master Grower, the Quality Assurance Person, the Head of Security and and Company president whose employment will continue to assist the Receiver in these proceedings;
- f) attending meetings with certain management and other key stakeholders of OGEN;
- g) communication with ATB Financial and the Lender to freeze the Company's operating account and have the account set to "deposit only" as well as requesting that the cash on hand be sent to the Receiver's trust account;

- h) communication with certain vendors who visited the Company premises and notifying them of the receivership and discussing the need for services going forward;
- i) communication with former employees with respect to the wage earner protection program (“**WEPP**”) and preparing notices and documentation for each of the terminated employees to file their respective claims;
- j) reviewing Company financials and creditor listings to begin preparing the notice of receiver, required by section 245 and 246 of the BIA (“**Receiver’s Notice to Creditors**”), which will be delivered by the Receiver to all known creditors on November 10, 2023. A copy of the Receiver’s Notice to Creditors have been posted to the Receiver’s Website;
- k) inquiring into the status of insurance and taking steps to acquire adequate insurance coverage;
- l) redirecting mail to the office of the Receiver.
- m) retaining and providing instructions to MLT Aikins LLP (“**MLT Aikins**” or “**Receiver’s Counsel**”), the Receiver’s independent legal counsel, on a variety of matters with respect to the Receivership proceedings, including an independent security review;
- n) various communication with interested parties, exchange companies respecting their interest in the purchase of the Company’s inventory, equipment and building;
- o) multiple communication with the Company’s senior management, Company counsel, the Lender and its legal counsel, respecting operational matters and the Company’s interest to sell its inventory to assist in maximizing relations of the estate; and



- p) notifying the Company's insurance brokers of the Receivership Order and adding the Receiver as the named insured and loss payee.

#### Insurance Coverage

- 19. The Receiver obtained copies of the insurance policies from the Company's insurance broker, which consisted of insurance coverage for commercial general liability of \$10 million, equipment breakdown of \$29 million, and product recall of \$15 million. The Receiver is advised that the monthly payments for the policy is \$16,425.27 and the insurance policy is set to expire on May 30, 2024.

#### **OPERATIONAL UPDATE**

- 20. As at the Receivership Date, the Company was in full production mode and continued to produce various cannabis products. In particular, the Receiver noted and inspected the following:
  - a) Early Growth: Approximately 13,000 plants
  - b) Late Growth: Approximately 3,000 plants
  - c) Dring stage/cure stage: Approximately 725,000 grams of finished goods equivalent.
  - d) Bulk: Approximately 350,000 grams
  - e) Finished Goods. Approximately \$1,000,000 in potential realization at market value.
- 21. The Receiver, with the assistance of the Responsible Person and the Head of Security, ensure that the security of the OGEN Facility was in place and the only person that had access are the Receiver and those individuals that the Receiver will continue to utilize in the Receivership Proceedings. While the Receiver has access to the entire OGEN Facility, the Receiver has made arrangements with the Responsible Person and Head of Security that it will only enter into those areas

where cannabis products are situated while the Responsible Person or those that have security clearance are on the premises.

22. The Company, with the cooperation of the Receiver, is currently using reasonable efforts to maintain the cannabis products in normal course and practice until it is determined by the Receiver and this Honourable Court whether the Company would be permitted to sell the cannabis product, as discussed in greater detail below, or to transfer or destroy the cannabis product.

### **Employees and Contractors**

23. As at the Receivership Date, OGEN had a total of 86 staff and management. The Receiver terminated 80 of those employees and continued to employ 6 employees, including those persons listed in Section 18(e), to assist the Receiver with administrative matters and upkeep of the building.
24. The Receiver is currently determining the amounts owed to each of the terminated employees for unpaid wages as at the Receivership Date and will work the former employees and Service Canada make the appropriate applications for potential payment under WEPP. In addition, depending on the path forward respecting the sale of the cannabis products by the Company and/or removal or destruction of the cannabis products, the Receiver is evaluating the quantum of resources (individuals) it may require to engage as independent contractors to assist in these roles.

## PROPERTY, SECURED CREDITORS AND SECURITY REVIEW

### Assets

25. Based on Company's books and records, as at the Receivership Date, the books and records include the following:

	Estimated Book Value
Accounts Receivable	892,919
Inventory	7,895,394
Prepaid Expenses	685,835
GST Receivable	10,654
Property and Equipment	28,211,901
<b>Total Book Value of Assets</b>	<b>\$ 37,696,703</b>

*(1) Realizable values may differ from the above estimated book value.*

### Liabilities

26. Based on the Company's books and records at the Receivership Date, the amounts owed to creditors are as follows:

	Amount
Secured Creditors	\$ 21,994,760
Unsecured Creditors	6,580,936
<b>Total Amount</b>	<b>\$ 28,575,696</b>

27. The Receiver notes that the sum of the secured creditor amounts is owed to the Lender and the majority of the unsecured creditor amounts largely consist of amounts owing to CRA (being approximately \$5 million). The Receiver has not undertaken a claims process for unsecured creditors and as such, expresses no opinion on the accuracy or completeness of the amount owed.

### Security Review

28. The Receiver's Counsel has not yet initiated a security review of the Lenders security, related security and mortgage documentation, in its role as independent legal counsel for the proposal trustee in the NOI proceedings. It is anticipated that the Receiver's Counsel will complete its review in the coming weeks but the Receiver has been advised that the Lender has a first ranking security interest over OGEN's personal property.
29. The Receiver is not aware of any other claimant that may have priority over the Lender's security, other than potential "super priority" claims with respect to CRA and the Receiver's Charge as set out in the Receivership Order and prior charges granted in the NOI Proceedings.

## **COMPANY'S APPLICATION**

### **Overview**

30. The Company is seeking from this Honourable Court on the following:
- a) authorizing OGEN to distribute and sell certain Excluded Assets which include cannabis and cannabis products (the "**Cannabis Assets**"), with the cooperation with the Receiver in accordance with applicable law;
  - b) authorizing the Receiver to facilitate access to the OGEN Facility and cooperate with OGEN respecting the sale of the Cannabis Assets notwithstanding the Cannabis Assets are Excluded Assets in the Receivership Order;
  - c) confirming Mr. Darren Brisebois, as President of OGEN, to be authorized to instruct its legal counsel on behalf of OGEN to facilitate the sale of the Cannabis Assets;
  - d) authorizing the distribution of funds from the Cannabis Assets in accordance with the Receivership Order;

- e) releasing Darren Brisebois, Benoit Milette, and James Brophy (the "**Key Employees**") from any and all claims respecting the sale of the Cannabis Assets and any related destruction or disposal (the "**Release**");
31. As at the Receivership Date, the Receiver was able to confirm that the Company has a significant amount of Cannabis Assets located in the OGEN Facility, as more fully described above. While the Receiver is not in possession or control of the Cannabis Assets pursuant to the Receivership Order, the Receiver has conducted a preliminary review on the estimated cost for destruction and removal of the Cannabis Assets versus the possibility of the Company fulfilling and completing certain sales orders and completing certain late harvest of plants to the bulk stage for possible sale.
32. The Receiver and the Company have received interest from multiple sources on the purchase of the existing Cannabis Assets and received proposals from certain various licensed cannabis companies and reputable brokerages. In addition, the Company received confirmation from Alberta Gaming, Liquor, and Cannabis ("AGLC") that, should the Company be permitted to, given the top quality of the cannabis product, the AGLC would be prepared to continue purchasing all of OGEN's finished goods in the normal course.
33. As a result, the Receiver, with the assistance of existing senior management, prepared a preliminary draft cash flow forecast analysis under two scenarios – (i) a blown down, where the Receiver would assist to facilitate the destruction or removal of all the Cannabis Assets from the OGEN Facility; and (ii) stop all existing new production, destroy all new growth plants, and sell all existing finished goods and bulk inventory.
34. In order to participate in the Transactions outlined above, the Company has advised the Receiver that it requires the Release to cover the Key Employees involved as well as a separate indemnity agreement provided by the Lender. The Key Employees have advised the Receiver that they require reasonable protection to coordinate the sales of the Cannabis Assets as the Company will be unable to

indemnify them should any unforeseen issues arise. The Key Employees are concerned that the Receiver's protections may not extend to them as OGEN employees, and because there is no insurance in place to protect them. The Receiver has reviewed the Release with Receiver's Counsel and the Company and Company's counsel and believes the Release requested is reasonable in the circumstances and supports the approval of the Release.

35. The Company has further advised the Receiver that it understands any excise taxes payable as a result of sales of Cannabis Assets that are packaged and sold after the Receivership Date, will be segregated from the sale proceeds and paid in the ordinary course such that no additional excise liability may accrue as unpaid.
36. The below chart summarizes the preliminary estimate of under both scenarios:

Ogen Ltd. and Ogen Holdings Ltd. Cash Flow Forecast ending February 9, 2024 Scenario 1: Blowdown <i>unaudited, in CAD \$000's</i>		Period Nov 3 to Feb 24 Week 1 to Week 14
Total Cash Receipts		687
Total Expenditures From Operations		(1,133)
Total G&A Costs		(799)
Net Cash Flow		(1,245)

Ogen Ltd. and Ogen Holdings Ltd. Cash Flow Forecast ending February 9, 2024 Scenario 2: Sale and Winddown <i>unaudited, in CAD \$000's</i>		Period Nov 3 to Feb 24 Week 1 to Week 14
Total Cash Receipts		2,879
Total Expenditures From Operations		(1,847)
Total G&A Costs		(939)
Net Cash Flow		93

- a) **Scenario 1 (Blow Down).** In this scenario, it is assumed that the total net costs of approximately \$1.2 million would be incurred, which include a preliminary estimate for professional fees and costs of the Receiver and Receiver's Counsel. It is estimated that the Company would be able to collect approximately \$700,000 in outstanding accounts receivable, with no new sales of its inventory and would be

required to engage numerous independent contractors to assist in the removal, destruction and clean-up of the OGEN Facility respecting the Cannabis Assets. As a result, the Receiver would anticipate seeking an increase to its current Receiver's borrowing from \$750,000 (as permitted in the Receivership Order) to approximately \$1.3 million to address these costs or negotiate and/or make alternative arrangements with either the Lender or Health Canada for the removal of the Cannabis Assets.

- b) **Scenario 2 (Sale and Wind-Down).** In this scenario, it is assumed that the Company would be able to sell its existing finished goods inventory (i.e. product that is already stamped and ready for shipment to the provincial regulatory bodies, such as the AGLC), its bulk inventory and converting its existing late harvest plants to bulk sales, subject to Court approval. Should this scenario be acceptable to this Honourable Court, the preliminary draft cash flow forecast indicates that there should be sufficient cash flow to fund the Receivership Proceedings and cover the costs of the wind-down, clean up and non-operating disbursements of the Company (including professionals and costs) of the estate. The Receiver would be required to borrow up to \$250,000 initial through the issuance of a Receiver's Certificate and during the course of the Receivership Proceedings, these amounts should be paid back to the Lender.

37. The Receiver wishes to reiterate that the preliminary draft cash flow forecasts under both scenarios were prepared in conjunction with the Company's senior management team, and these forecast may be subject to material change. Notwithstanding the foregoing, these preliminary cash flow forecasts are the Receiver's and Company's best estimate at this stage and the Receiver will monitor the collection of receipts and expenditures closely throughout the Receivership Proceedings.

38. Considering the significant financial impact to the estate under both scenarios, the Company, with the support of the Lender, the CRA and Health Canada, believe Scenario 2 should be undertaken and that the Company should be authorized to engage in and complete the sales of its existing inventory to assist in defraying the expected material forecast costs in these proceedings.

**RECEIPTS & DISBURSEMENTS – NOVEMBER 3, 2023 TO NOVEMBER 14, 2023**

39. Since the Receivership Date, the Receiver arranged to make two payroll runs for the Company's former and existing staff of approximately \$273,160. The funds were borrowed through the Lender utilizing the Receiver's Certificate, which the Receiver is permitted to borrow up to \$750,000 pursuant to the Receivership Order.
40. The Receiver will be reviewing the cash flow requirements of the Company over the coming weeks to determine if there is a requirement to borrow funds by use of a Receiver's Certificate and this will largely be dependent upon the which scenario is ultimate chosen as part of the Receiver's path forward in the Receivership Proceeding.

**RECEIVER'S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION**

41. The Receiver's next steps include but are not limited to:
- a) coordinating with the Company on any sales efforts it may engage in with respect of the sale of the Cannabis Assets, subject to Court approval;
  - b) coordinating (as required) the removal, transfer and/or destruction of any Cannabis Assets, in coordination with Health Canada, CRA and other stakeholders;
  - c) implementing WEPP and notifying all former employees;
  - d) coordinating an audit on source deductions and GST with CRA;



- e) continuing efforts with respect to collecting valid accounts receivable with the Company's customers, including regulators;
- f) continuing communication with and updates to the secured lenders and other stakeholders in the receivership proceedings;
- g) completing other administrative tasks related to the Receivership Proceedings;

#### **RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS**

42. For the foregoing reasons, the Receiver respectfully recommends that this Honourable Court approve the application proposed by the Company.

All of which is respectfully submitted this 16<sup>th</sup> day of November, 2023.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as the Court-appointed Receiver of  
OGEN Holdings Ltd. and OGEN Ltd. and not its  
personal or corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President