

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 **SECOND REPORT OF THE RECEIVER**

February 8, 2024

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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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 exercise control over 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 up to \$750,000 by way of a receiver's certificate and the whole of the Property is charged by way of a fixed and specific charge to secure such borrowings.
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 September 1, 2023, Ogen presented a proposal (the "**Proposal**") to their creditors. On September 20, 2023, Ogen held the Creditors' Meeting (as defined in the Proposal), which was subsequently adjourned to November 2, 2023 which was then adjourned further.

5. 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 will be 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.
6. On November 17, 2023, the Court granted an Order (the "**Excluded Assets Order**") which, among other things, authorized the Company to distribute and/or sell certain Excluded Assets with the cooperation of the Receiver. The Receiver filed the first report of the Receiver (the "**First Report**") in support of the November 17, 2023 motion.
7. The purpose of this second report of the Receiver (the "**Second Report**" or "**this Report**") is to provide this Honourable Court with information in respect of the following:
 - a) the activities of the Receiver since the First Report;
 - b) an update on the Company's activities since the First Report, including the Company's efforts to sell certain of the Excluded Assets (i.e. cannabis and cannabis products), with the assistance of the Receiver;
 - c) the Receiver's selection of a sales and marketing agent in connection with the Receiver's proposed sale and investment solicitation process (the "**SISP**");
 - d) the Receiver's application for an Order (the "**SISP Order**") approving a SISP for the sale of the Property;

- e) the Receiver's application for an Order (the "**Restricted Court Access Order**") sealing Confidential Appendices 1 to 3 of this Report;
 - f) the cash flow results for the period from November 15, 2023 to January 26, 2024 (the "**Reporting Period**");
 - g) approval of the Receiver's actions, activities and conduct, and approval of the Receiver's fees and disbursements and those of the Receiver's Counsel since the Receivership Date;
 - h) the Receiver's ongoing activities and its intended course of action; and
 - i) the Receiver's conclusions and recommendations.
8. Capitalized words or terms not otherwise defined in this Report are as defined in First Report or the Receivership Order.
9. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

10. In preparing this Second 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.
11. 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

12. 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 business operations nor have any employees.
13. 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.
14. OHL is the sole shareholder of OL. OHL has approximately 15 shareholders, the two largest of which are G. Edwards Holdings Ltd. and Hawksworth Holdings Ltd. who respectively hold 40.67% and 46.31% of the voting common shares of OHL.
15. As at the Receivership Date, OL had approximately 86 employees. The Receiver initially terminated the employment of 80 employees while continuing to utilize 6 employees to assist in the receivership proceedings. As at February 2, 2024, the Receiver has continued to retain the services of 3 of the Company's employees and 7 contractors as discussed further below.
16. Ogen produced high-quality bulk flower and pre-rolls. Ogen holds licenses from Health Canada under the *Cannabis Act*, SC 2018, c. 16, an excise license under the *Excise Act*, 2001 SC 2002, c. 22, and is party to certain supply agreements with

provincial distributors and customers, such as the Alberta Gaming, Liquor and Cannabis Commission, the Ontario Cannabis Retail Corporation, and others across Canada.

17. Connect First Credit Union (the "**Lender**" or "**CFCU**") 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 (the "**CRA**") with total indebtedness outstanding of approximately \$5 million, of which approximately \$253,000 relates to GST and the remaining balance of approximately \$4.7 million relating to an excise tax claim.
18. Further background on the Company 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**") and the Receiver's First Report. These documents and other publicly filed Court materials in these proceedings have been posted on the Receiver's website at: <https://www.alvarezandmarsal.com/ogen> (the "**Receiver's Website**").

ACTIVITIES OF THE RECEIVER SINCE THE FIRST REPORT

19. Since the First Report, the Receiver's activities have included, but are not limited to, the following:
 - a) terminating the employment of certain employees no longer required as a result of the Receivership Order being granted;
 - b) identifying certain former employees of the Company to retain as independent contractors for the purpose of assisting the Receiver in carrying out its duties;
 - c) continuing to secure and safeguard the Property, except for the Excluded Assets, with the assistance of the Company's employees that were retained by the Receiver and certain contractors;

- d) communicating with certain suppliers regarding 30-day claim matters and entering into negotiations with customers to collect on outstanding accounts receivable;
- e) assisting the Company, as required, in the Company's efforts to sell certain of the Excluded Assets to the Alberta Gaming, Liquor and Cannabis Commission (the "**AGLC**"), and certain licensed cannabis producers. The Company engaged the services of the Canadian Cannabis Exchange ("**CCX**") to act as its broker to sell a significant portion of the Cannabis Assets;
- f) assisting the Company in its efforts to market its genetic material, which form part of the Excluded Assets, and assisting the Company to market the Company's brand, intellectual property and provincially listed stock-keeping units, which form part of the Property;
- g) correspondence with numerous vendors with respect to the Receivership Order and the continuation of services during the receivership proceedings;
- h) monitoring the cash flows of the Company on a daily basis and developing cash flow forecasting to manage future cash flow requirements of the Company;
- i) communicating with the CRA to obtain access to the Company's CRA accounts and requesting that the CRA complete its respective source deduction and GST audits;
- j) communication with former employees with respect to the Wage Earner Protection Program ("**WEPP**");
- k) correspondence with respective counsel for the Department of Justice and Health Canada, with respect to the ongoing operations of the

Company and the status of the Company's Health Canada and excise tax licenses;

- l) various communications with interested parties and brokerage companies respecting their interest in the purchase of the Company's inventory, equipment and building;
- m) seeking proposals from select real estate agents and parties interested in marketing the Property, along side with the Receiver, respecting the contemplated SISP;
- n) engaging the services of Cushman & Wakefield ULC and GD Auctions & Appraisals Inc. to conduct separate independent appraisals for the lands and facility and the inventory and equipment, respectively;
- o) numerous communications with the Company's senior management, the Company's counsel, the Lender and its legal counsel, respecting operational matters and the Company's interest to sell certain of the Excluded Assets to assist in maximizing relations of the estate; and
- p) providing instructions to MLT Aikins LLP (the "**Receiver's Counsel**"), on a variety of matters with respect to the receivership proceedings, including an independent security review.

OPERATIONAL UPDATE

Cannabis Assets

- 20. Pursuant to the November 17, 2023 Excluded Assets Order, the Company is authorized to distribute and/or sell certain Excluded Assets which are cannabis and cannabis products (the "**Cannabis Assets**") with the cooperation of the Receiver and in accordance with applicable laws.
- 21. The Company, with the cooperation of the Receiver, completed harvesting and processing activities for all late-growth cannabis plants with a scheduled harvest

date up to and including November 20, 2023, and completed the destruction of all early-growth cannabis plants with a scheduled harvest date later than November 20, 2023.

22. As of the date of this Report, the Company has sold approximately 2.5 million grams of bulk and retail packaged Cannabis Assets, which is comprised of approximately 120,000 grams sold to the AGLC and approximately 2.3 million grams sold to licensed producers, either through direct sales or through the CCX. As a result, total sales collected for the benefit of the estate have been delivered to the Receiver of approximately \$1.1 million and an additional \$427,000 is yet to be collected.
23. The Company also completed the destruction of approximately 117,000 grams of dried cannabis product that was either unsaleable as per applicable standards or for which the Company determined it would be uneconomical to sell.
24. As at the date of this Report, the Receiver understands that remaining Cannabis Assets are as follows:
 - a) 57 late-stage plants (the "**Mother Plants**") which are used to duplicate the genetic properties of the various strains of cannabis plants owned by Ogen, and are the result of multiple years of research and development initiatives conducted by the Company;
 - b) 1,466 early-stage plants, which have been propagated using genetic material from the Mother Plants (the "**Clones**");
 - c) approximately 1,900 cannabis plant seeds, which the Company has compiled since obtaining its Health Canada license; and
 - d) approximately 79kg of retained samples for cannabis product previously sold by the Company, which are required to be retained as per Health Canada requirements.

Sale of the Ogen Brand, Genetics, SKUs, and Intellectual Property

25. The Company and the Receiver are jointly conducting a marketing and sales process for certain of the Excluded Assets and the Property.
26. The Excluded Assets, which remain in the Company's control and possession, include genetic material relating to the Company's numerous strains of cannabis, which is in the form of the Mother Plants, Clones, and remaining seeds (collectively, the "**Genetics**").
27. The Property (which is being marketed with the above Excluded Assets) is under the control of the Receiver, include the Company's trademarked brands, stock-keeping units ("**SKUs**"), marketing campaigns, social media accounts, and other intellectual property assets (collectively, the "**Intellectual Property**").
28. The Company and the Receiver, with the support of the Lender, have engaged CCX to act as the marketing agent (the "**IP Marketing Agent**"), to help sell the Genetics, SKUs and Intellectual Property (collectively, the "**IP Assets**"). CCX was selected to act as the IP Marketing Agent, given, among other things, its significant experience in marketing cannabis assets in Canada and a competitive compensation model. The Lender has confirmed that it is supportive of the Receiver's selection of the Marketing Agent and overall approach for the sale of the IP Assets.
29. The IP Marketing Agent is currently marketing the IP Assets to a wide variety of strategic licensed producers known within the cannabis sectors in Canada, the United States and internationally. A copy of the marketing package (the "**IP Bid Package**") that was sent to the interested parties, after execution of a NDA, is attached as Confidential Appendix "1" to this Report.
30. The IP Marketing Agent has also advertised the sale of the IP Assets in a news wire that was picked up by national publications such as the Globe and Mail, Financial Post and Yahoo Finance, and has run separate advertisements within cannabis industry-specific publications such as StratCann and MJBiz.

31. As of the date of this Report, 39 parties have expressed interest in the IP Assets and were granted access to a virtual data room after having signed a client agreement with confidentiality provisions.
32. The competitive bidding process was initiated on January 16, 2024 and the initial deadline for bids to be received was on or before February 2, 2024 (the "**Initial IP Asset Bid Deadline**"). A summary of the initial offers received (the "**IP Bid Summary**") is listed as Confidential Appendix "2" to this Report.
33. The final bid deadline for bids to be received was on or before February 7, 2024 (the "**Final IP Asset Bid Deadline**"). Following the Final IP Asset Bid Deadline, the bids will be reviewed and negotiated between the Company and Receiver, with the assistance of the IP Marketing Agent, and the successful bidder. The selection of the successful bidder for the IP Assets will be communicated to this Court in future reporting.
34. Due to the confidential nature of the information provided by the IP Marketing Agent in the IP Bid Summary, including the IP Bid Package, the Receiver is concerned that, if the information is disclosed to third-parties prior to the completion of a transaction, the disclosure could materially jeopardize the realizations during the SISP. As such, the Receiver is respectfully of the view that it is appropriate for this Honourable Court to seal Confidential Appendices 1 and 2, in accordance with the proposed form of the Restricted Court Access Order.
35. Upon the conclusion of the anticipated sale of the IP Assets, the Company will proceed to destroy any of the remaining Genetics which are not transferred to a purchaser of the IP Assets. When the sale of the IP Assets concludes, it is anticipated that all Excluded Assets will have been returned, destroyed or disposed of in accordance with all applicable laws in all material respects.

SECURITY REVIEW

36. The Receiver's Counsel completed a review of the Lender's security, including related security and mortgage documentation, and has determined that, subject to customary qualifications and exceptions, as set forth in the subject security opinion, the loan document noted therein constitutes a legal and binding obligation of Ogen enforceable against Ogen in accordance with its terms, in favour of the Lender, and that the subject security documents create valid security interests in favour of the Lender in the real and personal property described therein, as applicable, in which Ogen presently has rights and are sufficient to create a valid security interest in favour of the Lender in any such real and personal property, as applicable.
37. 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, claims with respect to section 81.4 of the BIA, the Receiver's Charge as set out in the Receivership Order and prior charges granted in the NOI Proceedings.

SELECTION OF A MARKETING AGENT

38. Pursuant to paragraph 6(d) of the Receivership Order, the Receiver is authorized to, among other things, engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and other persons to assist with the exercise of the Receiver's powers and duties.
39. The Receiver contacted a commercial realty brokerage and CCX (the "**Brokers**") in order to obtain their professional and independent views of the market and potential realizations of Property, including any alternative development strategies that may increase potential realizations for the estate. Each Broker executed a non-disclosure agreement and subsequently provided their proposals to the Receiver on and around February 6, 2024 (the "**Proposals**").
40. The Receiver reviewed the Proposals and communicated with the Brokers to further understand and discuss the same. A summary of the Proposals is attached as Confidential Appendix "**3**" to this Report.

41. The Proposals outlined the Brokers' estimates of the potential gross realizations that may be achieved for the Property and their recommended marketing processes.
42. Based on the Proposals, it appears that the anticipated realizations from the sale of the Property is likely lower than the debt owing to CFCU, being approximately \$21.9 million. As such, it is expected that CFCU will suffer a shortfall and is considered the fulcrum creditor of the estate.
43. After considering the Proposals, the Receiver, with the support of CFCU, selected CCX to assist in carrying out the proposed SISP. The Receiver anticipates entering into a marketing agent agreement with CCX as marketing agent for the Property. While the engagement letter has not yet been finalized, the major terms and conditions shall be included as part of the proposal filed by CCX. The Receiver anticipates executing an engagement letter with CCX prior to the Receiver's court application date of February 16, 2024, and if it is finalized, the Receiver intends to file a copy of the engagement letter with the Court. The Receiver will seek consent by the Lender on the final form of the engagement letter.
44. Due to the sensitive nature of the information provided with respect to value in the Proposals, and given the fact that the Receiver has not yet fully initiated the SISP, the Receiver is of the view that if the information contained in the Proposals is disclosed to third parties prior to the marketing of the Property, the disclosure would materially jeopardize the potential realizations (or, if the sale does not close, such disclosure could materially jeopardize the value that the Receiver could subsequently obtain from a subsequent sale of the Property). As such, the Receiver is respectfully of the view that the information contained in the Proposals is commercially sensitive, and it is appropriate that the Court grant the Receiver's request for a Restricted Court Access Order to seal Confidential Appendix "3" as it contains a summary of the Proposals.

PROPOSED SISP

Overview

45. The Receivership Order empowers and authorizes, but does not obligate the Receiver to, among other things:

- a) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of the sale as the Receiver in its discretion may deem appropriate; and
- b) apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

46. Notwithstanding the authority to market and sell the Property is included in the Receivership Order, the Receiver is requesting that the Court approve the SISP as:

- a) the Property consists of a unique, large facility located within the Calgary city limits that may be best sold for its intended purpose – an indoor cannabis manufacturing facility, which is the largest in Alberta;
- b) should an offer be accepted to purchase the facility, but not for its intended purpose (as a licensed cannabis facility), there is a significant amount of inventory and equipment that may not be sold with the facility and could be sold separately, which may contain material value to the estate;
- c) there are several stakeholders in these proceedings, including super-priority creditors, secured creditors (Lender), unsecured creditors and the guarantors of the loan owed to the Lenders. As such, ensuring that all stakeholders understand and have an opportunity to review the

significant undertaking of a SISP, with approval from this Honourable Court, will provide clarity and transparency to the SISP ahead of time; and

- d) to the extent there is a Successful Bidder (as defined in the SISP), the Receiver will return before this Court to apply for orders approving the sale(s) and vesting of the assets. The Receiver views the Court's involvement in the SISP at an early stage, through the approval of the process, as valuable in the circumstances.

- 47. CFCU has reviewed the proposed SISP and has provided input into its terms which has been incorporated. The Receiver understands that CFCU supports the proposed SISP.

Summary of the Proposed SISP

- 48. The proposed SISP provides for a combination of bids by auctioneers, private bidders from outright purchases and/or an *en bloc* offer for the sale of the Property. The Receiver believes that a SISP which provides for the greatest flexibility in soliciting and selecting bids from interested parties for the sale of the Property will provide the greatest chance for the Receiver to realize the maximum value.
- 49. In order to determine the Property's market value, the SISP will solicit offers in Canada and the United States, respecting the facility and land, along with all of the Company's equipment and inventory. A copy of the proposed SISP is attached to this Report as Appendix "A".
- 50. A summary of the timelines in the proposed SISP are outlined in the chart below:

Event	Date
SISP Order granted	February 16, 2024
Posting and distribution of non-confidential marketing materials	February 20, 2024
Further advertisement of the SISP in the publications noted below	February 20 - March 1, 2024
Open Data Room	February 21, 2024
Phase 1 Qualified Bidders to review materials, complete due diligence and schedule appointments to inspect the Property.	February 16 - March 22, 2024
Phase I Bid Deadline	March 22, 2024
Receiver to review the bids received, in consultation with the Marketing Agent and Lender.	March 22 - 25, 2024
Phase II due diligence period	March 22 - April 8, 2024
Phase II Bid Deadline	April 8, 2024
Receiver to review the Qualified Bids, negotiate as required, and select Successful Bidder(s)	April 8 - April 12, 2023
Receiver to seek Court approval of Successful Bid(s) submitted by Successful Bidder(s)	Week of April 19, 2024 or as soon as practical thereafter

51. Pursuant to the SISP, all qualified interested parties will be provided with an opportunity to participate in the SISP. The SISP is designed to find the highest and/or best offer for a sale of or investment in the Property and/or the business.
52. Any transaction involving the Property or the individual assets of the Company will be on an "*as is, where is*" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or any of its respective agents, estates, advisors, professionals or otherwise, except to the extent set forth in a written agreement with the person who is a counterparty to such a transaction.
53. Following productive discussions with Health Canada and the Lender, the SISP also contemplates that any Investment Proposal (as defined in the SISP) that seeks to preserve Ogen's Health Canada license will require the applicable purchaser to assume Ogen's liability for its 2023/2024 cannabis fee levy.

Pre-Marketing Stage

54. The Marketing Agent, with the assistance of the Receiver, will prepare:
- a) a non-confidential teaser describing the SISP (the "**Teaser Letter**"), the opportunity, and including a non-disclosure agreement (the "**NDA**") that must be executed by a potential bidder as a pre-requisite to gain access to the virtual data room ("**Data Room**"); and
 - b) a list of potential bidders ("**Known Potential Bidders**").
55. The Receiver will prepare a draft Purchase Agreement for use by potential bidders making a Sale Proposal and a draft Binding LOI for use by the potential bidders making an Investment Sale Proposal.

Marketing Stage

56. The Receiver and/or the Marketing Agent will arrange to publish a notice of the SISP in major publications (the "**Notice**"), including *The Calgary Herald*, the *Insolvency Insider* and any other publication, website, newspaper, journals or with any sales agents as the Receiver may consider appropriate. The Marketing Agent will also issue a press release with Canada Newswire (the "**Press Release**") setting out the information contained in the Notice and such other relevant information as the Receiver considers appropriate.
57. The Marketing Agent shall provide notice of the SISP to the Known Potential Bidders and invite them to execute an NDA. A Known Potential Bidder that has executed an NDA and provided the required documentation as outlined in the SISP may be deemed a "**Phase 1 Qualified Bidder**" and will be provided access to the Data Room which contains documents furnished by the Company relating to the Property.

Phase I

58. A Phase 1 Qualified Bidder who wishes to pursue the opportunity further must deliver a non-binding indication of interest to the Receiver, with a copy to the Marketing Agent, by no later than 5:00 pm (Calgary time) on March 22, 2024 (the "**Phase I Bid Deadline**"). A non-binding indication of interest will only qualify as a Qualified LOI in the event that it contains, meets or includes the criteria listed in the SISP.
59. Notwithstanding the above, the Receiver, in consultation with the Marketing Agent and with the consent of the Lender, may waive non-compliance with any one or more of the requirements specified in the SISP and may deem any non-compliant letter of intent to be a Qualified LOI.
60. The Receiver will, in consultation with the Lender and Marketing Agent, assess the Qualified LOIs. If it is determined by the Receiver that a Phase 1 Qualified Bidder that has submitted a Qualified LOI:
- a) has a bona fide interest in completing a Sale Proposal or Investment Proposal (as the case may be); and
 - b) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided;
- then such Phase 1 Qualified Bidder will be deemed a Phase 2 Qualified Bidder, provided that the Receiver may, in its reasonable business judgment, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some certain Phase 1 Qualified Bidders from the SISP). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.
61. No Phase 1 Qualified Bidder that has submitted a Qualified LOI shall be deemed to be a Phase 2 Qualified Bidder without the approval of the Receiver.

Phase II

62. In order to continue to participate in the SISP from and after the Phase 1 Bid Deadline, a Phase 2 Qualified Bidder must deliver a binding and definitive agreement to the Receiver, with a copy to the Marketing Agent, by no later than 5:00 PM (Calgary time) on April 8, 2024 or such other date and time as may be modified in the Bid Process Letter (the "**Phase 2 Bid Deadline**").
63. The Receiver will, in consultation with the Lender and Marketing Agent, review and evaluate each Phase 2 Qualified Bid. The Receiver may seek clarity with respect to the terms of any Phase 2 Qualified Bid. The Receiver may also negotiate with one or more Phase 2 Qualified Bidders, to seek amended, improved, or clarified terms with respect to such Phase 2 Qualified Bids.
64. After the completion of its evaluation and any negotiations related to Phase 2 Qualified Bids, the Receiver shall identify the highest or otherwise best bid(s) (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**"). The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.
65. At the hearing of the application to approve any transaction with a Successful Bidder (the "**Approval Application**"), the Receiver shall seek, among other things, approval from the Court to consummate any Successful Bid(s). The Approval Application will be held on a date to be agreed upon by the Receiver and the Successful Bidder(s). The Approval Application may be adjourned or rescheduled by the Receiver.

The Receiver's View of the SISP

66. The Receiver is of the view that the implementation of the proposed SISP is appropriate under the circumstances. The Receiver recommends that the SISP be approved by this Honourable Court for the following reasons:

- a) the SISP provides a fair and transparent process which will be conducted in such a manner as to provide potential bidders equal access to express their interest in making an offer for the Property or the business of the Company;
- b) the timeline provided in the SISP will permit a sufficient level of market exposure for the Property in an expedient and efficient manner and provide potential bidders with approximately five weeks to submit a qualified non-binding bid and perform any desired diligence, with additional time to finalize a definitive agreement, as part of a Phase II, as required;
- c) the Receiver has extensive experience in marketing distressed assets and is of the view that the proposed SISP is the best way to market the Property and/or the Company;
- d) the arrangement with Health Canada regarding the proposed assumption of the cannabis levy liability will provide a level of regulatory certainty for prospective purchasers that incentivizes going concern bids for the Property;
- e) the Receiver is not aware of any stakeholder that will be prejudiced by the process; and
- f) the Lender has been consulted and is supportive of the SISP.

INTERIM STATEMENT OF RECEIPTS & DISBURSEMENTS

67. The following is an interim statement of the Receiver's receipts and disbursements in respect of the Company during the Reporting Period:

Ogen Ltd. and Ogen Holdings Ltd.
Interim Statement of Receipts and Disbursements
November 15, 2023 to January 26, 2024
in CAD \$000's

	First Report Nov 3/23 to Nov 14/23	Reporting Period Nov 15/23 to Jan 26/24	Total Nov 3/23 to Jan 26/24
Opening cash balance	\$ 0	\$ 92	\$ 0
Receiver's borrowings	-	-	-
Receipts			
Provincial Customer receipts	217	309	526
Private Customer receipts	147	76	223
Cannabis Sales	-	1,063	1,063
Other Receipts	2	0	2
Total receipts	365	1,449	1,814
Disbursements			
Employee Costs - Pre-Receivership	259	-	259
Employee Costs - Post-Receivership	14	330	343
Excise, Health Canada	-	5	5
Winddown support services	-	40	40
Windown materials	-	2	2
IT	-	11	11
Insurance	-	66	66
Utilities	-	122	122
Miscellaneous	-	2	2
CRA WEPP Payment	-	-	-
Professional Fees	-	406	406
GST paid/(received)	-	1	1
Total disbursements	273	985	1,258
Ending cash balance	\$ 92	\$ 556	\$ 556

68. There was approximately \$92,000 of cash at the start of the Reporting Period.
69. The Receiver collected approximately \$1.4 million during the Reporting Period, relating to the collection of pre-receivership accounts receivable and sales to the AGLC and other licensed producers.
70. The Receiver made disbursements of approximately \$985,000 during the Reporting Period, relating primarily to:
- a) payments of approximately \$330,000 relating to wages and benefits for the remaining employees and independent contractors;
 - b) utilities costs for electricity, water, and natural gas of approximately \$122,000;

- c) insurance costs of approximately \$66,000;
- d) winddown support services costs relating primarily to required product quality testing of approximately \$40,000;
- e) IT costs of approximately \$11,000; and
- f) professional fees totaling approximately \$406,000 relating to payment of invoices for the following:
 - i. the Receiver's and Receiver's Counsel's fees and costs in the amount of approximately \$256,000 and \$42,000, respectively for fees and expenses incurred up to December 31, 2023;
 - ii. Company's counsel's fees and costs totaling approximately \$33,000 for fees and costs incurred in the Receivership Proceeding up to December 31, 2023 authorized by the Receiver to assist the Company to sell the Cannabis Assets and other services provided to the Receiver; and
 - iii. the payment of outstanding fees and costs of the Company's counsel and MLT Aikins in the NOI Proceedings totaling approximately \$75,000, which were subject to the Administration Charge granted by the Court in the NOI Proceedings that maintained a priority charge over the Lender in the Receivership Proceedings. The Receiver confirms that all priority charges subject to the Administration Charge granted in the NOI Proceedings have now been paid in full in the Receivership Proceedings.

- 71. The ending cash available as at January 26, 2024 was approximately \$556,000.
- 72. The Receiver notes that the Interim Financing Charge of \$500,000 which was granted in the NOI Proceedings and fully utilized, remains outstanding and unpaid.

73. Pursuant to paragraph 24 of the Receivership Order, the Receiver has been empowered to borrow by way of revolving credit or otherwise, up to \$750,000, or such greater amounts as the Court may further order. The Receiver was not required to borrow any funds during the Reporting Period.

APPROVAL OF PROFESSIONAL FEES AND EXPENSES

74. Pursuant to paragraphs 21 to 23 of the Receivership Order, the Receiver seeks approval from this Honourable Court of the respective professional fees and disbursements of the Receiver and its legal counsel for the period from October 30, 2023 to December 31, 2023 (the "**Interim Taxation Period**").
75. Professional fees and expenses rendered by the Receiver during the Interim Taxation Period total \$256,173.46 (exclusive of GST) (the "**Receiver's Fees and Costs**"). Professional fees and expenses of the Receiver's Counsel during the Interim Taxation Period total \$62,229.25 (exclusive GST) (the "**Receiver's Counsel's Fees and Costs**").
76. A summary of the Receiver's Fees and Costs and the Receiver's Counsel's Fees and Costs are attached as Appendix "**B**".
77. The Receiver and the Receiver's Counsel's invoices outline the date of the work completed, the description of the work completed, the length of time taken to complete the work and the name of the individual who completed the work. The Receiver will be filing to this Honourable Court an affidavit of professional fees and costs of the Receiver, as per the common practice in the Edmonton jurisdiction.
78. The Receiver respectfully submits that its professional fees and disbursements and those of its legal counsel in this operating receivership commensurate with the work performed as outlined in the First Report and this Report, are commercially fair and reasonable and were validly incurred in accordance with the provisions of the Receivership Order.

RECEIVER'S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION

79. The Receiver's next steps include, but are not limited to:

- a) assisting the Company in facilitating a sale of the IP Assets;
- b) assisting the Company in the sale and destruction of the remaining Excluded Assets;
- c) if approved by the Court, initiating the proposed SISP;
- d) coordinating an audit on excise tax, source deductions, and GST with the CRA;
- e) continuing efforts with respect to the collection of accounts receivable from the Company's customers;
- g) continuing communication with and updates to the Lender and other stakeholders in the receivership proceedings; and
- h) completing other administrative tasks related to the receivership proceedings.

RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS

80. The Receiver respectfully recommends that this Honourable Court approve the:

- a) proposed SISP;
- b) authorization of the Receiver to enter into an engagement letter with the Marketing Agent, subject to Lender consent;
- c) Restricted Court Access Order;
- d) Receiver's Fees and Costs and the Receiver's Counsel's Fees and Costs; and

- e) actions, activities and conduct of the Receiver to date and as outlined in greater detail in the First Report and the Second Report.

All of which is respectfully submitted this 8th day of February, 2024.

**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



Stephen Oosterbaan
Manager

APPENDIX A

SCHEDULE “A”

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

1. Pursuant to an order (the “**Receivership Order**”) granted by Justice D.R. Mah of the Court of King's Bench of Alberta (the “**Court**”) dated November 3, 2023 in Court Action Number 2301-13922 (the “**Receivership Proceedings**”) Alvarez & Marsal Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of certain of the remaining assets, undertakings and properties (the “**Property**”) of OGEN Ltd. and OGEN Holdings Ltd. (collectively, the “**Debtor**” or “**OGEN**”) 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. For certainty, the Property does not include the Excluded Property as defined in the Receivership Order.
2. At a Court application on February 16, 2024, the Receiver intends seek court approval of, among other things, a sale and investment solicitation process (the “**SISP**”) as set forth herein. The SISP is intended to solicit interest in an acquisition, investment in, restructuring or refinancing of the business or a sale of the assets and/or the business of OGEN.
3. This document (the “**SISP Procedures**”) outlines the SISP, which will be conducted in three stages: pre-marketing, marketing and offering and evaluation.
4. The Receiver anticipates engaging the services of one or more marketing agent(s) (collectively, and as applicable, the “**Marketing Agent**”), to assist in the development and execution of the SISP together with a marketing strategy with respect to the Property. The Receiver plans to engage the Sales Agent to implement brokerage and marketing services with respect to the SISP, with the oversight of the Receiver.
5. All monetary references shall be in Canadian Dollars (\$CAD), unless otherwise stated.

OPPORTUNITY AND SISP SUMMARY

6. The SISP is intended to solicit interest in, and opportunities for, a purchase of, or investment in, all or part of OGEN's Property (the “**Opportunity**”).
7. In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of:
 - (a) proposals to acquire all, substantially all, or a portion of the Property (the “**Purchased Assets**” and each, a “**Sale Proposal**”); and
 - (b) the investment in the licensed wholesale cannabis production business that was formerly operated by OGEN or such other business which an interested party (each a “**Potential Bidder**”) may propose to engage in using some or all of the Property of the Debtor (“**Business**”). Such proposals for the Business may take the form of an investment in or a proposal to restructure, reorganize, recapitalize or refinance the Debtor (an “**Investment Proposal**”). For certainty, any Investment Proposal seeking to preserve OGEN’s licence issued under the *Cannabis Act* (Canada) must contemplate the assumption and payment of

the 2023-2024 levy under the *Cannabis Fees Order* (SOR/2018-198) as part of such proposal.

8. Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (defined below), any Sale Proposal or any Investment Proposal will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by OGEN, the Marketing Agent, the Receiver, their agents, advisors or estates.
9. Solicitation of interest for Sale Proposals and Investment Proposals will be on an unpriced basis, whereby no set asking price will be stipulated.
10. OGEN’s primary secured creditor and interim lender is Connect First Credit Union (the “**Lender**”). The Lender shall be entitled, but is not required, to make a Sale Proposal and/or an Investment Proposal by way of credit bid in this SISP.
11. As described more fully in this SISP, the major stages in the SISP process will be comprised of the following:
 - (a) **Pre-Marketing:** preparation of all marketing material, assembly of all relevant due diligence material, establishment of an electronic data room and preparation of potential buyer/investor lists by the Marketing Agent, with the assistance of the Receiver and OGEN;
 - (b) **Marketing:** advertising, contacting potential buyers/investors, responding to requests for information and disseminating marketing material to potential buyers and investors; and
 - (c) **Offer Submission and Evaluation:** solicitation, receipt of, evaluation and negotiation of offers from potential buyers and investors, as described below.
12. The offer submission and evaluation stage of the SISP will be comprised of a two-phase offering process: “**Phase 1**” being the submission of non-binding letters of intent (“**LOIs**”) from qualified bidders, and “**Phase 2**” being the submission of formal binding offers from those parties that submitted LOI’s and have been invited by the Receiver participate in Phase 2 (defined below as “**Phase 1 Qualified Bidders**”).

TIMELINE

13. The following table sets out the key milestones under the SISP:

Event	Date
SISP Order granted	February 16, 2024
Posting and distribution of non-confidential marketing materials	February 20, 2024
Further advertisement of the SISP in the publications noted below	February 20 - March 1, 2024
Open Data Room	February 21, 2024
Phase I Qualified Bidders to review materials, complete due diligence and schedule appointments to inspect the Property.	February 16 - March 22, 2024
Phase I Bid Deadline	March 22, 2024
Receiver to review the bids received, in consultation with the Marketing Agent and Lender.	March 22 - 25, 2024
Phase II due diligence period	March 22 - April 8, 2024
Phase II Bid Deadline	April 8, 2024
Receiver to review the Qualified Bids, negotiate as required, and select Successful Bidder(s)	April 8 - April 12, 2023
Receiver to seek Court approval of Successful Bid(s) submitted by Successful Bidder(s)	Week of April 19, 2024 or as soon as practical thereafter

PRE-MARKETING STAGE

14. As soon as reasonably practicable, but in any event by no later than February 20, 2024:
- (a) the Marketing Agent, with the assistance of the Receiver, 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 Receiver (an “**NDA**”). The Teaser Letter will specifically stipulate that the Marketing Agent, Receiver, and its advisors make no representation or warranty as to the accuracy or completeness of the information contained in the Teaser Letter, the Data Room (as defined below), or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver;
 - (b) the Marketing Agent, with the assistance of the Receiver, will gather and review all required due diligence material to be provided to interested parties and shall establish a secure, electronic data room (the “**Data Room**”), which will be maintained and administered by the Marketing Agent during the SISP;
 - (c) the Marketing Agent, with the assistance of the Receiver, will develop a purchase and sale agreement for use by Potential Bidders making a Sale Proposal and a form of binding

letter of intent for use by Potential Bidders making an Investment Proposal (the “**Draft Purchase/Investment Agreement**”); and

- (d) the Marketing Agent and the Receiver will prepare a list of potential bidders, including: (i) parties that have approached the Marketing Agent, OGEN, the Lender, other stakeholders or the Receiver indicating an interest in the Opportunity; and (ii) local, national and international strategic and financial parties who the Marketing Agent and Receiver believe may be interested in making a Sale Proposal or an Investment Proposal, pursuant to the SISP (collectively, “**Known Potential Bidders**”).

MARKETING STAGE

15. The Marketing Agent and the Receiver will arrange for a notice of the SISP (and such other relevant information as the Receiver considers appropriate) (the “**Notice**”) to be published in the Calgary Herald, StratCann, the Insolvency Insider, and any other industry publication, website, newspaper, journals or with any sales agents as the Marketing Agent and the Receiver may consider appropriate.
16. The Marketing Agent will issue a press release with Canada Newswire (the “**Press Release**”) setting out the information contained in the Notice and such other relevant information as the Marketing Agent considers appropriate designating dissemination in Canada and major financial centers in the United States.
17. The Marketing Agent and the Receiver will send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who responds to the Notice or Press Release as soon as reasonably practicable after such request or identification, as applicable.
18. The Marketing Agent will grant access to the Data Room to those parties who have executed and delivered the NDA to the Marketing Agent, as soon as reasonably practicable after such request or identification, as applicable. Requests for information and access will be directed to the representatives of the Marketing Agent.
19. Any Potential Bidder, must, prior to being given any additional information to the Data Room, provide to the Marketing Agent and the Receiver an NDA executed by it, and which shall inure to the benefit of any ultimate Successful Bidder who closes a transaction contemplated by the Successful Bid, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
20. If it is determined by the Receiver in its reasonable business judgement that a Potential Bidder has delivered an executed NDA and the information contemplated in paragraph 19 above, and that the Potential Bidder has a reasonable prospect of completing a Sale Proposal or an Investment Proposal, then such Potential Bidder will be deemed to be a “**Phase 1 Qualified Bidder**” provided that no Potential Bidder (other than the Lender) shall be deemed to be a Phase 1 Qualified Bidder without the approval of the Receiver. For certainty, the Lender shall be deemed to be a Phase 1 Qualified Bidder.

OFFER SUBMISSION AND EVALUATION STAGE

Phase 1: LOI Submission Phase

21. At any time prior to the Phase 1 Bid Deadline, the Receiver may, in its reasonable business judgment, eliminate a Phase 1 Qualified Bidder (other than the Lender) from the SISP, in which case such bidder will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.
22. 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 Receiver. The Potential Bidders acknowledge that the Marketing Agent, Receiver, OGEN and their respective advisors make no representation or warranty as to the accuracy or completeness of the information contained in any of the materials of OGEN, including information contained in the Teaser Letter, Data Room or otherwise.
23. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an LOI to the Receiver, at the addresses specified in Schedule “B” hereto (including by email), with a copy to the Marketing Agent, so as to be received by them not later than 5:00 PM (Calgary time) on March 22, 2024 (the “**Phase 1 Bid Deadline**”).
24. An LOI so submitted will be considered a qualified LOI (a “**Qualified LOI**”) only if:
 - (a) it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;
 - (b) it contains an indication of whether the Phase 1 Qualified Bidder is making:
 - (i) a Sale Proposal; or
 - (ii) an Investment Proposal;
 - (c) in the case of a Sale Proposal, it identifies or contains the following:
 - (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
 - (ii) the form(s) of consideration being offered and the method by which any non-cash consideration is being valued;
 - (iii) a description of the Purchased Assets that are expected to be subject to the transaction and any of the Property expected to be excluded;
 - (iv) a specific indication of the financial capability, together with evidence of such capability, of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;
 - (v) a description of the conditions and approvals required for a final and binding offer;

- (v) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (d) in the case of an Investment Proposal, it identifies the following:
- (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars;
 - (iii) the form(s) of consideration being offered and the method by which any non-cash consideration is being valued;
 - (iv) the underlying assumptions regarding the *pro forma* capital structure;
 - (v) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;
 - (vi) a description of the conditions and approvals required for a final and binding offer;
 - (vii) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - (viii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and
 - (ix) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably required or requested by the Receiver, in consultation with the Lender and Marketing Agent.
25. The Receiver, in consultation with the Lender and Marketing Agent, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. 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.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

26. Following the Phase 1 Bid Deadline, the Receiver, in consultation with the Lender and Marketing Agent, will assess the Qualified LOIs. If it is determined by the Receiver, in consultation with the Lender and Marketing Agent, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (i) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided;

then such Phase 1 Qualified Bidder will be deemed a “**Phase 2 Qualified Bidder**”, provided that the Receiver may, in its reasonable business judgment, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the SISP). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP. No Phase 1 Qualified Bidder that has submitted a Qualified LOI shall be deemed to be a Phase 2 Qualified Bidder without the approval of the Receiver.

27. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Receiver, in consultation with the Lender and Marketing Agent, shall determine the process and timing to be followed in pursuing Qualified LOIs based on such factors and circumstances as it considers appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received; (ii) the scope of the Property or Business to which any Qualified LOIs may relate; and (iii) whether to proceed by way of sealed bid or auction with respect to some or all of the Property or Business. For certainty, the Receiver may either designate one of the Qualified LOIs as the Successful Bid following the Phase 1 Bid Deadline or choose to proceed to Phase 2 of the SISP.
28. Upon the determination by the Receiver to proceed to Phase 2 of the SISP, the Receiver, in consultation with the Lender and Marketing Agent, will prepare a bid process letter for Phase 2 (the “**Bid Process Letter**”), which will include the Draft Purchase/Investment Agreement, including a blackline showing any changes thereto, and the Bid Process Letter will be sent to all Phase 2 Qualified Bidders, inviting them to participate in Phase 2.
29. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter, the Receiver may at any time bring an application to seek approval of a Sale Proposal or Investment Proposal in respect of some or all of the Property or Business and related bid procedures in respect of such Property or to establish further or other procedures for the SISP, including extending any of the deadlines set out herein.

Due Diligence

30. The Marketing Agent, in consultation with the Receiver, shall in its reasonable business judgment and subject to competitive and other business considerations, afford each Phase 2 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as it deems appropriate. Due diligence access may further include the Marketing Agent and/or its advisor presentations, on-site inspections, and other matters which a Phase 2 Qualified Bidder may reasonably request and to which the Marketing Agent, in consultation with the Receiver, in its reasonable business judgment, may agree. The Marketing Agent will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 2 Qualified Bidders and the manner in which such requests must be communicated. The Marketing Agent, in consultation with the Receiver, will not be obligated to furnish any information relating to the Property or Business to any person other than to Phase 2 Qualified Bidders.

Phase 2: Formal Offers and Selection of Successful Bidder

Formal Binding Offers

31. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Property or Business shall submit to the Receiver, with a copy to the Marketing Agent, a sealed binding offer that complies with all of the following requirements at the addresses specified in Schedule “A” hereto (including by email), so as to be received by them not later than 5:00 PM (Calgary time) on April 8, 2024 or such other date and time as may be modified in the Bid Process Letter (the “**Phase 2 Bid Deadline**”):
- (a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified LOIs;
 - (b) if the bid utilizes consideration other than cash, a description of the material terms of the consideration shall be provided;
 - (c) the bid is an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to the Receiver;
 - (d) unless otherwise agreed, the bid shall take the form of the Draft Purchase/Investment Agreement and shall include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
 - (e) the bid includes duly authorized and executed transaction agreements as listed in the Draft Purchase/Investment Agreement; including, but not limited to, the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto, the name or names of the ultimately beneficial owner(s) of the Phase 2 Qualified Bidder including their respective percentage interests;
 - (f) 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 Receiver to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
 - (g) the bid should not be conditioned on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, to the disclosure of due diligence materials that represent proprietary or competitively sensitive information which was withheld in Phase 2 from the Phase 2 Qualified Bidder;
 - (h) each Phase 2 Qualified Bidder must provide with its bid details regarding its ability to obtain and method of financing the transaction, the timetable for obtaining financing and, if appropriate, the amount of senior debt, subordinated debt, equity and any other source of financing contemplated in the pro forma capital structure;
 - (i) 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;
 - (j) for either a Sales Proposal or an Investment Proposal, the bid shall be accompanied by a deposit in the amount of not less than 10% of the purchase price offered, which shall be paid to the Receiver in trust (the “**Deposit**”). The Successful Bidder's Deposit shall be

applied as against the Purchase Price and all other Deposits submitted by Phase 2 Qualified Bidders who are not selected as the Successful Bidder shall be returned in accordance with paragraph 42;

- (k) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and OGEN prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or competitively sensitive information which were withheld in Phase 2 from the Phase 2 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 made by the Marketing Agent, OGEN, the Receiver and/or its advisors, whether express, implied, statutory or otherwise, regarding the Business or Property, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
 - (l) the bid shall be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature or description by OGEN, the Marketing Agent, the Receiver, their agents, advisors or estates;
 - (m) all required corporate approvals of the Phase 2 Qualified Bidder will have been obtained prior to the submission of the bid;
 - (n) the bid shall identify any material conditions in favour of the purchaser or investor to be resolved prior to closing the transaction;
 - (o) the bid is received by the relevant Phase 2 Bid Deadline; and
 - (p) the bid contemplates a schedule for closing the transaction set out therein which is on or before April 19, 2024 (the “**Closing Date**”).
32. Following the Phase 2 Bid Deadline, the Receiver, in consultation with the Lender and Marketing Agent, will assess the Phase 2 bids received. The Receiver will designate the most competitive bids that comply with the foregoing requirements to be “**Qualified Bids**”. No Phase 2 bids received shall be deemed to be Qualified Bids without the approval of the Receiver. Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder.
33. The Receiver may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.
34. The Receiver shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constituted a Phase 2 Qualified Bid within five (5) business days of the Phase 2 Bid Deadline, or at such later time as the Receiver deems appropriate.
35. If the Receiver is not satisfied with the number or terms of the Phase 2 Qualified Bids, the Receiver, in consultation with the Lender and Marketing Agent, may extend the Phase 2 Bid Deadline, or seek Court approval of an amendment to the SISP.

36. The Receiver may terminate, at any time, further participation in the Phase 2 Bid Process by any interested party, or modify dates or procedures as deemed appropriate or necessary or terminate the process.

Evaluation of Competing Bids

37. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the purchase price and the net value and form of consideration to be paid provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, including any conditions attached to the bid and the expected feasibility of such conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Receiver, each as determined by the Receiver.

Selection of Successful Bid

38. The Receiver, in consultation with the Lender and Marketing Agent: (a) will review and evaluate each Phase 2 Qualified Bid, and may seek clarity with respect thereto and/or negotiate amended terms thereof with the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such negotiations, and, after obtaining any such clarifications and negotiating any such amendments, (b) identify the highest or otherwise best bid (the “**Successful Bid**”), and the Phase 2 Qualified Bidder making such Successful Bid (the “**Successful Bidder**”). The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.
39. The Receiver shall have no obligation to enter into a Successful Bid, and it reserves the right to reject any or all Phase 2 Qualified Bids.

Sale Approval Motion Hearing

40. At the hearing of the application to approve any transaction with a Successful Bidder (the “**Approval Application**”) the Receiver shall seek, among other things, approval from the Court to consummate any Successful Bid. The Approval Application will be held on a date selected by the Receiver. The Approval Application may be adjourned or rescheduled by the Receiver.
41. All Phase 2 Qualified Bids and Subsequent Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of closing of the Successful Bid, but not before, and shall remain open for acceptance until that time.

Miscellaneous Provisions

42. All Deposits shall be retained by the Receiver in a non-interest-bearing bank account. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Application shall be applied to the purchase or investment price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits of Phase 2 Qualified Bidders not selected as the Successful Bidder shall be returned to such bidders within

five (5) Business Days of the date on which the Court grants an order approving the Successful Bid unless agreed by the Receiver to its earlier release. If there is no Successful Bid, all Deposits shall be returned to the bidders within five (5) Business Days of the date upon which the SISP is terminated in accordance with these procedures.

43. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Receiver, the Marketing Agent and OGEN and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into and approved by the Court.
44. Without limiting the preceding paragraph, neither the Receiver, the Marketing Agent nor OGEN shall have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, or any other creditor or other stakeholder of OGEN, for any act or omission related to the process contemplated by this SISP Procedure. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed to the foregoing.
45. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with such participation, including, without limitation, the submission of any LOI, Phase 2 bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
46. At any time during the SISP, the Receiver may apply to the Court for advice and directions with respect to any aspect of these SISP Procedures or the discharge of its powers and duties hereunder.
47. The Receiver shall have the right to modify the SISP and the start date and deadlines set out herein (including, without limitation, pursuant to the Bid Process Letter) if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP.

Schedule “A”

TO THE RECEIVER:

Alvarez & Marsal Canada Inc.
Bow Valley Square IV
Suite 1110, 250 6th Avenue SW
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk / Stephen Oosterbaan / Brinton Wolever

Phone: (403) 538 4736 / (403) 538 7527 / (403) 608 9645

Email: okonowalchuk@alvarezandmarsal.com / soosterbaan@alvarezandmarsal.com / bwolever@alvarezandmarsal.com

APPENDIX B

Ogen Holdings Ltd. and Ogen Ltd. - in Receivership
Summary of Receiver's Fees and Disbursements
October 30, 2023 to December 31, 2023

Invoices subject to Court approval

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
#1	October 30, 2023 to November 30, 2023	154,602.00	785.46	155,387.46	7,769.37	163,156.83
#2	December 1, 2023 to December 31, 2023	100,786.00	-	100,786.00	5,039.30	105,825.30
	Subtotal	255,388.00	785.46	256,173.46	12,808.67	268,982.13

Ogen Holdings Ltd. and Ogen Ltd. - in Receivership
Summary of Receiver's Counsel's Fees and Disbursements
November 1, 2023 to December 31, 2023

Invoices subject to Court approval

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
6416095	November 1, 2023 to November 30, 2023	39,980.50	94.75	40,075.25	2,003.76	42,079.01
6424794	December 1, 2023 to December 31, 2023	22,008.50	145.50	22,154.00	1,107.70	23,261.70
	Total	61,989.00	240.25	62,229.25	3,111.46	65,340.71