

COURT FILE NUMBER
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JUDICIAL CENTRE OF

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COURT OF KING'S BENCH OF ALBERTA
EDMONTON

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, as amended

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
FREEDOM CANNABIS INC.

APPLICANT:

FREEDOM CANNABIS INC.

DOCUMENT

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CONTACT INFORMATION OF
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COURT FILE NUMBER Q.B. No. 733 of 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT ABBEY RESOURCES CORP.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 1985, c C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT FOR THE CREDITORS
OF ABBEY RESOURCES CORP.

SECOND SUPPLEMENTAL BRIEF OF LAW
(Re: Application for Initial Order)

SECOND SUPPLEMENTAL BRIEF OF LAW FILED BY THE APPLICANT IN RESPECT OF ITS
APPLICATION FOR AN INITIAL ORDER, PURSUANT TO THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT

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I. INTRODUCTION

1. The Applicant, ABBEY RESOURCES CORP. ("**Abbey**"), files this Second Supplemental Brief of Law in support of its Application for an Initial Order.
2. This Second Supplemental Brief of Law is intended to provide the Court with additional case law and argument in relation to the "regulatory stay" now sought by Abbey pursuant to section 11.1(3) of the *Companies' Creditors Arrangement Act*¹ (the "**CCAA**") in light of recent actions taken by the Ministry of Energy and Resources ("**MOER**").
3. On July 30, 2021, the MOER provided Abbey with a notice indicating that its Licensee Liability Rating ("**LLR**") had been adjusted. On this basis, the MOER demanded an additional security deposit in the amount of \$13,445,871. The MOER has expressly threatened to take action under *The Oil & Gas Conservation Act*² (the "**O&G Act**") should Abbey fail to furnish the additional security deposit demanded of it.
4. Herein, Abbey argues that a regulatory stay is now required for it to restructure successfully in these proceedings, and that the granting of such stay is not contrary to the public interest. Abbey argues in the alternative that, even if this Honourable Court should decline to grant the regulatory stay at this time, it should nevertheless grant the Initial Order.
5. This Brief of Law should be read in conjunction with the Brief of Law dated July 16, 2021, and the Supplemental Brief of Law dated July 26, 2021.

II. STATEMENT OF ISSUES

- A. This Court should impose a regulatory stay pursuant to section 11.1(3) of the CCAA
- B. The Court should grant the Initial Order, even if it is not inclined to grant the regulatory stay

III. ARGUMENT

- A. This Court should impose a regulatory stay pursuant to section 11.1(3) of the CCAA

6. Section 11.1(2) of the CCAA limits the applicability of the general stay of proceedings imposed pursuant to section CCAA 11.02 in relation to "regulatory bodies" - i.e. any "person or body

¹ RSC 1985, c C-36.

² RSS 1978, c O-2.

that has powers, duties or functions relating to the enforcement or administration" pursuant to an enactment.³ It is conceded that the MOER is a "regulatory body" within the meaning of CCAA section 11.1(1).

7. CCAA section 11.1(2) reads as follows:

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company **or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body**, other than the enforcement of a payment ordered by the regulatory body or the court.⁴

8. CCAA section 11.1(3) allows a CCAA court to grant an applicant a regulatory stay of proceedings, which has the effect staying certain actions undertaken by regulatory bodies that, by virtue of CCAA section 11.1(2), are not caught within the ambit of the general stay of proceedings imposed under CCAA section 11.02. Section 11.1(3) reads:

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.⁵

9. Section 11.1(3) of the CCAA only appears to have been applied by a CCAA court in Canada in a single reported decision - namely, the Ontario Superior Court of Justice's ("**ONSC**") recent decision in *Re Just Energy Corp.*⁶ There, the ONSC provided the following general comment on the operation of CCAA section 11.1(3):

79 More plainly put, the CCAA automatically stays enforcement of any payments of money ordered by the regulator. It does not, however, automatically stay other steps that a regulator may take against a regulated entity. The court may nevertheless stay such other steps if it is of the view that the failure to stay those other steps means that a viable compromise or arrangement could not be made, provided that the additional stay is not contrary to the public interest.⁷

10. The ONSC went on to confirm that, in determining whether to impose a stay pursuant to section 11.1(3) of the CCAA, the courts should remain mindful of the remedial purposes of the

³ CCAA, *supra* note 1, s 11.1(1).

⁴ *Ibid*, at s 11.1(2), emphasis added.

⁵ *Ibid*, at s 11.1(3).

⁶ 2021 ONSC 1793, [*Just Energy*].

⁷ *Ibid*, at para 79.

CCAA as were articulated by the Supreme Court of Canada (the "SCC") in *Century Services Inc. v. Canada (Attorney General)*.⁸ Specifically, the ONSC in *Just Energy* stated that the imposition of a regulatory stay was, in that instance, "consistent with the remedial purpose of the CCAA which is to avoid social and economic losses resulting from the liquidation of an insolvent company. To permit the immediate termination of Just Energy's licenses would not avoid social and economic losses but amplify them."⁹

11. The following paragraphs argue that the two criteria in CCAA section 11.1(3) (a)-(b) are readily made out, and that the imposition of a limited regulatory stay is consistent with the remedial purposes of the CCAA.

i. A Regulatory Stay is necessary for a viable compromise or arrangement

12. Abbey holds licenses granted by the MOER under the O&G Act. Abbey requires its licenses to continue to extract gas. If Abbey's licenses are cancelled or suspended, or if Abbey is required to suspend production at all of its well sites, it will be unable to continue to extract natural gas for direct sale.
13. On July 30, 2021, the MOER delivered a correspondence, dated July 29, 2021, to Abbey indicating that it had recalculated the value of its LLR. The MOER's correspondence stated that, for the ostensible reason that it had devalued Abbey's total assets from \$44,901,360 to \$6,844,726, it would require an additional security deposit from Abbey in the amount of \$13,445,781 in order for Abbey to maintain an LLR of 1.0 or greater. The MOER has directly threatened to "order the suspension [Abbey's] wells and facilities" under section 17.01 of the O&G Act for non-payment of the additional security deposit demanded.¹⁰
14. Without recurrent revenues generated from natural gas sales, Abbey will be unable to pay its operational costs or the professional costs of restructuring. Indeed, without cash flow from natural gas sales, Abbey will not be able to carry on business in any meaningful capacity.
15. The MOER has made its opposition to Abbey's entry into these proceedings abundantly clear. By way of its actions and, indeed, its own Affidavit evidence, the MOER has confirmed that, if it is not paid the substantial security deposit that it knows Abbey is unable to pay, it intends to wield its authority to take regulatory action that would inhibit Abbey from carrying on business. In so doing, the MOER has telegraphed its intention to thwart Abbey's attempt to restructure

⁸ 2010 SCC 60.

⁹ *Ibid*, at para 87.

¹⁰ July 29, 2021, Affidavit of Brad Wagner at para 6.

successfully in these proceedings, even if this Honourable Court should agree that Abbey is a suitable candidate for entry into CCAA proceedings against the MOER's opposition.

16. Consequently, it is necessary and in keeping with the remedial purposes of the CCAA for this Honourable Court to grant a regulatory stay that would prohibit the MOER from cancelling or suspending Abbey's licences for non-payment of amounts owing to the MOER by Abbey pursuant to the O&G Act.
17. Abbey thus seeks that this Honourable Court grant an Order under CCAA section 11.1(3) directing that section 11.1(2) of the CCAA does not apply to certain actions, suits or proceedings taken by the MOER that would lead to the cancellation of licenses granted to Abbey under O&G Act. Specifically, Abbey seeks an Order providing that section 11.1(2) of the CCAA does not apply to any action taken by the MOER under section 12(2) of the O&G Act to amend, suspend or cancel any licence issued to Abbey under the O&G Act. Section 12(2) of the O&G Act governs the MOER's ability to revoke licences for non-emergency reasons:

12(1) The minister may amend or suspend a licence where the amendment or suspension is necessary for the purposes of public safety or the safety of any person or for the protection of property or the environment.

(2) The minister may amend, suspend or cancel a licence if:

- (a) the licensee is in agreement with the amendment, suspension or cancellation;
- (a.1) the licensee fails to pay the administrative levy within the prescribed period;
- (b) the licensee fails to comply with a notice issued pursuant to subsection 11(1) within the period specified in the notice;
- (c) the security required pursuant to section 15 has not been provided in the amount and within the time required; or
- (d) the licensee has contravened any provision of this Act or the regulations or has failed to comply with any order made pursuant to this Act.

18. Additionally, though non-payment of a security deposit or a levy amount would not appear to serve as a legitimate ground for the MOER to issue any order under section 17.01 of the O&G Act, Abbey seeks to include suspension under section 17.01 of the O&G Act for non-payment of any amounts by Abbey to the MOER within the scope of the regulatory stay sought.

ii. Granting a regulatory stay is not contrary to the public interest

19. The granting of the regulatory stay sought by Abbey is not contrary to the public interest. Rather, the limited regulatory stay sought by Abbey merely seeks to prevent the MOER from

relying on its statutory authority to suspend or cancel Abbey's licences or operations for non-payment of amounts owing to it.

20. In essence, the regulatory stay sought by Abbey is intended to prohibit the MOER from relying on Abbey's non-payment of a security deposit or levies to the MOER as grounds to suspend, amend, or cancel Abbey's licences issued under the O&G Act, or to otherwise take steps to prohibit Abbey from continuing to producing natural gas.
21. Abbey does not seek to impose a stay that would prohibit the MOER from acting in its capacity as a regulatory body to protect the public, property, and the environment. The stay sought by Abbey would not prohibit the MOER from requiring Abbey to comply, generally, with the regulatory regime imposed upon oil and gas producers in Saskatchewan. Notwithstanding the imposition of the regulatory stay, Abbey will remain bound to adhere to abandonment, restoration, remediation, or reclamation orders properly issued by the MOER. Likewise, the MOER will remain empowered to order that Abbey suspend the operation of any of its wells or flow lines if it determines that their continued operation poses a risk to property or the environment.
22. In *Just Energy*, the ONCA considered a counterfactual scenario - i.e. the consequences of what would happen if the regulatory stay were not ordered - in determining whether the regulatory stay was contrary to the public interest. There, the ONCA noted that the consequences of regulatory action would "create more market disruption than would a stay."¹¹
23. The instant case likewise merits consideration of a counterfactual scenario: if the Abbey is not granted the regulatory stay and the MOER should rely on its statutory authority to revoke Abbey's licences for non-payment of a security deposit, Abbey's restructuring efforts will fail and the company will ultimately face a disorderly liquidation. In such circumstance, the public will be in no better position than if the regulatory stay had not been issued. No additional security deposit will have been furnished by Abbey and other amounts owing to the MOER will remain unpaid on account of Abbey's insolvency. Indeed, the public will find itself in a worse position, as Abbey will cease to generate revenues and it will not have the opportunity to use such cash flow to begin the process of decommissioning its unproductive assets during the course of its restructuring.
24. In this regard, granting the regulatory stay sought by Abbey is not contrary to the public interest, but rather is in keeping with the remedial purposes of the CCAA.

¹¹ *Just Energy*, supra note 6, at para 86.

B. The Court should grant the Initial Order, even if it is not inclined to grant the regulatory stay

25. Even if this Honourable Court should decline to grant the regulatory stay sought by Abbey under section 11.1(3) of the CCAA at the Initial Order stage, it is nevertheless submitted that it would be appropriate for the Court to grant the Initial Order. This is to say, the MOER's attempt to wield its regulatory authority for the clear and obvious purpose of hindering the Company's efforts to restructure by entry into CCAA proceedings should not dissuade this Honourable Court from granting the Initial Order.
26. At present, the MOER has only indicated that it intends to Order the "suspension of the Applicant's wells and facilities pursuant to section 17.01 of [the O&G Act]" if Abbey fails to furnish an additional security deposit.¹² However, it does not appear as if section 17.01 of the O&G Act could possibly entitle the MOER to take any action against Abbey for failure to furnish a security deposit or to make payment to it generally. Section 17.01 of the O&G Act empowers the MOER to make emergency orders for the purpose of public safety or environmental protection:

17.01(1) Notwithstanding any licence, permit or approval, if, in the minister's opinion, it is necessary to do so for the purposes of public safety or the safety of any person, for the protection of property or the environment or for any other prescribed purpose, the minister may order any person to:

a) suspend the operation of any well, flowline or facility in the manner and within the time specified in the order; and

(b) abandon, restore, remediate or reclaim any well, flowline or facility, or the site of any well, flowline, or facility, in the manner and within the time specified in the order.

27. The MOER may have intended to refer in its Affidavit to section 12 of the O&G Act, which does entitle it to suspend or cancel licences for non-payment of security deposits or levies. Even supposing this is the case, the MOER is still unable to immediately cancel or suspend Abbey's licences without complying with procedural fairness requirements included in the O&G Act. Section 12(3) of the O&G Act provides that, except in the case of emergencies, the MOER shall not cancel or suspend licences without giving the producer the opportunity to make representations to the MOER.

(3) Unless, in the minister's opinion, action is urgently required, the minister shall not amend, suspend or cancel a licence pursuant to clause (2)(a.1), (b), (c) or (d) unless the licensee has been given a reasonable opportunity to make

¹² July 29, 2021, Affidavit of Brad Wagner, at para 6.

representations to the minister, in a form and manner determined by the minister, concerning the proposed amendment, suspension or cancellation.

28. Section 12(3) of the O&G Act is of interest in the present case given the MOER's unexplained decision to abruptly devalue Abbey's assets from approximately \$45,000,000 to roughly \$6,800,000 for the purposes of calculating Abbey's LLR. Denying Abbey the opportunity to restructure on the grounds that the Ministry may elect to revoke licensure in the future on grounds that may not stand up to scrutiny is not in keeping with the remedial purposes of the CCAA.

IV. CONCLUSION AND RELIEF SOUGHT

29. Abbey respectfully submits that the regulatory stay sought by it is required for it to restructure in these proceedings and that the granting of the same is not contrary to the public interest.
30. Abbey, therefore, asks that this Honourable Court grant the Initial Order, inclusive of the regulatory stay provisions sought by Abbey.

DATED at Edmonton, Alberta, this 4th day of August, 2021.

DLA PIPER (CANADA) LLP

Per: 

Jerritt R. Pawlyk and Kevin N. Hoy, Counsel
for Abbey Resources Corp.

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COURT FILE NUMBER Q.B. No. 773 of 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT ABBEY RESOURCES CORP.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
FOR THE CREDITORS OF ABBEY RESOURCES CORP.

TABLE OF AUTHORITIES
(Re: Application for Initial Order)

CASE LAW

Re Just Energy Corp, 2021 ONSC 1793 (CanLII).

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 (CanLII).



Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 30TH
	)	
JUSTICE OSBORNE	)	DAY OF JANUARY, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**
AND 2496750 ONTARIO INC. (each, an "Applicant" and
collectively, the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Hill Affidavit**"), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Second Hill Affidavit**"), the pre-filing report of the proposed monitor, KPMG Inc. ("**KPMG**") dated January 27, 2023 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the "**Partnerships**" and collectively with the Applicants, the "**OTE Group**"), counsel for Royal Bank of Canada ("**RBC**") and such other counsel who were present, and on reading the consent of KPMG to act as the monitor (the "**Monitor**"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the OTE Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the OTE Group shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the OTE Group shall be entitled to continue to utilize the central cash management system currently in place as described in the Hill Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any future Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and
- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group; and
- (c) payment for goods or services actually supplied to the OTE Group following the date of this Order.

9. THIS COURT ORDERS that the OTE Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the OTE Group in connection with the sale of goods and services by the OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the OTE Group.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the OTE Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

CARVE-OUT

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

RESTRUCTURING

13. THIS COURT ORDERS that the OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the OTE Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. THIS COURT ORDERS that the OTE Group shall provide each of the relevant landlords with notice of the OTE Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the OTE Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the OTE Group, or by further Order of this Court upon application by the OTE Group on at least two (2) days notice to such landlord and any such secured creditors. If the OTE Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the OTE Group's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the OTE Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the OTE Group in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE OTE GROUP OR THE PROPERTY

16. THIS COURT ORDERS that until and including February 9, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court, tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

NO EXERCISE OF RIGHTS OR REMEDIES

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the OTE Group to carry on any business which the OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial and federal regulators and/or border authorities that have authority with respect to the importation and exportation of fuel, petroleum, diesel and/or gasoline against or in respect of the OTE Group or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the

Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court on notice to the Service List, such that no licenses held by any of the OTE Group may be revoked or expire during the Stay Period and same are further extended during the course of these CCAA proceedings.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the OTE Group, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the OTE Group, and that the OTE Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the OTE Group in accordance with normal payment practices of the OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the OTE Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-

advance any monies or otherwise extend any credit to the OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the OTE Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the OTE Group shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the OTE Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of the OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$250,000**, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. THIS COURT ORDERS that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the OTE Group in its development of the Plan and any amendments to the Plan;
- (d) assist the OTE Group, to the extent required by the OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**");

- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the OTE Group with information provided by the OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the OTE Group may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the OTE Group on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant, retainers in the approximate amount of **\$950,000** to be held by them as security for payment of their respective fees and disbursements outstanding for certain pre- and post-filing costs.

34. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000**, as

security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. THIS COURT ORDERS that the priorities of the existing security held by RBC (the "**RBC Security**"), the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – RBC Security;

Second – Administration Charge; and

Third – Directors' Charge.

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the RBC Security (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

39. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the RBC Security, unless the OTE Group also obtains the prior written

consent of the Monitor and the beneficiaries of the Directors' Charge, the RBC Security and the Administration Charge, or further Order of this Court.

40. THIS COURT ORDERS that the Directors' Charge, the Administration Charge and the RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the OTE Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the OTE Group entering into the creation of the Charges; and
- (c) the payments made by the OTE Group pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the OTE Group's interest in such real property leases.

SERVICE AND NOTICE

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>’.

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the OTE Group and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the OTE Group's creditors or other interested parties at their respective addresses as last shown on the records of the OTE Group and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. THIS COURT ORDERS that the OTE Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the OTE Group, the Business or the Property.

48. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

49. THIS COURT ORDERS that each of the OTE Group and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. THIS COURT ORDERS that any interested party (including the OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days

notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

SEALING RELIEF

53. THIS COURT ORDERS that the Second Hill Affidavit shall be and is hereby sealed, kept confidential, and shall not form part of the public record until the earlier of (a) the vacating of the sealing order appended as Exhibit B to the Second Hill Affidavit (the "**Foreign Sealing Order**"), without being replaced by another sealing order granted by a court of a foreign jurisdiction, (b) the vacating of any sealing order that may granted by a court of a foreign jurisdiction to replace the Foreign Sealing Order, or (c) further Order of this Court.



OSBORNE, J.

2023.01.30

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Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

INITIAL ORDER

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Lawyers for the OTE Group

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	TUESDAY, THE 22ND
	)	
JUSTICE CONWAY	)	DAY OF AUGUST, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF ALEAFIA HEALTH INC., EMBLEM
CORP., EMBLEM CANNABIS CORPORATION, EMBLEM
REALTY LTD., GROWWISE HEALTH LIMITED., CANABO
MEDICAL CORPORATION, ALEAFIA INC., ALEAFIA
FARMS INC., ALEAFIA BRANDS INC., ALEAFIA RETAIL
INC., 2672533 ONTARIO INC., and 2676063 ONTARIO INC.

(collectively, the "**Applicants**")

**ORDER
(Re: SISP Approval)**

THIS MOTION, made by the Applicants, for an order approving, among other things: (i) the Sale and Investment Solicitation Process in respect of the Applicants as attached hereto at Schedule "A" (the "**SISP**"); and (ii) the Stalking Horse Agreement (as defined herein) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, was heard this day by judicial videoconference.

ON READING the affidavit of Patricia Symmes-Rizakos sworn July 24, 2023 and the Exhibits thereto (the "**Initial Symmes Affidavit**"), the affidavit of Patricia Symmes-Rizakos sworn July 26, 2023 and the Exhibits thereto (the "**Comeback Affidavit**"), the affidavit of Patricia Symmes-Rizakos sworn August 11, 2023 and the Exhibits thereto (the "**Third Affidavit**"), the pre-filing report of KSV Restructuring Inc. ("**KSV**"), in its capacity as proposed monitor of the Applicants dated July 24, 2023, the First Report of KSV, in its capacity as monitor (in such

capacity, the “**Monitor**”), dated August 1, 2023 (the “**First Report**”), and the Second Report of the Monitor, dated August 17, 2023 (the “**Second Report**”) and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel to Red White & Bloom Brands Inc. (the “**DIP Lender**”), and such other parties listed on the Counsel Slip, no one appearing for any other party although duly served as appears from the Affidavits of Service of S. Hans, as filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP or the Amended and Restated Initial Order granted by the Honourable Justice Penny on August 4, 2023 (the “**ARIO**”), as applicable.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including October 31, 2023.

APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS

4. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) is hereby approved and the Applicants and the Monitor are hereby authorized to implement the SISP pursuant to the terms thereof. The Applicants and the Monitor are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order.

5. **THIS COURT ORDERS** that the Applicants and the Monitor are authorized to immediately commence the SISP to solicit interest in the opportunity for a sale of or investment in all or part of the Applicants’ (i) property, assets and undertaking or shares in the capital of one or more of the Applicants (collectively, the “**Property**”) and (ii) business operations (the “**Business**”) in accordance with the terms of the SISP.

6. **THIS COURT ORDERS** that each of the Applicants, the Monitor and their respective affiliates, partners, directors, employees, agents, consultants, advisors, experts, accountants, counsel and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any Person in connection with or as a result of implementing or otherwise in connection with the SISP, except to the extent such losses, claims, damages or liabilities result from their respective gross negligence or wilful misconduct, as applicable, as determined by this Court.

7. **THIS COURT ORDERS** that, pursuant to section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS), the Monitor and the Applicants are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the SISP in these proceedings.

8. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the SISP, and in no way limiting the protections provided to the Monitor in the ARIO, the Monitor shall not take possession of any Property or be deemed to take possession of any Property, including pursuant to any provision of the Cannabis Legislation.

APPROVAL OF THE STALKING HORSE AGREEMENT

9. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to enter into the stalking horse agreement (the “**Stalking Horse Agreement**”) among Aleafia Health Inc., Emblem Cannabis Corporation, Canabo Medical Corporation, Aleafia Farms Inc., Aleafia Retail Inc., the DIP Lender and RWB (PV) Canada Inc., a wholly-owned subsidiary of the DIP Lender (the “**Purchaser**”), and attached as Exhibit “G” to the Third Affidavit, *nunc pro tunc*, with such minor amendments as may be acceptable to each of the parties thereto, with the prior written approval of the Monitor.

10. **THIS COURT ORDERS** that the Stalking Horse Agreement is hereby approved and accepted solely for the purposes of being the Stalking Horse Bid under the SISP; provided that, nothing herein approves the transactions contemplated in the Stalking Horse Bid, and the approval of any transactions contemplated by the Stalking Horse Agreement shall be considered by this

Court on a subsequent motion made to this Court if the Stalking Horse Agreement is the Successful Bid pursuant to the SISP.

11. **THIS COURT ORDERS** that the Expense Reimbursement (as defined in the Stalking Horse Agreement) is hereby approved and the Applicants party to the Stalking Horse Agreement are hereby authorized and directed to pay the Expense Reimbursement to the Purchaser (or as it may direct) subject to and in accordance with the terms of the Stalking Horse Agreement.

PROTECTION OF PERSONAL INFORMATION

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor, the Applicants and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a “**SISP Participant**”) and their advisors personal information of identifiable individuals (“**Personal Information**”), records pertaining to the Applicants’ past and current employees, and information on specific customers, but only to the extent desirable or required to negotiate or attempt to complete a transaction under the SISP (a “**Transaction**”). Each SISP Participant to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information and limit the use of such Personal Information to its evaluation of a Transaction, and if it does not complete a Transaction, shall return all such information to the Applicants or the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if required by the Applicants or the Monitor. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the Transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor or the Applicants.

“STATUS QUO” OF APPLICANTS’ LICENSES

13. **THIS COURT ORDERS** that (a) the status quo in respect of the Applicants’ Health Canada and cannabis excise licenses (collectively, the “**Licenses**”) shall be preserved and

maintained during the pendency of the Stay Period, including the Applicants' ability to sell cannabis inventory in the ordinary course under the Licenses; and (b) to the extent any License may expire during the Stay Period, the term of such License shall be deemed to be extended by a period equal to the Stay Period.

GENERAL

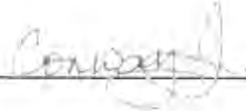
14. **THIS COURT ORDERS** that each of the Applicants or the Monitor may, from time to time, apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties under this Order or in the interpretation of this Order.

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Germany or in Australia, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

18. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.



Schedule "A"

Bidding Procedures for the Sale and Investment Solicitation Process

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on July 25, 2023 (as amended and restated, the "**Initial Order**"), Aleafia Health Inc., Emblem Corp., Emblem Cannabis Corporation, Emblem Realty Ltd., Growwise Health Limited, Canabo Medical Corporation, Aleafia Inc., Aleafia Farms Inc., Aleafia Brands Inc., Aleafia Retail Inc., 2672533 Ontario Inc. and 2676063 Ontario Inc. (collectively, the "**Applicants**" or the "**Aleafia Group**") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and the proceedings thereunder, the "**CCAA Proceedings**"), and KSV Restructuring Inc. ("**KSV**") was appointed monitor of the Applicants (in such capacity, the "**Monitor**").

On August 15, 2023, the Court granted an order (the "**SISP Order**"), authorizing the Monitor, with the assistance of the Aleafia Group's management team, to undertake a sale and investment solicitation process ("**SISP**") for the sale of the Aleafia Group's (i) property, assets and undertaking or shares in the capital of one or more of the Applicants (collectively, the "**Property**"), and (ii) business operations (the "**Business**"). The SISP will be conducted by the Monitor in the manner set forth herein and in accordance with the SISP Order.

Among other things, the SISP Order also: (a) approved the procedures set out in this Schedule (the "**Bidding Procedures**") for the solicitation of offers or proposals (each, a "**Bid**") for the acquisition of (i) the Grimsby Property, and (ii) the other Property and the Business or some portion thereof; and (b) approved the form of stalking horse agreement (as same may be amended from time to time pursuant to its terms and the SISP Order, the "**Stalking Horse Agreement**") to be entered into between each of Aleafia Health Inc., Emblem Cannabis Corporation, Canabo Medical Corporation, Aleafia Farms Inc. and Aleafia Retail Inc., as vendors, and (PV) Canada Inc.¹ (a wholly-owned subsidiary of the DIP Lender, the "**Stalking Horse Bidder**"), as purchaser, for the purposes of serving as the stalking horse bid in the SISP (the "**Stalking Horse Bid**"). For the avoidance of doubt, the implementation of the transactions contemplated by the Stalking Horse Agreement is conditional upon the Stalking Horse Bid being selected as a Successful Bid (as defined below) in accordance with the Bidding Procedures and Court approval of the Stalking Horse Agreement and the transactions contemplated therein on a subsequent motion to be brought by the Applicants following the completion of the SISP.

Defined Terms

1. Capitalized terms used in these Bidding Procedures and not otherwise defined herein have the meanings given to them in Appendix "A" hereto.

¹ Stalking Horse Agreement and Implementation Steps contemplate the assignment/pledge of the DIP and Senior Loans and security to the Purchaser.

Bidding Procedures

Opportunity

2. The SISP is intended to solicit interest in and opportunities for a sale of, or investment in, all or part of the Aleafia Group's Property and Business (the "**Opportunity**"). The Opportunity may include one or more of a restructuring, refinancing, recapitalization or other form of reorganization of the business and affairs of one or more entity comprising the Aleafia Group as a going concern, or a sale of all, substantially all or one or more components of the Aleafia Group's Property and Business as a going concern or otherwise.
3. Any sale of any of the Property or investment in the Business will be on an "*as is, where is*" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Aleafia Group or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Aleafia Group in and to the Property to be acquired will be sold free and clear of, *inter alia*, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders and definitive documents.
4. The Stalking Horse Agreement constitutes a Binding Offer (as defined below) by the Stalking Horse Bidder (which constitutes a Binding Offer Bidder (as defined below)) for all purposes and at all times under this SISP and will serve as the Stalking Horse Bid for purposes of this SISP and the Bidding Procedures and have the right to participate in the Auction (as defined below), if any. Notwithstanding the Stalking Horse Agreement and proposed transactions therein, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal (as defined below), a Partial Sale Proposal (as defined below), an Investment Proposal (as defined below), or a Grimsby Proposal (as defined below). A copy of the Stalking Horse Agreement will be made available to all Qualified Bidders (as defined below) and a form of such agreement, to be uploaded to the VDR (as defined below), may be used as the basis for any Binding Offer made in the SISP. A form of purchase and sale agreement prepared by the Applicants and the Monitor in connection with the sale of the Grimsby Property (the "**Grimsby APS**"), will be made available to all Qualified Bidders that have expressed an interest in the Grimsby Property and uploaded to the VDR, and will be used as the basis for any Binding Offer for the Grimsby Property in the SISP.
5. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Aleafia Group, the Property and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the requisite approvals to be sought from the Court in connection therewith.

Subject to paragraph 18 below, the Monitor, in consultation with the Aleafia Group, may at any time and from time to time, modify, amend, vary or supplement the Bidding Procedures, without the need for obtaining an order of the Court or providing notice to

Qualified Bidders, Binding Offer Bidders, the Successful Bidder(s) or the Back-Up Bidder(s) (as defined below) provided that such modification, amendment, variation or supplement is expressly limited to changes that do not alter, amend or prejudice the rights of such bidders (including the rights of the Stalking Horse Bidder, except with the authorization of the Stalking Horse Bidder) and are necessary or useful in order to give effect to the substance of the SISP, the Bidding Procedures or the SISP Order. Notwithstanding the foregoing, the dates or time limits indicated in the table contained below may be extended by the Monitor, as the Monitor deems necessary or appropriate, and with the consent of the DIP Lender, acting reasonably, or by order of the Court.

The Monitor will post on the Monitor's website and serve on the service list maintained in the CCAA Proceedings, as soon as practicable, any such modification, amendment, variation or supplement to these Bidding Procedures and inform the bidders impacted by such modifications.

In the event of a dispute as to the interpretation or application of the SISP Order or these Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute. For the avoidance of doubt, all bidders shall be deemed to have consented to the jurisdiction of the Court in connection with any disputes relating to the SISP, including the qualification of bids, the construction and enforcement of the SISP, and closing of a Successful Bid, as applicable.

A summary of the key dates pursuant to the SISP is as follows:

Milestone	Date
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA (each as defined below), Confidential Information Memorandum and access to VDR	No later than two (2) Business Days after the granting of the SISP Order
Grimsby Offer Deadline (as defined below)	September 6, 2023 at 5:00 p.m. EST
Binding Offer Deadline (as defined below)	October 2, 2023 at 5:00 p.m. EST
<i>If no Binding Offers are received other than Stalking Horse Bid</i>	

Selection of Stalking Horse Bid as Successful Bid	October 3, 2023
Approval Motion (as defined below)	October 11, 2023 or the earliest date available thereafter
Closing of Stalking Horse Bid	As soon as possible but no later than November 22, 2023
<i>If Binding Offers are received other than Stalking Horse Bid</i>	
Selection of Successful Bid in respect of the Grimsby Property, if any, and Back-Up Bidder, if needed	No later than September 8, 2023
Approval Motion in respect of the Grimsby Property	No later than September 22, 2023
Closing of the Successful Bid in respect of the Grimsby Property, if any	As soon as possible but no later than October 31, 2023
Deadline to notify Qualified Bidders of Auction	No later than October 6, 2023
Auction, if needed	October 10, 2023
Selection of Successful Bid and Back-Up Bidder, if needed	October 10, 2023 or such later date immediately thereafter if the Auction is not completed in one day
Approval Motion	No later than October 18, 2023
Closing of the Successful Bid	As soon as possible but no later than November 22, 2023

Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable, but, in any event, by no later than two (2) Business Days after the granting of the SISP Order:
 - (a) the Monitor, in consultation with the Aleafia Group, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, (ii) strategic and financial parties who the Monitor, in consultation with the Aleafia Group, believe may be interested in purchasing all or part of the Business or the Property or investing in the Aleafia Group pursuant to the SISP, and (iii) parties that showed an interest in the Aleafia Group and/or their Property prior to the date of the SISP Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the **"Known Potential Bidders"**);
 - (b) a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Aleafia Group, considers appropriate) (the **"Notice"**) will be published by the Monitor in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Monitor;
 - (c) the Aleafia Group will issue a press release setting out the information contained in the Notice and such other relevant information which the Monitor and the Applicants determine is appropriate; and
 - (d) the Monitor, with the assistance of the Aleafia Group, will prepare (i) a process summary (the **"Teaser Letter"**) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and Aleafia Group and their respective counsel, which shall enure to the benefit of any purchaser of the Business or Property or any part thereof (an **"NDA"**). The Monitor may prepare a separate Teaser Letter in respect of the solicitation of offers or proposals for the acquisition of the Grimsby Property.
7. The Monitor will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder by no later than two (2) Business Days after the granting of the SISP Order, and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Virtual Data Room

8. A confidential virtual data room or rooms² (collectively, the **"VDR"**) in relation to the Opportunity will be made available by the Aleafia Group and the Monitor to Potential Bidders (as defined below) that have executed the NDA. The VDR will be made available

² A separate VDR may be made available in respect of the solicitation of offers or proposals for the acquisition of the Grimsby Property.

as soon as practicable. The Monitor, in consultation with the Aleafia Group, may establish or cause the Aleafia Group to establish separate VDRs (including "clean rooms"), if the Aleafia Group reasonably determines that doing so would further the Aleafia Group's and any Potential Bidder's compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Monitor may also, in consultation with the Aleafia Group, limit the access of any Potential Bidder to any confidential information in the VDR where the Monitor, in consultation with the Aleafia Group, reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business, the Property or their value.

Qualified Bidders and Delivery of Confidential Information Memorandum

9. Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Monitor and counsel to the Aleafia Group, at the addresses specified in Appendix "B" hereto (including by email transmission), an NDA executed by it, acceptable to the Monitor, in consultation with the Aleafia Group, and written confirmation of 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.
10. A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a "**Qualified Bidder**" if the Monitor, in its reasonable judgment, and in consultation with the Aleafia Group, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP. All Qualified Bidders will receive a Confidential Information Memorandum prepared by the Monitor and will be granted access to the VDR. For the avoidance of doubt, the Stalking Horse Bidder is, and will be deemed to be, a Qualified Bidder.
11. The Monitor will prepare and send to each Qualified Bidder a Teaser Letter and provide a copy of the Stalking Horse Agreement or the Grimsby APS, as applicable, and any material amendment thereto. The Aleafia Group, the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR, Teaser Letter, Confidential Information Memorandum or otherwise made available pursuant to the SISP.
12. At any time during the SISP, the Monitor may, in its reasonable judgment, and in consultation with the Aleafia Group, eliminate a Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a "Qualified Bidder" for the purposes of the SISP.
13. Potential Bidders must rely solely on their own independent review, diligence, 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 one or more of the entities comprising the Aleafia Group.

Due Diligence

14. The Monitor and the Aleafia Group, shall, subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property and Business as the Monitor, in consultation with the Aleafia Group, may deem appropriate. Due diligence access may include management presentations, access to the VDR, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Monitor, in its reasonable judgment, and in consultation with the Aleafia Group, may agree. Any access or interactions with the Aleafia Group's management and personnel shall be coordinated through, and involve a representative of, the Monitor.
15. The Monitor will designate one or more representatives of the Monitor to be solely responsible for coordinating and responding to all requests for information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. Neither the Monitor, nor the Aleafia Group through the Monitor, will be obligated to furnish any information relating to the Property or Business to any person other than to Qualified Bidders. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Monitor, in consultation with the Aleafia Group, determines such information to represent proprietary or sensitive competitive information.

Formal Binding Offers

16. Any Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer to (A) acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof (either one, a "**Sale Proposal**") or a portion of the Property or the Business (a "**Partial Sale Proposal**"); (B) make an investment in, restructure, recapitalize or refinance the Aleafia Group or the Business or a portion thereof (an "**Investment Proposal**"); or (C) acquire the Grimsby Property (a "**Grimsby Proposal**"), must submit a binding offer (a "**Binding Offer**"): (a) in the case of a Sale Proposal, in the form of a template purchase agreement provided in the VDR, along with a marked version showing edits to the original form of the template provided in the VDR and otherwise with a marked version compared to the Stalking Horse Agreement; or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Monitor, in consultation with the Aleafia Group (the "**Binding Offer Bidder**"), in each case, to the Monitor, no later 5 p.m. EST on October 2, 2023 (the "**Binding Offer Deadline**"), which does not apply in respect of a Grimsby Proposal. Any Qualified Bidder who wishes to make a formal offer in respect of a Grimsby Proposal must submit a Binding Offer, in the form of the Grimsby APS, to the Monitor no later than 5 p.m. EST on September 6, 2023 (the "**Grimsby Offer Deadline**"). Due to the earlier submission of offers for the Grimsby Property contemplated herein, the Grimsby Property, if subject to a Successful Bid arising from a Binding Offer submitted by the Grimsby Offer Deadline, shall be excluded from the later stages of this SISF (such as the Auction, as detailed below).
17. Except in the case of a Grimsby Proposal, a Binding Offer will be considered if it:

- (a) provides net cash proceeds on closing via provisions that meet the following requirements, that are not less than the aggregate total of: (A) the amount of cash payable under the Stalking Horse Agreement together with the amount of all secured indebtedness, liabilities and obligations owing by the Aleafia Group to the DIP Lender (both in respect of its outstanding pre-filing secured loans and advances under the DIP Facility), plus (B) the amount of cash payable to cover the Expense Reimbursement (as defined in the Stalking Horse Agreement), plus (C) a minimum overbid amount of \$200,000, plus (D) the amount of cash payable to repay in full all of the secured indebtedness, liabilities and obligations owing by the Aleafia Group to 1260356 Ontario Limited (the amounts set forth in this paragraph 17(a), the “**Minimum Purchase Price**”); provided, however, that the Monitor may, in its reasonable judgment, and in consultation with the Aleafia Group, deem this criterion satisfied if the Sale Proposal, Partial Sale Proposal or the Investment Proposal, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet or exceed the Minimum Purchase Price and such Minimum Purchase Price is payable in full in cash on closing (such bids, “**Aggregated Bids**”, and each an “**Aggregated Bid**”) (the amount of the Minimum Purchase Price will be confirmed by the Monitor with Potential Bidders);
- (b) is submitted on or before the Binding Offer Deadline by a Qualified Bidder;
- (c) is made by way of binding, definitive transaction document(s) that is/are executed by the Binding Offer Bidder;
- (d) is a Binding Offer: (i) to purchase all, substantially all, or a portion of the Property or the Business; and/or (ii) to make an investment in, restructure, recapitalize or refinance the Aleafia Group or the Business or a portion thereof, on terms and conditions reasonably acceptable to the Monitor and the Aleafia Group;
- (e) identifies all executory contracts of the Aleafia Group that the Binding Offer Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
- (f) is not subject to any financing condition, diligence condition or internal or board approval;
- (g) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
- (h) contains or identifies the key terms and provisions to be included in any Approval Order, including whether such order will be a “reverse vesting order”;
- (i) contains the Binding Offer Bidder’s proposed treatment of employees of the applicable Aleafia Group entities (for example, anticipated employment offers and treatment of post-employment benefits);

- (j) includes acknowledgments and representations of the Binding Offer Bidder that it:
 - (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities, including those regulating the cannabis sector;
- (k) provides for (i) net cash proceeds on closing that are not less than the Minimum Purchase Price; unless it is a part of a bid that qualifies as an Aggregated Bid, as the case may be, in which case the total net cash proceeds of the Aggregated Bids will be not less than the Minimum Purchase Price; and (ii) evidence satisfactory to the Monitor of funds available to pay the Minimum Purchase Price on closing including written evidence of a firm, irrevocable commitment for financing or other evidence of ability to pay the Minimum Purchase Price on closing;
- (l) is accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Aleafia Group by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two (2) Business Days after the date of closing of the applicable Successful Bid; and (B) the Outside Date (as defined below);
- (m) provides for any anticipated corporate, licensing, securityholder, Health Canada, legal or other regulatory approvals required to close the transaction, and an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (n) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (o) in the case of a Sale Proposal or Partial Sale Proposal, includes:
 - (i) the specific purchase price in Canadian dollars and a description of any non-cash consideration;
 - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - (iii) a specific indication of the sources of capital for the Binding Offer Bidder and the structure and financing of the transaction; and

- (iv) a description of those liabilities and obligations (including operating liabilities) which the Binding Offer Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
- (p) in the case of an Investment Proposal, includes:
 - (i) a description of how the Binding Offer Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;
 - (iii) the underlying assumptions regarding the pro forma capital structure;
 - (iv) a specific indication of the sources of capital for the Binding Offer Bidder and the structure and financing of the transaction; and
 - (v) a description of those liabilities and obligations (including operating liabilities) which the Binding Offer Bidder intends to assume and which liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
- (q) prior to entering the Auction, the Binding Offer Bidder will be required to deliver to the Monitor a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the “**Deposit**”);
- (r) is accompanied by an acknowledgement that (i) if the Binding Offer Bidder is selected as a Successful Bidder, that the Deposit will be non-refundable subject to approval of such Successful Bid by the Court and the terms described in paragraph 27 below; and (ii) if the Binding Offer Bidder is selected as a Back-Up Bidder, that the Deposit will be held and dealt with as described in paragraph 27 below;
- (s) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on the date that is twenty-one (21) days from the date of the issuance of the Approval Order approving such bid, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the “**Target Closing Date**”) and in any event no later than November 22, 2023 (the “**Outside Date**”); and
- (t) includes such other information as reasonably requested or identified as being necessary or required by the Monitor, in consultation with the Aleafia Group.

17A. In the case of a Grimsby Proposal, a Binding Offer will be considered if it:

- (a) provides net cash proceeds on closing that provide an acceptable value for the Grimsby Property, as determined by the Aleafia Group and the Monitor, with the consent of the DIP Lender, on a commercially reasonable basis;
- (b) is submitted on or before the Grimsby Offer Deadline by a Qualified Bidder;
- (c) is made by way of binding, definitive transaction document(s) that is/are executed by the Binding Offer Bidder, and includes a blackline to the Grimsby APS;
- (d) is not subject to any financing condition, diligence condition or internal or board approval;
- (e) is unconditional, other than upon the receipt of the Approval Order and satisfaction of any other conditions expressly set forth in the Binding Offer;
- (f) includes acknowledgments and representations of the Binding Offer Bidder that it:
 - (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Grimsby Property in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by any applicable governmental authorities;
- (g) is accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Aleafia Group by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of two (2) Business Days after the date of closing of the applicable Successful Bid; and (B) the Grimsby Outside Date (as defined below);
- (h) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (i) includes the specific purchase price in Canadian dollars;
- (j) includes a specific indication of the sources of capital for the Binding Offer Bidder and the structure and financing of the transaction;
- (k) is accompanied by the delivery to the Monitor of a deposit in the amount of not less than 10% of the cash purchase price payable on closing (the "**Grimsby Deposit**") and an acknowledgement that (i) if the Binding Offer Bidder is selected as a Successful Bidder, that the Grimsby Deposit will be non-refundable subject to approval of such Successful Bid by the Court and the terms described in paragraph

27 below; and (ii) if the Binding Offer Bidder is selected as a Back-Up Bidder, that the Grimsby Deposit will be held and dealt with as described in paragraph 27 below;

- (l) demonstrates a capacity to consummate a closing of the transaction set out therein on the date that is twenty-one (21) days from the date of the issuance of the Approval Order approving such bid, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the “**Grimsby Target Closing Date**”) and in any event no later than October 31, 2023 (the “**Grimsby Outside Date**”); and
 - (m) includes such other information as reasonably requested or identified as being necessary or required by the Monitor, in consultation with the Aleafia Group.
18. The Monitor, in its reasonable judgment, and in consultation with the Aleafia Group, may waive strict compliance with any one or more of the requirements specified above (with the exception of the requirements contained in paragraphs 17(a) and 17(k), which cannot be waived without the prior written consent of the DIP Lender) and consider such non-compliant Binding Offer. For the avoidance of doubt, the completion of any Binding Offer shall be subject to the approval of the Court.
19. In the circumstance that a Binding Offer, including one or more Binding Offers comprising an Aggregated Bid, does not provide for net cash proceeds on closing that are at least equal to the Minimum Purchase Price, the Monitor will consult with the DIP Lender and, with the consent of the DIP Lender, may elect that such Binding Offer nevertheless be considered as a potential Successful Bid and be entitled to participate in the Auction.

Selection of Successful Bid

20. The Monitor, in consultation with the Aleafia Group, may, following the receipt of any Binding Offer, including one or more Binding Offers comprising an Aggregated Bid, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered.
21. The Monitor and the Aleafia Group, will (i) review and evaluate each relevant Binding Offer, valued upon numerous factors as referenced above, including factors affecting the speed, certainty and value of the transaction (including any licensing, Health Canada, regulatory or legal approvals, assignments or third party contractual arrangements required to close the transactions); (ii) subject to paragraph 22(j) below, (A) identify the highest and otherwise best Binding Offer (the “**Successful Bid**”, and the Binding Offer Bidder making such Successful Bid, the “**Successful Bidder**”), and (B) the next highest and otherwise second best Binding Offer (the “**Back-Up Bid**”, and the Binding Offer Bidder making such Back-Up Bid, the “**Back-Up Bidder**”); provided that, with respect to the sale of the Grimsby Property pursuant to a Grimsby Proposal, the applicable Successful Bid, Successful Bidder, Back-Up Bid and Back-Up Bidder, if any, will be identified by the Monitor and the Aleafia Group, with the consent of the DIP Lender, following the Grimsby Offer Deadline by no later than September 8, 2023 in accordance with the terms hereof.

Provided that the Ad Hoc Committee of Convertible Debentureholders confirms in writing that (i) it has not submitted or participated in the submission of a Binding Offer, and (ii) it is not affiliated or communicating with any Binding Offer Bidder, the Ad Hoc Steering Committee and counsel to the Ad Hoc Committee of Convertible Debentureholders shall be entitled to receive copies of each Binding Offer submitted by the Grimsby Offer Deadline and the Binding Offer Deadline, as applicable, on a confidential basis pursuant to one or more NDAs satisfactory to the Monitor as soon as reasonably practicable following receipt thereof.

22. In the event that no Binding Offer is selected (other than the Stalking Horse Bid), the Aleafia Group will promptly seek Court approval of the Stalking Horse Agreement and the transactions contemplated therein. In the event there is at least one Binding Offer in addition to the Stalking Horse Bid, a Successful Bid will be identified through an auction in accordance with the procedure set out below; provided that, the Grimsby Property is intended to be marketed separately as part of this SISF as set forth herein and will only be marketed through the Auction if no Grimsby Proposal is received by the Grimsby Offer Deadline or if the Grimsby Proposals received provide insufficient value, as determined by the Aleafia Group and the Monitor, on a commercially reasonable basis.
23. In the event that an auction (the “**Auction**”) is required in accordance with the terms of these Bidding Procedures, it will be conducted in accordance with the procedures set forth in this paragraph (provided that, for certainty, the Auction will not apply or take place in respect of the Grimsby Property unless the requirements set out in the paragraph above are met):
 - (a) The Auction will commence at a time to be designated by the Monitor, on October 10, 2023, and may, in the discretion of the Monitor, be held virtually via videoconference, teleconference or such other reasonable means as the Monitor deems appropriate. The Monitor will consult with the parties permitted to attend the Auction to arrange for the Auction to be so held. Subject to the terms hereof, the Monitor, in consultation with the Aleafia Group, may postpone the Auction.
 - (b) The identity of each Binding Offer Bidder participating in the Auction will be disclosed, on a confidential basis, to other Binding Offer Bidders participating in the Auction.
 - (c) Except as otherwise permitted in the Monitor’s discretion, only the Aleafia Group, the Monitor and the Binding Offer Bidders, and, in each case, their respective professionals and representatives, will be permitted to attend the Auction. Only Binding Offer Bidders (including, for greater certainty, the Stalking Horse Bidder) are eligible to participate in the Auction.
 - (d) Binding Offer Bidders will participate in the Auction through a duly authorized representative.
 - (e) Except as otherwise set forth herein, the Monitor may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the

participation of parties participating in an Aggregated Bid, that are reasonable under the circumstances for conducting the Auction, provided that such rules are: (i) not inconsistent with the Initial Order, the SISP, the Bidding Procedures, the CCAA, or any order of the Court issued in connection with the CCAA Proceedings; (ii) disclosed to each Binding Offer Bidder; and (iii) designed, by the Monitor, in its reasonable judgment, and in consultation with the Aleafia Group, to result in the highest and otherwise best offer.

- (f) The Monitor may arrange for the actual bidding at the Auction to be transcribed or recorded. Each Binding Offer Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction.
- (g) Each Binding Offer Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Aleafia Group or any other person, without the consent of the Monitor, regarding the SISP, that has not been disclosed to all other Binding Offer Bidders. For greater certainty, communications between the Stalking Horse Bidder and either the Aleafia Group or the Monitor with respect to and in preparation of the Stalking Horse Agreement, the SISP and the Bidding Procedures, prior to the issuance of the SISP Order and the commencement of the SISP will not represent collusion nor communications prohibited by this paragraph.
- (h) Prior to the Auction, the Monitor will identify the highest and best of the Binding Offers received and such Binding Offers will constitute the opening bid for the purposes of the Auction (the **"Opening Bid"**). Subsequent bidding will continue in minimum increments valued at not less than \$200,000 cash in excess of the Opening Bid. Each Binding Offer Bidder will provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Monitor, in consultation with the Aleafia Group, to facilitate bidding by the participants in the Aggregated Bid.
- (i) All Binding Offer Bidders will have the right, at any time, to request that the Monitor announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Binding Offer Bidder, use reasonable efforts to clarify any and all questions such Binding Offer Bidder may have regarding the Monitor's announcement of the then-current highest and best bid.
- (j) Each participating Binding Offer Bidder will be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction will continue until the bidding has concluded and there is one remaining Binding Offer Bidder. The Monitor and the Aleafia Group shall determine which Binding Offer Bidders have submitted (i) the highest and otherwise best Binding Offer of the Auction, which shall be a Successful Bid, and (ii) the next highest and otherwise second best Binding Offer of the Auction, which shall be a Back-Up Bid. At such time and upon the conclusion of the bidding, the Auction will be closed, and the

Binding Offer Bidder with the highest and otherwise best Binding Offer of the Auction will be a Successful Bidder. The Binding Offer Bidder with the next highest and otherwise second best Binding Offer of the Auction will be a Back-Up Bidder.

- (k) Upon selection of a Successful Bidder and a Back-Up Bidder, if any, the Successful Bidder and the Back-Up Bidder, if any, shall each deliver to the Monitor and the Aleafia Group, an amended and executed transaction document that reflects their final bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the motion material for the hearing to consider the Approval Motion.
 - (l) Any bids submitted after the conclusion of the Auction will not be considered.
 - (m) The Monitor, in consultation with the Aleafia Group, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit, including to conduct the Auction by way of written submissions.
24. Other than in the case of a Grimsby Proposal, a Successful Bid and Back-Up Bid, if any, will be selected by no later than 5:00 p.m. (Eastern Time) on October 10, 2023 (or such later date immediately thereafter if the Auction is conducted and not completed in one day) and the completion and execution of definitive documentation in respect of such Successful Bid and Back-Up Bid, as applicable, must be finalized and executed no later than October 10, 2023 (or such later date immediately thereafter if the Auction is conducted and not completed in one day) which definitive documentation will be conditional only upon the receipt of the Approval Order(s) and the express conditions set out therein and will provide that the Successful Bidder will use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as may be agreed to by the Monitor, in consultation with the Aleafia Group and the Successful Bidder, subject to the terms hereof. In any event, such Successful Bid must be closed by no later than the Outside Date. In the case of a Grimsby Proposal, a Successful Bid and Back-Up Bid, if any, will be selected following the Grimsby Offer Deadline by no later than September 8, 2023, and the completion and execution of definitive documentation in respect of such Successful Bid and Back-Up Bid, as applicable, must be finalized and executed within two (2) Business Days of selection, which definitive documentation will be conditional only upon the receipt of the Approval Order and the express conditions set out therein and will provide that the Successful Bidder will use all reasonable efforts to close the proposed transaction by no later than the Grimsby Target Closing Date, or such longer period as may be agreed to by the Monitor, in consultation with the Aleafia Group, the DIP Lender and the Successful Bidder, subject to the terms hereof. In any event, such Successful Bid must be closed by no later than the Grimsby Outside Date. If a Back-Up Bid is identified in accordance with the SISF, then such Back-Up Bid shall remain open until the date (the **"Back-Up Bid Outside Date"**) on which the transaction contemplated by the applicable Successful Bid is consummated or such earlier date as the Monitor, in consultation with the Aleafia Group, determines. If the transactions contemplated by the applicable Successful Bid have not closed by the Outside Date or the Grimsby Outside Date, as applicable, or the applicable Successful Bid is terminated for any reason prior to the

Outside Date or the Grimsby Outside Date, as applicable, the Aleafia Group and the Monitor may elect to, or by further order of the Court, seek to complete the transactions contemplated by the applicable Back-Up Bid, and will promptly seek to close the transaction contemplated by such Back-Up Bid, which will be deemed to be a Successful Bid. The Aleafia Group will be deemed to have accepted such Back-Up Bid only when the Aleafia Group and the Monitor have made such election.

Approval of Successful Bid

25. The Aleafia Group will apply to the Court (the “**Approval Motion**”) for one or more orders: (i) approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby (such order shall also approve the Back-Up Bid(s), if any, should the Successful Bid(s) not close for any reason); and (ii) granting a vesting order and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid(s) so as to vest title to any purchased assets and/or shares in the name of the applicable Successful Bidder(s) and/or vesting unwanted assets and liabilities out of one or more of the Aleafia Group (collectively, the “**Approval Order(s)**”). The Approval Motion will be held on a date to be scheduled by the Aleafia Group and confirmed by the Court upon application by the Aleafia Group. With the consent of the Monitor and the applicable Successful Bidder(s), the Approval Motion may be adjourned or rescheduled by the Aleafia Group without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the service list maintained in the CCAA Proceedings prior to the Approval Motion. The Aleafia Group will consult with the Monitor and the applicable Successful Bidder regarding the motion material to be filed by the Aleafia Group for the Approval Motion.
26. All Binding Offers (other than the Successful Bid(s) but including the applicable Back-Up Bid(s)) will be deemed rejected on and as of the date of the closing of the applicable Successful Bid(s), with no further or continuing obligation of the Aleafia Group or the Monitor to any unsuccessful Binding Offer Bidders.

Deposits

27. The Deposit(s) and the Grimsby Deposit(s), as applicable:
 - (a) will, upon receipt from the Binding Offer Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account;
 - (b) received from the Successful Bidder(s) and the Back-Up Bidder(s), if any, will:
 - (i) be applied to the purchase price to be paid by the applicable Successful Bidder or Back-Up Bidder whose Successful Bid or Back-Up Bid, as applicable, is the subject of the Approval Order(s), upon closing of the approved transaction; and
 - (ii) otherwise be held and refunded in accordance with the terms of the definitive documentation in respect of the applicable Successful Bid or or Back-Up Bid, provided that (i) all such documentation will provide that the

Deposit or Grimsby Deposit, as applicable, will be fully refunded to the Back-Up Bidder on the Back-Up Bid Outside Date; and (ii) all such documentation will provide that the Deposit will be retained by the Aleafia Group and forfeited by the Successful Bidder, if its Successful Bid fails to close by the Outside Date or Grimsby Outside Date, as applicable, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of its Successful Bid; and

- (c) received from the Binding Offer Bidder(s) that are not a Successful Bidder or a Back-Up Bidder will be fully refunded to the Binding Offer Bidder(s) that paid the Deposit(s) or the Grimsby Deposit(s), as applicable, as soon as practical following the closing of the applicable Successful Bid.
28. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder will not be required to provide a Deposit.

“As is, Where is”

29. Any sale (or sales) of the Property or the Business or portions thereof will be on an “**as is, where is**” basis except for representations and warranties that are customarily provided in purchase agreements for a company subject to CCAA proceedings. Any such representations and warranties provided for in the definitive documents will not survive closing.

Free of Any and All Claims and Interests

30. In the event of a sale, to the extent permitted by law, all of the rights, title and interests of the Aleafia Group in and to the Property or the Business to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the “**Claims and Interests**”) pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property or Business and/or excluded assets, as applicable (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder.

Credit Bidding

31. The Stalking Horse Bidder will be entitled pursuant to the Stalking Horse Agreement, including for greater certainty as part of the Auction, as the case may be, to credit bid or retain as Retained Liabilities all or part of the existing secured obligations owing to it, including all interest, costs and fees to which the Stalking Horse Bidder is entitled pursuant to its relevant loan, interim financing, debenture, promissory note and/or security agreements with the Aleafia Group.
32. Any other secured party of the Applicants may include as part of a Binding Offer under this SISP all or part of its existing secured obligations owing to it as a credit bid for the Business and the Property. For the avoidance of doubt, a secured party, including, without

limitation, the Stalking Horse Bidder, may only make a credit bid in relation to the Property subject to such secured party's valid and enforceable security (in each case, the "Encumbered Assets"). To the extent that a secured party wishes to submit a Binding Offer for Property that does not form part of the Encumbered Assets (the "Unencumbered Assets"), such secured party shall specify a cash purchase price allocated to the Unencumbered Assets while making a credit bid for the Encumbered Assets that are included in such Binding Offer.

Confidentiality

33. For greater certainty, other than as required in connection with any Auction or Approval Motion and subject to paragraph 21, neither the Aleafia Group nor the Monitor will disclose: (i) the identity of any Potential Bidder or Qualified Bidder (other than the Stalking Horse Bidder); or (ii) the terms of any bid, Sale Proposal, Investment Proposal, Grimsby Proposal or Binding Offer (other than the Stalking Horse Agreement), to any other bidder or any of its affiliates (provided that disclosure may be made to the DIP Lender when expressly contemplated by the SISP, such as in the event that no single Binding Offer provides for net cash proceeds that are at least equal to the Minimum Purchase Price), except to the extent the Monitor, with the consent of such applicable parties is seeking to combine separate bids into Aggregated Bids. Potential Bidders, Qualified Bidders (including the Stalking Horse Bidder) and each of their respective affiliates shall not communicate with, or contact, directly or indirectly, any other Potential Bidder, Qualified Bidder or their respective affiliates, or any secured creditors of members of the Aleafia Group, including the Ad Hoc Committee of Convertible Debentureholders, without the express written consent of the Monitor, and such communications or discussions are to take place under the supervision of the Monitor.

Further Orders

34. At any time during the SISP, the Aleafia Group or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP including, but not limited to, the continuation of the SISP or with respect to the discharge of its powers and duties hereunder.

Additional Terms

35. In addition to any other requirement of the SISP:
- (a) The Aleafia Group and the Monitor, as applicable, will at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as potential bidders in a process of this kind or who may be reasonably proposed by any of the Aleafia Group' stakeholders as a potential bidder.
 - (b) Any consent, approval or confirmation to be provided by the Stalking Horse Bidder, the DIP Lender, the Aleafia Group and/or the Monitor is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to,

and not in substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email will be deemed to have been provided in writing for the purposes of this paragraph.

- (c) Prior to seeking Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.
- 36. This SISP does not, and will not be interpreted to create any contractual or legal relationship between the Aleafia Group and any other party, other than as specifically set forth in the NDA or any other definitive agreement executed.
- 37. Notwithstanding anything to the contrary herein, the Monitor shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, Binding Offer Bidder, Successful Bidder, Back-Up Bidder or any other creditor or stakeholder, or any Applicant, as a result of implementation or otherwise in connection with this SISP, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Monitor, as determined by the Court, and all such persons or entities shall have no claim against the Monitor in respect of the SISP for any reason whatsoever.
- 38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Binding Offer, due diligence activities, and any other negotiations or other actions whether or not they lead to the consummation of a transaction.

APPENDIX A

DEFINED TERMS

“Ad Hoc Committee of Convertible Debentureholders” means the ad hoc group of holders of Aleafia Health Inc.’s secured convertible debentures issued under the amended and restated debenture indenture providing for the issue of certain convertible debentures dated as of June 27, 2022 between Aleafia Health Inc. and Computershare Trust Company of Canada, as the trustee, as supplemented by: (i) the first supplemental indenture dated as of June 27, 2022 (providing for the issue of the 8.5% Series A Secured Convertible Debentures Due June 30, 2024); (ii) the second supplemental indenture dated as of June 27, 2022 (providing for the issue of the 8.5% Series B Secured Convertible Debentures Due June 30, 2026); and (iii) the third supplemental indenture dated as of June 27, 2022 (providing for the issue of 8.50% Series C Secured Debentures Due June 30, 2028).

“Ad Hoc Steering Committee” means the three member committee elected by the Ad Hoc Committee of Convertible Debentureholders to represent and advance the interests of the Ad Hoc Committee of Convertible Debentureholders.

“Business Day” means a day on which banks are open for business in Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

“DIP Lender” means Red White & Bloom Brands Inc. and its successors and permitted assigns.

“Grimsby Property” means the lands and premises municipally known as 378 South Service Road, Grimsby, Ontario and legally described under PIN 46033-0368 (LT) as 1STLY: PT LT 1 CON 1 NORTH GRIMSBY DESIGNATED AS PT 2 30R13028 & PT 18 30R13499; 2NDLY PT LT A EAST GORE NORTH GRIMSBY DESIGNATED AS PTS 4, 5, 8, 9, 10 30R13028; S/T RO437966; SUBJECT TO AN EASEMENT IN GROSS OVER PART LOT A, EAST GORE, NORTH GRIMSBY, PART 4, 30R13028 AS IN NR529869; TOWN OF GRIMSBY and all personal property located on and therein other than inventory.

“Retained Liabilities” has the meaning given to it in the Stalking Horse Agreement.

APPENDIX "B"

The Monitor:

KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Attention: Noah Goldstein and Eli Brenner

Email: ngoldstein@ksvadvisory.com / ebrenner@ksvadvisory.com

with copies to:

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Attention: Marc Wasserman and Martino Calvaruso

Email: mwasserman@osler.com / mcavaruso@osler.com

The Applicants

Aleafia Group
c/o Aird & Berlis LLP
Brookfield Place, 181 Bay St. #1800
Toronto, ON M5J 2T9

Attention: Kyle Plunkett and Mel Cole

Email: kplunkett@airdberlis.com / mcole@airdberlis.com

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED, AND IN THE MATTER
OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ALEAFIA HEALTH INC. et al.

Applicants

Court File No. CV-23-00703350-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(Re: SISP Approval)

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Lawyers for the Applicants

District of British Columbia
Division No. 03 - Vancouver
Court No. B-230269
Estate No: 11-2960200

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*
R.S.C. 1985, c. B-3, AS AMENDED

– AND –

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TANTALUS LABS LTD.

APPLICATION RESPONSE

Application response of the Attorney General of Canada on behalf of the Minister of National Revenue (“Minister”).

THIS IS A RESPONSE TO the notice of application of Tantalus Labs Ltd. (“Tantalus”) filed July 7, 2023.

Part 1: ORDERS CONSENTED TO

The Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: N/A

Part 2: ORDERS OPPOSED

The Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: Paragraphs 2 and 3.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Respondent takes no position on the granting of the orders set out in the following paragraph of Part 1 of the notice of application: Paragraph 1

Part 4: FACTUAL BASIS

1. Tantalus was issued a cannabis license under the *Excise Act, 2001* ("Excise License").¹
2. The Excise License was most recently renewed on June 16, 2023, with an expiry date of July 10, 2023.²
3. Tantalus entered into multiple payment plans with Canada Revenue Agency ("CRA") over the last two years and failed to maintain the conditions of the plans.³
4. On June 12, 2023, Tantalus entered into its latest payment plan with CRA.⁴
5. On June 28, 2023, Tantalus filed a Notice of Intention to Make a Proposal ("NOI").⁵ As of the date of the NOI, Tantalus owed over 4 million dollars in duties under the *Excise Act, 2001*.⁶
6. On July 6, 2023, Tantalus' request to renew the Excise License was rejected.⁷
7. The renewal was rejected because CRA (acting as delegate for the Minister), found that Tantalus had not demonstrated their business has sufficient financial resource to conduct business in a responsible manner as required under the statutory framework to be eligible for a renewal of the Excise License.⁸
8. The reasons provided for this finding noted that (1) Tantalus had failed to uphold multiple payment arrangements with CRA and (2) Tantalus had filed a NOI on June 28, 2023 as an insolvent person.⁹
9. Tantalus now requests an order of the Court to provide, among other things, declaratory and/or injunctive relief against the Minister, in an attempt to extend the Excise License past its expiry on July 10, 2023 and sell its cannabis inventory.¹⁰

Part 5: LEGAL BASIS

1. In opposing the relief sought by the Applicant, the Respondent relies on:
 - a. The *Federal Courts Act*.¹¹

¹ Affidavit of Lucas Jenkins at para 30; *Excise Act, 2001*, SCC 2022, c 22, s 14(1.1).

² Affidavit of Lucas Jenkins at paras 30 and Exhibit E.

³ Affidavit of Lucas Jenkins at paras 35 to 49.

⁴ Affidavit of Lucas Jenkins at para 47.

⁵ Affidavit of Lucas Jenkins at para 49.

⁶ Affidavit of Lucas Jenkins at para 34.

⁷ Affidavit of Lucas Jenkins at para 57 and Exhibit S.

⁸ Affidavit of Lucas Jenkins at Exhibit S.

⁹ Affidavit of Lucas Jenkins at Exhibit S.

¹⁰ Notice of Application at paragraph 2.

- b. The *Excise Act, 2001*.¹²
- c. *Regulations Respecting Excise Licenses and Registrations*.¹³
- d. Such further and other legal basis as counsel may advise and this Honourable Court may allow

Overview

2. Until recent years, cannabis was a controlled substance that was illegal to possess or sell in most circumstances. While the sale of cannabis has been legalized in Canada, Parliament has decided to keep it under strict control under various statutes, including the requirements of the *Excise Act, 2001*.¹⁴
3. The Excise License will expire at the end of the day on July 10, 2023, as that is the period specified in the license.¹⁵ This is the legal status quo in this matter under the *Excise Act, 2001* and what will occur if the Minister does not renew the Excise License.
4. There are no extensions to a cannabis license under the *Excise Act, 2001*, only renewals.¹⁶ Tantalus requested a renewal of the Excise License.¹⁷ CRA (acting as delegate for the Minister) determined whether Tantalus still met the requirements for a cannabis license, which must be determined before it could be eligible for renewal.¹⁸ The determination was no and the renewal was not granted.¹⁹
5. Tantalus' present request that "CRA's refusal to renew [the] Excise License should be stayed" really means that Tantalus is (1) requesting the administrative decision of the Minister under the *Excise Act, 2001* be overturned *and* (2) a particular result for that administrative decision be mandated.²⁰ This is extraordinary relief against the Minister that is only available to Tantalus via the exclusive, original jurisdiction of the Federal Court and would be unlikely to succeed in any event.
6. It is expected that Tantalus might seek interlocutory relief from the Court against the Minister until its present application is heard and decided. Such interim relief against the Minister is similarly only available via the Federal Court and is would be unlikely to be granted in any event.

¹¹ *Federal Courts Act*, RSC 1985, c F-7.

¹² *Excise Act, 2001*, SCC 2022, c 22.

¹³ *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115.

¹⁴ Affidavit of Lucas Jenkins at paras 14-18; *Excise Act, 2001*.

¹⁵ Affidavit of Lucas Jenkins at Exhibit S; *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115, s 4.

¹⁶ *Excise Act, 2001*, s23(2).

¹⁷ Affidavit of Lucas Jenkins at para 54; *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115, s 9; *Excise Act*, s 9.

¹⁸ *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115, ss 2, 9(2).

¹⁹ Affidavit of Lucas Jenkins at Exhibit S

²⁰ Notice of Application at page 7.

7. The Minister's decision not to renew a license that is already set to expire under the terms of the *Excise Act, 2001* cannot possibly qualify as something that is "stayed" under section 69(1)(a) of the *Bankruptcy and Insolvency Act* ("BIA").²¹
8. Any steps taken by CRA or RCMP as officers under the *Excise Act, 2001* in enforcing the statutory provisions of *Excise Act, 2001* against a non-licensee in possession of cannabis stamps and cannabis is not stayed under section 69(1)(a) of the *BIA*. Interim equitable relief with regard to the enforcement of these statutory provisions (whose constitutionality is not under question) should not be ordered by the Court.

Exclusive Original Jurisdiction of the Federal Court

9. The Minister, in making administrative decisions under the *Excise Act, 2001*, including applications for the renewal of licenses, is acting in an administrative capacity subject to judicial review in the Federal Court.²² The Minister may delegate this administrative decision making to subordinates, including officers at the CRA.²³
10. Section 18(1) of the *Federal Courts Act* says the following²⁴:
 - (1) Subject to section 28, the Federal Court has exclusive original jurisdiction
 - (a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and
 - (b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.
11. The impact of section 18 of the *Federal Courts Act* is to transfer the supervisory jurisdiction of such federal administrative decisions exclusively to the Federal Courts.²⁵ This Court does not have the jurisdiction to overturn the Minister's refusal

²¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 69(1)(a).

²² *Federal Courts Act*, RSC 1985, c F-7; See for example, a case regarding tobacco license renewal under the *Excise Act, 2001* judicially reviewed in the Federal Court: *Legal v Canada (Attorney General)*, 2010 FC 554.

²³ *Legal v Canada (Attorney General)*, 2010 FC 554 at para 9.

²⁴ *Federal Courts Act*, RSC 1985, c F-7, s 18.

²⁵ *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 34; *Canada Labour Relations Board et al. v. Paul L'Anglais Inc. et al.*, 1983 CanLII 121 (SCC), [1983] 1 SCR 147 ("It is well established that the effect of s. 18 was to transfer all superintending and reforming power over federal agencies from the superior courts to the Federal Court"). Exceptions exist for

to renew the Excise License or to require a particular result for Tantalus' renewal application under the *Excise Act, 2001*. To seek such declaratory or injunctive relief, Tantalus must seek recourse in the Federal Court.²⁶ It is not permissible to seek this relief via insolvency proceedings in this Court, even if the alleged consequences are sympathetic or dire, because there is no sound legal basis for providing that relief.²⁷

Tantalus Would Be Unlikely to Succeed in Judicial Review

12. Even if Tantalus filed an application for judicial review in the Federal Court, as required, it would be unlikely to succeed. It would have to establish, per *Vavilov*, the decision that the requirements of the *Excise Act, 2001* were not met for renewal is unreasonable.²⁸ This is a robust but deferential standard of review, where the reviewing court does not conduct its own legislative interpretation but rather determines if the administrative decision is reasonable as being transparent, intelligible, and justified in the applicable facts and law.²⁹
13. Tantalus must continue to meet the statutory requirements for a cannabis license for the Excise License to be eligible for renewal by the Minister.³⁰ One of those requirements is to demonstrate they have sufficient financial resources to conduct their business in a responsible manner.³¹ Tantalus' application to renew was rejected for failure to establish his point, based on their history of failing to comply with multiple payment plans (to pay substantial amounts owing under the *Excise Act, 2001*) and their filing

constitutional law challenges, which cannot be removed from the concurrent jurisdiction of the superior courts.

²⁶ *McKinnon v Canada (Attorney General of)*, 2002 BCSC 1765 at paras 7-8 (No jurisdiction to order that the Plaintiffs are entitled to a federally issued permit, which is in the exclusive jurisdiction of the Federal Court); *861808 Ontario Inc v Canada Revenue Agency*, 2013 ONCA 604 at paras 1-8 (The Federal Court has exclusive original jurisdiction to grant injunctions and other transferred relief when CRA is acting as a federal board, commission, or other tribunal as defined under the *Federal Courts Act*), leave to appeal to SCC refused; *Arrangement relative a Rising Phoenix International Inc*, 2022 QCCS 1670 at para 20 ("Moreover, another legal impediment exists: the Superior Court of Québec has no jurisdiction to make an order of mandamus, or other injunctive order, against the federal minister, since this prerogative is reserved exclusively to the Federal Court of Canada under s. 18 (1) of the *Federal Courts Act*." Paragraphs 13-16 are also apt with regard to the Court not using the powers of section 11 of the CCAA to usurp the role of the ministers in question and substitute its decision.)

²⁷ *Arrangement relative a Rising Phoenix International Inc*, 2022 QCCS 1670 at para 12.

²⁸ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

²⁹ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 83.

³⁰ *Excise Act, 2001*, 23(2); *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115, ss 2, 9(2).

³¹ *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115, ss 2(c)(ii) and 2(c)(e).

of the NOI as an insolvent person.³² Tantalus is on one hand asking for the protections of the *BIA* under its NOI (which can only be granted to an insolvent person as defined under the *BIA*) after accumulating over 4 million dollars of debt under the *Excise Act, 2001*, while on the other hand it says it meets the above financial requirement.³³

14. Even if there would be comparatively greater proceeds in the *BIA* proceedings under a renewed license, that is not a basis for the Minister to grant the renewal of a license when the requirements of the *Excise Act, 2001* are not met. For the Minister to renew an expiring license when the requirements are not met, because it would generate more proceeds in the NOI proceedings, would be to contrary to the requirements of the statutory regime and the restrictions on cannabis possession and sale imposed by the *Excise Act, 2001*.³⁴
15. Ultimately, it is for the administrative decision maker to interpret the requirements of the *Excise Act, 2001* and for the Federal Court to intervene only if that reading is unreasonable. It is unlikely that the Minister's interpretation of the requirements for renewal under the *Excise Act, 2001* would be found to be outside the permissible range of reasonable results available within the applicable facts and law.

Federal Court Has Exclusive Jurisdiction for Interlocutory Relief Against the Minister

16. Tantalus will likely seek interlocutory relief until its present application is heard and decided by this Court. However, any interim relief with regard to challenging the Minister's refusal to renew is also within the exclusive jurisdiction of the Federal Court. The jurisdiction transferred to the Federal Court under section 18 of the *Federal Courts Act* catches all injunctions, including interim, interlocutory and permanent.³⁵ The language employed in section 18 is not ambiguous with regard to injunctions nor with regard to declaratory relief.

Tantalus Would Be Unlikely to Succeed In Seeking Such Relief

17. Even if such interlocutory relief were requested as required in the Federal Court, it would be unlikely to be granted.
18. The Federal Court has granted an interim injunction with regard to a tobacco license under the *Excise Act, 2001*, but this was in a case where the Minister sought to cancel

³² Affidavit of Lucas Jenkins at Exhibit S.

³³ *Bankruptcy and Insolvency Act*, ss 2, 50.4(1).

³⁴ *Excise Act, 2001*, s 8 ("Minister's duty – The Minister shall administer and enforce this Act ...").

³⁵ *861808 Ontario Inc v Canada Revenue Agency*, 2013 ONCA 604 at paras 6-8, leave to appeal to SCC refused.

an active license ahead of its expiry, not a license that was expiring because it was reaching the end of its term.³⁶ The Court specifically noted that it was preserving the status quo, because the license would still be in existence until it naturally expired at a subsequent date (i.e. it was not being asked to renew an expiring license).³⁷

19. In another Federal Court decision involving a tobacco license that was expiring due to the Minister's refusal to renew, which is directly on point to this case with regard to the facts and relief sought by Tantalus, the Federal Court specifically refused to grant the sought interlocutory relief.³⁸ The Court noted what was being sought was for the license to remain in effect until a final decision on the application for judicial review, despite its expiry under the terms of the *Excise Act, 2001*, which would be tantamount to making an order that is expressly contrary to a provision of an Act of Parliament.³⁹ The Court also referenced the principle that injunctions are meant to preserve the status quo, which would not be the case if it granted the relief.⁴⁰ Instead, it would be altering the status quo, giving the plaintiff his ultimate remedy in the interim period without an actual determination of the merits.⁴¹

BIA Section 69(1)(a) Does Not Assist Tantalus with Regard to the Minister's Decision

20. There is simply no basis to find that the Minister's refusal to renew the license qualifies as an "action, execution, or other proceedings, for the recovery of a claim provable in bankruptcy" barred by the stay provided by 69(1)(a) of the BIA. The license will automatically expire on July 10, 2023 under the terms of the *Excise Act, 2001*.⁴² If the Minister does nothing, it will expire. It can only be extended if the Minister actively

³⁶ 9101-9380 *Quebec Inc. (Les Tabacs Galaxy) v Canada (Customs and Revenue Agency)*, 2005 FC 309 at para 3.

³⁷ 9101-9380 *Quebec Inc. (Les Tabacs Galaxy) v Canada (Customs and Revenue Agency)*, 2005 FC 309 at paras 7-9.

³⁸ 9101-9380 *Quebec Inc v Canada (Canada Customs and Revenue Agency)*, 2005 FC 929 at paras 2-3, 10.

³⁹ 9101-9380 *Quebec Inc v Canada (Canada Customs and Revenue Agency)*, 2005 FC 929 at paras 12-14, citing *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115, s 4.

⁴⁰ 9101-9380 *Quebec Inc v Canada (Canada Customs and Revenue Agency)*, 2005 FC 929 at paras 22.

⁴¹ 9101-9380 *Quebec Inc v Canada (Canada Customs and Revenue Agency)*, 2005 FC 929 at paras 22; see also *Re A.G. Canada v Gould*, 1984 CanLII 5301 (FCA) ("The proper purpose of an interlocutory injunction is to preserve or restore the status quo, not to give the plaintiff his remedy, until trial), affirmed by the SCC.

⁴² *Regulations Respecting Excise Licenses and Registrations*, SOR/2003-115, s 4 ("A license is valid for the period specified in the license ..."); 9101-9380 *Quebec Inc v Canada (Canada Customs and Revenue Agency)*, 2005 FC 929 at para 12.

does something, i.e. determines the statutory requirements for renewal are met and renews the license under the *Excise Act, 2001*.

21. Tantalus relies on several CCAA cases where regulatory bodies were stayed from suspending or cancelling active licenses during insolvency proceedings.⁴³ They all involved the CCAA, whose stay granting section (11.02) is written more broadly than 69(1)(a) of the *BIA*.⁴⁴
22. As noted in the above review of Federal Court jurisprudence, acting to suspend or terminate a license ahead of its expiry date is different from not renewing a license that is going to expire at the end of its defined period. Tantalus has not provided any cases dealing where a regulatory body was required by the “stay” under the *BIA* (or even under the CCAA) to renew an expiring statutory license.
23. With regard to section 69.6 of the *BIA*, it is essentially a shield provided to regulatory bodies against the full impact of 69(1)(a), unless that shield is removed pursuant the terms of section 69.6. In other words, 69.6, including 69.6(4), does not expand the scope of the stay provided for under 69(1)(a).
24. The Minister does not agree that the requirements of removing the shield provided by 69.6 are met (including the public interest requirement), but even if they were, it would not matter because the stay under 69(1)(a) of the *BIA* does not and cannot require the Minister’s renewal of the expiring Excise License.

Tantalus’ Best Case Scenario Under *BIA* Section 69(1)(a) Is Bleak and Interim Relief Against Officers Enforcing the *Excise Act, 2001* Should Not Be Provided

25. The best case that Tantalus could hope for under the *BIA*, which is unlikely, is that Tantalus is able to retain temporary possession of the stamps and cannabis without a cannabis license, contrary to the terms of the *Excise Act, 2001*, only because any steps to enforce their removal or destruction are ultimately found to fall under the stay provided by 69(1)(a).
26. CRA will not force entry into Tantalus’ premises. If Tantalus does not proceed to return the cannabis stamps to CRA and destroy the cannabis after the expiry of the Excise License, CRA’s responsibility under the *Excise Act, 2001* is to the refer the matter to the RCMP, who qualify as officers under the *Excise Act, 2001*.⁴⁵ The RCMP in turn

⁴³ Notice of Application at page 11.

⁴⁴ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, s 11.02. For example, 11.02 does not contain the limiting word of “creditor” as compared to 69(1)(a), focusses on the debtor company rather than the party taking an action, and allows the Court to set the terms of the stay order, as compared to the automatic stay imposed by 69(1)(a).

⁴⁵ *Excise Act, 2001*, ss 2 (definition of officer).

have the ability to pursue enforcement against offences under the *Excise Act, 2001*.⁴⁶ It is unclear how steps taken by the RCMP against offences under the *Excise Act, 2001* could be stayed under section 69(1)(a) of the *BIA*. Even if CRA were somehow prevented by 69(1)(a) from notifying the RCMP about the expiry of the Excise License or from doing anything further on this matter, if the RCMP became aware of the situation, they would still have a responsibility under the *Excise Act, 2001* to enforce the terms of the Act.

27. Even if the RCMP were somehow temporarily stayed from acting, any contraventions of the *Excise Act, 2001* that occur during that stay period that constitute offences under Part 6 of the Act would remain punishable at a later date.
28. Section 69(1)(a) and 69.6 do not provide a basis under the *BIA* to provide interlocutory relief against the enforcement of the *Excise Act, 2001*.⁴⁷ Any interlocutory relief to prevent officers under the *Excise Act, 2001* from enforcing the provisions of the Act based on the assumption that 69(1)(a) might be found to apply after a final determination would have to rely on the Court's general equitable powers. Such relief, if it is even available, would be extraordinary and inappropriate in the circumstances.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Lucas Jenkins made July 7, 2023.
2. The pleadings and proceedings herein and such further materials as counsel may advise and this Honourable Court may permit.

The application respondent estimates that the application will take 1 hour.

- ☐ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

⁴⁶ *Excise Act, 2001*, 214, 218.1.

⁴⁷ *BIA* 69.6(4) only refers to a declaration after the actual determination is made that the regulatory body is seeking to enforce its rights as a creditor (i.e. it is not an interim measure, a final determination of that application must be made that goes hand in hand with the second part of the declaration that enforcement of those rights is stayed).

- ☒ The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

Mailing address: Department of Justice Canada
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Email: Aminollah.Sabzevari@justice.gc.ca
Khanh.Gonzalez@justice.gc.ca

Aminollah Sabzevari

Dated: July 9, 2023

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
British Columbia Regional Office
900 – 840 Howe Street
Vancouver, British Columbia
V6Z 2S9
Fax: (604) 394-2988

Per: Aminollah Sabzevari
Tel: (587) 930-5282
Solicitor/counsel for Application Respondent

District of British Columbia
Division No. 03 - Vancouver
Court No. B-230269
Estate No. 11-2960200

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

AND

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TANTALUS LABS LTD.**

ORDER MADE AFTER APPLICATION

William E.J. Skelly
MLT Aikins LLP
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Tel.: (604) 682-7737
Email: wskelly@mltaikins.com



District of British Columbia
Division No. 03 - Vancouver
Court No. B-230269
Estate No. 11-2960200

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TANTALUS LABS LTD.

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE	)	
	)	
MADAM JUSTICE FITZPATRICK	)	10/JUL/2023
	)	

ON THE APPLICATION of the Applicant, Tantalus Labs Ltd. ("**Tantalus**"), coming on for hearing in person at Vancouver, British Columbia, on the 10th day of July, 2023; **AND ON HEARING** William E.J. Skelly, counsel for the Applicant, Peter J. Reardon, counsel for the Proposal Trustee, and those other counsel listed on **Schedule "A"** hereto; **AND UPON READING** the material filed, including the First Affidavit of Lucas Jenkins, made on July 7, 2023 (the "**Jenkins Affidavit**"), the First Report of the Trustee, Ernst & Young Inc. (the "**Proposal Trustee**"), made on July 7, 2023, (the "**Trustee's Report**") **AND ON BEING ADVISED** that Canada Revenue Agency ("**CRA**") was given notice of this Application; **AND** pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended (the "**BIA**"), the *British Columbia Supreme Court Rules*, and the inherent jurisdiction of this Honourable Court;

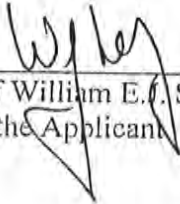
THIS COURT ORDER AND DECLARES THAT:

1. The time for service of the Notice of Application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this Notice of Application is properly returnable today, and no other than those persons served is entitled to service of the Notice of Application.
2. The status quo in respect of the cannabis excise license (the "**Excise Licence**") in the within Notice of Intention to Make Proposal proceedings (the "**Proposal Proceedings**") shall be maintained and renewed to July 27, 2023.
3. The status quo shall include the following:

- a. CRA shall be stayed from taking any actions against Tantalus with respect to the cannabis stamps and cannabis inventory;
 - b. Tantalus shall be permitted to continue selling its cannabis inventory in the ordinary course under the Excise Licence, which Tantalus validly held at the time at the commencement of the Proposal Proceedings.
4. The Proposal Trustee shall approve every sale of the cannabis inventory in the ordinary course of business.
 5. Endorsement of this Order by counsel appearing on this Notice of Application, except for counsel for the Applicant, is hereby dispensed with.

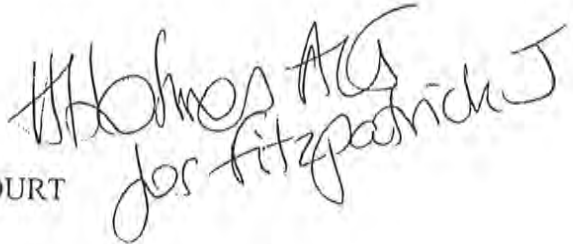
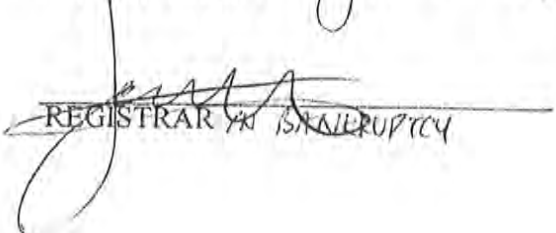
THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:



Signature of William E. Skelly
Lawyer for the Applicant

BY THE COURT

REGISTRAR IN BANKRUPTCY

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Schedule "A"

(List of Counsel)

Name of Counsel	Party Represented
William E.J. Skelly Jess R. Reid	The Applicant, Tantalus Labs Ltd.
Peter J. Reardon	The Proposal Trustee, Ernst & Young Inc.
Aminollah Sabzevari	Canada Revenue Agency
Eamonn Watson	The Lender, The Sungrown Mortgage Corporation



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703350-00CL

DATE: **22-AUG-2023**

NO. ON LIST: 6

TITLE OF PROCEEDING: ALEAFIA HEALTH INC. et al.

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	Applicants	mspence@airdberlis.com
Samantha Hans	Applicants	shans@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig & Josh Foster	Ad Hoc Committee of the Convertible Debentureholders	zweigs@bennettjones.com fosterj@bennettjones.com
Martino Calvaruso	Monitor	mcalvaruso@osler.com
Virginie Gauthier	Red White & Bloom Brands Inc.	virginie.gauthier@gowlingwlq.com
Sanea Tanvir	1260356 Ontario Limited and Royal Group Resources Ltd.	stanvir@mccarthy.ca

Noah Goldstein	Observer, KSV Restructuring	ngoldstein@ksvadvisory.com
Murtaza Tallat	Inc. as Monitor	mtallat@ksvadvisory.com
Chris Burr	Board of Directors	chris.burr@blakes.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants dated August 17, 2023.
- [2] The Applicants bring this motion for an order approving a SISP, approving the Stalking Horse Agreement, preserving the Licenses during the extended Stay of Proceedings, and extending the Stay Period to October 31, 2023. The Monitor supports all of the relief sought.
- [3] As a result of negotiations between stakeholders – in particular the Ad Hoc Committee of Debentureholders – the motion is now proceeding on an unopposed basis. Counsel for the Applicants advised the court that changes have been made to how the SISP will be conducted to ensure that it proceeds in an independent manner, which has addressed the concerns of the Ad Hoc Committee, as confirmed by its counsel in court. Counsel for the board of directors and the secured creditor 1260356 Ontario Limited also voiced their support for the relief sought.
- [4] I reviewed the terms of the Stalking Horse Agreement and the timelines in the SISP. I am satisfied that the SISP process, accompanied by the Stalking Horse Agreement, is warranted to adequately canvass the market for the benefit of all stakeholders and should be approved.
- [5] With respect to the *status quo* order for the Licenses, the Monitor's counsel advised that CRA has expressly told the Monitor that it does not oppose the order. It did not attend or file any opposing materials. While Health Canada did not expressly advise the Monitor, it has been served and did not oppose. The *status quo* order is consistent with those granted in *Just Energy*, *Abbey Resources*, *Original Traders* and *Tantalus* and will mitigate the risk of destruction of value that revoking the Licenses would have on the business. I am granting the *status quo* order.
- [6] The stay extension to October 31, 2023 is granted. The Applicants have acted and are continuing to act in good faith and with due diligence. The Updated Cash Flow Forecast indicates that the Applicants will have sufficient liquidity to fund their business during the extended period. The Monitor confirms that no creditor will be materially prejudiced by the extension.
- [7] Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

Conway



Court File No.: _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 28 th
	)	
JUSTICE OSBORNE	)	DAY OF FEBRUARY, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC.,
BZAM MANAGEMENT INC., BZAM CANNABIS CORP.,
FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN
LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN
ORGANIC INC., HIGH ROAD HOLDING CORP. AND FINAL
BELL CORP. (collectively the "**Applicants**", and each an
"**Applicant**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Matthew Milich sworn February 28, 2024, and the Exhibits thereto (the "**Milich Affidavit**"), and the Pre-Filing Report of FTI Consulting Canada Inc. ("**FTI**") as the proposed monitor dated February 28, 2024, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the additional parties listed in Schedule "A" hereto (collectively, the "**Non-Applicant Stay Parties**" and together with the Applicants, the "**BZAM Entities**"), counsel for FTI, counsel for Cortland Credit Lending Corporation (the "**DIP Lender**"), and such other counsel that were present, and on reading the consent of FTI to act as the Monitor (as defined below),

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that each of the Applicants is a company to which the CCAA applies. Although not Applicants, the Non-Applicant Stay Parties shall enjoy the benefits of the protections and authorizations provided under the terms of this Order.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, licences, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the BZAM Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Milich Affidavit or, with the consent of the Monitor and the DIP Lender, replace it with another substantially similar central cash management system (the "**Cash Management System**"), and that any present or future bank providing the Cash Management System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the BZAM Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; (ii) be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the BZAM Entities, pursuant

to the terms of the documentation applicable to the Cash Management System; and (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement (as defined below), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable prior to, on, or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) with the consent of the Monitor and the DIP Lender, amounts owing for goods and services actually supplied to the Applicants prior to the date of this Order, with the Monitor considering, among other factors, whether (i) the supplier or service provider is essential to the Business and ongoing operations of the Applicants and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Property or the Business, (iii) making such payment is required to address regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicants after the date of this Order, including pursuant to the terms of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein or in the DIP Agreement, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of

insurance (including directors' and officers' insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicants on or following the date of this Order.

7. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement, the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any taxes, duties or other payments required under the Cannabis Legislation (as defined below) (collectively, "**Cannabis Taxes**"), but only where such Cannabis Taxes are accrued or collected after the date of this Order; and
- (d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as

otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, monthly on the first day of each month, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Monitor and the DIP Lender, at such other time intervals and dates as may be agreed to between the applicable Applicant and landlord. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein or required pursuant to the terms of the DIP Agreement, the Applicants are hereby directed, until further Order of this Court: (i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (iii) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement, have the right to:

- (a) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the DIP Lender; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business.

NO PROCEEDINGS AGAINST THE BZAM ENTITIES OR THEIR RESPECTIVE PROPERTY

11. **THIS COURT ORDERS** that until and including March 8, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or

tribunal (each, a "**Proceeding**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of any of the BZAM Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the BZAM Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the BZAM Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the written consent of the BZAM Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of any of the BZAM Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the BZAM Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower any BZAM Entity to carry on any business which such BZAM Entity is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the BZAM Entities, except with the written consent of the BZAM Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the BZAM Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software,

communication and other data services, centralized banking services, payroll services, accounting services, testing and irradiation services, security services, insurance, transportation services, utility or other services to the Business or any of the BZAM Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by any of the BZAM Entities or exercising any other remedy provided under the agreements or arrangements, and that each of the BZAM Entities shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the applicable BZAM Entity in accordance with the normal payment practices of the applicable BZAM Entity or such other practices as may be agreed upon by the supplier or service provider and the applicable BZAM Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the BZAM Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by Subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the BZAM Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the BZAM Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as a director or officer of any of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of such director's or officer's gross negligence or wilful misconduct.

18. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$5,300,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 35 and 37 herein.

19. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (ii) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the BZAM Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the BZAM Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements, including the management and use of any funds advanced by the DIP Lender to the Applicants under the DIP Agreement (as defined below);
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on a weekly basis, or as otherwise agreed to by the DIP Lender, of financial and other information as agreed to between the Applicants and the DIP Lender, which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) monitor all payments, obligations and transfers as between the BZAM Entities;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the BZAM Entities, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

22. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of the Property, pursuant to any provision of any federal, provincial or

other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act*, S.C. 2018, c. 16, as amended, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, the *Criminal Code*, R.S.C. 1985, c. C-46, as amended, the *Excise Act, 2001*, S.C. 2002, c. 22, as amended, the *Cannabis Licence Act, 2018*, S.O. 2018, c. 12, Sched. 2, as amended, the *Cannabis Control Act, 2017*, S.O. 2017, c. 26, Sched. 1, as amended, the *Ontario Cannabis Retail Corporation Act, 2017*, S.O. 2017, c. 26, Sched. 2, as amended, the *Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, as amended, the *Cannabis Distribution Act*, S.B.C. 2018, c. 28, as amended, the *Gaming, Liquor and Cannabis Act*, R.S.A. 2000, c. G-1, as amended, *The Cannabis Control (Saskatchewan) Act*, S.S. 2018, c. C-2.111, as amended, the *Cannabis Regulation Act*, C.Q.L.R. c. C-5.3, as amended or other such applicable federal, provincial or other legislation or regulations (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof within the meaning of any Cannabis Legislation or otherwise. For greater certainty, nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity for any purpose whatsoever.

23. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, the *Alberta Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Water Protection Act*, the *British Columbia Workers Compensation Act*, *The Environmental Management and Protection Act, 2010* (Saskatchewan), the *British Columbia Workers Compensation Act*, the *British Columbia*

Fish Protection Act, The Environmental Management and Protection Act, 2010 (Saskatchewan), the Agricultural Operations Act (Saskatchewan), The Dangerous Goods Transportation Act (Saskatchewan), The Water Security Agency Act (Saskatchewan), the Saskatchewan Occupational Health and Safety Act, 1993, the Quebec Environment Quality Act, the Act Respecting Occupational Health And Safety (Quebec) and regulations thereunder (collectively, "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants including, without limitation, the DIP Lender, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order including, without limitation, under any Cannabis Legislation, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants in these proceedings shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel

for the Applicants in these proceedings on a weekly basis, or pursuant to such other arrangements as may be agreed to between the Applicants and such parties.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 35 and 37 hereof.

DIP FINANCING

29. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that the borrowings under such credit facility shall not exceed the principal amount of \$2,400,000, unless permitted by further Order of this Court.

30. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP facility agreement between the Applicants and the DIP Lender dated as of February 28, 2024 (as may be amended from time to time, the "**DIP Agreement**"), filed.

31. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

32. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not exceed the amount of \$2,400,000 plus interest, fees, costs or other charges under the DIP Agreement, unless permitted by further Order of this Court, or secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 35 and 37 hereof.

33. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 4 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

34. **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by any of the Applicants under the CCAA, or any proposal filed by any of the Applicants under the

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

35. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Edmonton Property Charge (as defined in the Milich Affidavit), the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**"), as among them, shall be as follows:

With respect to all Property other than the Edmonton Property (as defined in the Milich Affidavit):

First – Administration Charge (to the maximum amount of \$500,000);

Second – DIP Lender's Charge (to the maximum amount of \$2,400,000), plus interest, fees, costs or other charges under the DIP Agreement); and

Third – Directors' Charge (to the maximum amount of \$5,300,000).

With respect to the Edmonton Property:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Edmonton Property Charge;

Third – DIP Lender's Charge (to the maximum amount of \$2,400,000), plus interest, fees, costs or other charges under the DIP Agreement); and

Fourth – Directors' Charge (to the maximum amount of \$5,300,000).

36. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

37. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment; provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicants and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as defined below), on notice to those Persons likely to be affected thereby.

38. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

39. **THIS COURT ORDERS** that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which the applicable Applicant(s) is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

40. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Applicant's interest in such real property lease.

CORPORATE MATTERS

41. **THIS COURT ORDERS** that BZAM Ltd. is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

RELIEF FROM REPORTING AND FILING OBLIGATIONS

42. **THIS COURT ORDERS** that the decision by BZAM Ltd. to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the Canadian Securities Exchange (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of BZAM Ltd. failing to make any Securities Filings required by the Securities Provisions.

43. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of BZAM Ltd. nor the Monitor shall have any personal liability for any failure by BZAM Ltd. to make any Securities Filings required by the Securities Provisions.

"STATUS QUO" OF APPLICANTS' LICENSES

44. **THIS COURT ORDERS** that (a) the status quo in respect of the Applicants' Health Canada and cannabis excise licenses (collectively, the "**Licenses**") shall be preserved and maintained during the pendency of the Stay Period, including the Applicants' ability to sell cannabis inventory in the ordinary course under the Licenses; and (b) to the extent any License may expire during the Stay Period, the term of such License shall be deemed to be extended by a period equal to the Stay Period.

SERVICE AND NOTICE

45. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail (National Edition)*, a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the names and addresses of individuals who are creditors publicly available.

46. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the "**Rules of Civil Procedure**"). Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will

be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://cfcanada.fticonsulting.com/bzam>.

47. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants, the Monitor, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service, distribution or notice shall be deemed to be received: (i) if sent by courier, on the next business day following the date of forwarding thereof; (ii) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (iii) if sent by ordinary mail, on the third business day after mailing.

48. **THIS COURT ORDERS** that the Applicants, the Monitor and each of their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message (including by e-mail) to the Applicants' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

GENERAL

49. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on March 8, 2024 (the "**Comeback Date**"), and any such interested party shall give not less than two (2) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought in advance of the Comeback Date; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 35 and 37 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

50. **THIS COURT ORDERS** that, notwithstanding paragraph 49 of this Order, each of the Applicants, the Monitor or the DIP Lender may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties hereunder or in the interpretation of this Order.

51. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

53. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

54. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.



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SCHEDULE "A"
NON - APPLICANT STAY PARTIES

1. The Green Organic Beverage Corp.
2. TGOD Europe B.V.
3. 9430-6347 Québec Inc.
4. The Green Organic Dutchman Germany GmbH

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM
CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093
SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD.,
MEDICAN ORGANIC INC., HIGH ROAD HOLDING CORP. AND FINAL BELL
CORP.**

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

INITIAL ORDER

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