

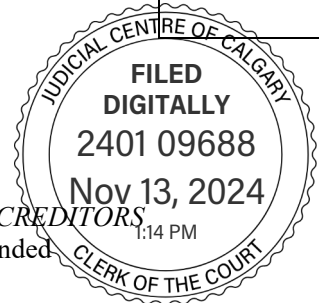
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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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



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

DOCUMENT **FOURTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

November 13, 2024

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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TABLE OF CONTENTS

INTRODUCTION	3
PURPOSE.....	6
TERMS OF REFERENCE AND DISCLAIMER	7
BACKGROUND	8
SALES AND INVESTMENT SOLICITATION PROCESS	9
102 MB APA.....	11
RESTRICTED COURT ACCESS ORDER.....	13
CONCLUSIONS AND RECOMMENDATIONS.....	14

APPENDICES

APPENDIX A	102 MB APA (Redacted)
CONFIDENTIAL APPENDIX 1	SISP Bid Summary
CONFIDENTIAL APPENDIX 2	Monitor's Analysis of 102 MB APA
CONFIDENTIAL APPENDIX 3	102 MB APA (Unredacted)

INTRODUCTION

1. On July 15, 2024 (the "**Filing Date**"), Delta 9 Cannabis Inc. ("**Delta Parent**"), Delta 9 Bio-Tech Inc. ("**Bio-Tech**"), Delta 9 Lifestyle Cannabis Clinic Inc. ("**Lifestyle**"), Delta 9 Cannabis Store Inc. ("**Store**") and Delta 9 Logistics Inc. ("**Logistics**" and collectively, the "**Delta 9 Group**", the "**Company**" or the "**Applicants**") were granted an initial Order (the "**Initial Order**") by the Court of King's Bench of Alberta (the "**Court**"), in relation to proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc., ("**A&M**") was appointed as monitor (the "**Monitor**") in the CCAA Proceedings.
2. The Initial Order provided for limited relief to the Applicants including, but not limited to, the imposition of a stay of proceedings in favour of the Applicants and their assets (the "**Stay Period**") initially only through to July 25, 2024 (the "**Initial Stay Period**"), an administrative charge to a maximum amount of \$350,000 (the "**Initial Administration Charge**") and a directors and officers charge to a maximum amount of \$300,000 (the "**Initial Directors' Charge**").
3. On July 24, 2024, the Applicants sought and obtained the following relief from this Honourable Court:
 - a) an amended and restated Initial Order (the "**ARIO**");
 - b) an Order (the "**Bio-Tech SISP Order**") approving a sales and investment solicitation process with respect to Bio-Tech (the "**SISP**"); and
 - c) an Order (the "**Claims Procedure Order**") approving a claims procedure to determine the claims of creditors and establish a claims bar date to prove such claims (the "**Claims Procedure**").

4. The ARIO, among other things:
- a) extended the Initial Stay Period to September 15, 2024;
 - b) approved the interim financing facility (the "**Interim Financing Facility**") and related charge (the "**Interim Financing Charge**") in the amount of \$16 million, plus interest, costs and expenses;
 - c) approved a key employee retention plan (the "**KERP**") and related charge (the "**KERP Charge**") in the amount of \$655,000;
 - d) increased the Initial Administration Charge from \$350,000 to \$750,000 (the "**Amended Administration Charge**");
 - e) increased the Initial Directors' Charge from \$300,000 to \$900,000, and extended the same in favour of legal counsel of the directors and officers of the Applicants, Norton Rose Fulbright LLP (the "**Amended Directors' Charge**");
 - f) granted a break fee charge in favour of the Plan Sponsor (the "**Break Fee Charge**") of \$1.5 million; and
 - g) authorized the appointment of a chief restructuring officer (the "**CRO**").
5. On September 11, 2024, the Applicants sought and obtained the following relief from this Honourable Court (the "**Stay Extension and Approval Order**"):
- a) an extension of the Stay Period to November 1, 2024;
 - b) an amendment to the Interim Financing Term Sheet (the "**Amended Interim Financing Term Sheet**") authorizing borrowing up to \$17.5 million from 2759054 Ontario Inc. o/a Fika Herbal Goods ("**Fika**", the "**Interim Lender**" and/or the "**Plan Sponsor**");
 - c) approval of the Monitor and Monitor's counsel's fees and disbursements as set out in the Second Report; and

- d) approval of the Monitor's activities, actions, and conduct, as set out in the Pre-Filing Report, the First Report, and the Second Report.

November 1 Application

- 6. On November 1, 2024, the Applicants sought and obtained the following relief from this Honourable Court (the "**Second Stay Extension and Approval Order**"):
 - a) an extension of the Stay Period to January 31, 2025;
 - b) a further amendment to the Interim Financing Term Sheet (the "**Second Amended Interim Financing Term Sheet**") authorizing borrowings up to \$18.5 million from the Interim Lender; and
 - c) approval of the Monitor and Monitor's counsel's fees and disbursements as set out in the Third Report; and
- 7. The Monitor also sought and obtained a minor amendment to the Claims Procedure Order which empowered the Monitor and the Company to accept and consider Claims filed subsequent to the Claims Bar Date (the "**Amended and Restated Claims Procedure Order**").
- 8. The Court reserved its decision on the relief sought by the Plan Sponsor (as outlined in the Third Report) on November 1, 2024, and advised that it would aim to render its decision as soon as possible.
- 9. Proceedings (the "**Arbuthnot Affidavits**"), or the materials filed by the Applicants, the Plan Sponsor, or any other party in connection with the CCAA Proceedings.

November 15 Application

- 10. The relief sought by the Applicants includes:
 - a) approving the 102 MB APA (as defined below) and the transaction contemplated therein, and a corresponding sale approval and vesting order (the "**SAVO**");

- b) a Restricted Court Access Order (the "**Restricted Court Access Order**") temporarily sealing Confidential Appendices "1", "2", and "3" to this Report (the "**Confidential Appendices**") on the Court Record; and
 - c) such further and other relief as may be sought by the Applicants and this Honourable Court may deem appropriate in the CCAA Proceedings.
- 11. Capitalized terms not defined in this Monitor's Fourth Report (this "**Report**" or the "**Fourth Report**") are as defined in the ARIO, the Prior Monitor Reports,¹ the Affidavits of John Arbuthnot and any supplements thereto sworn in these CCAA.
- 12. This Report should be read in conjunction with the Fifth Arbuthnot Affidavit and sworn November 8, 2024, which is available on the Monitor's website at: www.alvarezmarsal.com/delta9 (the "**Monitor's Website**").

PURPOSE

- 13. The purpose of this Report is to provide information to this Honourable Court in respect of the following:
 - a) a summary of the SISP process and results;
 - b) the 102 MB APA (defined below) and the Applicants' request for the approval of the transaction contemplated therein and a corresponding SAVO; and
 - c) the Monitor's overall recommendation in respect of the foregoing.

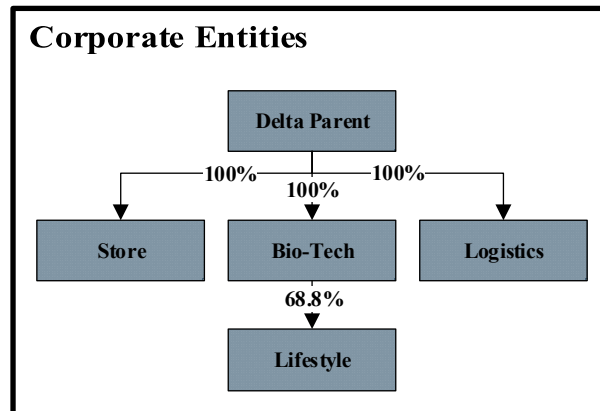
¹ The Pre-Filing Report of the Monitor dated July 12, 2024 (the "**Pre-Filing Report**"), the First Report of the Monitor dated July 22, 2024, (the "**First Report**"), the Second Report of the Monitor dated September 10, 2024, (the "**Second Report**") and the Third Report of the Monitor dated October 29, 2024 (the "**Third Report**") are collectively referred to as the "**Prior Monitor Reports**".

TERMS OF REFERENCE AND DISCLAIMER

14. In preparing this Report, A&M, in its capacity as the Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by the Applicants and has held discussions with the Applicants' management ("**Management**") and their respective counsel and directors (collectively, the "**Information**"). Except as otherwise described in this Report, in respect of the Applicants' cash flow forecast:
- a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the Chartered Professional Accountants Canada Handbook (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
 - b) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.
15. Future-oriented financial information referred to in this Report was prepared based on the Applicants' estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
16. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

BACKGROUND

17. The Delta 9 Group is engaged in cannabis cultivation, processing, extraction, wholesale distribution, retail, and business-to-business sales. The Delta 9 Group's organizational chart is summarized below:



18. Further information regarding the Delta 9 Group's ownership structure and operations, the cause of the Applicants' insolvency and these CCAA Proceedings, including the Initial Order, the ARIO, other Orders of this Honourable Court, the Arbuthnot Affidavits, other affidavits and the Prior Monitor's Reports are available on the Monitor's Website.
19. Bio-Tech is a privately held corporation existing under the laws of the province of Alberta. Bio-Tech is a 100% wholly-owned subsidiary of Delta Parent. Bio-Tech is the licensed producer in the Applicants' corporate structure, holding a licence issued by Health Canada pursuant to the *Cannabis Act*, SC 2018, c 16, which permits Bio-Tech to produce and sell cannabis, cannabis oils, extracts, and derivative products. Bio-Tech operates a 95,000-square-foot cannabis cultivation and processing facility located at 760 Pandora Avenue East in Winnipeg, Manitoba (the "**Bio-Tech Facility**"). Bio-Tech owns 68.8% of the issued and outstanding shares of Lifestyle.

SALES AND INVESTMENT SOLICITATION PROCESS

SISP Marketing Efforts

20. As discussed in the Prior Monitor Reports, pursuant to the Bio-Tech SISP Order, the Monitor, in consultation with the Company and the CRO, initiated a number of marketing and solicitation activities to ensure that the investment and sale opportunities in respect of Bio-Tech and its assets were effectively and thoroughly canvassed, which included the preparation of:
- a) a notice of the SISP (the "**SISP Notice**") that was published in *Insolvency Insider*, the *National Post*, *New Cannabis Ventures*, *StrattCann* and *Newswire*, which allowed for marketing coverage in North America;
 - b) an initial offering summary (the "**Teaser**") and a non-disclosure agreement ("**NDA**") in a form acceptable to the Company and the Monitor;
 - c) an initial list of prospective bidders, including strategic purchasers, capital providers and commercial real estate specialists (collectively, the "**Prospective Bidders**"); and
 - d) a comprehensive package of marketing materials (including the development of all relevant financial, accounting, asset and facility listings, inventory schedules, liabilities, contractual agreements, valuation materials, and other materials (the "**VDR Materials**"), to be made available in a virtual data room ("**VDR**").
21. The Company also engaged Capital Commercial Real Estate Services Inc. (the "**Sales Agent**") to assist with the marketing of the Bio-Tech Facility. The Sales

Agent's marketing activities with respect to the Bio-Tech Facility included, among other things:

- a) preparing a marketing brochure in consultation with the Company, the Monitor and the CRO, which was sent to the Sales Agent's investor and broker distribution list on September 4, 2024;
- b) posting the listing for the Bio-Tech Facility on the Sales Agent's website and Manitoba Realtor (CPIX); and
- c) listing the Bio-Tech Facility on the Sales Agent's LinkedIn account, which has over 1,700 followers.

SISP Outcome

22. Notable events within the SISP include the following:

- a) the SISP commenced on July 31, 2024, with the placement of the SISP Notice announcing the commencement of the SISP in the media outlets discussed above, as well as posting of the Teaser and other SISP materials to the Monitor's Website;
- b) the Monitor disseminated the Teaser to a broad but focused list of Prospective Bidders, consisting of 69 strategic investors, 10 capital providers and 4 commercial real estate specialists, and invited them to execute an NDA if interested in the opportunity;
- c) 16 Prospective Bidders executed an NDA and were granted access to the VDR containing the VDR Materials with respect to Bio-Tech;
- d) all key staff of the Company as well as the Monitor, the CRO and the Sales Agent were made available to answer any questions and provide

site tours for Prospective Bidders as part of their review and due diligence process;

- e) the bid deadline was October 28, 2024 (the "**SISP Bid Deadline**") and multiple offers were received by the SISP Bid Deadline. The Monitor's summary of the offers received in the SISP are found in Confidential Appendix "**1**" to this Fourth Report.

- 23. On November 11, 2024, after extensive negotiations, the Company entered into an asset purchase agreement (the "**102 MB APA**") with 10213358 Manitoba Ltd. ("**102 MB**") for the purchase of 17 grow pods and certain specified inventory (collectively, the "**Purchased Assets**"), and all intellectual property and marketing materials related to the Purchased Assets.
- 24. The Purchased Assets contemplated in the 102 MB APA do not comprise all of the assets marketed for sale in the SISP. Most notably the Purchased Assets do not include the Bio-Tech Facility, the Bio-Tech cannabis production business, and related asset, including key cannabis licenses or intellectual property that is unrelated to the Purchased Assets. The Company, with assistance from the CRO and the Monitor, continues to negotiate with Qualified and Prospective Bidders for the sale of Bio-Tech's remaining assets and will provide a further update on the sale(s) of these assets to the Court in a subsequent Report. It is not expected that the sale of the Purchased Assets will impact the purchase price of any remaining offer from the remaining Qualified and Prospective Bidders.

102 MB APA

Overview

- 25. A copy of the 102 MB APA with the purchase price and the deposit redacted is attached as Appendix "**A**". The Monitor's analysis of the 102 MB APA and an unredacted copy of the 102 MB APA are attached to this Report as Confidential Appendices "**2**" and "**3**", respectively.

26. The key terms of the 102 MB APA are as follows:

- a) the Monitor will receive a non-refundable deposit in the amount of 10% of the purchase price, the particulars of which are disclosed in Confidential Appendix "2". 102 MB has confirmed it has initiated a wire transfer of the deposit to the Monitor's bank account, and the Monitor will inform the Court once it has been received;
- b) the only material condition to the 102 MB APA is the approval of this Honourable Court;
- c) all Purchased Assets must be removed from the Company's premises by no later than 5:00pm (Winnipeg time) on November 29, 2024. If 102 MB does not remove all of the Purchased Assets by this time, the Company may, at its option: (i) destroy or dispose of the remaining Purchased Assets; (b) sell or transfer the remaining Purchased Assets to any third party; and/or (c) arrange for the Purchased Assets to be stored at 102 MB's sole cost.
- d) the transaction contemplated in the 102 MB APA is to close the later of:
 - (i) 5 Business Days after the date the SAVO is granted by this Court;
 - (ii) the date that is 5 Business Days following the final resolution, dismissal or withdrawal of an appeal properly brought by a party with standing to appeal the SAVO; or (c) such other date as the parties may agree to in writing from time to time.

Monitor's Comments on the 102 MB APA

27. The Monitor is of the view that the 102 MB APA is commercially reasonable in the circumstances for the following reasons:

- a) the Monitor was authorized by this Court to market and sell the Purchased Assets pursuant to the Bio-Tech SISP Order;

- b) the 102 MB APA arose from an extensive marketing process conducted by the Monitor and Sales Agent in accordance with the court-approved SISP and in consultation with the Company and the CRO, in which the Monitor solicited offers from a large number of Prospective Bidders in a reasonable timeframe;
 - c) the Monitor received interest from several parties; however, the only offer for the Purchased Assets was from 102 MB;
 - d) the Monitor has determined that the 102 MB APA is the highest and best offer that will be received for the Purchased Assets;
 - e) the 102 MB APA is supported by the Company and the Plan Sponsor who is considered the fulcrum creditor in the CCAA Proceedings; and
 - f) the 102 MB APA was negotiated between the parties at arm's length, in good faith.
28. The Monitor sought confirmation from SNDL regarding their support for the 102 MB APA. SNDL, the first-ranking secured creditor of the Purchased Assets, has not yet confirmed its position on the 102 MB APA as of the date of this Report. The Monitor will advise the Court of SNDL's position once they respond to the request.
29. After consideration of the above, the Company, with the support of the Monitor, is seeking an order approving the 102 MB APA and granting the corresponding SAVO.

RESTRICTED COURT ACCESS ORDER

30. The Applicants are seeking a Restricted Court Access Order temporarily sealing the Confidential Appendices on the Court Record. The Confidential Appendices include sensitive information, including a summary of the bids received in the SISP and the purchase price and deposit contemplated in the 102 MB APA.

31. The sealing of this type of sensitive information is the common practice in insolvency proceedings and the Applicants are concerned that if the information is disclosed to third parties prior to the closing of the transaction, the disclosure could materially jeopardize the sale to 102 MB or, if the sale to 102 MB does not close, could materially jeopardize subsequent efforts to market the Purchased Assets. As such, the Company, with support of the Monitor, is respectfully of the view that it is appropriate for this Honourable Court to seal the Confidential Appendices to the Monitor's Fourth Report in accordance with the proposed form of the Restricted Court Access Order accompanying the Applicant's application.

CONCLUSIONS AND RECOMMENDATIONS

32. Based on the current information that has been made available to the Monitor, the Monitor is of the opinion that the relief sought by the Applicants is appropriate and respectfully recommends that this Honourable Court approve:

- a) the 102 MB APA;
- b) the SAVO; and
- c) the Restricted Court Access Order.

All of which is respectfully submitted this 13th day of November, 2024.

**ALVAREZ & MARSAL CANADA INC.,
in its capacity as Monitor of Delta 9 Cannabis Inc.,
Delta 9 Bio-Tech Inc., Delta 9 Lifestyle Cannabis Clinic Inc.,
Delta 9 Cannabis Store Inc., and Delta 9 Logistics Inc., and
not in its personal or corporate capacity**



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



David Williams, CPA, CIRP, LIT
Manager

APPENDIX "A"

102 MB APA (REDACTED)

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of the 11th day of November, 2024 (the "**Effective Date**"):

BETWEEN:

DELTA 9 BIO-TECH INC.

(the "**Vendor**")

– and –

10213358 MANITOBA LTD.

(the "**Purchaser**")

WHEREAS pursuant to the Order of the Honourable Justice D. R. Mah of the Alberta Court of King's Bench in the Judicial District of Calgary, Alberta (the "**Court**") issued July 15, 2024 (the "**CCAA Order**"), and the Amended and Restated Initial Order of the Honourable Associate Chief Justice K. G. Nielsen issued July 24, 2024 (the "**ARO**", and together with the CCAA Order, the "**Initial Order**") in Action No. 2401-09688 (the "**CCAA Proceedings**"), Alvarez & Marsal Canada Inc. (the "**Monitor**") was appointed monitor of Delta 9 Cannabis Inc., Delta 9 Logistics Inc., Bio-Tech, Delta 9 Lifestyle Cannabis Clinic Inc., and Delta 9 Cannabis Store Inc.;

AND WHEREAS pursuant to the Order (the "**SISP Order**") of the Honourable Associate Chief Justice K. G. Nielsen issued July 24, 2024, the Court approved and authorized, among other things, the Monitor to conduct a sale and investment solicitation process in respect of the Company, including the sale of its business (the "**Business**") and assets;

AND WHEREAS the Purchaser desires to purchase, accept and assume from the Vendor, all of the Vendor's right, title, interest and obligation in and to the Purchased Assets and Assumed Liabilities, subject to and in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the "**Parties**", and each, a "**Party**") hereby acknowledge and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Unless something in the subject matter or context is inconsistent therewith, the terms defined herein shall have the following meanings:

"**Action**" means any claim, action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity and by or before a Governmental Authority.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to **"control"** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.

"Agreement" means this asset purchase agreement, as may be amended and restated from time to time in accordance with the terms hereof.

"ARO" has the meaning given to it in the recitals;

"Applicable Law" means, in relation to any Person, property or circumstance, all laws, statutes, rules, regulations, official directives and orders of Governmental Authorities (whether administrative, legislative, executive or otherwise), including judgments, orders and decrees of courts, commissions or bodies exercising similar functions, as amended, and includes the provisions and conditions of any permit, licence or other governmental or regulatory authorization, that are in effect as at the relevant time and are applicable to such person, property or circumstance.

"Approval and Vesting Order" means an order by the Court, in substantially the same form as the Alberta Template Approval and Vesting Order, among other things, approving and authorizing the Transaction and vesting in the Purchaser (or as it may direct) all the right, title, interest and obligation of the Vendor in and to the Purchased Assets, free and clear from any Encumbrances other than the Permitted Encumbrances and the Assumed Liabilities.

"Assigned Contracts" means those Contracts set out and listed in Schedule "C". For certainty, the Assigned Contracts do not include the Excluded Contracts.

"Assignment and Assumption Agreement" means an assignment and assumption agreement, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the Vendor's rights, benefits, interests and obligations in, to and under the Assigned Contracts and the assumption by the Purchaser of all of the Assumed Liabilities under or in respect of the Assigned Contracts.

"Assignment Order" means an Order of the Court issued in form and substance satisfactory to the Parties, each acting reasonably, assigning to the Purchaser the Vendor's right, benefit and interest in and to any of the Assigned Contracts for which any necessary consent to assign has not been obtained, in form and substance satisfactory to the Parties, acting reasonably.

"Assumed Liabilities" means: (a) Liabilities specifically and expressly designated by the Purchaser as assumed Liabilities in Schedule "D"; (b) all Liabilities relating to the Purchased Assets arising on or after the Closing Time; and (c) all Liabilities which relate to the Assigned Contracts; in each case solely in respect of the period from and after the Closing Time and not relating to any default existing prior to or as a consequence of Closing. For certainty, the Assumed Liabilities do not include the Excluded Liabilities.

"Authorization" means any authorization, approval, consent, concession, exemption, licence, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Authority having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person's property or business and affairs (including any zoning approval or building permit) or from any Person in connection with any easements, contractual rights or other matters.

"Bill of Sale" means a general conveyance and bill of sale, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the Vendor's rights, benefits, and interests in, to and under the Purchased Assets.

"Books and Records" means the Vendor's files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), which are in the possession of the Vendor and are materially relevant to the Assigned Contracts, the Business, or the Purchased Assets.

"Business Day" means a day on which banks are open for business in Calgary, Alberta, but does not include a Saturday, Sunday or statutory holiday in the Province of Alberta.

"CCAA Order" has the meaning given to it in the recitals;

"CCAA Proceedings" has the meaning given to it in the recitals;

"Cash Purchase Price" has the meaning set out in Section 3.2(b).

"Closing" means the completion of the Transactions confirmed by issuance of the Monitor's Certificate.

"Closing Date" means, subject to the terms hereof, the date that is the later of (a) five (5) Business Days after the date the Approval and Vesting Order is granted by the Court; (b) the date that is five (5) Business Days following the final resolution, dismissal or withdrawal of an appeal properly brought by a party with standing to appeal the Approval and Vesting Order; or (c) such other date as the Parties may agree to in writing from time to time.

"Closing Time" means 12:01 a.m. (Winnipeg time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

"Contracts" means all pending and executory contracts, agreements, leases, deeds, mortgages, licences, instruments, notes, commitments, undertakings, indentures, joint ventures, understandings, arrangements and all other legally binding arrangements (whether oral or written) to which the Vendor is a party or by which the Vendor is bound or in which the Vendor has, or will at Closing have, any rights or by which any of its property or assets are or may be affected.

"Court" has the meaning set out in the recitals hereto.

"Cure Costs" means (a) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchaser in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Vendor's monetary defaults existing as at the Closing Date under the applicable Assigned Contract (or such other amounts as may be agreed by the Purchaser and the counterparty to the Assigned Contract, but not more than the monetary defaults); and (b) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Vendor to the Purchaser (which amount shall be set out on the form of contractual consent agreed to by the applicable Vendor and the counterparty to such Assigned Contract and approved by the Monitor, provided that such amount shall not be more than the monetary defaults under such contract).

"Deposit" has the meaning ascribed thereto in Section 3.2 hereof.

"Effective Date" has the meaning set out in the preamble hereto.

"Encumbrance" means any legal notation, charge, lien, interest or other encumbrance or title defect of whatever kind or nature, regardless of form, whether or not registered or registrable and whether or not consensual or arising by law (statutory or otherwise), including any security interest, lien, Claim, charge, right of retention, deemed trust, judgment, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, mortgage or right of a third party (including any contractual rights such as purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of creating a security interest in, against or affecting the Purchased Assets (including any conditional sale or title retention agreement, or any capital or financing lease).

"ETA" means the *Excise Tax Act*, RSC 1985, c E-15 and the regulations thereunder.

"Excluded Assets" means all of Vendor's right, title and interest in the properties, rights, assets and undertakings that are not identified as Purchased Assets.

"Excluded Contracts" means all Contracts that are not identified as Assigned Contracts.

"Excluded Liabilities" means all Liabilities of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or in equity and whether arising by subrogation, set-off, right of indemnification or otherwise) of or against the Vendor that are not Assumed Liabilities.

"Governmental Authority" means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

"GST" means the goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada), and any provincial, territorial or foreign legislation imposing a similar value added or multi-staged tax.

"Initial Order" has the meaning given to it in the recitals.

"Intellectual Property" means:

- (a) all patents, patent applications and registrations, trademarks, trademark applications and registrations, copyrights, copyright applications and registrations, trade names and industrial designs, domestic or foreign, owned or used by Vendor directly relating to the Purchased Assets, and the design, structure, layout, fabrication, marketing, distribution and sales of the grow pods forming part of the Purchased Assets hereunder;
- (b) all trade secrets, know-how, inventions and other intellectual property owned or used by Vendor directly relating to the Purchased Assets and the design, structure, layout, fabrication, marketing, distribution and sales of the grow pods forming part of the Purchased Assets hereunder; and
- (c) all documentation relating thereto.

"Interim Period" means the period between the date of this Agreement and the Closing Date.

"Legal Proceeding" means any litigation, action, application, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave to appeal or review.

"Liability" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, legal, beneficial or equitable, present or future, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person, and includes, without limiting the generality of the foregoing, any debt, dues, guarantee, surety, indemnity obligation or other obligation.

"Monitor" has the meaning set out in the recitals hereto.

"Monitor's Certificate" has the meaning set out in Section 6.1(e).

"Organizational Documents" means any trust document, charter, certificate or articles of incorporation or amalgamation, articles of amendment, articles of association, articles of organization, articles of continuance, bylaws, as amended, partnership agreement or similar formation or governing documents of a Person (excluding individuals).

"Outside Date" means **November 29, 2024**, or such earlier or later date as the Parties may agree upon in writing.

"Parties" has the meaning set out in the recitals hereto.

"Party" has the meaning set out in the recitals hereto.

"Permitted Encumbrances" means the Encumbrances listed on Schedule "B" in respect of the Purchased Assets.

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

"Personal Information" means any factual or subjective information, recorded or not, about an employee, contractor, agent, consultant, officer, director, executive, client, customer, supplier or natural person who is natural person or a natural person who is a shareholder or employee of the Vendor, or about any other identifiable individual, including any record that can be manipulated, linked or matched by a reasonably foreseeable method to identify an individual.

"Purchase Price" has the meaning set out in Section 3.1.

"Purchased Assets" means all of Vendor's right, title and interest, if any, in and to the properties, rights, assets and undertakings listed in Schedule "A". For certainty, the Purchased Assets do not include the Excluded Assets.

"Purchaser's Solicitors" means Taylor McCaffrey LLP.

"SISP Order" has the meaning given to it in the recitals;

"Sanctions" has the meaning ascribed in Section 7.2(i) hereof.

"Taxes" means, with respect to any Person, all national, federal, provincial, local or other taxes, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties and any Liability for the payment of any amounts of the type described in this paragraph as a result any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Person, and includes, without limitation, property taxes, income taxes, branch taxes, profit taxes, capital gains taxes, gross receipt taxes, windfall profit taxes, value added taxes, severance taxes, ad valorem taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, transmission fees, withholding or similar taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/PST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority.

"Transactions" means all of the transactions contemplated by this Agreement, including the purchase and sale transaction whereby the Purchaser will acquire the Purchased Assets.

"Transaction Taxes" means all applicable Taxes, including any applicable GST/PST/HST, payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording, transfer or transmission fees payable in connection with the instruments of transfer provided for in this Agreement.

"Vendor's Solicitors" means MLT Aikins LLP.

1.1 Interpretation Not Affected by Headings, etc.

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.2 General Construction

The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof. The expression "Section" or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings and the term "third party" means any other Person other than the Vendor, Monitor, or the Purchaser, or any Affiliates thereof.

1.4 Currency

All references in this Agreement to dollars, monetary amounts, or to \$, are expressed in Canadian currency unless otherwise specifically indicated.

1.5 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

1.6 Schedules

The following schedules are attached hereto and incorporated in and form part of this Agreement:

SCHEDULES

<u>Schedule "A"</u>	-	Purchased Assets
<u>Schedule "B"</u>	-	Permitted Encumbrances
<u>Schedule "C"</u>	-	Assigned Contracts
<u>Schedule "D"</u>	-	Assumed Liabilities

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement will apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

1.7 Interpretation if Closing Does Not Occur

If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Purchased Assets and assumed the Assumed Liabilities shall be construed as having been contingent upon Closing having occurred.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of the Purchased Assets

Subject to the terms and conditions of this Agreement, effective as of the Closing Time, the Vendor shall sell, assign and transfer the Purchased Assets and Assumed Liabilities to the Purchaser, and the Purchaser shall purchase, accept, assume and receive from the Vendor, all of the Purchased Assets and Assumed Liabilities. For certainty, the Purchased Assets: (a) shall be free and clear of all Encumbrances that are not Permitted Encumbrances and (b) do not include the Excluded Assets.

2.2 Assumption of Assumed Liabilities

At the Closing Time, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities hereunder other than the Assumed Liabilities, except as required under Applicable Law.

2.3 Assignment of Contracts

- (a) Cure Costs. To the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall: (i) where such Assigned Contract is assigned pursuant to an Assignment Order, pay all such Cure Costs in accordance with the Assignment Order; and (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty. The Cure Costs as paid by the Purchaser shall be in addition to the Cash Purchase Price received by the Vendor for the Purchased Assets.
- (b) Assignment. At the Closing Time, on and subject to the terms and conditions of this Agreement (including Section 2.3(c) below), the Approval and Vesting Order and the Assignment Order (if applicable), all of the Vendor's rights, benefits, interests and obligations in, to and under the Assigned Contracts shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.
- (c) Where Consent Required. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract to the extent such Assigned Contract is not assignable under Applicable Law, or the terms of the applicable Assigned Contract provide that it is not assignable without the consent of another Person, unless such consent has been obtained or the assignment is subject to an Assignment Order.
- (d) No Adjustment. For greater certainty, if the consent of any Person is required to assign an Assigned Contract, but such consent is not obtained prior to Closing and such Contract is not assigned pursuant to an Assignment Order, such Contract shall not form part of the Assigned Contracts and: (i) neither Party shall be considered to be in breach of this Agreement; (ii) the failure to assign or otherwise transfer such Assigned Contract shall not be a condition to Closing; (iii) the Purchase Price shall not be subject to any adjustment; and (iv) the Closing shall not be delayed.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The purchase price payable by the Purchaser for the Purchased Assets shall be [REDACTED] (the "**Purchase Price**"). For certainty, the Purchase Price shall be exclusive of; (1) applicable Taxes; and (2) Cure Costs, if any, which shall be payable by the Purchaser in cash in addition to the Purchase Price on Closing.

3.2 Satisfaction of Purchase Price

The Purchaser shall satisfy the purchase, at the Closing Time, in accordance with the following:

- (a) Deposit. The Parties acknowledge that the Purchaser has paid a deposit to the Vendor concurrent with the execution hereof in the amount of [REDACTED] (the "**Deposit**"), representing 10% of the Purchase Price, by wire transfer of immediately available funds to a trust account specified by the Monitor, and such Deposit shall be credited against the Purchase Price at Closing.
- (b) Cash Purchase Price. An amount equal to the remaining Purchase Price less the Deposit, plus any Transaction Taxes (the "**Cash Purchase Price**"), shall be paid by the Purchaser

to the Vendor, or the Vendor's Solicitors in trust for the Vendor, via certified cheque, bank draft, solicitor's trust cheque (provided such cheque is certified) or wire transfer or immediately available funds at the Closing.

- (c) Cure Costs. The Cure Costs, if any, shall be paid by the Purchaser to the applicable counterparties at Closing.
- (d) Assumed Liabilities. An amount equal to the amount of the remaining Assumed Liabilities which the Purchaser shall assume on the Closing Date, if any, and which shall be satisfied by the Purchaser becoming liable for and performing the Assumed Liabilities.

3.3 Deposit

- (a) If Closing occurs in accordance with the terms and conditions of this Agreement, the Deposit shall be credited against the Purchase Price, in partial satisfaction of the Purchaser's obligation to pay the Purchase Price at Closing.
- (b) If this Agreement is terminated:
 - (i) pursuant to Sections 6.1, 6.2 or 8.1(b), the Deposit shall be returned to the Purchaser; or
 - (ii) for any other reason, the Deposit shall be forfeited by the Purchaser retained by the Vendor; and
 - (iii) in the event of termination of this Agreement under Section 8.1 pursuant to which the Vendor shall be entitled to retain the Deposit, the Parties agree that the amount of the Deposit constitutes a genuine pre-estimate of liquidated damages representing the Vendor's losses and Liabilities as a result of Closing not occurring and agree that the Vendor shall not be entitled to recover from the Purchaser any amounts that are in excess of the Deposit as a result of Closing not occurring. The Purchaser hereby waives any Claim or defence that the amount of the Deposit is a penalty or is otherwise not a genuine pre-estimate of the Vendor's damages.

3.4 Allocation of the Purchase Price

The Vendor and the Purchaser agree to allocate the Purchase Price to the Purchased Assets held by the Vendor for tax purposes in a manner to be agreed to by the Parties, each acting reasonably, at least three (3) days before Closing, and to report the sale and purchase of the Purchased Assets for all federal, provincial and local tax purposes in a manner consistent with such allocation.

3.5 Section 167 Tax Election.

If available and requested by the Purchaser on Closing, the Vendor and the Purchaser shall execute jointly an election under Section 167 of the ETA to have the sale of the Purchased Assets take place on a GST-free basis under Part IX of the ETA. The Purchaser shall file the elections in the manner and within the time prescribed by the relevant legislation.

3.6 Adjustments

Intentionally deleted.

ARTICLE 4 COVENANTS

4.1 Closing Date

- (a) The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing.
- (b) Each of the Parties shall, as promptly as possible, make, or cause to be made, all filings and submissions, as applicable, required under any Applicable Law to effect the Closing.

4.2 Interim Period

During the Interim Period, except as otherwise expressly contemplated or permitted by this Agreement (including the Approval and Vesting Order), the Vendor shall, unless consented to by the Purchaser, continue to maintain the Business and operations of the Vendor in substantially the same manner as conducted on the Effective Date and in compliance with Applicable Laws in all material respects.

4.3 Access During Interim Period

During the Interim Period, the Vendor shall, subject to any confidentiality, privacy or safety restrictions, give, or cause to be given, to the Purchaser, and its representatives, reasonable access during normal business hours to the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business as the Purchaser reasonably deems necessary or desirable to further familiarize itself with the Business. Without limiting the generality of the foregoing: (a) the Purchaser and its representatives shall be permitted reasonable access during normal business hours to all documents relating to information scheduled or required to be disclosed under this Agreement and which are included in the data room; and (b) the Purchaser and its representatives shall be permitted to contact and discuss the Transactions contemplated herein with Governmental Authorities and the Vendor's customers and contractual counterparties. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk and cost, during normal business hours, and without undue interference with the Vendor's operations and the Vendor shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser.

4.4 Assigned Contracts

- (a) The Purchaser, with the Vendor's consent, will request any consents necessary to permit the assignment to the Purchaser of the Assigned Contracts. The Vendor will provide its reasonable cooperation to assist the Purchaser to obtain such consents, including providing financial and other information of the Vendor requested by the Purchaser or party to such Assigned Contract. For certainty, the Purchaser will be responsible for all Cure Costs in respect of any Assigned Contracts.
- (b) Nothing in this Agreement will constitute an agreement to assign or an attempted assignment of any non-assignable rights or any Contracts for which any requisite consent or approval has not been obtained or which as a matter of Applicable Law or by its terms is not assignable.

4.5 Insurance Matters

Until Closing, the Vendor shall keep in full force and effect all existing insurance policies and give any notice or present any claim under any such insurance policies consistent with past practice of the Vendor and the Vendor in the ordinary course of business.

4.6 Risk of Loss

The Purchased Assets shall be at the risk of the Vendor until Closing. If, between the date hereof and Closing, any of the Purchased Assets are destroyed, lost or materially damaged (each a "**Casualty**"), the Purchaser shall still complete the purchase of the Purchased Assets on an "as is, where is" basis without any adjustment to the Purchase Price payable hereunder and take an assignment from the Vendor of all insurance proceeds payable to the Vendor in respect of the Casualty. For greater certainty, in no event shall the aggregate total of the insurance proceeds assigned to the Purchaser in accordance with this Section and the fair market value of Purchased Assets exceed the Purchase Price.

4.7 Removal

All Purchased Assets must be removed from the Vendor's premises by no later than 5:00 pm (Winnipeg time) on **November 29, 2024**. If the Purchaser does not remove all of the Purchased Assets by such time, the Vendor may, at its option: (1) destroy or dispose of the remaining Purchased Assets; (b) sell or transfer the remaining Purchased Assets to any third party; and/or (c) arrange for the Purchased Assets to be stored, in each case without liability to the Purchaser and at the Purchaser's sole cost.

4.8 Indemnity

The Purchaser hereby indemnifies the Vendor, the Monitor (in its personal and corporate capacity) and their respective representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (a) any Transaction Taxes (including penalties and interest) which may be assessed against any of the Vendor, including, notwithstanding anything to the contrary in this Agreement, any Taxes which may be assessed against any of the Vendor in the event that any election made pursuant to Section 3.5 challenged by the relevant Tax authority as being inapplicable to the transactions under this Agreement, or as a result of the Purchaser's failure to file such elections within the prescribed time;
- (b) the Purchaser's access in accordance with Section 4.3;
- (c) the Purchaser's failure to remove all Purchased Assets from the Vendor's premises by **November 29, 2024** or such later date as approved by the Vendor in its sole discretion;
- (d) any Damage caused by the Purchaser in the removal of any of the Purchased Assets; and
- (e) the Purchaser's failure to pay when due and failure to perform and discharge the Assumed Liabilities, if any, in accordance with their terms.

4.9 Personal Information Privacy

The Purchaser shall at all times comply with all Applicable Laws governing the protection of personal information with respect to Personal Information disclosed or otherwise provided to the Purchaser by the Vendor and Monitor under this Agreement. The Purchaser shall only collect, use or disclose such Personal Information for the purposes of investigating the Business as contemplated in this Agreement and

completing the transactions contemplated in this Agreement. The Purchaser shall safeguard all Personal Information collected from the Vendor and/or the Monitor in a manner consistent with the degree of sensitivity of the Personal Information and maintain at all times the security and integrity of the Personal Information. The Purchaser shall not make copies of the Personal Information or any excerpts thereof or in any way re-create the substance or contents of the Personal Information if the purchase of the Purchased Assets is not completed for any reason and shall return all Personal Information to the Vendor or destroy such Personal Information at the Vendor's request.

ARTICLE 5 CLOSING ARRANGEMENTS

5.1 Closing

Closing shall take place on the Closing Date effective as of the Closing Time electronically (or as otherwise determined by mutual agreement of the Parties in writing), by the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format.

5.2 Vendor Closing Deliveries

At or before the Closing Time, the Vendor shall deliver or cause to be delivered to the Purchaser the following:

- (a) the Purchased Assets, with delivery to occur *in situ* wherever such Purchased Assets are located at the Closing Time;
- (b) a certified true copy of the Approval and Vesting Order, as issued and entered by the Court;
- (c) a true copy of any Assignment Order, if applicable, in respect of any Assigned Contracts for which consents to assignment were required but not obtained;
- (d) the Bill of Sale, duly executed by the Vendor;
- (e) the Assignment and Assumption Agreement, duly executed by the Vendor, if applicable;
- (f) the election referred to in Section 3.4 of this Agreement, if applicable;
- (g) a release or waiver of restrictive covenants in favour of Kelsey Friesen and the Purchaser, in form and content acceptable to the Purchaser and the Purchaser's Solicitors;
- (h) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

5.3 Purchaser's Closing Deliveries

At or before the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor or Monitor, as applicable, the following:

- (a) the Cash Purchase Price referred to in Section 3.2(b), including the payment of all Transaction Taxes (if any) required to be paid on Closing, which shall be paid to the Vendor;
- (b) the Bill of Sale, duly executed by the Purchaser;

- (c) the Assignment and Assumption Agreement, duly executed by the Purchaser, if applicable;
- (d) the Cure Costs referred to in Section 3.2(c), if any;
- (e) bring-down certificate executed by a senior officer of the Purchaser (without personal liability) dated as of the Closing Date, in form and substance satisfactory to the Vendor, acting reasonably, certifying that: (i) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date; and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects;
- (f) the election referred to in Section 3.4 of this Agreement, if applicable; and,
- (g) such other agreements, documents and instruments as may be reasonably required by the Vendor to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

ARTICLE 6

CONDITIONS OF CLOSING

6.1 Mutual Conditions of Closing

The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) Approval and Vesting Order. The Court shall have pronounced the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated and no Legal Proceeding shall have been commenced by a party with standing to appeal same which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.
- (b) Assignment Order. The Court shall, if applicable, have pronounced the Assignment Order, which Assignment Order shall not have been stayed, set aside, or vacated and no Legal Proceeding shall have been commenced by a party with standing to appeal same which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.
- (c) No Order. No Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority (other than the Court or other court with standing) or otherwise in effect that restrains or prohibits the completion of the Transaction.
- (d) No Restraint. No motion, action or proceedings shall be pending by or before a Governmental Authority (other than the Court or other court with standing) to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (e) Monitor's Certificate. The Monitor shall have provided an executed certificate of the Monitor substantially in the form attached to the Approval and Vesting Order (the "**Monitor's Certificate**") confirming that all other conditions to Closing have either been satisfied or waived by both the Purchaser and the Vendor.

The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in this Section 6.1 is not satisfied, performed or mutually waived on or prior to the Closing Date, any Party may elect on written notice to the other Parties to terminate this Agreement.

6.2 Purchaser's Conditions of Closing

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Vendor's Deliverables. The Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 5.2.
- (b) No Breach of Representations and Warranties. Except as such representations and warranties may be affected by the occurrence of events or transactions specifically contemplated by this Agreement, each of the representations and warranties contained in Section 7.1 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Vendor shall have performed, in all material respects, all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendor on or before the Closing Date.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 6.2 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. In the event any condition set out in this Section 6.2 is not satisfied or performed by the Closing Date, the Purchaser may elect on written notice to the Vendor to terminate the Agreement.

6.3 Vendor's Conditions of Closing

The obligation of the Vendor to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Purchaser's Deliverables. The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor or Monitor, as applicable, at the Closing all the documents and payments contemplated in Section 5.3.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 7.2 shall be true and correct in all material respects (i) as of the Closing Date as if made on and as of such date, or (ii) if made as of a date specified therein, as of such date.
- (c) No Breach of Covenants. The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 6.3 may be waived by the Vendor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set forth in this Section 6.3 is not satisfied or performed by the Closing Date, the Vendor may elect on written notice to the Purchaser to terminate the Agreement.

6.4 Monitor's Certificate

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived, the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation that all such funds have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Vendor

The Vendor hereby represents and warrants to and in favour of the Purchaser as of the date hereof and as of the Closing Time, and acknowledges that, the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Authority. Subject to Court approval of this Agreement, it has the authority to sell the Purchased Assets to the Purchaser on the terms and conditions of this Agreement.
- (b) Residency. The Vendor is not a non resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada).

7.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to and in favour of the Vendor as of the date hereof and as of the Closing Time, and acknowledges that, the Vendor is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Incorporation and Status. The Purchaser is a corporation incorporated and existing under the Province of Manitoba as of the date hereof, is in good standing under such act and has the power and authority to enter into, deliver and perform its obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and performance by the Purchaser of this Agreement has been authorized by all necessary corporate action on the part of the Purchaser.
- (c) No Conflict. The execution, delivery and performance by the Purchaser of this Agreement do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the Organizational Documents of the Purchaser.
- (d) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject only to the Approval and Vesting Order.

- (e) Proceedings. There are no Legal Proceedings pending, or to the knowledge of the Purchaser, threatened against the Purchaser, before any Governmental Authority, which prohibit or seek to enjoin delay, restrict or prohibit the Closing of the Transaction, as contemplated by this Agreement, or which would reasonably be expected to delay, restrict or prevent the Purchaser from fulfilling any of its obligations set forth in this Agreement.
- (f) Funding Available. The Purchaser has available sufficient funding to enable the Purchaser to consummate the purchase of the Purchased Assets on the terms set forth herein and otherwise to perform all of the Purchaser's obligations under this Agreement. For certainty, such funding shall not be conditional on either: (i) title to the Purchased Assets being transferred to the Purchaser or other third party prior to the Purchase Price being advanced to the Vendor and the Monitor's Certificate being issued; and (ii) security being registered against the Purchased Assets prior to Closing.
- (g) Excise Tax Act. The Purchaser is registered under Part IX of the *Excise Tax Act* (Canada) with registration number [REDACTED].
- (h) Residency. The Purchaser is not a non resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada).
- (i) No Sanctions. None of the Purchaser, any of its subsidiaries or, to the knowledge of the Purchaser, any director, officer, agent, employee, Affiliate or representative of the Purchaser or any of its subsidiaries is, or is controlled or 50% or more owned by or is acting on behalf of, an individual or entity (a "**Sanctioned Person**") currently the subject of applicable economic sanctions including those administered or enforced by the government of Canada, the United States of America, or the United Kingdom (collectively, "**Sanctions**"). None of the Purchaser or any of its subsidiaries is located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions. To the Purchaser's knowledge, neither it nor any of its subsidiaries has engaged in any dealings or transactions with or for the benefit of a Sanctioned Person. The Purchaser has procedures and policies in place designed to ensure compliance with Sanctions.

7.3 "As is, Where is"

- (a) Except as contemplated in Section 7.1, the Purchaser acknowledges and agrees that it is purchasing the Purchased Assets and assuming the Assumed Liabilities on an "as is, where is" basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Assets, Assumed Liabilities and all other relevant matters and has determined to proceed with the Transaction contemplated herein and will accept the same at the Closing Time in their then current state, condition, location, and amounts, subject to all Permitted Encumbrances.
- (b) Except as otherwise expressly provided in Section 7.1, no representation, warranty or condition whether statutory (including under *The Sale of Goods Act* (Manitoba), *The International Sale of Goods Act* (Manitoba), the *International Sale of Goods Contracts Convention Act* (Canada) or any other Canadian (including federal, provincial or municipal) or international acts which may be applicable to the subject matter pursuant to the provisions of this Agreement, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods), or express or implied, oral or written, legal, equitable, conventional, collateral, arising by custom or usage of trade, or otherwise is or will be given by the Vendor or the Monitor including as to title, outstanding liens or encumbrances, description, fitness for purpose, merchantability, merchantable quality, quantity, condition (including physical and environmental condition), suitability,

durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded and disclaimed and any rights pursuant to such statutes have been waived by the Purchaser. The Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets and assume the Assumed Liabilities pursuant to this Agreement.

- (c) The description of the Purchased Assets and Assumed Liabilities contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by the Vendor. Except as otherwise explicitly set forth in Section 7.1 no representation, warranty or condition has been given by the Vendor or the Monitor concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Vendor or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Vendor.
- (d) Any documents, materials and information provided by the Vendor or Monitor to the Purchaser with respect to the Purchased Assets or Assumed Liabilities (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Vendor and/or Monitor have not made and are not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Vendor and/or Monitor and their respective Affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information. The Purchaser further acknowledges that the use of the documents may not be possible without the Purchaser obtaining reliance or other assurances from the author of such documents directly and further that the documents may be subject to copyright or other property rights which may preclude their use by the Purchaser in whole or in part.

ARTICLE 8 TERMINATION

8.1 Grounds for Termination

This Agreement may be terminated prior to the Closing Date:

- (a) by the Vendor upon written notice to the Purchaser if:
 - (i) the Closing has not occurred by the Outside Date; or
 - (ii) the Purchaser has breached its obligations under this Agreement and has not cured such breach within five (5) Business Days of receiving notice thereof from Vendor;
- provided in each case that the failure to close, as applicable, is not caused by a breach of this Agreement by the Vendor; or

- (b) by the Purchaser upon written notice to the Vendor if: (i) the Closing has not occurred by the Outside Date; or (ii) the Vendor has breached its obligations under this Agreement and has not cured such breach within five (5) Business Days of receiving notice thereof from Purchaser; provided in each case that the failure to close, as applicable, is not caused by a breach of this Agreement by the Purchaser.

8.2 Effect of Termination.

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder; except for the provisions of Sections 4.7 (Indemnity), 4.9 (Personal Information Privacy), 9.3 (Public Announcements) and 9.9 (Governing Law).

ARTICLE 9 GENERAL

9.1 Access to Books and Records

For a period of six (6) years from the Closing Date or for such longer period as may be reasonably required for the Vendor (or any trustee in bankruptcy of the estate of the Vendor) to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement, but the Purchaser is not responsible or liable for any accidental loss or destruction of, or damage to, any such Books and Records. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Vendor (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendor, including the Monitor) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

9.2 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:

- (a) in the case of the Purchaser, as follows:

10213358 Manitoba Ltd.
6 Nicolas Ave.
Winnipeg, MB R2J 0T5
Attention: Hariharan Krithivasan, President
Email: hari@nebulacontrols.ca

with a copy (which shall not constitute notice) to:

Taylor McCaffrey LLP
2200 - 201 Portage Ave.
Winnipeg, MB R3B 3L3
Attention: Sean G. Hicks
Email: shicks@tmlawyers.com

(b) in the case of the Vendor, as follows:

To Bio-Tech:

Delta 9 Bio-Tech Inc.
770 Pandora Avenue East
Winnipeg, MB R2C 3N1
Attention: John Arbuthnot
Email: john.arbuthnot@delta9.ca

with a copy (which shall not constitute notice) to:

MLT Aikins LLP

2100, 222 3rd Ave SW
Calgary, AB T2P 0B4
Attention: Ryan Zahara / Chris Nyberg
Email: rzahara@mltaikins.com / cnyberg@mltaikins.com

To the Monitor:

Alvarez and Marsal Canada Inc.
Bow Valley Square 4, Suite 1110
250 6th Ave SW
Calgary, AB T2P 3H7
Attention: David Williams / Quinn Park
Email: david.williams@alvarezandmarsal.com / qpark@alvarezandmarsal.com

Any such notice or other communication, if transmitted by email before 5:00 p.m. (Calgary time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Calgary time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission. In the case of a communication by email or other electronic means, if an autoreply is received indicating that the email is no longer monitored or in use, delivery must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by electronic means shall be deemed to have been given on the date stipulated above for electronic delivery.

Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

9.3 Public Announcements

The Vendor and the Monitor shall be entitled to disclose this Agreement to the Court and parties in interest in the CCAA Proceedings and this Agreement may be posted on the Monitor's website maintained in connection with the CCAA Proceedings at: <https://www.alvarezandmarsal.com/content/delta-9-sale-investment-solicitation-process>. Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein) or where required to meet timely disclosure obligations of the Vendor or any of its Affiliates under Applicable Laws or stock exchange rules, the Purchaser shall not issue (prior to or after the Closing) any press release or make any public statement or public communication with respect

to this Agreement or the transactions contemplated hereby without the prior consent of the Vendor, which shall not be unreasonably withheld or delayed.

9.4 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties.

9.5 Survival

All representations, warranties and covenants of Vendor contained in this Agreement shall merge and terminate on Closing. Notwithstanding the foregoing, the representations, warranties and covenants of the Purchaser contained herein shall not merge on Closing and shall survive and remain in full force and effect.

9.6 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

9.7 Entire Agreement

This Agreement and the attached Schedules hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Vendor and the Purchaser.

9.8 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

9.9 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and each of the Parties irrevocably attorn to the exclusive jurisdiction of the Court in the CCAA Proceedings, and any appellate courts of the Province of Alberta therefrom.

9.10 Assignment

This Agreement may be assigned by the Purchaser prior to the issuance of the Approval and Vesting Order and Assignment Order (if applicable), in whole or in part, without the prior written consent of the Vendor or the Monitor, provided that: (a) such assignee is a related party or subsidiary of the Purchaser; (b) the Purchaser provides prior notice of such assignment to the Vendor and Monitor; and (c) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment; provided, however, that any such assignment shall not relieve the Purchaser of its obligations hereunder.

9.11 Further Assurances

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances,

transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

9.12 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

9.13 Severability

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

9.14 Monitor's Capacity

In addition to all of the protections granted to the Monitor under the Initial Order, SISP Order or any other order of the Court in these CCAA Proceedings, the Purchaser acknowledges and agrees that the Monitor, acting in its capacity as court-appointed monitor and not in its corporate or personal capacity, will have no Liability to the Purchaser in connection with this Agreement or the Transaction contemplated herein.


9.15 Electronic Signatures

Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

DELTA 9 BIO-TECH INC.

Per: 

Name: John Arbuthnot

Title: Authorized Signatory

10213358 MANITOBA LTD.

Per:

Name: Hariharan Krithivasan

Title: President

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

DELTA 9 BIO-TECH INC.

Per: _____

Name: _____

Title: _____

10213358 MANITOBA LTD.

Per: _____

Name:  Hariharan Krithivasan

Title: President

SCHEDULE "A"

PURCHASED ASSETS

1. All Intellectual Property
2. Trademark TMA1156627 - DELTA 9 GROW PODS
3. 17 grow pods located at Vendor's premises (not including the D-Pod)



4. All marketing materials for promotion of Grow Pod sales
5. The personal property evidenced in the photos below, including that personal property listed in Appendix "I" attached to this Schedule "A":









APPENDIX "1" TO SCHEDULE "A"

PERSONAL PROPERTY

PLASTIC TROUGHS - 12' x 9"	PT-1	FARM TECK	EA	330
PLASTIC TROUGHS - 6' x 9"	PT-2	FARM TECK	EA	21
500W HPS Lights	LHGROW-1	HPS	EA	64
3x9 White Modular Trays - Center M&F	HARP-WMT3X9-001	METHOD INNOVATES	EA	84
3x9 White Modular Trays - Male, Drainage	HARP-WMT3X9-002	METHOD INNOVATES	EA	42
3x9 White Modular Trays - Female, Drainage	HARP-WMT3X9-003	METHOD INNOVATES	EA	42

SCHEDULE "B"

PERMITTED ENCUMBRANCES

None.

SCHEDULE "C"
ASSIGNED CONTRACTS

None.

SCHEDULE "D"
ASSUMED LIABILITIES

None.