

COURT FILE NUMBER 2301-13922

COURT COURT OF KING'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE RECEIVERSHIP OF OGEN
HOLDINGS LTD. and OGEN LTD.

APPLICANT ALVAREZ & MARSAL CANADA INC.

DOCUMENT **ORDER (APPROVAL OF SALE AND INVESTMENT
SOLICITATION PROCESS)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT AIKINS LLP
222 - 3rd Avenue S.W.
Calgary, AB T2P 0B4
Attention: Catrina Webster/Chris Nyberg
Telephone: 403.693.4347/2636
Email: cwebster@mltaikins.com/cnyberg@mltaikins.com
Fax Number: 403.508.4349
File No.: 0035572.00013



DATE ON WHICH ORDER WAS PRONOUNCED: FEBRUARY 16, 2024

LOCATION OF HEARING OR TRIAL: EDMONTON, ALBERTA

NAME OF JUDGE WHO MADE THIS ORDER: JUSTICE M.J. LEMA

UPON THE APPLICATION of Alvarez & Marsal Canada Inc. filed February 8, 2024 (the "**Application**") in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of certain of the remaining assets, undertaking, and properties of OGEN Ltd. and OGEN Holdings Ltd. (collectively, the "**Debtors**"), for an Order approving the sale and investment solicitation process (the "**SISP**"); **AND UPON HAVING READ** the Application, the Receivership Order granted by the Honourable Justice D.R. Mah on November 3, 2023 and filed November 6, 2023 (the "**Receivership Order**"), the First Report of the Receiver dated November 16, 2023 (the "**First Report**"), the Second Report of the Receiver dated February 8, 2024 (the "**Second Report**"), and the Affidavit of Service of Colleen Finnerty sworn February 14, 2024; **AND UPON IT** appearing that all interested and affected parties have been served with notice of the Application; **AND**

UPON HEARING the submissions of counsel for the Receiver and all other interested parties present;. **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

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

APPROVAL OF THE RECEIVER'S ACTIVITIES

2. The Receiver's actions, activities and conduct as reported in the First Report and the Second Report are hereby approved and ratified.

APPROVAL OF PROFESSIONAL FEES

3. The Receiver's accounts for fees and disbursements as set out in the Second Report are hereby approved, without the necessity of a formal assessment of its accounts.
4. The accounts of the Receiver's legal counsel, MLT Aikins LLP, for its fees and disbursements as set out in the Second Report are hereby approved, without the necessity of a formal assessment of its accounts.

APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS

5. The SISP attached hereto as **Schedule "A"** is hereby approved and Receiver is hereby authorized and empowered to proceed, carry out, and implement the SISP and all corresponding sales, marketing, or tendering processes, including any and all actions related thereto, substantially in accordance with the SISP and, furthermore, the Debtors, by and through the Receiver, are hereby authorized to enter into any resulting agreement(s) or transaction(s) which may arise in connection thereto, as the Receiver determines are necessary or advisable in connection with or in order to complete any or all of the various steps, as contemplated by the SISP.
6. The Receiver and any interested person is hereby authorized and empowered to apply to this Honourable Court to amend, vary, or seek any advice, directions, or the approval or vesting of any transactions, in connection with the SISP.

7. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

A handwritten signature in black ink, appearing to read "M. J. Lema". The signature is written in a cursive style with a large, stylized initial "M".

The Honourable Justice M.J. Lema
Justice of the Court of King's Bench of Alberta

Schedule "A"

Sale and Investment Solicitation Process

SCHEDULE “A”

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

1. Pursuant to an order (the “**Receivership Order**”) granted by Justice D.R. Mah of the Court of King's Bench of Alberta (the “**Court**”) dated November 3, 2023 in Court Action Number 2301-13922 (the “**Receivership Proceedings**”) Alvarez & Marsal Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of certain of the remaining assets, undertakings and properties (the “**Property**”) of OGEN Ltd. and OGEN Holdings Ltd. (collectively, the “**Debtor**” or “**OGEN**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), and section 13(2) of the *Judicature Act*, RSA 2000, c B-9, and 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7. For certainty, the Property does not include the Excluded Property as defined in the Receivership Order.
2. At a Court application on February 16, 2024, the Receiver intends seek court approval of, among other things, a sale and investment solicitation process (the “**SISP**”) as set forth herein. The SISP is intended to solicit interest in an acquisition, investment in, restructuring or refinancing of the business or a sale of the assets and/or the business of OGEN.
3. This document (the “**SISP Procedures**”) outlines the SISP, which will be conducted in three stages: pre-marketing, marketing and offering and evaluation.
4. The Receiver anticipates engaging the services of one or more marketing agent(s) (collectively, and as applicable, the “**Marketing Agent**”), to assist in the development and execution of the SISP together with a marketing strategy with respect to the Property. The Receiver plans to engage the Sales Agent to implement brokerage and marketing services with respect to the SISP, with the oversight of the Receiver.
5. All monetary references shall be in Canadian Dollars (\$CAD), unless otherwise stated.

OPPORTUNITY AND SISP SUMMARY

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

the full amount of the annual fees for the 2023-2024 fiscal year ending March 31, 2024 and any other subsequent annual fee as imposed under the *Cannabis Fees Order* (SOR/2018-198) as part of such proposal.

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

TIMELINE

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

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

PRE-MARKETING STAGE

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

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

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

MARKETING STAGE

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

OFFER SUBMISSION AND EVALUATION STAGE

Phase 1: LOI Submission Phase

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

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

25. The Receiver, in consultation with the Lender and Marketing Agent, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

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

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

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

Due Diligence

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

Phase 2: Formal Offers and Selection of Successful Bidder

Formal Binding Offers

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

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

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

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

Evaluation of Competing Bids

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

Selection of Successful Bid

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

Sale Approval Motion Hearing

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

Miscellaneous Provisions

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

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

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

Schedule "A"

TO THE RECEIVER:

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

Attention: Orest Konowalchuk / Stephen Oosterbaan / Brinton Wolever

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

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