



No. S1912098
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED AND SECTION
39 OF THE *LAW AND EQUITY ACT*, RSBC 1996 c. 253, AS AMENDED

AND

IN THE MATTER OF THE RECEIVERSHIP OF DIONYMED BRANDS INC.

BETWEEN:

GLAS Americas LLC

PETITIONER

AND:

DionyMed Brands Inc.

RESPONDENT

ORDER MADE AFTER APPLICATION
(Approving bidding procedures)

BEFORE)))))	THE HONOURABLE <u>MR. JUSTICE MYERS</u>)))))	November 26, 2019
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ON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of all of the assets, undertakings and property of DionyMed Brands Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor pursuant to the receivership order issued on October 29, 2019 (the "**Receivership Order**") in the within proceedings; AND ON READING the Receiver's First Report to the Court dated November 19, 2019 (the "**First Report**"); AND ON HEARING from counsel for the Receiver and other counsel as listed on **Schedule "A"** hereto, and no one else appearing, although duly served;

THIS COURT ORDERS AND DECLARES THAT:**Service**

1. The time for service of the Notice of Application herein and supporting materials be and are hereby abridged and deemed good and sufficient such that the Notice of Application is properly returnable today, and service upon any interested party other than those parties on the service list maintained by the Receiver in this proceeding is hereby dispensed with.

Approval of Receiver's Actions

2. The actions, conduct, and activities of the Receiver, as outlined in the First Report, are hereby approved.

Approval of bidding procedures

3. The bidding procedures (the "**Bidding Procedures**") for the sale of the Debtor's Property (as defined in the Bidding Procedures), substantially in the form attached as Schedule B to this Order, are hereby approved.
4. The Receiver is authorized and directed to implement the Bidding Procedures and to do all such things as it considers necessary or desirable to conduct and give full effect to the Bidding Procedures.
5. The Receiver, and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of performing its obligations under the Bidding Procedures, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Bidding Procedures (as determined by this Court).
6. In connection with the Bidding Procedures and pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act* (Canada), the Receiver and the Debtor are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver or the Debtor, as applicable; (ii) destroy all such information, or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The transacting party with respect to any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver or the Debtor, as applicable, or ensure that all other personal information is destroyed.

Authorization to provide funding

7. The Receiver is empowered and authorized, but not obligated, to provide funding to Herban Industries Inc. ("**Herban Delaware**"), as the Receiver considers necessary or desirable, for the purpose of Herban Delaware acquiring the Gotham Green Debt and Security, as that term is defined in the First Report.

General

8. Service of this Order shall be deemed good and sufficient by:

- (a) serving the same in accordance with the Receivership Order on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
- (b) posting a copy of this Order on the Receiver's website at <http://cfcanada.fticonsulting.com/DionyMed/>

and service on any other person is hereby dispensed with.

9. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER.



 Signature of Alexandra Andrisoi
 Lawyer for the Receiver

BY THE COURT



 REGISTRAR



Schedule "A" – List of Counsel

<u>Counsel Name</u>	<u>Party Represented</u>

Schedule "B" – Bidding Procedures

Bidding Procedures

Background

GLAS USA LLC and GLAS Americas Inc. (collectively the “**Agents**”) are the administrative and collateral agent, respectively, of the lenders (the “**Secured Lenders**”) from time to time party to the credit agreement dated January 16, 2019 with DionyMed Brands Inc. (the “**Debtor**”) and certain of its subsidiaries, as amended, modified and supplemented from time to time.

On October 29, 2019, on the application of the Agents, the Supreme Court of British Columbia (the “**Court**”) granted an order (the “**Receivership Order**”) appointing FTI Consulting Canada Inc. as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of the Debtor, including all proceeds thereof (collectively, the “**Property**”). Pursuant to the Receivership Order, the Receiver is authorized to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate, and, subject to a further order of the Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.

Property for Sale

The Property is available for sale pursuant to these bidding procedures (these “**Bidding Procedures**”). The Property includes the following:

1. All shares in the capital of Herban Industries Inc. (“**Herban**”), a Delaware corporation;
2. All of the books, records, books of account, supplier and customer lists, business information, research and development information, business analyses and plans, and records, and all other documents, files, records, correspondence, electronic information (including emails and web page content), and other data and information, financial or otherwise related to the business of Herban, Herban Industries CA LLC, Herban CA 2 LLC, Gourmet Green Room, Inc., Herban Industries OR LLC, Herban Industries NJ LLC, Hometown Heart, Herban Industries NV LLC, Herban Industries CO LLC and Herban Industries MI LLC, in each case, which is owned by, and within the control or possession of DYME, at the Closing Date; and
3. The agricultural lease dated January 1, 2019 between Cynthia A. Jessup and DionyMed Holdings Inc. (a predecessor corporation of the Debtor) in respect of 42466 Winberry Creek Road, Fall Creek, Oregon 97438 and the lease agreement dated July 23, 2019 between IIP-CA 3 LP and DYME in respect of 1454, 1458 and 1500 Esperanza Street, Los Angeles, California.

Notwithstanding anything else contained herein, the Receiver may consider offers for individual assets of the Debtor and/or any of its direct or indirect subsidiaries.¹ However, the Receiver will favour a bid that includes all of the shares of Herban.

Free of Any And All Claims and Interests

All of the right, title and interests of the Receiver and the Debtor in and to the Property, or any portion thereof, to be acquired will be sold free and clear of all security interests, hypothecs, mortgages, trusts or deemed trusts, liens, executions, levies, charges, or other financial or monetary claims (collectively, the “**Charges**”) pursuant to an Approval and Vesting Order in form reasonably satisfactory to the Successful Bidder(s) (as defined below) and the Receiver and approved by the Court, such Charges to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding priority, validity or enforceability thereof).

Bidding Procedures

The Receiver filed an application with the Court seeking, among other things, approval of: (a) the solicitation of offers for the acquisition of the Property or any parts thereof (each a “**Bid**”, and each party who submits a Bid, a “**Bidder**”) in accordance with the terms of these Bidding Procedures; and (b) the rules for the conduct of an auction (the “**Auction**”) if and when (i) the conditions for the holding of the Auction are satisfied as provided in these Bidding Procedures, and (ii) the Receiver determines in its sole discretion that an Auction would be advisable.

On November [●], 2019, the Court issued an order approving the Bidding Procedures (the “**Bidding Procedures Order**”). Accordingly, these Bidding Procedures shall govern the solicitation by the Receiver of Bids for all or part of the Property and the selection by the Receiver of one or more Successful Bids (as defined below).

1. Solicitation

The Receiver has prepared: (a) a list of potential bidders for the Property (the “**Potential Bidders**”), including both strategic and financial parties who, in the Receiver’s reasonable professional judgment, may be interested in acquiring the Property; (b) an initial offering summary (the “**Teaser Letter**”) to notify Potential Bidders of the existence of this solicitation process and invite the Potential Bidders to make an offer to acquire all or any part of the Property; (c) a form of confidentiality agreement (the “**Confidentiality Agreement**”); and (d) a form of acknowledgment (the “**Acknowledgement**”) whereby the Potential Bidder agrees to be bound by the provisions of these Bidding Procedures.

In accordance with the Receivership Order, the Receiver has already sent the Teaser Letter to the Potential Bidders. The Receiver will continue the solicitation process in accordance with the Bidding Procedures.

¹ The structuring of any transaction involving individual assets of any direct or indirect subsidiary will require discussion between the Receiver and the bidder.

2. **As is, where is**

Any sale of any or all of the Property will be completed on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or the Debtor or their respective agents, professionals, advisors, or otherwise, except to the extent set forth in the relevant agreement(s) with the Successful Bidder(s).

3. **Access to Due Diligence Materials**

Interested parties that execute and deliver to the Receiver the Confidentiality Agreement and the Acknowledgement shall receive (a) a detailed confidential information memorandum prepared by the Receiver describing the opportunity to acquire all or part of the Property; and (b) access to an electronic due diligence data site (collectively, the "**Due Diligence Access**"). In addition, the Receiver will populate the due diligence data site with a template asset purchase agreement (the "**Template APA**"), which is to be used by interested parties who intend to submit binding offers as described below.

Each party's Due Diligence Access shall terminate upon the earliest of the following events to occur:

- (a) Such party advises that it is no longer interested in pursuing an acquisition of any Property;
- (b) Such party does not submit a bid by the Bid Deadline (as defined below);
- (c) Such party submits a Bid by the Bid Deadline but the Receiver determines that such party does not constitute a Qualified Bidder (as defined herein);
- (d) If there is an Auction, such party does not participate in the Auction;
- (e) If there is an Auction, at the conclusion of the Auction; or
- (f) If there is no Auction, the approval by the Court of the Successful Bid.

The Receiver will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access in accordance with this Section. The Receiver and the Debtor are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Property and do not make any representations or warranties as to the information or materials provided, except to the extent of any representations or warranties provided for in the relevant agreement(s) with the Successful Bidder(s).

Notwithstanding that a party's Due Diligence Access may continue following the Bid Deadline, the Receiver shall not be obligated to furnish any additional due diligence information after the Bid Deadline.

4. **Bidding**

These Bidding Procedures provide for one phase of bidding in which to solicit binding offers to purchase all or part of the Property. In the event that the Receiver determines that the results of any Bids received satisfy the conditions for an Auction, as set out below, the Receiver may, in the Receiver's sole discretion, conduct an Auction in accordance with the procedures set out in Section 8 below.

All bids are to be denominated in dollars of the United States of America.

5. **Bidding Deadlines**

All bids must be submitted in writing via email or by personal delivery so that they are actually received by the Receiver no later than 1:00 p.m. (Vancouver time) on December 9, 2019 (the "**Bid Deadline**") at:

FTI Consulting Canada Inc.
TD Waterhouse Tower, Suite 2010
79 Wellington Street
Toronto, ON M5K 1G8

Attention: Jeffrey Rosenberg
Email: Jeffrey.rosenberg@fticonsulting.com

Unless the Receiver determines otherwise, a bid received by the Receiver after the Bid Deadline shall not constitute a Qualified Bid (as defined below).

6. **Bid Requirements**

In order to be eligible to be a Qualified Bidder, a Bidder must deliver a bid to the Receiver which satisfies each of the following conditions (a "**Bid**"):

- (a) **Confidentiality**: The Bidder must deliver an executed Confidentiality Agreement and Acknowledgement (if not already delivered);
- (b) **Identification**: The Bid must identify the Bidder and representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated transaction;
- (c) **Form and Content**. The Bid must be in the form of the Template APA and be executed by the Bidder (each, a "**Proposed Purchase Agreement**"). Any changes and modifications to the Template APA are to be indicated on a blackline to the Template APA, which is to be submitted along with the executed version;
- (d) **Allocation**. The Bid must provide an allocation of the aggregate consideration of the Bid among the Property;

- (e) Good-Faith Deposit. The Bid must be accompanied by a cash deposit equal to the greater of (x) US\$3,000,000.00 and (y) twenty percent (20%) of the total cash purchase price contemplated by the Bid (the “**Good Faith Deposit**”), and the Good Faith Deposit shall be paid to the Receiver, to be held by the Receiver in trust in accordance with these Bidding Procedures²;
- (f) Financial Wherewithal. The Bid must include evidence satisfactory to the Receiver of the Bidder’s financial ability to close by the Closing Date (as defined below);
- (g) Closing Date. The Bid must contain a binding commitment by the Bidder to close on the terms and conditions set forth in the Proposed Purchase Agreement as soon as practicable after satisfaction or waiver of all conditions; provided that such closing must take place by no later than December 31, 2019 (the “**Closing Date**”);
- (h) Irrevocable. The Bid must be accompanied by a letter which confirms that the Bid: (i) may be accepted by the Receiver, by the Receiver countersigning the Proposed Purchase Agreement, and (ii) is irrevocable and capable of acceptance until the earlier of (I) the day on which the Bidder is notified that the Bid is not a Qualified Bid (as defined below); (II) the day on which a Successful Bid or Successful Bids are selected, if the Bid is neither a Successful Bid nor a Back-Up Bid (as defined below) selected on such day; (III) if the Bid is the Back-Up Bid, then the day on which the Successful Bid(s) closes; and (IV) December 20, 2019 (the “**Termination Date**”);
- (i) No Representations and Warranties. The Bid shall include an “as is, where is” clause substantially on the same terms as the “as is, where is” clause set out in the Template APA;
- (j) Contingencies. The Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence;
- (k) No Fees Payable to Bidder. The Bid may not request or entitle the Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Bid, a Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its Bid or these Bidding Procedures; and
- (l) Other Information. A Bid shall contain such other information reasonably requested by the Receiver.

Each Bidder shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by the Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Bidder is not a Qualified Bidder (as defined below).

7. Designation as Qualified Bidder

² In connection with an offer for individual assets of the Debtor and/or any of its direct or indirect subsidiaries (i.e. an offer that does not include all of the shares of Herban), the Good Faith Deposit must be equal to at least twenty-five percent (25%) of the total cash purchase price contemplated by the offer. For greater certainty, there is no US\$3,000,000 minimum in that circumstance.

The Receiver may discuss, negotiate or seek clarification of any Bid. A Bidder may not modify, amend or withdraw its Bid without the written consent of the Receiver. Any purported modification, amendment or withdrawal of a Bid by a Bidder without the written consent of the Receiver shall result in a forfeiture of such Bidder's Deposit.

After any clarifying discussions or negotiations, the Receiver shall review all Bids and other documentation and information submitted by the Bidders, and shall determine, in its reasonable judgment, those Bidders, if any, that are qualified to participate in the Auction (the "**Qualified Bidders**" and the Bid of each Qualified Bidder, a "**Qualified Bid**"). The Receiver shall notify all Qualified Bidders with respect to whether such Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline. All Bids will be considered, but the Receiver reserves the right to reject any and all Bids.

8. Auction

If the Receiver determines that there are less than two (2) Qualified Bids, then there will be no auction.

If the Receiver determines that there are at least two (2) Qualified Bids for the Property, or any combination thereof, or a combination of non-overlapping Qualified Bids (an "**Aggregated Bid**"), the Receiver may conduct an auction to determine the highest and/or best Qualified Bid or Aggregated Bid (the "**Auction**").

In all cases, the Receiver shall post notice of such facts on its website established in connection with the receivership of the Debtor, at <http://cfcanada.fticonsulting.com/DionyMed/>

If the Auction is to take place, then as soon as practicable after the Bid Deadline, and in any event not less than two days prior to the Auction, the Receiver shall provide all Qualified Bidders with a copy of the Opening Bid (as defined below) for the Auction.

The Auction shall commence on December 11, 2019, at a time and place to be determined by the Receiver, and shall be conducted according to the following procedures:

- (a) Participation at the Auction. The Receiver and its professionals shall direct and preside over the Auction. Only Qualified Bidders are eligible to participate in the Auction. Each Qualified Bidder must have present or available, the individual or individuals with the necessary decision making authority to submit Overbids (as defined below) and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of each of the Qualified Bidders and the Receiver shall be permitted to attend the Auction;
- (b) Rounds. Bidding at the Auction shall be conducted in rounds. The Qualified Bid or Aggregated Bid with the highest and/or best value shall constitute the "**Opening Bid**" for the first round of bidding. The highest Overbid at the end of each round shall constitute the "**Opening Bid**" for the following round. The Receiver shall determine what constitutes the Opening Bid for each round in accordance with the Bid Assessment Criteria set out in Section 8(d) below. An Aggregated Bid may be

an Opening Bid in the opening round. A combination of non-overlapping Overbids (an “**Aggregated Overbid**”) may also be an Opening Bid in any subsequent round, if such Aggregated Overbid is determined to be the highest Bid. In each round, a Qualified Bidder may submit no more than one Overbid. The Receiver reserves the right to impose time limits for the submission of Overbids;

- (c) Failure to Submit an Overbid. If, at the end of any round of bidding, a Qualified Bidder or Aggregated Bidder (other than the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) fails to submit an Overbid, then such Qualified Bidder may not participate in any further round of bidding at the Auction. Any Qualified Bidder or Aggregated Bidder that submits an Overbid or Aggregated Overbid during a round (including the Qualified Bidder or Aggregated Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction;
- (d) Bid Assessment Criteria. The Receiver shall determine which Qualified Bid or Aggregated Bid constitutes the Opening Bid for the first round of bidding and the determination of which Overbid or Aggregated Overbid constitutes the Opening Bid for each subsequent round of bidding taking into account all factors which the Receiver, with the assistance of its advisors, reasonably deems relevant to the value of such Bid, including, among other things: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities; (iii) the ability of the Bidder(s) to close the proposed transaction(s); (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) the net after-tax consideration to be received by the Receiver (including assumed liabilities and other obligations to be performed or assumed by the Bidder(s) and any purchase price adjustments); (vi) the claims likely to be created by such Bid in relation to other Bids; (vii) the proposed revisions to the Template APA and the terms of any other transaction documents; (viii) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals or third party consents required to close the transaction); (ix) the Property included or excluded from the Bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property; (x) the transition services required from the Receiver post-closing and any related costs; (xi) the monetary value that may reasonably be attributed to any non-cash consideration by the Receiver in its reasonable discretion; and (xii) such other considerations as the Receiver deems relevant in its reasonable business judgment.
- (e) Overbids. All Bids made during the Auction shall be “**Overbids**”. Overbids will be submitted in a form to be determined by the Receiver, in its reasonable discretion, including further revised and executed purchase agreements. The identity of each Qualified Bidder and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders participating in the Auction. The Receiver shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid(s) (as defined below) and the Back-Up Bid(s) (as defined below). To be considered an “Overbid”, a Bid made during the Auction must satisfy the following criteria:

- (i) Minimum Consideration. The amount of purchase price consideration of any Overbid shall not be less than the purchase price consideration of the Opening Bid of the applicable round of bidding plus US\$250,000 or such lower or higher amount as the Receiver may determine in advance of such round of bidding in order to facilitate the Auction (the “**Minimum Overbid Increment**”).

The Receiver reserves the right to attribute monetary value to certain non-monetary terms and conditions contained in an Overbid and credit such value to the purchase price consideration of an Overbid. The Receiver will disclose to all Bidders any monetary value attributed to non-monetary terms and conditions prior to soliciting Overbids in any given round; and

- (ii) Remaining terms are the same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in Section 6 above; provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (h) hereof).

To the extent not previously provided (which shall be determined by the Receiver), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to the Receiver demonstrating such Qualified Bidder’s ability (including financial ability) to close the transaction contemplated by its Overbid;

- (f) Announcing Highest Overbids. At the end of each round of bidding, the Receiver, with the assistance of its advisors, shall (i) immediately review each Overbid made in such round; (ii) identify the highest and/or best Overbid or Aggregated Overbid; and (iii) announce the terms of such highest and/or best Overbid or Aggregated Overbid to all Qualified Bidders entitled to participate in the next round of bidding. Such highest and/or best Overbid or Aggregated Overbid shall be the Opening Bid for the next round of the Auction;
- (g) Adjournments. The Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (i) facilitate discussions between the Receiver and individual Qualified Bidders, including any discussion, negotiation or clarification of any Overbid; (ii) allow individual Qualified Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and/or best Overbid or Aggregated Overbid at any given time during the Auction; (iv) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require, in its reasonable business judgment, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (v) subject to such rules and guidelines as the Receiver may consider appropriate, facilitate any appropriate consultation by the Receiver and/or Qualified Bidders with third party stakeholders;

- (h) Closing the Auction. If, in any round of bidding, no Overbid or Aggregated Overbid is made, the Auction shall be closed and the Receiver shall, with the assistance of its advisors: (i) declare the last Opening Bid as the successful Bid(s) (the “**Successful Bid(s)**” and the party or parties submitting such Successful Bid(s), the “**Successful Bidder(s)**”); (ii) immediately review the other Overbids or Aggregated Overbids made in the previous round (or the Qualified Bids and Aggregated Bids if no Overbids were made at the Auction) and identify and record the next highest and/or best Overbid or Aggregated Overbid (or Qualified Bid or Aggregated Bid) (the “**Back-Up Bid(s)**” and the party or parties submitting such Back-Up Bid(s), the “**Back-Up Bidder(s)**”); and (iii) advise the Successful Bidder(s) and the Back-Up Bidder(s) of such determinations and all other Qualified Bidders that they are not a Successful Bidder or a Back-Up Bidder.

To the extent not already provided, the Successful Bidder(s) and the Back-Up Bidder(s) shall each, within two (2) business days of the conclusion of the Auction, provide the Receiver with an additional cash deposit to increase its original Good Faith Deposit to equal at least twenty percent (20%) of the total cash purchase price contemplated by its Successful Bid or Back-Up Bid, as applicable, to be held by the Receiver in trust as such party’s “Good Faith Deposit” in accordance with these Bidding Procedures;

- (i) Consent to Jurisdiction as Condition to Bid. All Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder’s transaction documents, as applicable; and
- (j) No Collusion. Each Qualified Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behaviour with respect to the submissions of Overbids. The Receiver may permit discussions between Qualified Bidders at the Auction, subject to such rules and guidelines as the Receiver considers appropriate.

9. Receiver’s Reservation of Rights

In addition to the other reservations of rights set out herein, the Receiver reserves the right in its reasonable discretion to: (a) waive strict compliance with any one or more of the Bid requirements specified herein, and deem such non-compliant Bids to be Qualified Bids; provided that such non-compliance is not material in nature; (b) reject any or all Bids if, in the Receiver’s reasonable business judgment, no Bid is for fair and adequate consideration; and (c) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures and facilitate the Auction; provided that the adoption of any rule that materially deviates from these Bidding Procedures shall require an order of the Court.

Subject to such confidentiality arrangements as the Receiver deems appropriate, the Receiver shall consult regularly with Tribeca Global Resources Credit Pty Ltd., the investor representative of

Evolution Trustees Limited as sole trustee of SP1 Credit Fund (the “**SP1 Representative**”), with respect to the conduct and status of these Bidding Procedures, and shall provide the SP1 Representative with true and complete copies of any and all Bids received by the Receiver and such other information as is reasonably requested from time to time by the SP1 Representative in respect of the conduct and status of these Bidding Procedures.

For greater certainty, the Receiver is under no obligation to conduct an Auction under any circumstances, and the Receiver retains the sole discretion as to whether to conduct an Auction.

10. **Sale Motion**

The Receiver shall, within seven (7) days of the conclusion of the Auction, or if there is no Auction by December 13, 2019, serve notice of an application seeking approval of the Successful Bidder(s) and the sale of the applicable Property to the Successful Bidder(s) free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Successful Bidder(s) (the “**Sale Motion**”). The Sale Motion shall be conducted by the Court as soon as possible thereafter at 800 Smithe Street, Vancouver, British Columbia. At the Sale Motion, the Receiver may also seek, in its sole discretion, conditional approval of the Back-Up Bid(s) authorizing the Receiver to close the Back-Up Bid(s) if the Successful Bid(s) is/are not closed by the Closing Date.

11. **Closing the Successful Bid**

The Receiver and the Successful Bidder(s) shall take all reasonable steps to complete the sale transaction contemplated by the Successful Bid(s) as soon as possible after the Successful Bid(s) are approved by the Court. Notwithstanding the foregoing, in the event that there is more than one Successful Bid, the Receiver reserves the right to impose a condition in each Successful Bid that the obligation of the Receiver to complete the sale transaction contemplated by each Successful Bid is conditional upon the completion of the transaction(s) contemplated by each other Successful Bid. The Receiver will be deemed to have accepted the Successful Bid(s) only when the Successful Bid(s) has/have been approved by the Court. If the transaction(s) contemplated by the Successful Bid(s) has/have not closed by the Closing Date or the Successful Bid(s) is/are terminated for any reason prior to the Closing Date, the Receiver may elect, in its sole discretion seek to complete the transaction(s) contemplated by the Back-Up Bid(s), and upon making such election, the Receiver will seek Court approval of the Back-Up Bid(s) (if such approval has not already been obtained) and promptly seek to close the transaction(s) contemplated by the Back-Up Bid(s) after such Court approval. The Back-Up Bid(s) will be deemed to be the Successful Bid(s) and the Receiver will be deemed to have accepted the Back-Up Bid(s) only when the Back-Up Bid(s) has/have been approved by the Court and the Receiver has made such election.

12. **Return of Good Faith Deposit**

- (a) All Good Faith Deposits shall be held in an interest-bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with Section 6 or this Section 12;

- (b) Good Faith Deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidders within two (2) business days after the day on which the Bidder is notified that it is not a Qualified Bidder;
- (c) Good Faith Deposits of all Qualified Bidders other than the Successful Bidder(s) and the Back-Up Bidder(s) shall be returned to such Qualified Bidders within two (2) business days after the day on which one or more Successful Bidders is selected;
- (d) The Good Faith Deposit(s) of the Successful Bidder(s) shall be applied to the purchase price of such transaction(s) at closing. If the Successful Bid(s) fail(s) to close by the Termination Date because of a breach or failure to perform on the part of the Successful Bidder(s), the Receiver shall be entitled to retain the Good Faith Deposit of the applicable Successful Bidder(s) as part of its damages resulting from the breach or failure to perform by the applicable Successful Bidder(s). The Good Faith Deposit of the Successful Bidder(s) shall otherwise be returned to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s);
- (e) If the Back-Up Bid(s) has/have not been deemed to be a Successful Bid(s), the Good Faith Deposit(s) of the Back-Up Bidder(s) shall be returned to the Back-Up Bidder(s) as soon as practicable after the earlier of: (i) the closing of the transaction(s) contemplated by the Successful Bid(s); (ii) the date on which the Receiver provides written notice to the Back-Up Bidder(s) that the Receiver will not elect to complete the transaction(s) contemplated by the Back-Up Bid(s) and (iii) the Termination Date; and
- (f) If a Back-Up Bid is deemed to be a Successful Bid, the Good Faith Deposit of such Back-Up Bidder shall be applied to the purchase price of such transaction at closing. If a Back-Up Bid fails to close by the Termination Date because of a breach or failure to perform on the part of such Back-Up Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of such Back-Up Bidder as part of its damages resulting from the breach or failure to perform by such Back-Up Bidder. The Good Faith Deposit of a Back-Up Bidder shall otherwise be returned to the applicable Back-Up Bidder in accordance with the terms of its Back-Up Bid.

13. **No Qualified Bid**

If the Receiver determines that no Qualified Bid was received, or at least one Qualified Bid was received but it is not likely that the transactions contemplated in any such Qualified Bid will be consummated, the Receiver shall notify the SP1 Representative forthwith, and within ten (10) Business Days of such determination, file an application with the Court seeking directions and/or such other relief as the Receiver deems appropriate in the circumstances. In the circumstances described in this subsection, the Secured Lenders shall have the option within five (5) Business Days from such determination to submit a credit bid (that would constitute a binding agreement if accepted) even if they did not submit a credit bid at any other point during the bidding process, and notwithstanding the receipt of any new information regarding bids or offers after the Bid Deadline.

