

## Schedule "A"

### Procedures for the Sale and Investment Solicitation Process

On June 5, 2023, Fire & Flower Holdings Corp., Fire & Flower Inc., 13318184 Canada Inc. ("133 Canada"), 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. (collectively, the "**F&F Entities**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Superior Court of Ontario (Commercial List) in the City of Toronto (the "**Court**") pursuant to an order granted by the Court on the same day (as may be amended or amended and restated from time to time, the "**Initial Order**").

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**").

On June 15, 2023, the Court granted an order (the "**SISP Order**"), authorizing the F&F Entities to undertake a sale and investment solicitation process ("**SISP**") for the sale of their assets (the "**Property**") and business operations (the "**Business**"). The SISP will be conducted by the Monitor in the manner set forth herein.

Among other things, the SISP Order also: (a) approved the procedures set out in this Schedule (the "**Bidding Procedures**") for the solicitation of offers or proposals (each a "**Bid**" for the acquisition of the Business or some portion thereof, and (b) approved the form of subscription agreement to be entered into between the F&F Entities, as vendors, and 2707031 Ontario Inc. (the "**Stalking Horse Bidder**"), as purchaser (as same may be amended from time to time pursuant to its terms, the "**Stalking Horse Agreement**") as the "Stalking Horse Bid" for the purposes of the SISP, provided that the Stalking Horse Agreement and the transactions provided for therein must be submitted to the Court for consideration in a subsequent application upon completion of the SISP or upon termination thereof and the Stalking Horse Agreement being the Successful Bid (as defined below).

### Defined Terms

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

### Bidding Procedures

#### **Opportunity**

2. The SISP is intended to solicit interest in, and opportunities for: (i) one or more sales or partial sales of all, substantially all, or certain portions of the Property or the Business; and/or (ii) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the F&F Entities or their Business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the F&F Entities as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property or the Business, or a combination thereof (the "**Opportunity**").
3. The Stalking Horse Agreement constitutes a qualified Bid by the Stalking Horse Bidder for all purposes and at all times under this SISP and will serve as the Stalking Horse Bid for

purposes of this SISP and these Bidding Procedures. Notwithstanding the Stalking Horse Agreement and proposed transactions therein, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal. A copy of the Stalking Horse Agreement will be made available to all Phase 1 Qualified Bidders.

4. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the F&F Entities and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith.

The Monitor, in consultation with the F&F Entities and the DIP Lender (acting reasonably) may at any time and from time to time, modify, amend, vary or supplement the Bidding Procedures, without the need for obtaining an order of the Court or providing notice to Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, the Successful Bidder or the Back-Up Bidder, provided that the Monitor determines that such modification, amendment, variation or supplement is expressly limited to changes that do not materially alter, amend or prejudice the rights of such bidders (including the rights of the Stalking Horse Bidder, except with the authorization of the Stalking Horse Bidder) and that are necessary or useful in order to give effect to the substance of the SISP, the Bidding Procedures and the SISP Order. Notwithstanding the foregoing and for greater certainty, any modification to the dates and time limits indicated in the table contained in paragraph 5 herein will require the authorization of the DIP Lender, acting reasonably.

The Monitor will post on the Monitor's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and inform the bidders impacted by such modifications.

In the event of a dispute as to the interpretation or application of the SISP Order or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

5. Certain bid protections are provided for in the Stalking Horse Agreement (including a break fee (the "**Break Fee**"), subject to the conditions set forth therein. No other bidder may request or receive any form of bid protection as part of any bid made pursuant to the SISP.

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

Event	Timing
<b><u>Phase 1</u></b>	
<b>1. Preparation</b>  F&F Entities to assemble due diligence information and set up VDR  Monitor to prepare a Teaser Letter and NDA	In advance of Court approval of the SISP Order
<b>2. Notice</b>  F&F Entities to issue a press release regarding the Opportunity and the Monitor to publish a notice of the SISP on the Monitor's website and other industry trade publications, as determined appropriate.  Monitor to distribute Teaser Letter and NDA to potentially interested parties	As soon as reasonably practicably following the date on which the SISP Order is granted.
<b>3. Phase 1</b>  Phase 1 Qualified Bidders provided access to a VDR	June 15, 2023 to July 13, 2023
<b>4. Phase 1 Bid Deadline</b>  Deadline for Qualified Bidders to submit non-binding LOIs in accordance with the requirement of paragraph 14 of the Bidding Procedures	By no later than July 13, 2023, at 5:00 p.m. (Eastern Time)
<b>5. Phase 1 Satisfactory Bid</b>  Monitor to assess non-binding LOIs using criteria outlined in the SISP to determine if a LOI is a Satisfactory Bid.  Phase 1 Satisfactory Bidders designated by the Monitor as Phase 2 Qualified Bidders invited to participate in Phase 2 if the Monitor proceeds to Phase 2	By no later than July 14, 2023, at 5:00 p.m. (Eastern Time)
<b>6. Approval Motion if No Other Bids</b>  Filing of Approval Motion in respect of the Stalking Horse Agreement in the event that no other Phase 1 Satisfactory Bid is received and	Week of July 24, 2023

issuance of the Vesting Order.

**7. Closing – No Other Bids**

August 4, 2023

Anticipated deadline for closing of the Stalking Horse Agreement in the event that no other Phase 1 Satisfactory Bid is received

**Phase 2**

**8. Phase 2 Bid Deadline & Qualified Bidders**

August 11, 2023

Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 22 of the Bidding Procedures)

**9. Auction**

August 15, 2023

Anticipated Auction (if needed)

**10. Selection of Successful Bid and Back-Up Bidder**

By no later than August 17, 2023 at 5:00 p.m. (Eastern Time)

Deadline for selection of Successful Bid

**11. Definitive Documentation**

By no later than August 22, 2023

Deadline for completion of definitive documentation in respect of Successful Bid

**12. Approval Motion – Successful Bid**

Week of August 28, 2023

Deadline for filing of Approval Motion in respect of Successful Bid

**13. Closing – Successful Bid**

September 8, 2023 or such earlier date as is achievable

Anticipated deadline for closing of Successful Bid being the Target Closing Date

**14. Outside Date – Closing**

September 15, 2023

Outside Date by which the Successful Bid must close

***Solicitation of Interest: Notice of the SISP***

6. As soon as reasonably practicable, but, in any event, by no later than five (5) days after the granting of the SISP Order:

- a) the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, (ii) local and international strategic and financial parties who the Monitor, in consultation with the Applicants, believe may be interested in purchasing all or part of the Business or Property or investing in the Applicants pursuant to the SISP, and (iii) parties that showed an interest in the Applicants and/or their assets prior to the date of the SISP Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the "**Known Potential Bidders**");
  - b) a notice of the SISP and any other relevant information that the F&F Entities, in consultation with the Monitor, consider appropriate will be published by the Monitor in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Monitor;
  - c) a press release setting out the notice and any other relevant information regarding the Opportunity as may be considered appropriate will be issued by the F&F Entities with Canada Newswire designating dissemination in Canada; and
  - d) the Monitor, in consultation with the Applicants, will prepare a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and Applicants and their respective counsel which shall enure to the benefit of any purchaser of the Business or Property or any part thereof (an "**NDA**").
7. The Monitor will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder by no later than five (5) days from the SISP Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

### ***Virtual Data Room***

8. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by the F&F Entities or by the Monitor to Potential Bidders that have executed the NDA (as defined below) in accordance with paragraph 9 herein. The VDR will be made available as soon as practicable. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the F&F Entities and the Opportunity. The Monitor, in consultation with the F&F Entities, may establish or cause the F&F Entities to establish separate VDRs (including "clean rooms"), if the F&F Entities reasonably determine that doing so would further the F&F Entities' and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Monitor may also, in consultation with the F&F Entities, limit the access of any Potential Bidder to any confidential information in the VDR where the Monitor may also, in consultation with the F&F Entities, reasonably determine that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value.

## **PHASE 1: NON-BINDING LOIs**

### ***Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum***

9. In order to participate in the SISP, and prior to the distribution of any confidential information to an interested party (including access to the VDR), such interested party must deliver to the Monitor an executed NDA, which will enure to the benefit of any Successful Bidder that closes a transaction contemplated by the Successful Bid. Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has executed an NDA with the F&F Entities, a "**Potential Bidder**"), each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the consent of the Monitor, in consultation with the F&F Entities. Prior to the F&F Entities executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Monitor, in consultation with the F&F Entities, of its financial wherewithal to complete on a timely basis a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") will not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the F&F Entities in the event that it elects to act as a Potential Bidder. 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 Applicants (or any of them).
10. A Potential Bidder that has executed an NDA and that has been provided any additional information required pursuant to paragraph 11 will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the Monitor. For the avoidance of doubt, the Stalking Horse Bidder is, and will be deemed to be, a Phase 1 Qualified Bidder, notwithstanding paragraphs 13 and 14 hereof.
11. The Monitor will prepare and send to each Phase 1 Qualified Bidder (including the Stalking Horse Bidder) a Teaser Letter and provide a copy of the Stalking Horse Agreement, and any material amendment thereto, as soon as practicable. The F&F Entities, the Monitor and their respective advisors make no representation or warranty as to the information contained in the Teaser Letter or otherwise made available pursuant to the SISP.
12. The Monitor will provide any person deemed to be a Phase 1 Qualified Bidder (including the Stalking Horse Bidder) with access to the VDR. The F&F Entities and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR.
13. If a Phase 1 Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, provided in accordance with paragraph 14 below, a "**Phase 1 Qualified Bid**") to the Monitor (including by email) so as to be received by the Monitor not later than 5:00 p.m. (Eastern Time) on July 13, 2023 or such other date or time as may be agreed by the Monitor, with the authorization of the Stalking Horse Bidder, acting reasonably, and in consultation with the F&F Entities (as may be extended, the "**Phase 1 Bid Deadline**").

14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "Phase 1 Qualified Bid" if the LOI complies at a minimum with the following:
- a) it has been duly executed by all required parties;
  - b) it is received by the Phase 1 Bid Deadline;
  - c) it provides written evidence, satisfactory to the Monitor, in consultation with the F&F Entities, of the ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital and, to the extent that the Phase 1 Qualified Bidder expects to finance any portion of the purchase price, the identity of the financing source;
  - d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for the Monitor, in consultation with the F&F Entities, to determine that these conditions are reasonable in relation to the Phase 1 Qualified Bidder,
  - e) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI, identifies all legal, financial, accounting and other advisors that have been or expect to be retained by the Phase 1 Qualified Bidder in connection with contemplated transaction;
  - f) it identifies any additional due diligence required to be completed in order to submit a Binding Offer;
  - g) it clearly indicates that:
    - i. the Phase 1 Qualified Bidder is (A) seeking to acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof (either one, a "**Sale Proposal**") or some other portion of the Business (a "**Partial Sale Proposal**"); or (B) offering to make an investment in, restructure, recapitalize or refinance the F&F Entities or the Business (an "**Investment Proposal**"); and
    - ii. if the Phase 1 Qualified Bidder is submitting a Sale Proposal or Investment Proposal, such proposal will at a minimum and on closing, provide net cash proceeds that are not less than the aggregate total of: (A) the amount of cash payable under the Stalking Horse Agreement together with the amount of all secured indebtedness, liabilities and obligations owing by the F&F Entities to 2707031 Ontario Inc., plus (B) an amount equivalent to the Break Fee and (C) a minimum overbid amount of \$250,000 (the amounts set forth in this paragraph 14.g)ii, the "**Minimum Purchase Price**"); provided, however, the F&F Entities, in consultation with the Monitor and

the DIP Lender, may deem this criterion satisfied if the Sale Proposals, Partial Sale Proposals or the Investment Proposals, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet or exceed the Minimum Purchase Price (such bids, "**Aggregated Bids**") (the amount of the Minimum Purchase Price will be confirmed by the Monitor with Potential Bidders);

- h) it contains such other information as may be reasonably requested by the Monitor, in consultation with the F&F Entities;
- i) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder will be entitled to any such bid protections;
- j) in the case of a Sale Proposal, it identifies or contains the following:
  - i. the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
  - ii. any contemplated purchase price adjustment;
  - iii. a description of the specific assets that are expected to be subject to the transaction and any assets expected to be excluded;
  - iv. a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
  - v. information sufficient for the Monitor, in consultation with the F&F Entities, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
  - vi. whether the proposed transaction is to be implemented by way of a "reverse vesting order"; and
  - vii. any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- k) 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, restructuring, recapitalization or refinancing;
  - ii. the aggregate amount of the equity and/or debt investment to be made in the F&F Entities or their Business;
  - iii. the underlying assumptions regarding the pro forma capital structure;

- iv. a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
  - v. information sufficient for the Monitor, in consultation with the F&F Entities, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
  - vi. whether the proposed transaction is to be implemented by way of a "reverse vesting order"; and
  - vii. any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.
15. The Monitor, in consultation with the F&F Entities and the DIP Lender, may waive compliance with any one or more of the requirements specified in subparagraphs 14.j) and/or 14.k) and deem any such non-compliant LOI to be a Phase 1 Qualified Bid.
16. Notwithstanding subparagraph 14.g)ii in the circumstance that a Phase 1 Qualified Bid does not provide for net cash proceeds that are at least equal to the Minimum Purchase Price, the F&F Entities and the Monitor will consult with the DIP Lender and, subject to the prior written consent of the DIP Lender, may elect that such Phase 1 Qualified Bid be nevertheless considered to be a Phase 1 Satisfactory Bid (as defined below) and that the applicable Phase 1 Qualified Bidder proceed as Phase 2 Qualified Bidder (as defined below).

#### ***Assessment of Phase 1 Qualified Bids and Subsequent Process***

17. The Monitor, in consultation with the F&F Entities may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Satisfactory Bid (as defined below).
18. Only Phase 2 Qualified Bidders will be permitted to proceed to Phase 2 of the SISF. The Stalking Horse Agreement shall constitute a Phase 1 Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Phase 2 Qualified Bidder for all purposes under the SISF, including the Auction, notwithstanding anything to the contrary contained herein.
19. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the F&F Entities, will determine which Phase 1 Qualified Bid(s) shall proceed to Phase 2 of the SISF and be deemed a **"Phase 1 Satisfactory Bid(s)"** and which Phase 1 Qualified Bidder(s) accordingly will be deemed **"Phase 2 Qualified Bidder(s)"**, if any. For greater certainty, there can be more than one Phase 1 Qualified Bid that may be determined as being a Phase 1 Satisfactory Bid, and more than one Phase 1 Qualified Bidder that may be determined as being a Phase 2 Qualified Bidder. The Monitor will notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constitutes a Phase 1 Satisfactory Bid - such that it is a Phase 2 Qualified Bidder - no later than one (1) Business Day following the Phase 1 Bid Deadline, or at such later time as the Monitor deems

appropriate, in consultation with the F&F Entities and with the authorization of the Stalking Horse Bidder, acting reasonably.

20. In the event that no Phase 1 Satisfactory Bid is selected (other than the one from the Stalking Horse Bidder), the F&F Entities will promptly proceed to seek Court approval of the Stalking Horse Agreement and Phase 2 of the SISP will not be conducted.

## **PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS (IF REQUIRED)**

### ***Formal Binding Offers***

21. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to its Sale Proposal or Investment Proposal must submit a binding offer (a "**Binding Offer**"): (a) in the case of a Sale Proposal, in the form of a template agreement of purchase and sale if one is provided in the VDR (if any), along with a marked version showing edits to the original form of the template provided in the VDR and otherwise with a marked version compared to the Stalking Horse Agreement; or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Monitor, in consultation with the F&F Entities (each, such Binding Offer submitted in accordance with paragraph 22 below, a "**Phase 2 Qualified Bid**") in each case to the Monitor, by August 11, 2023, or such other date or time as may be agreed by the Monitor in consultation with the F&F Entities and with the authorization of the DIP Lender, acting reasonably (as may be extended, the "**Phase 2 Bid Deadline**").
22. A Binding Offer will only be considered as a Phase 2 Qualified Bid if the Binding Offer:
- a) has been received by the Phase 2 Bid Deadline;
  - b) is a Binding Offer: (i) to purchase all, substantially all, or a portion of the Property or the Business; and/or (ii) to make an investment in, restructure, recapitalize or refinance the F&F Entities or the Business, on terms and conditions reasonably acceptable to the F&F Entities;
  - c) identifies all executory contracts of the F&F Entities that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
  - d) is not subject to any financing condition;
  - e) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
  - f) it contains or identifies the key terms and provisions to be included in any Approval Order, including whether such order will be a "reverse vesting order";
  - g) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the

Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities, including those regulating in the cannabis sector;

- h) provides for net cash proceeds that are not less than the Minimum Purchase Price; unless it is a part of a bid that qualifies as an Aggregated Bid, as the case may be, in which case the total net cash proceeds of the Aggregated Bids will be not less than the Minimum Purchase Price;
- i) is accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the F&F Entities by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date;
- j) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- k) in the case of a Sale Proposal, includes:
  - i. the specific purchase price in Canadian dollars and a description of any non-cash consideration, including any future royalty payments or other deferred payment, details of any liabilities to be assumed by the Phase 2 Qualified Bidder and key assumptions supporting the valuation; provided that if the purchase price involves a royalty, earn-out or other deferred payment, the Sale Proposal shall include a specific indication of the Phase 2 Qualified Bidder's proposal and/or commitments for and relating to obtaining necessary regulatory approvals and the Bidder's commercialization strategy, manufacturing capabilities, proposed sale milestones and minimum sale amounts, budget and/or commitment for capital expenditures, direct marketing and sales initiatives and support and proposed product positioning within the Potential Bidder's current product portfolio;
  - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - iii. a specific indication of the sources of capital for the Phase 2 Qualified Bidder and the structure and financing of the transaction; and
  - iv. a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;

- l) in the case of an Investment Proposal, includes:
    - i. a description of how the Phase 2 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
    - ii. the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;
    - iii. the underlying assumptions regarding the pro forma capital structure;
    - iv. a specific indication of the sources of capital for the Phase 2 Qualified Bidder and the structure and financing of the transaction; and
    - v. a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Qualified Bidder intends to assume and which liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
  - m) is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the "**Deposit**"), along with acknowledgement that (i) if the Phase 2 Qualified Bidder is selected as the Successful Bidder, that the Deposit will be non-refundable subject to approval of the Successful Bid by the Court and the terms described in paragraph 32 below; and (ii) if the Phase 2 Qualified Bidder is selected as the Back-Up Bidder, that the Deposit will be held and dealt with as described in paragraph 32 below; and
  - n) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before September 8, 2023, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the "**Target Closing Date**") and in any event no later than September 15, 2023 (the "**Outside Date**").
23. The F&F Entities may not waive compliance with any one or more of the requirements specified above (except as provided by paragraph 24 below) and may not deem any non-compliant Binding Offer to be a Phase 2 Qualified Bid.
24. Notwithstanding subparagraph 22.h) in the circumstance that a Phase 2 Qualified Bid does not provide for net cash proceeds that are at least equal to the Minimum Purchase Price, the F&F Entities and the Monitor will consult with the DIP Lender and, subject to the prior written consent of the DIP Lender, may elect that such Phase 2 Qualified Bid be nevertheless considered as a potential Successful Bid and be entitled to participate in the Auction.

#### ***Selection of Successful Bid***

25. The Monitor, in consultation with the F&F Entities, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.

26. The F&F Entities and the Monitor will: (a) review and evaluate each Phase 2 Qualified Bid; (b) identify the highest or otherwise best bid (the "**Successful Bid**", and the Phase 2 Qualified Bidder making such Successful Bid, the "**Successful Bidder**"); and (c) identify the next highest or otherwise second best bid (the "**Back-Up Bid**", and the Phase 2 Qualified Bidder making such Back-Up Bid, the "**Back-Up Bidder**"), in each case pursuant to the paragraphs below. Any Successful Bid and Back-Up Bid will be subject to approval by the Court.
27. In the event that no Phase 2 Qualified Bid is selected (other than the Stalking Horse Bid), the F&F Entities will promptly seek Court approval of the Stalking Horse Agreement. In the event there is at least one Phase 2 Qualified Bid in addition to the Stalking Horse Bid, the Monitor, in consultation with the F&F Entities may determine the Successful Bid or may determine that the Successful Bid will be identified through an Auction in accordance with the procedure set out below.
28. In the event that an auction (the "**Auction**") is required in accordance with the terms of these Bidding Procedures, it will be conducted in accordance with the procedures set forth in this paragraph:
  - a) The Auction will commence at a time to be designated by the Monitor, on August 15, 2023, and may, in the discretion of the Monitor, be held virtually via videoconference, teleconference or such other reasonable means as the Monitor deems appropriate. The Monitor and the F&F Entities will work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be so held. The Monitor, with the consent of the F&F Entities and of the DIP Lender, may postpone the Auction.
  - b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to other Phase 2 Qualified Bidders participating in the Auction.
  - c) Except as otherwise permitted in the Monitor's discretion, only the F&F Entities, the Monitor and the Phase 2 Qualified Bidders, and, in each case, their respective professionals and representatives, will be entitled to attend the Auction. Only Phase 2 Qualified Bidders (including, for greater certainty, the Stalking Horse Bidder) are eligible to participate in the Auction.
  - d) Phase 2 Qualified Bidders will participate in the Auction through a duly authorized representative.
  - e) Except as otherwise set forth herein, the Monitor, in consultation with the F&F Entities, may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable under the circumstances for conducting the Auction, provided that such rules are: (i) not inconsistent with the Initial Order, the SISF, the Bidding Procedures, the CCAA, or any order of the Court issued in connection with the CCAA Proceedings; (ii) disclosed to each Phase 2 Qualified Bidder; and (iii) designed, in the Monitor's business judgment, to result in the highest and otherwise best offer.

- f) The Monitor may arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction.
- g) Each Phase 2 Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the F&F Entities or any other person, without the consent of the F&F Entities and the Monitor, regarding the SISP, that has not been disclosed to all other Phase 2 Qualified Bidders. For greater certainty, communications between the Stalking Horse Bidder and either the F&F Entities or the Monitor with respect to and in preparation of the Stalking Horse Agreement, the SISP, the Bidding Procedures and other ancillary matters prior to the issuance of the SISP Order and the commencement of the SISP will not represent collusion nor communications prohibited by this paragraph.
- h) Prior to the Auction, the Monitor will identify, in consultation with the F&F Entities, the highest and best of the Phase 2 Qualified Bids received and such Phase 2 Qualified Bid will constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than \$250,000 cash in excess of the Opening Bid. For the purposes of facilitating bidding, the Monitor, with the consent of the F&F Entities and subject to the reimbursement in payment in full, in cash at closing, of the Purchaser, or with the prior written consent of the Purchaser, may ascribe a monetary value to non-cash considerations of each of the Phase 2 Qualified Bids, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) will provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Monitor, in consultation with the F&F Entities. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Monitor, in consultation with the F&F Entities, to facilitate bidding by the participants in the Aggregated Bid.
- i) All Phase 2 Qualified Bidders will have the right, at any time, to request that the Monitor announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder may have regarding the Monitor's announcement of the then-current highest and best bid.
- j) Each participating Phase 2 Qualified Bidder will be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction will continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder. The Monitor, in consultation with the F&F Entities, shall determine which Phase 2 Qualified Bidders have submitted the (i) highest and otherwise best Phase 2 Qualified Bid of the Auction, and (ii) the next highest and otherwise second best Phase 2 Qualified Bid of the Auction, in each case, taking into account, as the case may be, the monetary value of the non-cash considerations as determined in accordance with subparagraph 28.h). At such time and upon the conclusion of the bidding, the Auction will be closed, and the final remaining Phase 2 Qualified

Bidder will be the Successful Bidder and the next highest and otherwise second best Phase 2 Qualified Bidder will be the Back-Up Bidder.

- k) Upon selection of a Successful Bidder and a Back-Up Bidder, if any, the Monitor will require the Successful Bidder and the Back-Up Bidder, if any, to each deliver, as soon as practicable, an amended and executed transaction document that reflects their final bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion.
  - l) The Monitor and the F&F Entities will not consider any bids submitted after the conclusion of the Auction.
  - m) The Monitor, in consultation with the Applicants, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit, including to conduct the Auction by way of written submissions.
29. The Successful Bid and the Back-Up Bid will be selected by no later than 5:00 p.m. (Eastern Time) on August 17, 2023 and the completion and execution of definitive documentation in respect of the Successful Bid and the Back-Up Bid, as applicable, must be finalized and executed no later than September 4, 2023, which definitive documentation will be conditional only upon the receipt of the Approval Order(s) and the express conditions set out therein and will provide that the Successful Bidder will use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as may be agreed to by the Monitor, in consultation with the F&F Entities and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date. If a Back-Up Bid is identified in accordance with this SISF, then such Back-Up Bid shall remain open until the date (the "**Back-Up Bid Outside Date**") on which the transaction contemplated by the Successful Bid is consummated or such earlier date as the Monitor, in consultation with the F&F Entities, determines. If the transactions contemplated by the Successful Bid have not closed by the Outside Date or the Successful Bids is terminated for any reason prior to the Outside Date, the F&F Entities may elect, in consultation with the Monitor, to seek to complete the transactions contemplated by the Back-Up Bid, and will promptly seek to close the transaction contemplated by the Back-Up Bid. The Back-Up Bid will be deemed to be the Successful Bid and the F&F Entities will be deemed to have accepted the Back-Up Bid only when the F&F Entities have made such election.

### ***Approval of Successful Bid***

30. The F&F Entities will apply to the Court (the "**Approval Motion**") for one or more orders: (i) approving the Successful Bid and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby (such order shall also approve the Back-Up Bid(s), if any, should the Successful Bid not close for any reason); and (ii) granting a vesting order and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid so as to vest title to any purchased assets in the name of the Successful Bidder and/or vesting unwanted liabilities out of one or more of the F&F Entities (collectively, the "**Approval Order(s)**"). The Approval Motion will be held on a date to be scheduled by the F&F Entities and confirmed by the Court upon application by the F&F Entities. With the consent of the Monitor and the Successful Bidder, and in consultation with the DIP Lender, the Approval Motion may be adjourned

or rescheduled by the F&F Entities without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the service list of the CCAA proceedings prior to the Approval Motion. The F&F Entities will consult with the Monitor, the DIP Lender and the Successful Bidder regarding the application material to be filed by the F&F Entities for the Approval Motion.

31. All Phase 2 Qualified Bids (other than the Successful Bid but including the Back-Up Bid) will be deemed rejected on and as of the date of the closing of the Successful Bid, with no further or continuing obligation of the F&F Entities to any unsuccessful Phase 2 Qualified Bidders.

### ***Deposits***

32. The Deposit(s):
- a) will, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account;
  - b) received from the Successful Bidder and the Back-Up Bidder, if any, will:
    - i. be applied to the purchase price to be paid by the applicable Successful Bidder or Back-Up Bidder whose Successful Bid or Back-Up Bid, as applicable, is the subject of the Approval Order(s), upon closing of the approved transaction; and
    - ii. otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid or Back-Up Bid, provided that (i) all such documentation will provide that the Deposit will be fully refunded to the Back-Up Bidder on the Back-Up Bid Outside Date; and (ii) all such documentation will provide that the Deposit will be retained by the F&F Entities and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;
  - c) received from the Phase 2 Qualified Bidder(s) that are not the Successful Bid or the Back-Up Bidder will be fully refunded, to the Phase 2 Qualified Bidder(s) that paid the Deposit(s) as soon as practical following the closing of the Successful Bid.
33. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder will not be required to provide a Deposit.

### ***"As is, Where is"***

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

### ***Free of Any and All Claims And Interests***

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

### ***Credit Bidding***

36. The Stalking Horse Bidder will be entitled pursuant to the Stalking Horse Agreement, including for greater certainty as part of the Auction, as the case may be, to credit bid or retain as Assumed Liabilities or Retained Liabilities all or part of the existing secured obligations owing to it, including all interest, costs and fees to which the Stalking Horse Bidder is entitled pursuant to its loan, interim financing, debenture, promissory note and security agreements with the F&F Entities.

### ***Confidentiality***

37. For greater certainty, other than as required in connection with any Auction or Approval Motion, neither the F&F Entities nor the Monitor will disclose: (i) the identity of any Potential Bidder, or Phase 1 Qualified Bidder (other than the Stalking Horse Bidder); or (ii) the terms of any bid, LOI, Phase 1 Qualified Bid, Sale Proposal, Investment Proposal or Phase 2 Qualified Bid (other than the Stalking Horse Agreement), with any other bidder (provided that disclosure may be made to the DIP Lender when contemplated, by the SISP, such as in the event that no single Phase 1 Qualified Bid or Phase 2 Qualified Bid provides for net cash proceeds that are at least equal to the Minimum Purchase Price) without the consent of such party (including by way of email), subject to applicable law.

### ***Further Orders***

38. At any time during the SISP, the F&F Entities, the DIP Lender or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP including, but not limited to, the continuation of the SISP or with respect to the discharge of its powers and duties hereunder.

### ***Additional Terms***

39. In addition to any other requirement of the SISP:
- a) The F&F Entities and the Monitor, as applicable, will at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by any of the F&F Entities' stakeholders as a high potential bidder.
  - b) Any consent, approval or confirmation to be provided by the Stalking Horse Bidder, the F&F Entities and/or the Monitor is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in

substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email will be deemed to have been provided in writing for the purposes of this paragraph.

- c) Prior to seeking Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.

**APPENDIX A**  
**DEFINED TERMS**

"**Aggregated Bids**" has the meaning given to it in paragraph 14.g)ii.

"**Approval Motion**" has the meaning given to it in paragraph 30.

"**Approval Order(s)**" has the meaning given to it in paragraph 30

"**Auction**" has the meaning given to it in paragraph 28.

"**Back-Up Bid**" has the meaning given to it in paragraph 26.

"**Back-Up Bidder**" has the meaning given to it in paragraph 26.

"**Back-Up Bid Outside Date**" has the meaning given to it in paragraph 29.

"**Bid**" has the meaning given to it in the preamble.

"**Bidding Procedures**" has the meaning given to it in the preamble.

"**Binding Offer**" has the meaning given to it in paragraph 21.

"**Business**" has the meaning given to it in the preamble.

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

"**CCAA**" has the meaning given to it in the preamble.

"**CCAA Proceedings**" has the meaning given to it in the preamble.

"**Claims and Interests**" has the meaning given to it in paragraph 35.

"**Court**" has the meaning given to it in the preamble.

"**Deposit**" has the meaning given to it in paragraph 22.1).

"**DIP Lender**" means 2797031 Ontario Inc., and its successors and permitted assigns.

"**F&F Entities**" has the meaning given to it in the preamble.

"**Financing Party**" has the meaning given to it in paragraph 9.

"**Initial Order**" has the meaning given to it in the preamble.

"**Investment Proposal**" has the meaning given to it in paragraph 14.g)i.

"**LOI**" has the meaning given to it in paragraph 13.

"**Monitor**" has the meaning given to it in the preamble.

"**Minimum Purchase Price**" has the meaning given to it in paragraph 14.g)ii.

"**NDA**" has the meaning given to it in paragraph 6.d).

"**Opening Bid**" has the meaning given to it in paragraph 28.h).

"**Opportunity**" has the meaning given to it in paragraph 2.

"**Outside Date**" has the meaning given to it in paragraph 22.n).

"**Partial Sale Proposal**" has the meaning given to it in paragraph 14.g)i.

"**Phase 1 Bid Deadline**" has the meaning given to it in paragraph 13.

"**Phase 1 Qualified Bid**" has the meaning given to it in paragraph 13.

"**Phase 1 Qualified Bidder**" has the meaning given to it in paragraph 10.

"**Phase 1 Satisfactory Bid**" has the meaning given to it in paragraph 19.

"**Phase 2 Bid Deadline**" has the meaning given to it in paragraph 21.

"**Phase 2 Qualified Bid**" has the meaning given to it in paragraph 21.

"**Phase 2 Qualified Bidder**" has the meaning given to it in paragraph 19.

"**Potential Bidder**" has the meaning given to it in paragraph 9.

"**Retained Liabilities**" has the meaning given to it in the Stalking Horse Agreement.

"**Sale Proposal**" has the meaning given to it in paragraph 14.g)i.

"**SISP**" has the meaning given to it in the preamble.

"**SISP Order**" has the meaning given to it in the preamble.

"**Stalking Horse Agreement**" has the meaning given to it in the preamble.

"**Stalking Horse Bidder**" has the meaning given to it in the preamble.

"**Successful Bid**" has the meaning given to it in paragraph 26.

"**Successful Bidder**" has the meaning given to it in paragraph 26.

"**Target Closing Date**" has the meaning given to it in paragraph 22.i).

"**Teaser Letter**" has the meaning given to it in paragraph 11.

"**VDR**" has the meaning given to it in paragraph 8.