

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

B E T W E E N:

ELA CAPITAL INC.

Applicant

and

11157353 CANADA CORPORATION

Respondent

**APPLICATION UNDER s. 243 OF THE BANKRUPTCY AND
INSOLVENCY ACT (CANADA) AND s. 101 OF THE COURTS
OF JUSTICE ACT (ONTARIO)**

**MOTION RECORD OF THE RECEIVER,
KSV RESTRUCTURING INC.
(RETURNABLE APRIL 12, 2023)**

April 3, 2023

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SUPERIOR COURT OF JUSTICE
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B E T W E E N:

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**APPLICATION UNDER s. 243 OF THE BANKRUPTCY AND
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TAB 1

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

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Respondent

**APPLICATION UNDER s. 243 OF THE BANKRUPTCY AND
INSOLVENCY ACT (CANADA) AND s. 101 OF THE COURTS
OF JUSTICE ACT (ONTARIO)**

NOTICE OF MOTION

KSV Restructuring Inc. (“**KSV**”) in its capacity as the receiver (the “**Receiver**”) of the property, assets and undertaking other than excluded cannabis-related assets and business (collectively, the “**Property**”) of 11157353 Canada Corporation (the “**Company**”) will make a Motion to the court on Tuesday, April 12, 2022 at 11:00 a.m., or as soon after that time as the Motion can be heard by Zoom video-conference.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally by Zoom video conference.

THE MOTION IS FOR

1. The following Orders:

(a) an Approval and Vesting Order (the “**Germany AVO**”), among other things:

- (i) approving the sale transaction (the “**German Transaction**”) contemplated by the share purchase agreement (the “**Germany SPA**”) between the Receiver and Reflourish Capital Limited (the “**Germany Purchaser**”) dated February 14, 2023;
 - (ii) vesting in the Germany Purchaser all of the Company’s right, title and interest in and to the Purchased Shares (as defined in the Germany SPA) free and clear of all liens, claims and encumbrances, other than permitted encumbrances, upon execution and delivery of a certificate by the Receiver confirmation completion of the German Transaction; and
 - (iii) authorizing the Receiver to complete the German Transaction;
- 2. An Approval and Vesting Order (the “**Malta AVO**”), among other things:
 - (a) approving the sale transaction (the “**Malta Transaction**”) contemplated by the share purchase agreement (the “**Germany SPA**”) between the Receiver and JMCC (Canada) Corp. (the “**Malta Purchaser**”) dated March 31, 2023;
 - (b) vesting in the Malta Purchaser all of the Company’s right, title and interest in and to the Purchased Shares (as defined in the Malta SPA) free and clear of all liens, claims and encumbrances, other than permitted encumbrances, upon execution and delivery of a certificate by the Receiver confirmation completion of the Malta Transaction; and
 - (c) authorizing the Receiver to complete the Malta Transaction; and

3. An Order (“**Ancillary Order**”), among other things:
 - (a) sealing the confidential appendices to the Receiver’s First Report dated April 3, 2023 (the “**First Report**”);
 - (b) authorizing the Receiver to make distributions to repay amounts owing under the Receiver’s Borrowing Charge and the KERP (as defined below); and
 - (c) approving the First Report of the Receiver and the activities and conduct of the Receiver as described in the First Report; and
4. Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background on Receivership Proceeding

5. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 21, 2023 (the “**Receivership Order**”), KSV was appointed Receiver over the Property of the Company, which excludes the Company’s cannabis assets and business, but includes the issued and outstanding shares of Materia Ventures Malta Ltd., (“**Materia Malta**” and such shares the “**Materia Malta Shares**”), Materia Deutschland GmbH (“**Materia Germany**” and such shares the “**Materia Germany Shares**”) and Handpicked CBP Limited and Kara Wellness Limited (jointly, “**Materia UK**” and such shares the “**Materia UK Shares**” and together with the Materia Malta Shares and the Materia Germany Shares, the “**Shares**”).

6. The primary purpose of the receivership proceedings was to create a stabilized environment to enable the Receiver to conduct: (i) a stalking horse sale process for the Materia Germany Shares; and (ii) a sale process for the Materia UK Shares and the Materia Malta Shares (the “**Sale Process**”).

7. The Sale Process was necessary to realize and maximize value of the Company’s assets for the benefit of all stakeholders.

8. On February 21, 2023, the Court made an order (the “**Sale Process and KERP Order**”) approving the Sale Process, approving a key employee retention plan (“**KERP**”) for the only individual employed by the Company, and granting a charge to secure the KERP (the “**KERP Charge**”). Pursuant to the Sale Process and KERP Order, the terms of the KERP were sealed from the public record until 30 days after the completion of the Sale Process, or until further Order of the Court.

Sale Process

9. Following issuance of the Sale Process and KERP Order, the Sale Process was carried out in accordance with its terms. Among other things, the Receiver:

- (a) prepared an interest solicitation letter to potential purchasers and investors detailing the acquisition opportunity (“**Teaser**”);
- (b) prepared a non-disclosure agreement (“**NDA**”);
- (c) established a data room containing historical and projected financial information and other information;

- (d) prepared a soft copy of the Germany SPA and a template share purchase agreement for the Malta Shares;
 - (e) prepared a Confidential Information Memorandum (“**CIM**”);
 - (f) distributed the Teaser to 185 potentially interested parties, attaching the NDA that parties were required to sign to obtain access to the data room;
 - (g) published the Notice of the Sale Process online; and
 - (h) advised interested parties of the required consideration for a “Qualified Bid” pursuant to the terms of the Sale Process.
10. A summary of the Sale Process is provided in the Receiver’s First Report. As a summary:
- (a) 25 parties executed an NDA and were provided with a copy of the CIM as well as access the data room;
 - (b) Three bids were received for the Malta Shares before the Bid Deadline;
 - (c) Four bids, including the stalking horse bid, were received for the Germany Shares before the Bid Deadline; and
 - (d) One bid was received for the UK Shares before the Bid Deadline.
11. Two bids received for the Germany Shares contemplated a nominal purchase price higher than the Germany SPA. However, one of these bidders revised the form of consideration payable

shortly after the Bid Deadline, from a bid comprising solely of cash to a bid combining cash and shares of its private company, and the second bid was comprised solely of unsecured notes payable.

12. As such, these bids did not meet the attributes of a qualified bid and the German SPA from the stalking horse bidder was determined to be the successful bid by the Receiver, in consultation with ELA in accordance with the Sale Process.

13. The purchase price in the sole bid received for the UK Shares comprised only unsecured notes payable. The lack of cash and the low value of the offer resulted in the bid not being further considered. The Receiver will consider next steps for the UK Shares, including terminating efforts to sell them by the Receiver.

Germany SPA and Germany Transaction

14. The terms of the successful bid for the Germany Shares are set out in the Germany SPA. A summary of the Germany SPA is as follows (all capitalized terms not otherwise defined below are as defined in the Germany SPA):

- (a) **Purchaser:** ReFlourish Capital Limited
- (b) **Purchased Shares:** 100% of the issued and outstanding share capital of Materia Germany
- (c) **Purchase Price:** €400,000

- (i) The Purchaser shall satisfy the Purchase Price by providing a credit and corresponding reduction in the Debt in the amount of the Purchase Price as follows:
 - (1) a credit to Materia and corresponding reduction in the total amount of the Materia Debt; and
 - (2) a credit to the Receiver and corresponding reduction in the Receiver Debt in an amount equal to the balance of the Purchase Price.
- (d) **No Cash Payment on Closing:** provided that the Purchaser has advanced to the Receiver all advances required to be made by the Purchaser on Closing, the Purchaser shall not be required to fund any amounts owing under the KERP Charge, the Receiver's Borrowings Charge or the Receiver's Charge; provided, however, in the event that cash from operations and proceeds received from the closing of the sale(s) of the other assets of Materia is insufficient to satisfy amounts owing under the Receiver's Charge, the Purchaser will fund, in cash on Closing, amounts owing under the Receiver's Charge that are documented and reasonably incurred by the Receiver to consummate the Transaction.
- (e) **Representation and Warranties:** Consistent with the terms of a standard insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties.
- (f) **Outside Date:** April 30, 2023

- (g) **Material Conditions:** The only material conditions precedent are as follows: (i) the Purchaser shall be the Successful Germany Share Bid; (ii) there shall not have been a Material Adverse Change; (iii) all authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of this Agreement by the Receiver hereunder or the purchase of the Purchased Shares shall have been obtained; and (iv) issuance of the Germany AVO.

Malta SPA and Malta Transaction

15. The terms of the successful bid for the Malta Shares are set out in the Malta SPA. A summary of the Malta SPA is as follows (all capitalized terms not otherwise defined below are as defined in the Malta SPA):

- (a) **Purchaser:** JMCC (Canada) Corp. (“**JMCC**”)
- (b) **Purchased Shares:** 100% of the issued and outstanding share capital of Materia Malta
- (c) **Purchase Price:** Subject to sealing order request
- (d) **Purchase Price Adjustments:** JMCC advised that it had identified certain liabilities of approximately €599,000 related to Materia Malta, which reflected the purchase price JMCC could afford. The Receiver understands these potential liabilities are lower than contemplated. On the other hand, because the operating entity is a Malta Entity to which the Malta AVO will not directly apply, JMCC was

concerned about the discovery of additional liabilities. Accordingly, the Receiver and JMCC agreed upon a mechanic to potentially adjust the purchase price upward or downward as follows:

- (i) the Receiver is entitled to negotiate certain Liabilities in the aggregate amount of €599,000 that were identified by JMCC. The Purchase Price shall increase on a dollar-for-dollar basis by any agreed-upon reductions to such liabilities; and
 - (ii) the Purchase Price shall decrease, on a dollar-for-dollar basis, on account of all liabilities of the Purchased Entity and Malta subsidiary which the Purchaser becomes aware of and which are disclosed to the Receiver no later than April 11, 2023 or the last Business Day prior to the date for the Court hearing for the Malta AVO, whichever is later. If the quantum of Additional Liabilities resulting in a reduction of the Purchase Price exceeds \$300,000, the Receiver or the Purchaser may terminate the Malta SPA. Based on the Receiver's information, it is highly unlikely that additional liabilities exceeding \$300,000 exist.
- (e) **Representation and Warranties:** Consistent with the terms of a standard insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties.
- (f) **Outside Date:** May 5, 2023.

- (g) **Material Conditions:** The only material conditions precedent are that: (i) there shall not have been any Material Adverse Change; (ii) all authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of the Malta SPA by the Receiver or the purchase of the Purchased Shares shall have been obtained; (iii) receipt of certificate of status and compliance from Government; (iv) neither the Purchased Entity nor the Malta Subsidiary has any obligation or Liability (whether as borrower, obligor, guarantor or otherwise) in respect of, and there are not in existence any Encumbrances in respect of the Purchased Entity, the Malta Subsidiary or their respective assets, property or the Business to secure, support or satisfy the payment of, any Funded Indebtedness (including any indebtedness owing to the Material Lenders or to Material or any of its Affiliates), except and solely to the extent of any such Funded Indebtedness that is Discharged at or before the Closing Time; (v) the Court shall have issued the Malta AVO.
- (h) **Releases Covenant:** at closing, the Receiver shall deliver or cause to be delivered to the Purchaser a release and discharge executed by each of the Material Lenders, Material and its Affiliates (other than the Purchased Entity and the Malta Subsidiary) in favour of the Purchaser, the Purchased Entity and the Malta Subsidiary, in form acceptable to the Purchaser, unconditionally and irrevocably forever releasing and discharging any and all Encumbrances against or in respect of the Purchased Shares, the Purchased Entity, the Malta Subsidiary, the Business and their respective assets and properties. Since the Malta AVO does not directly

discharge liabilities of the Malta subsidiaries, JMCC sought additional comfort from the secured creditors that they have no direct claims against the Malta subsidiaries' assets by way of a release as a closing document. The Receiver has engaged with all three secured creditors and believes releases can be obtained prior to closing.

16. The Receiver recommends that the Court issue orders approving the Germany Transaction and the Malta Transaction for the following reasons:

- (a) the Sale Process was conducted in accordance with the terms of the Sale Process and KERP Order;
- (b) the Transactions maximize value for the secured creditors;
- (c) the Transactions contemplate the continuation of the operations, including preserving the jobs of approximately six employees and three contractors for Malta and three employees and three contractors for Germany;
- (d) the Receiver is unaware of any party who is prepared to continue to fund the Company's business and operations, or fund a further marketing process for the Company's business and assets;
- (e) absent the Transactions being approved and implemented in the near term, the Company will need to cease operations; and
- (f) Ela, being the principal economic stakeholder, supports the relief sought including the approval of the Malta SPA and the Germany SPA, and the Transactions.

Requested Sealing Order

17. The Receiver requests that the confidential appendices to the Receiver's First Report be sealed from the public record. The confidential appendices contain the Offer Summary and the unredacted Malta SPA. These documents contain confidential information, which, if disclosed, may negatively impact realizations on the Malta Shares in the event that the Malta Transaction does not close.

Approval of First Report and Receiver's Activities

18. The Receiver seeks this Court's approval of the Receiver's conduct and activities, as described in the First Report.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The First Report of the Receiver dated April 3, 2023; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 3, 2023

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ELA CAPITAL INC.

and

11157353 CANADA CORPORATION

Court File No. CV-23-00694886-00CL

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding Commenced at
Toronto

NOTICE OF MOTION
(RETURNABLE APRIL 12, 2023)

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TAB 2



**First Report of
KSV Restructuring Inc.
as Receiver and Manager of
11157353 Canada Corporation**

April 3, 2023

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Court File No. CV-23-00694886-00CL

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BETWEEN:

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Respondent

FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER

April 3, 2023

1.0 Introduction

1. This report ("**Report**") is filed by KSV Restructuring Inc. ("**KSV**") as receiver (the "**Receiver**") of the property, assets and undertaking other than excluded cannabis-related assets and business (collectively, the "**Property**") of 11157353 Canada Corporation (the "**Company**").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on February 21, 2023 (the "**Receivership Order**"), KSV was appointed Receiver. The definition of "Property" under the Receivership Order excludes cannabis assets and business, but includes the issued and outstanding shares of Materia Ventures Malta Ltd., ("**Materia Malta**" and such shares the "**Materia Malta Shares**"), Materia Deutschland GmbH ("**Materia Germany**" and such shares the "**Materia Germany Shares**") and Handpicked CBP Limited and Kara Wellness Limited (jointly, "**Materia UK**" and such shares the "**Materia UK Shares**" and together with the Materia Malta Shares and the Materia Germany Shares, the "**Shares**").
3. The primary purpose of the receivership proceedings was to create a stabilized environment to enable the Receiver to conduct: (i) a stalking horse sale process for the Materia Germany Shares; and (ii) a sale process for the Materia UK Shares and the Materia Malta Shares (the "**Sale Process**").

4. On February 21, 2023, the Court made an order (the “**Sale Process and KERP Order**”) approving the Sale Process, approving a key employee retention plan (“**KERP**”) for the only individual employed by the Company, and granting a charge to secure the KERP (the “**KERP Charge**”). Pursuant to the Sale Process and KERP Order, the terms of the KERP were sealed from the public record until 30 days after the completion of the Sale Process, or until further Order of the Court.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) summarize the results of the Sale Process;
 - c) summarize the terms of a transaction for the Materia Germany Shares (the “**German Transaction**”) pursuant to a Share Purchase Agreement dated February 14, 2023 (the “**Germany SPA**”) between the Receiver, as seller, and ReFlourish Capital Ltd. (“**ReFlourish**”), as purchaser and the stalking horse bidder in the Sale Process (the “**Germany Purchaser**”);
 - d) summarize the terms of a transaction for the Materia Malta Shares (the “**Malta Transaction**”) and together with the German Transaction, the “**Transactions**”) pursuant to a Share Purchase Agreement dated March 31, 2023 (the “**Malta SPA**”) and together with the Germany SPA, the “**SPAs**”) between the Receiver, as seller, and JMCC (Canada) Corp. (the “**Malta Purchaser**”) and together with the Germany Purchaser, the “**Purchasers**”), as purchaser;
 - e) summarize the Receiver’s activities since the date of the Receivership Order;
 - f) recommend that the Court issue the following Orders:
 - i. an Approval and Vesting Order consisting of the following substantive relief (the “**Germany AVO**”):
 - approving the Germany SPA;
 - authorizing the Receiver to complete the German Transaction; and
 - vesting title in and to the Materia Germany Shares in the Germany Purchaser, free and clear of all liens, claims and encumbrances, other than permitted encumbrances upon execution and delivery of a certificate by the Receiver confirming completion of the German Transaction; and
 - ii. an Approval and Vesting Order consisting of the following substantive relief (the “**Malta AVO**”):
 - approving the Malta SPA;

- authorizing the Receiver to complete the Malta Transaction; and
 - vesting title in and to the Materia Malta Shares in the Malta Purchaser, free and clear of all liens, claims and encumbrances, other than permitted encumbrances, upon execution and delivery of a certificate by the Receiver confirming completion of the Malta Transaction; and
- iii. an Ancillary Order (“**Ancillary Order**”), among other things:
- approving the repayment of the Receiver’s Borrowing Charge and the payout of the KERP Charge;
 - sealing the confidential appendices to this Report until the closing of the Transactions; and
 - approving this Report and the activities of the Receiver described herein.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon the Company’s unaudited financial information, the Company’s books and records, and discussions with representatives of Ela Capital Inc. (“**Ela**”) and its legal counsel, Reconstruct LLP.
2. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the Company’s financial and other information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
3. The Receiver expresses no opinion or other form of assurance with respect to the financial and other information presented in this Report or relied upon by the Receiver in preparing this Report. Other than the Court, any party wishing to place reliance on the Company’s financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

2.0 Background

1. The Company serves as a holding company for the Shares.
2. The Company is one of the multiple companies worldwide that conducts business under the name “Materia”.
3. The Company employs one individual, the Manager, who oversees the operations of the subsidiaries. The Company funded the operations of Materia Germany, Materia UK and Materia Malta using funds raised by its shareholders and lenders.

4. Vijay Sappani is a director of the Company.
5. The Receiver has been advised that there are no current financial statements for the Company. The Receiver understands that the only assets the Company holds are the Shares.
6. Additional background information about the Company is provided in the Pre-Filing Report of KSV in its capacity as the proposed Receiver dated February 17, 2023 and in the Court materials filed in these proceedings which are available on the Receiver's website at <https://www.ksvadvisory.com/experience/case/materia>.

2.1 Materia Malta

1. Materia Malta owns and operates a fully licensed medical cannabis import, manufacturing and export facility located in Malta. The Malta factory is certified in accordance with the European Union ("EU") Good Manufacturing Practice ("GMP") certification. Materia Malta employs 4 individuals and has 5 contractors.
2. Materia Malta imports flowers and converts them into EU-GMP-certified cannabis. Materia Malta then sells those products to Materia Germany.

2.2 Materia Germany

1. Materia Germany owns and operates a fully licensed, EU-GMP-certified cannabis import, labelling, packaging and distribution facility located in Germany. Materia Germany employs one individual and three contractors.

2.3 Materia UK

1. Materia UK has no active operations. Materia UK owns certain technology infrastructure, including an e-commerce website, as well as a customer list and has banking arrangements with Barclays, which the Receiver understands may have some value given that it is difficult to access first-tier banking in the United Kingdom.

3.0 Creditors

3.1 Secured Creditors

3.1.1 Ela

1. Ela currently owns approximately 25% of the Company's common shares.
2. In addition to its equity investment, Ela made several secured loans to the Company during 2021 and 2022. The total amount owing to Ela under these loans is approximately \$3,251,214. Interest and costs continue to accrue.
3. Mr. Sappani is Ela's sole director and officer.

3.1.2 Other Secured Lenders

1. The Company has a secured loan in the principal amount of \$1 million owing to Kanabo Group Plc. (“**Kanabo**”). Interest and costs continue to accrue. Through counsel, the Receiver engaged with counsel for Kanabo in connection with certain matters related to the Sale Process and the sale of the Malta Shares. Counsel for Kanabo advised that they have or may have certain disputes with Ela related to the priority of Kanabo’s and Ela’s respective claims. The Receiver advised that inter-creditor priority disputes are a distribution issue, and that no distribution to secured creditors is being sought at this time. The Receiver confirmed to Kanabo’s and Ela’s respective counsel that any priority dispute will need to be either consensually resolved or adjudicated prior to a distribution on account of pre-filing secured indebtedness to those secured creditors.
2. The Company also has secured loans in the amount of approximately €309,089 (interest and costs inclusive) owing to the Germany Purchaser. These loans were originally made by Alastair Crawford (“**Crawford**”), a principal of the Germany Purchaser.
3. In connection with the loans, the Company granted a security interest in the Materia Germany Shares pursuant to a share pledge agreement governed by German law (the “**German Security**”).
4. On February 14, 2023, Crawford assigned his security interest in the Materia Germany Shares to the Germany Purchaser.

3.1.3 Receiver’s Borrowing Charge

1. The Receivership Order authorizes the Receiver to borrow funds from Ela and ReFlourish to a maximum of \$575,000 pursuant to a Term Sheet dated February 21, 2023. The Receiver has borrowed a total of \$352,198¹, comprised of \$190,198 from ReFlourish and \$162,000 from Ela. The amounts borrowed rank *pari passu* and are secured by a charge on the Property in priority to all other claims other than the Receiver’s Charge (as defined in the Receivership Order) (the “**Receiver’s Borrowing Charge**”).

3.1.4 Security Review

1. The Receiver understands that the Materia Germany Shares are uncertificated securities. Accordingly, pursuant to the provisions of the Ontario *Personal Property Security Act*, German law governs the validity, perfection and priority of security interests in the Materia German Shares. KSV was advised prior to the receivership proceedings that the Germany Purchaser intended to submit a stalking horse credit bid. Accordingly, KSV in its capacity as proposed Receiver retained German counsel to review the validity of the German Security. The Receiver’s German counsel provided an opinion that the German Security is a valid, binding and enforceable security interest against the Materia Germany Shares under German law.

¹ US\$142,545 was received from ReFlourish, converted per Bank of Canada on the date received, February 13, 2023.

2. All of the obligations owing to Ela and Kanabo are secured by substantially all of the Property pursuant to various security documents, including general security agreements entered into by the Company (the “**Security Documents**”). Prior to instructing counsel to review the Security Documents, the Receiver determined it to be necessary to first review the results of the Sale Process to determine if any amounts would be available for distribution to Ela and Kanabo. Based on the results of the Sale Process, it appears amounts may be available and, accordingly, the Receiver has instructed counsel to perform a security review of the Security Documents, which will be addressed prior to seeking a distribution order from this Court.

3.2 Unsecured Creditors

1. Based on the Company’s books and records, as of January 31, 2023, the Company’s accounts payable totaled approximately \$320,000.

4.0 Sale Process

4.1 Pre- Marketing Process

1. In advance of the Sale Process, the Receiver prepared:
 - a) an interest solicitation letter to potential purchasers and investors detailing the acquisition opportunity (“**Teaser**”);
 - b) a non-disclosure agreement (“**NDA**”);
 - c) a data room containing historical and projected financial information and other information, including corporate documents and shareholder register, financial statements and model, licenses, lease agreements, supplier agreements and service contracts;
 - d) a soft copy of the Germany SPA and a template share purchase agreement for the Malta Shares, both of which were made available in the data room; and
 - e) a Confidential Information Memorandum (“**CIM**”), which included a summary of the Company, Materia Malta, Materia Germany, Materia UK and details concerning the Sale Process.

4.2 Marketing Process

1. The marketing process following issuance of the Sale Process and KERP Order is summarized below:
 - a) The Receiver distributed the Teaser to 185 potentially interested parties. Attached to the Teaser was the NDA that parties were required to sign to obtain access to the data room;
 - b) Notice of the Sales Process was published in the Insolvency Insider on February 27, 2023;

- c) Only in respect of the German Shares, interested parties were advised that a “Qualified Bid” must be a minimum of at least €400,000 (or equivalent in Canadian dollars) in cash due on closing of a transaction plus (i) a minimum incremental amount of \$6,000; and (ii) up to \$45,000, comprising the aggregate amount of the bid protections;
- d) In order to facilitate the comparison of offers received and to reduce the cost of reviewing and negotiating various forms of offers, interested parties were encouraged to submit their offers in the form of the agreements provided in the data room, and to blackline any changes made to those agreements; and
- e) The deadline to submit offers was March 23, 2023 (the “**Bid Deadline**”).

4.3 Sale Process Results

1. A summary of the results of the Sale Process is as follows:
 - a) 25 parties executed an NDA and were provided with a copy of the CIM as well as access to the data room;
 - b) Three bids were received for the Malta Shares before the Bid Deadline;
 - c) Four bids, including the stalking horse bid, were received for the Germany Shares before the Bid Deadline; and
 - d) One bid was received for the UK Shares before the Bid Deadline.
2. A summary of the offers received is provided in Confidential Appendix “1” (the “**Offer Summary**”). The Receiver’s rationale for seeking a sealing order with respect to the Offer Summary is provided in Section 7 below.
3. Two bids received for the Germany Shares contemplated a purchase price marginally higher than the Germany SPA. However, one bidder revised the form of consideration payable shortly after the Bid Deadline, from a bid comprising solely of cash to a bid combining cash and shares of its private company. The second bid was comprised solely of unsecured notes payable. As such, these bids did not meet the attributes of a qualified bid and the German SPA from the stalking horse bidder was determined to be the successful bid by the Receiver, in consultation with Ela in accordance with the Sale Process.
4. The proposed successful bids for the Germany Shares and Malta Shares are summarized below. The purchase price in the sole bid received for the UK Shares comprised only unsecured notes payable. The lack of cash and the low value of the offer resulted in the bid not being further considered. The Receiver will consider next steps for the UK Shares, including terminating efforts to sell them by the Receiver.

5.0 Germany SPA²

1. A copy of the Germany SPA is provided in **Appendix “A”**. A summary of the Germany SPA is as follows:

- a) **Purchaser:** ReFlourish
- b) **Purchased Shares:** 100% of the issued and outstanding share capital of Materia Germany;
- c) **Purchase Price:** €400,000.

The Purchaser shall satisfy the Purchase Price by providing a credit and corresponding reduction in the Debt in the amount of the Purchase Price as follows:

- (i) a credit to Materia and corresponding reduction in the total amount of the Materia Debt; and
 - (ii) a credit to the Receiver and corresponding reduction in the Receiver Debt in an amount equal to the balance of the Purchase Price.
- d) **No Cash Payment on Closing:** provided that the Purchaser has advanced to the Receiver all advances required to be made by the Purchaser on Closing, the Purchaser shall not be required to fund any amounts owing under the KERP Charge, the Receiver’s Borrowings Charge or the Receiver’s Charge; provided, however, in the event that cash from operations and proceeds received from the closing of the sale(s) of the other assets of Materia is insufficient to satisfy amounts owing under the Receiver’s Charge, the Purchaser will fund, in cash on Closing, amounts owing under the Receiver’s Charge that are documented and reasonably incurred by the Receiver to consummate the Transaction.
- e) **Representation and Warranties:** Consistent with the terms of a standard insolvency transaction, i.e., on an “as is, where is” basis, with limited representations and warranties.
- f) **Outside Date:** April 30, 2023.
- g) **Material Conditions:** The only material conditions precedent are as follows: (i) the Purchaser shall be the Successful Germany Share Bid; (ii) there shall not have been a Material Adverse Change; (iii) all authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of this Agreement by the Receiver hereunder or the purchase of the Purchased Shares shall have been obtained; and (iv) issuance of the Germany AVO.

² Defined terms in this section of the Report have the meanings provided to them in the Germany SPA.

6.0 Malta SPA

1. A redacted version of the Malta SPA is attached as Appendix “B”, with the only redaction being to the purchase price. An unredacted version of the Malta SPA is provided in **Confidential Appendix “2”**. A summary of the Malta SPA is as follows:
 - a) **Purchaser:** JMCC (Canada) Corp. (“**JMCC**”)
 - b) **Purchased Shares:** 100% of the issued and outstanding share capital of Materia Malta;
 - c) **Purchase Price:** For the reasons noted in Section 7 below, the Receiver recommends that the Purchase Price be sealed.
 - d) **Purchase Price Adjustments:** JMCC effectively reduced its purchase price for because it will be required to assume potential trade liabilities of approximately €599,000 related to Materia Malta, as such potential liabilities are at the subsidiary level in Malta that would not be vested out with the Malta AVO. Accordingly, the parties agreed on a purchase price adjustment that will allow the Receiver the opportunity to settle such potential trade liabilities and obtain a dollar-for-dollar increase to the purchase price. On the other hand, the purchase price may also adjust downward if JMCC discovers additional liabilities at the Malta entities and the Receiver is unable to settle such additional liabilities:
 - (i) the Receiver is entitled to negotiate certain Liabilities in the aggregate amount of €599,000. The Purchase Price shall increase on a dollar-for-dollar basis by any agreed-upon reductions to such liabilities; and
 - (ii) the Purchase Price shall decrease, on a dollar-for-dollar basis, on account of all liabilities of the Purchased Entity and Malta subsidiary which the Purchaser becomes aware of and which are disclosed to the Receiver no later than April 11, 2023 or the last Business Day prior to the date for the Court hearing for the Malta AVO, whichever is later. If the quantum of Additional Liabilities resulting in a reduction of the Purchase Price exceeds \$300,000, the Receiver or the Purchaser may terminate the Malta SPA. Based on the Receiver’s information, it is highly unlikely that additional liabilities exceeding \$300,000 exist.
 - e) **Representations and Warranties:** Consistent with the terms of a standard insolvency transaction, i.e., on an “as is, where is” basis, with limited representations and warranties.
 - f) **Outside Date:** May 5, 2023

- g) **Material Conditions:** The only material conditions precedent are that: (i) there shall not have been any Material Adverse Change; (ii) all authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of the Malta SPA by the Receiver or the purchase of the Purchased Shares shall have been obtained; (iii) receipt of certificate of status and compliance from Government; (iv) Neither the Purchased Entity nor the Malta Subsidiary has any obligation or Liability (whether as borrower, obligor, guarantor or otherwise) in respect of, and there are not in existence any Encumbrances in respect of the Purchased Entity, the Malta Subsidiary or their respective assets, property or the Business to secure, support or satisfy the payment of, any Funded Indebtedness (including any indebtedness owing to the Material Lenders or to Material or any of its Affiliates), except and solely to the extent of any such Funded Indebtedness that is Discharged at or before the Closing Time; and (v) the Court shall have issued the Malta AVO.
- h) **Releases Covenant:** at closing, the Receiver shall deliver or cause to be delivered to the Purchaser a release and discharge executed by each of the Material Lenders, Material and its Affiliates (other than the Purchased Entity and the Malta Subsidiary) in favour of the Purchaser, the Purchased Entity and the Malta Subsidiary, in form acceptable to the Purchaser, unconditionally and irrevocably forever releasing and discharging any and all Encumbrances against or in respect of the Purchased Shares, the Purchased Entity, the Malta Subsidiary, the Business and their respective assets and properties. Since the Malta AVO does not directly discharge liabilities of the Malta subsidiaries, JMCC sought additional comfort from the secured creditors that they have no direct claims against the Malta subsidiaries' assets by way of a release as a closing document. The Receiver has engaged with all three secured creditors and believes releases can be obtained prior to closing.

7.0 Sealing

1. The Receiver respectfully requests that the Offer Summary and the unredacted Malta SPA be filed with the Court on a confidential basis and be sealed ("**Sealing Order**") as the documents contain confidential information. If the terms of the Malta SPA and the Offer Summary are not sealed, the information may negatively impact realizations on the Malta Shares in the event that the Malta Transaction does not close.
2. The Receiver is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances. The Receiver is not seeking a sealing order in respect of the German SPA as this was made public during the Sale Process.

8.0 Receiver's Recommendations with respect to the Transactions

1. The Receiver recommends that the Court issue orders approving the Transactions for the following reasons:
 - a) the Sale Process was conducted in accordance with the terms of the Sale Process and KERP Order;
 - b) the Transactions generate the maximum cash proceeds;
 - c) the Transactions contemplate the continuation of the operations, including preserving the jobs of approximately six employees and three contractors for Malta and three employees and three contractors for Germany;
 - d) the Receiver is unaware of any party who is prepared to continue to fund the Company's business and operations, or fund a further marketing process for the Company's business and assets;
 - e) absent the Transactions being approved and implemented in the near term, the Company will need to cease operations; and
 - f) Ela, being the principal economic stakeholder, supports the relief sought including the approval of the Malta SPA and the Germany SPA, and the Transactions.

9.0 Next Steps

1. Following the closing of the Transactions, the Receiver intends to repay the amounts owing under the Receiver's Borrowing Charge and the amounts owing under the KERP Charge. Accordingly, the Receiver seeks this Court's approval to make distributions to repay these amounts.
2. The Receiver expects a small amount of remaining funds to be available to distribute to Ela and Kanabo. As discussed above, there is a dispute between these parties regarding the priority of their loans. The Receiver is hopeful that the dispute can be resolved consensually given the limited funds available. Any dispute that needs to be adjudicated will likely erode the expected remaining funds available. The Receiver intends to seek a distribution order prior to making any distribution to Ela and Kanabo in respect of their pre-filing loans.

10.0 Receiver's Activities

1. In addition to the activities addressed in this Report, the Receiver's activities have included:
 - a) Corresponding frequently during the period with Reconstruct LLP and Miller Thompson, the Receiver's counsel;
 - b) Meeting and corresponding extensively with Ela;

- c) Preparing for the Company's receivership, including drafting a checklist of matters to be addressed;
- d) Reviewing several versions of receivership materials, including;
 - Notice of Application;
 - Affidavit of Benjamin Trefler;
 - Receivership Order;
 - the Stalking Horse Share Purchase Agreement between Reflourish and the Company for the German Shares;
 - Receiver's Borrowing Term Sheet;
 - the Sale Process; and
 - the Sale Process and KERP Order;
- e) Corresponding with the Company and reviewing financial and other information provided by the Company, including the Company's operating financial model, financial forecasts and historical financial information;
- f) Researching and corresponding with the Company to compile a potential buyers' list;
- g) Contacting interested parties regarding the opportunity;
- h) Corresponding extensively with potential buyers to execute the confidentiality agreement, provide information on the Sale Process, and arrange access to the virtual data room;
- i) Corresponding with the Company and potential buyers to respond to due diligence questions;
- j) Preparing the report to Court as proposed receiver dated February 17, 2023;
- k) Attending at Court, virtually, on February 21, 2023 for the hearing of the receivership application;
- l) Drafting and sending to all creditors of the Company the Notice and Statement of the Receiver dated February 28, 2023 pursuant to sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- m) Reviewing offers received in the Sale Process; and
- n) Preparing this Report.

11.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(f) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
OF THE PROPERTY, ASSETS AND UNDERTAKING OF
11157353 CANADA CORPORATION**

Appendix “A”

**KSV RESTRUCTURING INC., solely in its capacity as receiver and receiver and manager
of 11157353 CANADA CORP., and not in its personal or corporate capacity**

- AND -

REFLOURISH CAPITAL LIMITED

SHARE PURCHASE AGREEMENT

DATED FEBRUARY 14, 2023

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SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT dated February 14, 2023 is made by and between:

KSV Restructuring Inc. (“**KSV**”), solely in its capacity as receiver and receiver and manager of 11157353 Canada Corp. (“**Materia**”), a corporation incorporated under the laws of Canada, and not in its personal or corporate capacity
(hereinafter, the “**Receiver**”)

- and -

ReFlourish Capital Limited, a corporation incorporated under the laws of the British Virgin Islands
(hereinafter, the “**Purchaser**”)

RECITALS:

WHEREAS on February 21, 2023, the Ontario Superior Court (Commercial List) (the “**Court**”) granted an Order (the “**Receivership Order**”) appointing KSV as the Receiver of all of the assets, undertakings and properties of Materia, other than certain excluded assets and excluded business;

AND WHEREAS on February 21, 2023, the Court granted an Order (“**Sale Process Order**”), *inter alia*, authorizing and directing the Receiver to carry out a sale process (“**Sale Process**”) in accordance with its terms;

AND WHEREAS the Purchaser has agreed to act as a “stalking horse bidder” in the Sale Process for the purchase of the Purchased Shares (as defined herein) on the terms and conditions set forth in this Agreement;

AND WHEREAS if this Agreement is determined to be the Successful Germany Share Bid in accordance with the Sale Process, and subject to the granting of the Approval and Vesting Order and the satisfaction of the other conditions set forth herein, the Receiver has agreed to sell, and the Purchaser agrees to purchase the Purchased Shares on the terms and conditions set forth in this Agreement;

AND WHEREAS the Parties hereby acknowledge that the Receiver is entering into this Agreement in its capacity as Court-appointed receiver of Materia, and not in its personal or corporate capacity; and

NOW THEREFORE in consideration of the covenants and mutual promises set forth in this Agreement (including the recitals hereof) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions.

In this Agreement.

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

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

“Agreement” means this Share Purchase Agreement between the Receiver and the Purchaser, as may be amended, supplemented, restated or otherwise modified in accordance with the terms hereof.

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order (including any securities laws or requirements of stock exchanges and any consent decree or administrative Order) or other requirement having the force of law (**“Law”**), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“Approval and Vesting Order” means an order issued by the Court in the form attached hereto as Schedule “A” and otherwise acceptable to the Purchaser, the Receiver and the Court authorizing the Transaction and vesting in the Purchaser (or as it may direct) all of the right, title and interest of Materia in and to the Purchased Shares.

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

“Books and Records” means all books, records, files, papers, books of account and financial data including, without limitation, Tax Returns and customer and employee

records, related to the Purchased Shares or the Business in the possession, custody or control of the Receiver or Materia.

“**Break Fee**” has the meaning set out in Section 7.3(a).

“**Business**” means the business and operations carried on by the Purchased Entity as at the date of this Agreement and as at the Closing Date.

“**Business Day**” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the Province of Ontario.

“**Closing**” means the completion of the Transaction in accordance with the provisions of this Agreement.

“**Closing Date**” means the date on which Closing occurs.

“**Closing Time**” has the meaning set out in Section 5.1.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Debt**” means the indebtedness owing to the Purchaser by the Receiver and Materia comprised of: (a) all amounts borrowed by the Receiver from the Purchaser in these Receivership Proceedings (the “**Receiver Debt**”), to be evidenced and secured by a Receiver’s Certificate issued pursuant to the Receivership Order; and (b) approximately €309,089, inclusive of principal and interest as of January 30, 2023 (the “**Materia Debt**”), owing by Materia to the Purchaser pursuant to, (i) the Loan Agreement, dated November 21, 2022, between Materia and Alastair Crawford, and (ii) the Promissory Note, dated December 9, 2022 between Materia and Alastair Crawford, each as amended pursuant to the Amendment to Loan Agreement, dated January 10, 2023 and assigned by Alastair Crawford to the Purchaser.

“**Discharged**” means, in relation to any Encumbrance against any Person or upon any asset, undertaking or property, including all proceeds thereof, the full, final, complete and permanent waiver, release, discharge, cancellation, termination and extinguishment of such Encumbrance against such Person or upon such asset, undertaking or property and all proceeds thereof.

“**Ela**” means Ela Capital Inc.

“**Encumbrances**” means all claims, Liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights) and encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

“**Excise Tax Act**” means the *Excise Tax Act, 2001*, SC 2002, c 22.

“Expense Reimbursement Fee” has the meaning set out in Section 7.3.

“Governmental Authority” means the government of Canada, or any other nation, or of any political subdivision thereof, whether state, provincial (including the government of Ontario), territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, arbitrator or arbitrators, tribunal, central bank or other entity exercising executive, legislative, judicial or arbitral, taxing, regulatory or administrative powers or functions (including any applicable stock exchange).

“GST/HST” means all goods and services tax and harmonized sales tax imposed under Part IX of the Excise Tax Act.

“Interim Period” means the period from the date that the Sale Process Order is granted, to the earlier of the date that the offer submitted by the Purchaser pursuant to this Agreement is declared to not be the “Successful Bid” pursuant to the Sale Process or the Closing Time, as applicable.

“KERP Charge” has the meaning set out in the Receivership Order.

“KSV” means KSV Restructuring Inc.

“Law” has the meaning set out in the definition of **“Applicable Law”**.

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

“Liability” means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Materia” means 11157353 Canada Corp.

“Materia Debt” has the meaning set out in the definition of **“Debt”**.

“Material Adverse Change” means any fact, matter, event, circumstance, condition or change which materially and adversely affects, or could reasonably be expected to materially and adversely affect, the Business, operations, assets, liabilities, condition (whether financial, trading or otherwise) or operating results of the Purchased Entity and includes, without limitation: (a) the Purchased Entity ceasing to operate its Business in substantially the same manner as conducted on the date of this Agreement; (b) the removal, disposal, sale, transfer or assignment of the Purchased Entity’s assets, other than in the ordinary course of business; (c) the revocation, suspension, annulment or termination of

any licenses held by the Purchased Entity and material to the operation of the Business; and (d) any non-arms' length transaction involving the Purchased Entity's assets or the Business without the prior written approval of the Purchaser.

"Order" means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

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

"Outside Date" means April 30, 2023, or such other date as the Receiver and the Purchaser may agree to in writing.

"Party" means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **"Parties"** means more than one of them.

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal Representatives of an individual in such capacity.

"Personal Property" means all machinery, equipment, furniture, motor vehicles and other personal property that is related to the Business, wherever located (including those in possession of suppliers, customers and other third parties).

"Purchase Price" has the meaning set out in Section 2.2.

"Purchased Entity" means Materia Deutschland GmbH, a limited liability company incorporated under the laws of Germany, with its statutory seat in Hamburg, Germany, registered with the commercial register of the local court of Hamburg under HRB 152716.

"Purchased Shares" means 100% of the issued and outstanding shares in the share capital of the Purchased Entity, as more particularly described in Schedule "B" hereto.

"Purchaser" means ReFlourish Capital Limited.

"Qualified Bidders" has the meaning given to it in the Sales Process.

"Receiver" means KSV Restructuring Inc. in its capacity as court-appointed receiver and receiver and manager in the Receivership Proceedings.

"Receiver Debt" has the meaning set out in the definition of **"Debt"**.

"Receiver's Borrowings Charge" has the meaning set out it in the Receivership Order.

"Receiver's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Approval and Vesting Order, to be delivered by the Receiver to the

Purchaser on Closing and thereafter filed by the Receiver with the Court which shall, among other things, effect the vesting of the Purchased Shares in the Purchaser.

“Receiver’s Charge” has the meaning set out in the Receivership Order.

“Receivership Proceedings” means the proceedings commenced by Ela under section 243 of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* (Ontario).

“Representative” when used with respect to a Person means each director, officer, employee, consultant, financial adviser, legal counsel, accountant and other agent, adviser or representative of that Person.

“Sale Process” means the Court-approved sale process conducted further to and approved by the Sale Process Order (including Schedule “A” thereto). A copy of the Sale Process is attached as Schedule ‘C’ of this Agreement.

“Sale Process Order” means the order of the Court, dated February 21, 2023, among other things, approving the Sale Process.

“Successful Germany Share Bid” has the meaning given to it in the Sale Process.

“Target Closing Date” means 5 Business Days following the Approval and Vesting Order, or such other date as the Purchaser may agree to in writing, or in any event as otherwise ordered by the Court.

“Tax Act” means the *Income Tax Act* (Canada).

“Tax Returns” means all returns, reports, declarations, designations, forms, elections, notices, filings, information returns, and statements in respect of Taxes that are required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.

“Taxes” or **“Tax”** means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, mining taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties and any liability for the payment of any amounts of the type described in this paragraph as a result any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Person.

“**Transaction**” means the transaction contemplated by this Agreement, which provides for, among other things, the acquisition from the Receiver by the Purchaser of the Purchased Shares, on and subject to the terms set forth herein.

“**Receiver**” means KSV, solely in its capacity as receiver and receiver and manager of Materia, and not in its personal capacity.

1.2 Actions on Non-Business Days.

If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.3 Currency and Payment Obligations.

Except as otherwise expressly provided in this Agreement, all monetary amounts referred to in this Agreement are stated in Euros.

1.4 Calculation of Time.

In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. local Toronto Time on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. local Time on the next succeeding Business Day. Any references to a specific time in this Agreement means local Toronto time unless otherwise stated.

1.5 Additional Rules of Interpretation.

- a) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
- b) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.
- c) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.
- d) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

- e) *References to this Agreement.* The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.
- f) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.
- g) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

1.6 Schedules.

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

SCHEDULES

Schedule “A”	Form of Approval and Vesting Order
Schedule “B”	Purchased Shares and Ownership Interest
Schedule “C”	Sale Process

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

ARTICLE 2 PURCHASE OF PURCHASED SHARES

2.1 Purchase and Sale of the Purchased Shares.

Subject to the terms and conditions of this Agreement, effective as and from the Closing Time, the Receiver shall sell, assign and transfer the Purchased Shares to the Purchaser (or as the Purchaser may direct), and the Purchaser shall purchase the Purchased Shares from

the Receiver, free and clear of all Encumbrances and Liabilities, with the result that the Purchaser shall become the sole shareholder of the Purchased Entity from and after the Closing Time.

2.2 Purchase Price.

The purchase price for the Purchased Shares shall be €400,000 (the “**Purchase Price**”).

2.3 Payment of Purchase Price.

The Purchaser shall satisfy the Purchase Price by:

- (a) providing a credit and corresponding reduction in the Debt in the amount of the Purchase Price as follows:
 - (i) a credit to Materia and corresponding reduction in the total amount of the Materia Debt (up to the amount of the Purchase Price, inclusive of principal, interest and costs as of the Closing Date); and
 - (ii) a credit to the Receiver and corresponding reduction in the Receiver Debt in an amount equal to the balance of the Purchase Price.

2.4 No Cash Payment on Closing

Provided that the Purchaser has advanced to the Receiver all advances required to be made by the Purchaser pursuant to the Summary of Terms and Conditions, to be entered into by the Receiver, Ela and the Purchaser:

- (a) no cash payment or consideration other than provided for in Sections 2.3 and 2.4(b) shall be payable by the Purchaser on Closing; and
- (b) on Closing, the Purchaser shall not be required to fund any amounts owing under the KERP Charge, the Receiver’s Borrowings Charge or the Receiver’s Charge; provided, however, in the event that cash from operations and proceeds received from the closing of the sale(s) of the other assets of Materia are insufficient to satisfy amounts owing under the Receiver’s Charge, the Purchaser will fund in cash on Closing amounts owing under the Receiver’s Charge that are documented and reasonably incurred by the Receiver to consummate the Transaction.

2.5 Permitted Encumbrances / Encumbrances to be Discharged.

Pursuant to the Approval and Vesting Order, all Encumbrances of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or in equity and whether based in statute or otherwise) in respect of the Purchased Shares as at the Closing Time shall be Discharged from the Purchased Shares and shall no longer attach to the Purchased Shares following the Closing Time.

2.6 Taxes.

(1) The Parties agree that:

- (a) the Purchase Price is exclusive of all applicable Taxes and the Purchaser shall be liable for and shall pay any and all applicable Taxes pertaining to the acquisition of the Purchased Shares;
- (b) the Purchaser shall pay any applicable Taxes on the acquisition of the Purchased Shares in addition to the Purchase Price, either to the Receiver or directly to the appropriate Governmental Authority, as required by Applicable Law;
- (c) if applicable, the Receiver and the Purchaser shall jointly elect under section 167 of the Excise Tax Act that no HST will be payable pursuant to the Excise Tax Act with respect to the purchase and sale of the Purchased Share under this Agreement, and the Purchaser shall file such election(s) no later than the due date for its HST returns for the first reporting period in which HST would, in the absence of filing such election, become payable in connection with the purchase and sale of the Purchased Shares under this Agreement. Notwithstanding this election(s), in the event it is determined by a Governmental Authority that there is a liability of the Purchaser or of the Receiver to collect and remit, HST in respect of the purchase and sale of the Purchased Shares hereunder, the Purchaser shall forthwith pay such HST to the applicable Governmental Authority, or to the Receiver for remittance to the appropriate Governmental Authority, as the case may be, and the Purchaser shall indemnify and save harmless the Receiver from any taxes, penalties and interest which may be payable by or assessed against the Receiver (or its Representatives, agents, employees, directors or officers) under the Excise Tax Act.
- (d) If requested by the Purchaser, the Receiver shall make a joint election to have the rules in subsection 20(24) of the Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Receiver in respect of undertakings which arise from the operation of the business to which the Purchased Shares related and to which paragraph 12(1)(a) of the Tax Act applies.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Receiver.

Subject to the issuance of the Approval and Vesting Order, the Receiver represents and warrants to the Purchaser as follows and acknowledges and agrees that the Purchaser is relying upon such representations and warranties in connection with the purchase by Purchaser of the Purchased Shares:

- (a) Receiver Validly Appointed: The Receiver has been validly appointed by the Court as receiver and manager of the Purchased Shares pursuant to the Receivership Order.
- (b) Recitals: The Recitals hereto are true and correct as of the date of this Agreement.
- (c) Due Authorization. Subject to the Court granting the Approval and Vesting Order, the Receiver has all necessary power, authority, and capacity to enter into this Agreement and all other agreements and instrument to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement.
- (d) Execution and Binding Obligation. Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a legal, valid and binding obligation of the Receiver, enforceable against it in accordance with its terms.
- (e) Title to Purchased Shares. The Receiver will transfer the Purchased Shares to the Purchaser, free and clear of all Encumbrances, pursuant to and in accordance with the Approval and Vesting Order.
- (f) Residence of the Receiver. The Receiver is not a non-resident of Canada within the meaning of the Tax Act.

3.2 Representations and Warranties as to the Purchaser

The Purchaser represents and warrants to and in favour of the Receiver as follows and acknowledges and agrees that the Receiver is relying upon such representations and warranties in connection with the sale by the Receiver of the Purchased Shares:

- (a) Incorporation and Status. The Purchaser is incorporated and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to enter into, deliver and perform its obligations under, this Agreement.
- (b) Corporate Authorization. The execution, delivery and performance by the Purchaser of this Agreement has been authorized by all necessary corporate action on the part of the Purchaser.
- (c) Financial Ability. The Purchaser has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.
- (d) No Conflict. The execution, delivery and performance by the Purchaser of this Agreement and the completion of the Transaction contemplated by this Agreement does not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the Organizational Documents of the Purchaser.

- (e) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Purchaser and this Agreement is a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject only to the Approval and Vesting Order.
- (f) No Additional Due Diligence. The Purchaser acknowledges and agrees that: (a) it has had an opportunity to conduct any and all due diligence regarding the Purchased Shares prior to the execution of this Agreement; (b) it has relied solely upon its own independent review, investigation and/or inspection of any documents related to or in connection with the Purchased Shares; (c) it is not relying upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, (by operation of law or otherwise), regarding the Purchased Shares or the completeness or accuracy of any information provided in connection therewith, except as expressly stated in this Agreement; and (d) the obligations of the Purchaser under this Agreement are not conditional upon any additional due diligence.
- (g) No Commissions. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the Transaction contemplated by this Agreement based on any arrangement or agreement.

3.3 As is, Where is.

Except as expressly provided in Section 3.1, the Purchaser hereby acknowledges and agrees that:

- (a) the Purchased Shares are being purchased on an "*as is, where is*" basis as they exist at Closing and the Purchaser will accept the Purchased Shares in such states, understanding that the sale of the Purchased Shares is at the risk of the Purchaser. Other than those representations and warranties contained herein, no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect of any other matter or thing whatsoever; and
- (b) the Receiver and Materia have not made and are not making any representations, warranties, conditions, statements or promises whatsoever, express or implied, statutory or otherwise, with respect to the Purchased Shares, including without limitation with respect to: (i) compliance or non-compliance with laws, regulations, including environmental rules; and (ii) existence of encumbrances, liens or charges or any other matter or thing whatsoever affecting the Purchased Shares.

ARTICLE 4 COVENANTS

4.1 Target Closing Date.

The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on the Target Closing Date.

4.2 Motion for Approval and Vesting Order.

If the Purchaser is selected as the Successful Germany Share Bid pursuant to the terms of the Sale Process, the Receiver shall diligently use its commercially reasonable efforts to seek the issuance and entry of the Approval and Vesting Order and the Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Approval and Vesting Order. Such cooperation may include providing or filing affidavit or other evidence in support of the granting of the Approval and Vesting Order. The Receiver will provide to the Purchaser a reasonable opportunity to review a draft of the motion materials to be served and filed with the Court, it being acknowledged that such motion materials should be served as promptly as reasonably possible following the determination that this Agreement is the Successful Germany Share Bid, and will serve such materials on the current service list and on such other interested parties, and in such manner, as the Purchaser may reasonably require. The Receiver will promptly inform counsel for the Purchaser of any and all threatened or actual objections to the motion for the issuance of the Approval and Vesting Order of which it becomes aware, and will promptly provide to the Purchaser a copy of all written objections received.

4.3 Interim Period.

During the Interim Period, the Receiver will advise the Purchaser promptly if it becomes aware of or receives notice of any Material Adverse Change with respect to the Purchased Entity or the Business.

4.4 Access During Interim Period.

During the Interim Period, the Receiver shall facilitate, on a reasonable efforts basis, requests by the Purchaser for access to the Purchased Entity, including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business and the Personal Property of the Purchased Entity as the Purchaser reasonably deems necessary or desirable to further familiarize itself with the Business or the Personal Property of the Purchased Entity. Without limiting the generality of the foregoing, the Purchaser and its Representatives shall be permitted reasonable access during normal business hours to all documents in the Receiver's possession or control relating to information scheduled or required to be disclosed under this Agreement and to the employees of Materia and the Purchased Entity. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk and cost, during normal business hours, and without undue interference with the Purchased Entity's operations or the Sale Process and the Receiver shall use reasonable efforts to facilitate cooperation by the Purchased Entity with such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser and in the Receiver's possession or control.

4.5 Regulatory Approvals and Consents.

- (a) Each of the Parties (in case of the Receiver, so long as the Receiver is not discharged) shall use its commercially reasonable efforts to: (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any Applicable Law or otherwise to consummate and make effective the Transaction; (ii) obtain any consents, approvals or orders required to be obtained or made in connection with the authorization, execution and delivery of this Agreement and the consummation of the Transaction; and (iii) make all filings and give any notice, and thereafter make any other submissions either required or reasonably deemed appropriate by each of the Parties or required under any Applicable Law, for the purpose of consummating the Transaction.
- (b) The Parties shall use reasonable efforts to cooperate and consult with each other in connection with the making of any such filings and notices, including providing copies of all such documents to the non-filing Party and its advisors within a reasonable period of time prior to filing or the giving of notice. Up to the Closing Time, each Party shall pay for its own filing fees and other charges arising out of the actions taken under this Section 4.5 and following the Closing Time, such costs and fees shall be borne by the Purchaser.

4.6 Books and Records.

The Purchaser shall preserve and keep the Books and Records acquired by them pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such books and records (to the extent such electronic copies exist or could be reasonably made), available to the Receiver, Materia, their successors, and any trustee in bankruptcy of Materia, and shall, at such party's expense, permit any of the foregoing persons to take copies of such Books and Records as they may reasonably require. As soon as practicable following Closing and in any event no later than 45 days following Closing, the Receiver shall deliver, at the cost of the Purchaser any and all Books and Records reasonably requested by the Purchaser, provided such Books and Records are in the Receiver's possession and control.

ARTICLE 5 CLOSING ARRANGEMENTS

5.1 Closing.

The Closing shall take place virtually by exchange of documents in PDF format at 12:00 noon (the "**Closing Time**") on the Closing Date, or at such other time or such other place as may be agreed in writing by the Receiver and the Purchaser.

5.2 The Receiver's Closing Deliveries.

At the Closing, the Receiver shall deliver or cause to be delivered to the Purchaser the following:

- (a) a copy of the Approval and Vesting Order, as issued and entered by the Court;
- (b) a share transfer agreement with Materia as transferor and the Purchaser as transferee, in customary form under German law and notarized in Germany, providing for, among other things, payment of the Purchase Price as a condition precedent to the share transfer, in form and substance satisfactory to the Purchaser;
- (c) a certificate of status, compliance, good standing or like certificate with respect to Materia issued by the appropriate government official of its jurisdiction of incorporation;
- (d) a certificate dated as of the Closing Date and executed by the Receiver confirming and certifying that each the conditions in Sections 6.1 and 6.3 have been satisfied and that each of the representations and warranties contained in Sections 3.1 are true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date;
- (e) the Books and Records of the Purchased Entity that are in the Receiver's possession and control; and
- (f) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the Transaction provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

5.3 The Purchaser's Closing Deliveries.

At the Closing, the Purchaser shall deliver or cause to be delivered to the Receiver the following:

- (a) a certificate of status, compliance, good standing or like certificate with respect to the Purchaser issued by the appropriate government official of its jurisdiction of formation;
- (b) a share transfer agreement with Materia as transferor and the Purchaser as transferee, in customary form under German law and notarized in Germany, providing for, among other things, payment of the Purchase Price as a condition precedent to the share transfer;
- (c) a certificate dated as of the Closing Date and executed by an executive officer of the Purchaser confirming and certifying that each the conditions in Sections 6.1 and 6.2 have been satisfied and that the representations and warranties contained in Section 3.2 are true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date; and
- (d) such other agreements, documents and instruments as may be reasonably required by the Receiver to complete the Transaction provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

ARTICLE 6 CONDITIONS OF CLOSING

6.1 Conditions for the Benefit of the Purchaser and the Receiver.

The respective obligations of the Purchaser and of the Receiver to consummate the Transaction are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Shares pursuant to this Agreement shall be in effect;
- (b) this Agreement shall be selected as the Successful Germany Share Bid; and
- (c) the Approval and Vesting Order shall have been issued and entered on or before the Outside Date or on or before such later date as the Parties agree to in writing, and shall not have been vacated, appealed, set aside or stayed.

6.2 The Purchaser's Conditions.

The Purchaser shall not be obligated to complete the Transaction contemplated by this Agreement, unless, at or before the Closing Time, each of the conditions listed below in this Section 6.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing; provided that if the Purchaser does not waive a condition(s) and completes the Closing, such condition(s) shall be deemed to have been waived by the Purchaser. The Receiver shall take, and shall use best efforts to ensure that the Purchased Entity takes, all such commercially reasonable actions, steps and proceedings as are reasonably within their control to ensure that the conditions listed below in this Section 6.2 are fulfilled at or before the Closing Time.

- (a) The Receiver's Deliverables. The Receiver shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 5.2.
- (b) No Violation of Orders or Law. During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of: (a) making the Transaction illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of the Transaction contemplated by this Agreement.
- (c) No Breach of Representations and Warranties. Except as such representations and warranties may be affected by the occurrence of events or the Transaction specifically contemplated by this Agreement (including the Approval and Vesting Order), each of the representations and warranties contained in Sections 3.1 shall

be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.

- (d) No Breach of Covenants. The Receiver shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Receiver on or before the Closing.
- (e) Consents. All Authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of this Agreement by the Receiver hereunder or the purchase of the Purchased Shares hereunder shall have been obtained.
- (f) Certificate of Status. The receipt by the Purchaser of a certificate of status, compliance, good standing or like certificate with respect to the Purchased Entity issued by the appropriate government official of its jurisdiction of incorporation, to the extent such certificate exists in such jurisdiction.
- (g) Material Adverse Change. From the date of this Agreement to the Closing Time there shall not have occurred any Material Adverse Change.

6.3 The Receiver's Conditions.

The Receiver shall not be obligated to complete the Transaction contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 6.3 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Receiver, and may be waived by the Receiver in whole or in part, without prejudice to any of their rights of termination in the event of nonfulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Receiver only if made in writing. The Purchaser shall take all such actions, steps and proceedings as are reasonably within the Purchaser's control as may be necessary to ensure that the conditions listed below in this Section 6.3 are fulfilled at or before the Closing Time.

- (a) Purchaser's Deliverables. The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Receiver at the Closing all the documents and payments contemplated in Section 5.3.
- (b) No Violation of Orders or Law. During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of: (a) making the Transaction contemplated by this Agreement illegal; or (b) otherwise prohibiting, preventing or restraining the consummation of any of the Transaction contemplated by this Agreement.
- (c) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 3.2 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.

- (d) No Breach of Covenants. The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing, which shall have been performed in all respects.
- (e) Successful Bidder. This Agreement shall have been chosen as the Successful Germany Share Bid.
- (f) Consents. All Authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of this Agreement by the Receiver hereunder or the purchase of the Purchased Shares hereunder shall have been obtained.

6.4 Receiver's Certificate.

When the conditions to Closing set out in Sections 6.1, 6.2 and 6.3 have been satisfied and/or waived by the Receiver or the Purchaser, as applicable, the Receiver shall: (i) issue forthwith its Receiver's Certificate concurrently to Materia and the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Receiver's Certificate with the Court (and shall provide a copy of such filed certificate to Materia and the Purchaser).

ARTICLE 7 TERMINATION

7.1 Grounds for Termination.

- (a) This Agreement may be terminated on or prior to the Closing Date:
 - (I) by the mutual written agreement of the Receiver and the Purchaser;
 - (II) automatically and without any action or notice by the Receiver to the Purchaser or the Purchaser to the Receiver, immediately upon the closing by the Receiver of a Successful Germany Share Bid (as determined pursuant to the Sale Process) if this Agreement is not the Successful Germany Share Bid;
 - (III) by the Purchaser or the Receiver, at any time following the Outside Date, if Closing has not occurred on or prior to 11:59 p.m. (Eastern Time) on the Outside Date, provided that the reason for the Closing not having occurred is not due to any act or omission, or breach of this Agreement, by the Party proposing to terminate this Agreement;
 - (IV) by the Purchaser, on the one hand, or the Receiver, on the other hand, upon written notice to the other Parties if: (i) the Approval and Vesting Order has not been obtained by the Target Closing Date or (ii) the Court finally declines to grant the Approval and Vesting Order with no opportunity to return to Court to seek a revised Approval and Vesting Order, and in each

case for reasons other than a breach of this Agreement by the party proposing to terminate the Agreement;

- (V) by the Receiver, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty of the Purchaser in this Agreement which would prevent the satisfaction of, or compliance with, any condition set forth in Section 6.2, as applicable, by the Target Closing Date and such violation or breach has not been waived by the Receiver or cured within five (5) Business Days of the Receiver providing written notice to the Purchaser of such breach, unless the Receiver is in material breach of their obligations under this Agreement; or
 - (VI) by the Purchaser, if there has been a material violation or breach by the Receiver of any agreement, covenant, representation or warranty which would prevent the satisfaction of, or compliance with, any condition set forth in Section 6.3, as applicable, by the Target Closing Date and such violation or breach has not been waived by the Purchaser or cured within five (5) Business Days of the Purchaser providing notice to the Receiver of such breach, unless the Purchaser is in material breach of its obligations under this agreement.
- (b) Prior to the Receiver agreeing to or electing to any termination pursuant to this Section 7.1, the Receiver shall first consult with Ela.

7.2 Effect of Termination.

If this Agreement is terminated pursuant to Section 7.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections 7.3 (*Expense Reimbursement Fee and Break Fee*), 8.2 (*Expenses*), 8.3 (*Public Announcements*), 8.4 (*Notices*), 8.8 (*Waiver and Amendment*), 8.11 (*Governing Law*), 8.12 (*Dispute Resolution*), 8.13 (*Attornment*), 8.14 (*Successors and Assigns*), 8.15 (*Assignment*), 8.16 (*No Liability*), and 8.17 (*Third Party Beneficiaries*), which shall survive such termination. For the avoidance of doubt, any Liability incurred by a Party prior to the termination of this Agreement shall survive such termination.

7.3 Expense Reimbursement Fee and Break Fee

- (a) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial stalking horse bidder for the Purchased Shares in the Sale Process, and the preparation of this Agreement, and subject to Court approval, the Purchaser shall be entitled to: (i) an expense reimbursement fee in the maximum amount of \$25,000.00 Canadian Dollars (inclusive of HST, if any) (the “**Expense Reimbursement Fee**”); and (b) a break fee in the amount of \$20,000 Canadian Dollars (inclusive of HST, if any) (the “**Break Fee**”). The Expense Reimbursement and Break Fee are each payable by the Receiver to the Purchaser in the event that a bid other than the within Agreement is accepted by the Receiver as the Successful

Germany Share Bid, approved by the Court and completed. The payment of the foregoing amounts shall be approved in the Sale Process Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the Successful Germany Share Bid, and shall be made in priority to amounts secured by existing security other than the Receiver's Charge. For certainty, the Expense Reimbursement Fee and Break Fee do not form part of the Purchase Price.

- (b) The Parties acknowledge and agree that the Expense Reimbursement Fee represents a fair and reasonable estimate of the expenses that will be incurred by the Purchaser as a result of preparing for and entering into this Agreement, and both the Expense Reimbursement Fee and the Break Fee are not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Shares. Each of the Parties hereby acknowledge and agree that, under circumstances where the Purchaser is entitled to the Expense Reimbursement Fee and Break Fee and such amounts are paid in full to the Purchaser, the Purchaser shall be precluded from any other remedy against the Receiver at law or in equity or otherwise in respect of damages for non-completion of this Agreement, and in any such case it shall not seek to obtain any recovery, judgment, or damages of any kind, including consequential, indirect, or punitive damages, against the Receiver or any of its respective directors, officers, employees, partners, managers, members, shareholders or Affiliates in connection with the non-completion of this Agreement or the Transaction.
- (c) Notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not selected as the Successful Germany Share Bid, then upon the closing of a transaction with such successful bidder, this Agreement shall be terminated and the Purchaser shall be entitled to the Expense Reimbursement Fee and Break Fee and neither Party hereto shall have any further liability or obligation, except as expressly provided for in this Agreement.

ARTICLE 8 GENERAL

8.1 Survival.

Subject to Section 7.2, all representations, warranties, covenants and agreements of the Receiver or the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement.

8.2 Expenses.

Except if otherwise agreed upon in writing amongst the Parties and as set forth in Section 7.3 (Expense Reimbursement Fee), each Party shall be responsible for its own costs and expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement, the

Transaction (including the fees and disbursements of legal counsel, bankers, agents, investment bankers, accountants, brokers and other advisers).

8.3 Public Announcements.

The Receiver and Materia shall be entitled to disclose the terms of this Agreement to the Court, to parties with an interest in the Receivership Proceedings, and parties who are Qualified Bidders (as defined in the Sale Process) and this Agreement may be posted on the Receiver's website maintained in connection with the Receivership Proceedings; provided that any information which the Purchaser (acting reasonably) advises the Receiver in writing as being confidential shall be redacted. Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein) or where required to meet obligations of the Parties under the Sale Process, Applicable Laws or stock exchange rules, the Receiver and Materia shall not issue (prior to or after the Closing) any press release or make any public statement or public communication with respect to this Agreement or the Transaction contemplated hereby without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

8.4 Notices.

Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if: (i) delivered personally; (ii) sent by prepaid courier service; or (iii) sent by e-mail, in each case, to the applicable address set out below:

(a) if to the Receiver to:

KSV Restructuring Inc.

150 King St W #2308,
Toronto, ON M5H 1J9

Attention: Noah Goldstein,
Tel: 416-932-6207
Email: ngoldstein@ksvadvisory.com

Attention Eli Brenner
Tel: 416-932-6028
Email: ebrenner@ksvadvisory.com

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

Miller Thomson

40 King Street West #5800
Toronto, ON M5H 3S1

Attention: Asim Iqbal

Tel: 416-597-6008
Email: aiqbal@millerthomson.com

(b) If to the Purchaser:

Reflourish Capital Limited

C/O Dentons Canada LLP
77 King Street West, Suite 400,
Toronto-Dominion Centre,
Toronto, ON M5K 0A1

Attention: Kenneth Kraft
Tel: 416-863-4374
E-mail: kenneth.kraft@dentons.com

Attention: Sara-Ann Wilson
Tel: 416-863-4402
E-mail: sara.wilson@dentons.com

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

Any Party may from time to time change its address under this Section 8.4 by notice to the other Parties given in the manner provided by this Section 8.4.

8.5 Time of Essence.

Time shall be of the essence of this Agreement in all respects.

8.6 Further Assurances.

The Receiver and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Parties may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

8.7 Entire Agreement.

This Agreement and the deliverables delivered by the Parties in connection with the Transaction contemplated herein constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior

agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

8.8 Waiver and Amendment.

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the Receiver and Purchaser. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

8.9 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

8.10 Remedies Cumulative.

The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

8.11 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.12 Dispute Resolution.

If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 7, such dispute shall be determined by the Court within the Receivership Proceedings, or by such other Person or in such other manner as the Court may direct. The Parties irrevocably submit and attorn to the exclusive jurisdiction of the Court.

8.13 Attornment.

Each Party agrees: (a) that any Legal Proceeding relating to this Agreement shall be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (b) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Court on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other

jurisdiction of any Order duly obtained from the Court as contemplated by this Section 8.13. Each Party agrees that service of process on such Party as provided in this Section 8.13 shall be deemed effective service of process on such Party.

8.14 Successors and Assigns.

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

8.15 Assignment.

Prior to Closing, the Purchaser may assign, upon written notice to the Receiver, all or any portion of its rights and obligations under this Agreement to an Affiliate, including the rights of the Purchaser to purchase from the Receiver the Purchased Shares prior to the issuance of the Approval and Vesting Order; provided that no such assignment shall relieve the Purchaser of any of its obligations or Liabilities under this Agreement. The Receiver may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

8.16 No Liability.

The Purchaser acknowledges and agrees that the Receiver, acting in its capacity as the Receiver of Materia, will have no Liability, in its personal capacity, in connection with this Agreement whatsoever.

8.17 Third Party Beneficiaries.

Unless where provided to the contrary by the specific terms hereof, this Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.18 Independent Legal Advice

The Purchaser warrants that it has received independent legal advice in connection with this Agreement.

8.19 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Parties by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as receiver and receiver and manager of **11157353 CANADA CORP.**, and not in its personal or corporate capacity

By: 

Name: Noah Goldstein

Title: Managing Director

REFLOURISH CAPITAL LIMITED

By: 

Name: **Robert Petch**

Title: **Director**

SCHEDULE “A”
FORM OF APPROVAL AND VESTING ORDER

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE)	DAY OF MONTH, 2023

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and –

11157353 CANADA CORP.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order) of 11157353 Canada Corp. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by the share purchase agreement (the "**Sale Agreement**") between the Receiver and Reflourish Capital Limited (the "**Purchaser**") dated [●], 2023 and appended to the Report of the Receiver dated [●], 2023 (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the

Purchased Shares (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, Counsel for the Purchaser, and such other counsel as were present and listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [●] sworn [●], 2023 filed:

1. **THIS COURT ORDERS** that the time and manner of service of the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Shares to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Shares described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated February 21, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares shall stand in the place and stead of the Purchased Shares, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Shares with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that, following the closing of the Transaction, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares.

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

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

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

Schedule A – Form of Receiver’s Certificate

Court File No. _____

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

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and –

11157353 CANADA CORP.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the "**Court**") dated February 21, 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order), of 11157353 Canada Corp. (the "**Debtor**").

B. Pursuant to an Order of the Court dated [●], 2023, the Court approved the share purchase agreement dated [●], 2023 (the "**Sale Agreement**") between the Receiver and Reflourish Capital Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Shares, which vesting is to be effective with respect to the Purchased Shares upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Shares; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or

waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV RESTRUCTURING INC., in its
capacity as Receiver of the undertaking,
property and assets of 11157353 Canada
Corp., and not in its personal or corporate
capacity**

Per: _____
Name:
Title:

Schedule B – Purchased Shares

100% of the issued and outstanding shares in the share capital of Materia Deutschland GmbH, more particularly described below:

Company	Purchased Shares			
	Class of Shares	Number of Shares owned by Materia	% of Issued and Outstanding Shares owned by Materia (non-diluted)	% of Issued and Outstanding Shares owned by Materia (fully diluted)
Materia Deutschland GmbH	Not specified	25,000 (in a nominal amount of EUR 1.00 each)	100%	100%

SCHEDULE “B”
PURCHASED SHARES AND OWNERSHIP INTEREST

Purchased Entity	Purchased Shares			
	Class of Shares	Number of Shares owned by Materia	% of Issued and Outstanding Shares owned by Materia (non-diluted)	% of Issued and Outstanding Shares owned by Materia (fully diluted)
Materia Deutschland GmbH	Not specified	25,000 (in a nominal amount of EUR 1.00 each)	100%	100%

**SCHEDULE “C”
SALE PROCESS**

Sale Process

Overview

1. On February 21, 2023, pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), KSV Restructuring Inc. was appointed as receiver and receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties, excluding the Excluded Assets and Excluded Business (as defined in the Receivership Order) (the “**Property**”) of 11157353 Canada Corp. (the “**Company**”) which is principally comprised of 100% of the issued and outstanding share capital in Materia Deutschland GmbH (the “**Germany Shares**”), 100% of the issued and outstanding share capital in Materia Ventures Malta Ltd. (the “**Malta Shares**”), and 100% of the issued and outstanding share capital in Kara Wellness Limited and Handpicked CBD Limited (the “**UK Shares**”, together with the Germany Shares and Malta Shares, the “**Assets**”).

2. Pursuant to the Receivership Order, the Receiver is authorized to market any or all of the Property of the Company, which marketing may involve advertising or soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver may deem appropriate (the “**Sale Process**”).

3. On February 21, 2023, the Court issued an Order (the “**Sale Process Order**”) that, among other things:

- (a) approved the Sale Process as described herein; and
- (b) approved and accepted the Share Purchase Agreement between the Receiver and Reflourish Capital Limited (“**Reflourish**” and the “**Stalking Horse Bid**”) for the purpose of conducting a “stalking horse” solicitation process in respect of the Germany Shares, in accordance with the Sales Process.

Purpose

4. The purpose of this Sale Process is to seek offers for the purchase of: (i) the Germany Shares for an amount and on terms which are superior to the transaction contemplated by the Stalking Horse Bid; (ii) the Malta Shares; and (iii) the UK Shares.

5. The Sale Process, and any orders of the Court made in the proceeding relating to the Sale Process, shall exclusively govern the process for soliciting and selecting bids for the sale of the Assets (each, a “**Transaction**”).

Timeline

6. The following table sets out the key milestones and deadlines under the Sale Process:

Milestone	Deadline
Sale Process Commencement	As soon as practicable following the granting of the Sale Process Order
Publication of Notice of the Sale Process and delivery of the Teaser Letter and NDA to Potential Bidders, and upon execution of the NDA, provide Potential Bidders with access to the CIM and Data Room	As soon as practicable following the granting of the Sale Process Order
Bid Deadline	30 days after the granting of the Sale Process Order (the “ Bid Deadline ”)
Selection of the Successful Bid(s), including, if necessary, holding the Auction	As soon as reasonably practical following the Bid Deadline
Approval Hearing with the Court	As soon as reasonably practical following the Selection of the Successful Bid (s)
Closing of the Transaction under the Successful Bid(s)	No later than 5 days following the Court granting the Approval and Vesting Order (the “ Closing Date ”)

7. The deadlines set out in paragraph 6 above may be extended by the Receiver, acting reasonably, for up to a maximum of one week in the aggregate without the approval of the Court or the Stalking Horse Bidder. Any such extensions will be communicated to all bidders in writing.

8. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day (a “**Business Day**” is any day, other than a Saturday or Sunday, on which banks are ordinarily open for business in Toronto, Ontario).

Pre-Marketing Stage

9. As soon as reasonably practicable (the “**Sale Process Commencement**”), the Receiver will:

- (a) prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the Sale Process and inviting recipients of the Teaser

Letter to express their interest pursuant to the terms of the Sale Process; (ii) a non-disclosure and confidentiality agreement with the Receiver (an “**NDA**”); and (iii) a confidential information memorandum (“**CIM**”). The Teaser Letter will specifically stipulate that the Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Teaser Letter, the Data Room (as defined below), or made available pursuant to the Sale Process or otherwise, except to the extent expressly contemplated in any definitive sale agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver;

- (b) gather and review all due diligence materials, it determines to be relevant, to be provided to interested parties and establish a secure, electronic data room (the “**Data Room**”), which will be maintained and administered by the Receiver throughout the Sale Process; and
- (c) prepare a list of potential interested parties (each a “**Potential Bidder**”), including:
 - (i) parties that have approached the Company or the Receiver indicating an interest in the opportunity; and
 - (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing all or part of the Assets.

Marketing Stage

- 10. As soon as reasonably possible after the Sale Process Commencement, the Receiver shall:
 - (a) arrange for a notice of the Sale Process (and such other relevant information as the Receiver considers appropriate) (the “**Notice**”) to be published in such newspaper(s), publication(s) or journal(s) as the Receiver considers appropriate; and
 - (b) send the Teaser Letter and NDA to all Potential Bidders and to any other party who responds to the Notice as soon as reasonably practicable.

Free of Any and all Claims and Interests

11. Depending on the structure of the Transaction proposed by a Qualified Bidder (as defined herein), the Assets of the Company shall be transferred free and clear of all liens and claims, subject to any permitted encumbrances, pursuant to an approval and vesting order issued by the Court approving the Transaction (the “**Approval and Vesting Order**”). For greater certainty, all security interests, liens, claims and encumbrances will be discharged from the Assets and will attach to the net proceeds from a Transaction(s) following the granting of the Approval and Vesting Order.

“As Is, Where Is”

12. Any purchase of the Assets will be on an “as is, where is” basis without representations or warranties of any kind, nature or description by the Receiver or Company or any of their respective directors, officers, partners, employees, agents, advisors, representatives or estates,

except to the extent as may be set forth in a Binding APA (as defined herein) and approved by the Court.

13. By submitting a bid, each Potential Bidder (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Company and the Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and information in respect of the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties or guarantees, express, implied, statutory or otherwise, regarding the Company or its Assets or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA and approved by the Court.

Participation Requirements

14. Each Potential Bidder must deliver to the Receiver, an executed NDA, in the form provided by the Receiver, prior to the distribution of any confidential information by the Receiver.

15. If it is determined by the Receiver that a Potential Bidder: (i) has a *bona fide* interest in pursuing a Transaction (based on financial ability to consummate a transaction, industry experience, and other factors); and (ii) has delivered an executed NDA, then such Potential Bidder will be deemed to be a “**Qualified Bidder**”.

16. Reflourish shall be deemed to be a Qualified Bidder in respect to the Germany Shares for the purposes of this Sale Process.

17. The Receiver will grant each Qualified Bidder access to the Data Room and CIM, as soon as reasonably practicable, which will provide, among other things, information considered relevant to the Sale Process, including in the case of a Qualified Bidder that desires to make a bid for the Germany Shares, the Stalking Horse Bid.

18. No Potential Bidder or Qualified Bidder, nor the Stalking Horse Bidder shall be permitted to receive the details of any bids or Binding APAs submitted or the details or existence of any confidential discussions or correspondence among the Company, the Receiver and any bidder in connection with the Sale Process, except to the extent the Receiver, at its sole discretion, determines is reasonable or in preparation for the Auction (as defined below).

Due Diligence

19. The Receiver, subject to competitive and other business considerations, may give each Qualified Bidder such access to due diligence materials and information relating to the Company as the Receiver deems appropriate. Due diligence access may include access to the Data Room, on-site inspections and other matters which a Qualified Bidder may reasonably request and to which the Receiver may agree. Neither the Receiver, nor any of its representatives will be obligated to furnish any information relating to the Company to any person. The Receiver and Company make no representation or warranty, express or implied, as to the information provided through this due diligence process or otherwise, except as may be set forth in a Binding APA.

Binding APAs

20. A Qualified Bidder that desires to make a bid for the Germany Shares shall deliver written copies of its bid, in the form of the Stalking Horse Bid, together with a blackline outlining all changes made to the Stalking Horse Bid (the “**Binding APA for the Germany Shares**”).

21. A Qualified Bidder that desires to make a bid for the Malta Shares shall deliver written copies of its bid in the form of a share purchase agreement (the “**Binding APA for the Malta Shares**”).

22. A Qualified Bidder that desires to make a bid for the UK Shares shall deliver written copies of its bid in the form of a share purchase agreement (together with the Binding APA for the Germany Shares and the Binding APA for the Malta Shares, a “**Binding APA**”).

23. The Receiver will consider (i) a bid for all of the Company’s Assets (an “**En Bloc Bid**”) or (ii) separate bids to acquire some but not all of the Company’s Assets (“**Piecemeal Bids**”). Subject to Court approval, the Receiver has the right to accept an En Bloc Bid if the total consideration is greater than separate Piecemeal Bids.

24. A Binding APA (for any of the Assets) must be submitted to the Receiver as follows: Attn: Noah Goldstein [ngoldstein@ksvadvisory.com] and Eli Brenner [ebrenner@ksvadvisory.com], so as to be received by no later than the Bid Deadline.

25. A Binding APA must comply with all of the following:

- (a) it is received by the Receiver prior to the Bid Deadline;
- (b) the bid (either individually or in combination with another bid that makes up one Binding APA) is an offer:
 - (i) to purchase the Germany Shares on terms consistent with the form of the Stalking Horse Bid, together with all completed schedules thereto, and on conditions acceptable to the Receiver;
 - (ii) to purchase the Malta Shares on terms reflected in a share purchase agreement, together with all completed schedules thereto, and on conditions acceptable to the Receiver; and
 - (iii) to purchase the UK Shares on terms reflected in a share purchase agreement, together with all completed schedules thereto, and on conditions acceptable to the Receiver;
- (c) it is duly authorized and executed, and includes a purchase price for the Assets (collectively, the “**Purchase Price**”):
 - (i) with respect to the Germany Shares, €400,000 (or the equivalent in Canadian Dollars) in cash due on closing of the Transaction plus (i) a minimum incremental amount of \$6,000 Canadian Dollars in excess of the

aggregate purchase price contemplated by the Stalking Horse Bid; (ii) a reimbursement of Reflourish's reasonable fees and disbursements relating to the preparation and execution of the Stalking Horse Bid in the maximum amount of \$25,000 Canadian Dollars; and (iii) a break fee in the amount of \$20,000 Canadian Dollars (inclusive of HST, if any);

- (ii) with respect to the Malta Shares, an amount in cash due on closing of the Transaction; and
 - (iii) with respect to the UK Shares, an amount in cash due on closing of the Transaction.
- (d) includes a letter of acknowledgment stating that the Qualified Bidder's offer is irrevocable and open for acceptance until the closing of the Successful Bid (as defined herein);
 - (e) it is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Receiver, in its sole discretion, of the ability of the Qualified Bidder to consummate the proposed Transaction, and that will allow the Receiver to make a determination as to the Qualified Bidder's financial and other capabilities to consummate the proposed sale and pay the Purchase Price;
 - (f) it will be unconditional (other than customary or other conditions acceptable to the Receiver in its sole discretion) and not subject to further due diligence;
 - (g) it fully discloses the identity of each person or entity (including all beneficial owners of such entity) that will be bidding for, or otherwise sponsoring, financing, participating or benefiting from such bid;
 - (h) it includes an acknowledgement and representation of the Qualified Bidder that:
 - (i) it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Assets, the Company or the completeness or accuracy of any information provided by the Receiver or any other party in connection therewith;
 - (i) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Binding APA submitted by the Qualified Bidder;
 - (j) provides a deposit in the amount of not less than 15% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**"); and

(k) the bid contemplates closing the Transaction by or on the Closing Date.

26. The Receiver may determine, at its sole discretion, whether to entertain bids for the Germany Shares, the Malta Shares, and/or the UK Shares that do not conform to one or more of the requirements for a Binding APA specified herein.

27. Notwithstanding anything herein, the offer represented by the Stalking Horse Bid with respect to the Germany Shares shall be deemed to be a Binding APA for the Germany Shares.

Evaluation of Binding APA

28. Each Binding APA will be considered and reviewed by the Receiver based upon several factors including, without limitation, the Purchase Price and the net value provided by such bid, the financial ability of the Qualified Bidder to close the Transaction, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the Transaction, the value of the transaction, the Assets included or excluded from the bid, the transition services required from the Receiver (if any), any related transaction costs, the likelihood and timing of consummating such transactions, and such other matters as the Receiver may determine.

29. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Qualified Bidder or the Binding APA. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Receiver to reject a Binding APA.

Selection of Successful Germany Share Bid

30. With respect to the Germany Shares the Receiver may identify the highest or otherwise best offer for the Germany Shares (the “**Successful Germany Share Bid**”).

31. If no Binding APA for the Germany Shares (other than the Stalking Horse Bid) is received by the Bid Deadline, the Stalking Horse Bid shall be deemed the Successful Germany Share Bid.

32. If the Receiver receives one or more Binding APAs for the Germany Shares, it may, in the Receiver’s sole discretion, proceed with an auction to select the Successful Germany Share Bid (an “**Auction**”) on notice to each Qualified Bidder that submits a Binding APA for the Germany Shares and is invited to attend the Auction by the Receiver having regard to the terms of its Binding APA for the Germany Shares (each, an “**Auction Bidder**”). For greater certainty, Reflourish shall constitute an Auction Bidder in all circumstances in which an Auction is conducted for the Germany Shares.

33. If an Auction is commenced, the Receiver will implement Auction procedures that will be made available to all Auction Bidders if and when the Auction is implemented.

34. The Receiver shall consult with ELA Capital Inc, as applicant in these proceedings (“**Ela Capital**”), prior to the determination of a Successful Germany Share Bid by the Receiver, provided Ela Capital has not and confirms it has no intention to make a bid for any Assets.

Selection of Successful UK Share Bid and Malta Share Bid

35. With respect to the UK Shares and the Malta Shares: (i) the Receiver may identify the highest or otherwise best offer or combination of offers for the UK Shares (the “**Successful UK Share Bid**”); (ii) the Receiver may identify the highest or otherwise best offer or combination of offers for the Malta Shares (the “**Successful Malta Share Bid**”); or (iii) if the Receiver determines that two or more Binding APAs for the UK Shares and the Malta Shares are close in value, at the discretion of the Receiver, the Receiver may decide to negotiate with the applicable Qualified Bidders in order for the Qualified Bidders to submit an improved bids for the UK Shares or the Malta Shares, and as a result of such negotiations and the Receiver may identify a Successful UK Share Bid and Successful Malta Share Bid.

36. The Receiver shall consult with Ela Capital prior to the determination of a Successful UK Share Bid and the Successful Malta Share Bid by the Receiver, provided Ela Capital has not and confirms it has no intention to make a bid for any Assets.

37. The Receiver shall have no obligation to select a Successful UK Share Bid or a Successful Malta Share Bid and it reserves the right to reject any or all Binding APAs.

Backup Bid(s)

38. After selecting the Successful Bid(s), the Receiver may, at its sole discretion, chose the second highest or otherwise best offer or combination of offers for the Assets to act as the backup bid (the “**Backup Bid**”) in circumstances where the Transaction(s) contemplated by the Successful Bid(s) does not close.

Treatment of Deposits

39. In the event a Binding APA is not selected as a Successful Malta Share Bid, a Successful Germany Share Bid, or a Successful UK Share Bid (each a “**Successful Bid**”), the Deposit (without interest) shall be returned to the Qualified Bidder as soon as reasonably practicable after the closing of the Successful Bid.

40. A Binding APA may not be withdrawn, modified or amended without the written consent of the Receiver prior to the closing of the Successful Bid. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the closing of the Successful Bid shall result in the forfeiture of such Qualified Bidder’s Deposit as liquidated damages and not as a penalty.

41. If a Qualified Bidder who made a Successful Bid breaches its obligations under the terms of the Sale Process or Binding APA, its deposit shall be forfeited as liquidated damages and not as a penalty.

Sale Approval Hearing

42. The sale of the Assets to any Successful Bidder is expressly conditional on the approval of the Successful Bid by the Court pursuant to an Approval and Vesting Order.

43. The motion for an order of the Court approving any Successful Bid (the “**Sale Approval Hearing**”) shall be brought by the Receiver. The Sale Approval Hearing shall be heard on a date determined by the Receiver and subject to the Court’s availability.

44. All of the Binding APAs for the Germany Shares other than any Successful Germany Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful Germany Share Bid.

45. All of the Binding APAs for the Malta Shares other than any Successful Malta Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful Malta Share Bid.

46. All of the Binding APAs for the UK Shares other than any Successful UK Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful UK Share Bid.

Reservation of Rights

47. The Receiver may: (a) determine which Binding APA, if any, is the highest or otherwise best offer; and (b) notwithstanding anything contained herein, at any time before the issuance and entry of an Approval and Vesting Order, reject any bid that it determines is (i) inadequate or insufficient; or (ii) not in conformity with the requirements of this Sale Process or any order of the Court.

48. This Sale Process does not, and shall not be interpreted to, create any contractual or other legal relationship between the Receiver and any other party, other than as specifically set forth in definitive agreements that may be executed.

49. The Receiver shall have the right to adopt such rules, not inconsistent with the Sale Process described herein, that, in its reasonable discretion, will promote the goals of the Sale Process.

50. The Receiver may make any modification to the Sale Process that it considers appropriate in the circumstances and, if determined necessary or desirable in the Receiver’s sole discretion, it will seek Court approval of such modification on notice to the service list in the receivership proceeding. For greater certainty, any extension of time by the Receiver pursuant to paragraph 6 herein will not be considered “material”.

Approvals

51. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the Receivership Order or any other statute or as otherwise required at law in order to implement a Successful Bid.

Limitation of Liability

52. The Receiver and the Company shall not have any liability whatsoever to any person or party, including without limitation to any Potential Bidder, Qualified Bidder, a bidder who

submits a Successful Bid or any creditor or other stakeholder, for any act or omission related to this Sale Process, save gross negligence or willful misconduct. By submitting a bid, each Potential Bidder shall be deemed to have agreed that it has no claim against the Receiver for any reason, matter or thing whatsoever, save gross negligence or willful misconduct.

53. Other than as specifically set forth in a definitive agreement between the Receiver and a Successful Bidder, the Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship among the Company, the Receiver, a Potential Bidder, a Qualified Bidder, a Successful Bidder, or any other party.

54. The Receiver and the Company shall not be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the completion of any Transaction completed under the Sale Process. Any such claim shall be the sole liability of the bidder who completes a Transaction under the Sale Process.

55. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with their participation in the Sale Process, including submission of any bids, due diligence activities, completion of a Successful Bid, preparation for and attendance at the Sale Approval Hearing and any negotiations or actions whether or not they lead to the consummation of a Transaction.

Supervision of the Sale Process

56. The Receiver will have responsibility for managing all communication with all Potential Bidders. This shall include facilitating the delivery of all communications, providing the Teaser Letter, coordinating the execution of NDAs, and managing the process of answering enquiries. Under no circumstances should a representative of the Company be contacted directly or indirectly in respect of the Sale Process, including diligence requests, without the prior written consent of the Receiver. Any such unauthorized contact or communication could result in exclusion from the Sale Process, in the Receiver's sole discretion.

57. The Company and its principals, employees and professional advisors shall cooperate fully with the Receiver and provide documents and information requested as part of the Sale Process to the Receiver in a prompt fashion.

Jurisdiction

58. All bidders (including Qualified Bidders) shall be deemed to have consented to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) and waived any right to a jury trial in connection with any disputes relating to the Sale Process, including the qualification of bids, the construction and enforcement of the Sale Process, the selection of any Successful Bids and closing of any Transactions, as applicable.

Appendix “B”

KSV RESTRUCTURING INC., solely in its capacity as Court-appointed receiver and manager of 11157353 CANADA CORP., and not in its personal or corporate capacity

- and -

JMCC (CANADA) CORP.

SHARE PURCHASE AGREEMENT

DATED 31 MARCH, 2023

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SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT dated 31 March, 2023 is made by and between:

KSV RESTRUCTURING INC. ("KSV"), solely in its capacity as Court-appointed receiver and receiver and manager of **11157353 CANADA CORP. ("Materia")**, a corporation incorporated under the laws of Canada, and not in its personal or corporate capacity (hereinafter, the **"Receiver"**)

- and -

JMCC (CANADA) CORP., a company incorporated under the laws of the province of Ontario, Canada with registered number 2590273 (hereinafter, the **"Purchaser"**)

RECITALS:

- A. On February 21, 2023, pursuant to the order (the **"Receivership Order"**) of the Ontario Superior Court of Justice (Commercial List) (the **"Court"**), KSV was appointed as Receiver of all of the assets, undertakings and properties of Materia, excluding certain excluded assets and excluded business, but including all of the issued and outstanding shares of Materia Ventures Malta Ltd. (**"Materia Malta"**).
- B. On February 21, 2023, the Court granted an Order (the **"Sale Process Order"**), *inter alia*, approving the sale process attached thereto (the **"Sale Process"**) and authorizing and directing the Receiver to carry out the Sale Process in accordance with its terms, and to seek offers for the purchase of all of the issued and outstanding shares of Materia Malta.
- C. In accordance with the terms of the Sale Process, the Purchaser has submitted an offer to purchase from the Receiver all of the right, title and interest of Materia and the Receiver, if any, in and to the Purchased Shares (as defined herein).
- D. If this Agreement is determined to be the Successful Malta Share Bid for all, but not less than all, of the Purchased Shares in accordance with the Sale Process, and subject to the approval of the Court and the satisfaction of the other conditions set forth herein, the Receiver agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Receiver, all, but not less than all, of the Purchased Shares on the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE in consideration of the covenants and mutual promises set forth in this Agreement (including the recitals hereof) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement.

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

“Additional Liabilities” has the meaning ascribed to such term in Section 2.3(b) and **“Additional Liability”** means any one of them.

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

“Agreement” means this Share Purchase Agreement between the Receiver and the Purchaser, as may be amended, supplemented, restated or otherwise modified in accordance with the terms hereof.

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order (including any securities laws or requirements of stock exchanges and any consent decree or administrative Order) or other requirement having the force of law (**“Law”**), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“Approval and Vesting Order” means an order of the Court, in form and substance satisfactory to the Purchaser, acting reasonably, among other things approving and authorizing the Transaction and vesting in the Purchaser (or as it may direct) all of the right, title and interest of Materia and the Receiver, if any, in and to the Purchased Shares.

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

“Books and Records” means all books, records, files, papers, books of account and financial data including Tax Returns and customer and employee records, related to the Purchased Entity, the Malta Subsidiary or the Business in the possession, custody or control of the Receiver or Materia.

“Business” means the business and operations carried on by the Purchased Entity and the Malta Subsidiary as at the date of this Agreement and as at the Closing Date.

“Business Day” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the Province of Ontario.

“Cover Letter” means cover letter from the Purchaser to the Receiver dated March 23, 2023 included in the Purchaser’s submission of its bid in the Sale Process.

“Closing” means the completion of the Transaction in accordance with the provisions of this Agreement.

“Closing Date” means the date on which Closing occurs.

“Closing Time” has the meaning set out in Section 5.1.

“Court” means the Ontario Superior Court of Justice (Commercial List).

“Cover Letter Liabilities” has the meaning ascribed to such term in Section 2.3(a) and **“Cover Letter Liability”** means any one of them.

“Discharged” means, in relation to any Encumbrance against any Person or upon any asset, undertaking or property, including all proceeds thereof, the full, final, complete and permanent waiver, release, discharge, cancellation, termination and extinguishment of such Encumbrance against such Person or upon such asset, undertaking or property and all proceeds thereof.

“Ela” means Ela Capital Inc.

“Encumbrances” means all claims, Liabilities, obligations, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights) and encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

“Excise Tax Act” means the *Excise Tax Act, 2001*, SC 2002, c 22.

“Funded Indebtedness” means any borrowed money or other financial indebtedness owing by one party to another.

“Governmental Authority” means the governments of Canada, Malta or any other nation, or of any political subdivision thereof, whether state, provincial (including the government of Ontario), territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, arbitrator or arbitrators, tribunal, central bank or other entity exercising executive, legislative, judicial or arbitral, taxing, regulatory or administrative powers or functions (including any applicable stock exchange).

“GST/HST” means all goods and services tax and harmonized sales tax imposed under Part IX of the Excise Tax Act.

“Interim Period” means the period beginning on the date hereof and ending on the earlier of: (a) the Closing Time; and (b) the date that this Agreement is terminated in accordance with its terms.

“KSV” means KSV Restructuring Inc.

“Law” has the meaning set out in the definition of **“Applicable Law”**.

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

“Liability” means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or

unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person, and “**Liabilities**” has the corresponding meaning.

“**Malta Subsidiary**” means Materia Malta Operating Limited.

“**Materia**” means 11157353 Canada Corp.

“**Materia Lenders**” means Ela Capital Inc., Kanabo Group Plc, Reflourish Capital Limited and Alistair Crawford, and each of their respective Affiliates and managed funds, partnerships and other investee Persons.

“**Material Adverse Change**” means any fact, matter, event, circumstance, condition or change which materially and adversely affects, or could reasonably be expected to materially and adversely affect, the business (including the Business), operations, assets, liabilities, condition (whether financial, trading or otherwise) or operating results of the Purchased Entity or any of its Affiliates, and includes, without limitation: (a) the Purchased Entity or the Malta Subsidiary ceasing to operate its Business in substantially the same manner as conducted on the date of this Agreement; (b) the removal, disposal, sale, transfer or assignment of the assets of the Purchased Entity or the Malta Subsidiary, other than in the ordinary course of business; (c) the revocation, suspension, annulment or termination of any licenses held by the Purchased Entity or the Malta Subsidiary; and (d) any non-arms’ length transaction involving the assets of the Purchased Entity or the Malta Subsidiary or the Business without the prior written approval of the Purchaser, which may be withheld, conditioned and delayed in the Purchaser’s sole and absolute discretion for any reason.

“**Notification Deadline**” has the meaning ascribed to such term in Section 2.3(b).

“**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

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

“**Outside Date**” means May 5, 2023, or such other date as the Receiver and the Purchaser may agree to in writing.

“**Party**” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and “**Parties**” means more than one of them.

“**Person**” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal Representatives of an individual in such capacity.

“**Personal Property**” means all machinery, equipment, furniture, motor vehicles and other personal property that is related to the Business, wherever located (including those in possession of suppliers, customers and other third parties).

“**Purchase Price**” has the meaning set out in Section 2.2.

“Purchased Entity” means Materia Ventures Malta Ltd.

“Purchased Shares” means 100% of the issued and outstanding shares in the share capital of the Purchased Entity, as more particularly described in Schedule “A hereto.

“Purchaser” means JMCC (Canada) Corp.

“Receiver” means KSV Restructuring Inc. in its capacity as Court-appointed receiver and manager of Materia in the Receivership Proceedings.

“Receiver’s Certificate” means the certificate to be delivered by the Receiver to the Purchaser on Closing and thereafter filed by the Receiver with the Court pursuant to the Approval and Vesting Order, which shall, among other things, effect the vesting of the Purchased Shares in the Purchaser.

“Receivership Proceedings” means the proceedings commenced by Ela under section 243 of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* (Ontario).

“Representative” when used with respect to a Person means each director, officer, employee, consultant, financial adviser, legal counsel, accountant and other agent, adviser or representative of that Person.

“Sale Process” has the meaning set out in the Recitals.

“Sale Process Order” has the meaning set out in the Recitals.

“Successful Malta Share Bid” has the meaning set out in the Sale Process.

“Target Closing Date” means 5 Business Days following the Approval and Vesting Order, or such other date as the Purchaser and the Receiver may agree to in writing, or in any event as otherwise ordered by the Court.

“Tax Act” means the *Income Tax Act* (Canada).

“Tax Returns” means all returns, reports, declarations, designations, forms, elections, notices, filings, information returns, and statements in respect of Taxes that are required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.

“Taxes” or **“Tax”** means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, mining taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties and any liability for the payment of any amounts of the type described in this paragraph

as a result any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Person.

“Transaction” means the transaction contemplated by this Agreement, which provides for, among other things, the acquisition from the Receiver by the Purchaser of the Purchased Shares, on and subject to the terms and conditions set forth herein.

1.2 Actions on Non-Business Days

If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.3 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement, all monetary amounts referred to in this Agreement are stated in Canadian Dollars (CAD). All amounts due under this Agreement, including the Purchase Price or other amounts owed under this Agreement, are due and payable by the Purchaser to the Receiver in Canadian Dollars.

1.4 Calculation of Time

In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. local Toronto Time on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. local Time on the next succeeding Business Day. Any references to a specific time in this Agreement means local Toronto time unless otherwise stated.

1.5 Additional Rules of Interpretation

- (a) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
- (b) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.
- (c) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.
- (d) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.
- (e) *References to this Agreement.* The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.
- (f) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such

amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

- (g) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

1.6 Schedules

Schedule “A – Purchased Shares and Ownership Interest is attached to and incorporated in this Agreement by reference and deemed to be a part hereof. Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF PURCHASED SHARES

2.1 Purchase and Sale of the Purchased Shares

Subject to the terms and conditions of this Agreement, effective as and from the Closing Time, the Receiver shall sell, assign and transfer the Purchased Shares to the Purchaser (or as the Purchaser may direct), and the Purchaser shall purchase the Purchased Shares from the Receiver, free and clear of all Encumbrances, with the result that the Purchaser shall become the sole legal and beneficial owner of the Purchased Entity from and after the Closing Time.

2.2 Purchase Price

The purchase price payable by the Purchaser for the Purchased Shares shall be [REDACTED] subject to adjustments in accordance with Section 2.3 (as adjusted, the “**Purchase Price**”).

2.3 Purchase Price Adjustments

The Purchase Price shall be subject to adjustment(s) as follows:

- (a) The Purchaser identified certain Liabilities in the aggregate amount of €599,000 that existed prior to the date of this Agreement (as described in the Cover Letter, and referred to herein as the “**Cover Letter Liabilities**”). The Receiver shall be entitled, prior to Closing, to negotiate with the creditors and counterparties of the Cover Letter Liabilities in an effort to settle, compromise or reduce the quantum of such Cover Letter Liabilities. If the Receiver is successful in Discharging such Cover Letter Liabilities or any part thereof prior to Closing, as evidenced by a legally binding written agreement in favour and for the benefit of the Purchaser, the Purchased Entity and the Malta Subsidiary and otherwise in form and substance acceptable to the Purchaser, the Purchase Price shall increase on a dollar-for-dollar basis by the amount so Discharged.
- (b) The Purchase Price shall decrease, on a dollar-for-dollar basis, on account of all Liabilities of the Purchased Entity and Malta Subsidiary which the Purchaser

becomes aware of and which are disclosed to the Receiver in writing no later than April 11, 2023 or the last Business Day prior to the date for the Court hearing for the Approval and Vesting Order, whichever is later (the “**Notification Deadline**”), so long as such Liabilities were not fully, accurately and fairly disclosed (as determined by the Parties, acting reasonably, with any dispute to be referred to the Court) in the due diligence information in the virtual data room established by the Receiver as of the date of this Agreement (and accessible via link: <https://login.firmex.com/?siteUrl=https://ksv.firmex.com/projects/13/documents?documentid=340>) (the “**Additional Liabilities**”). The Purchaser shall deliver to the Receiver a description of the nature and extent of any Additional Liability together with supporting documentation (to the extent available to the Purchaser). The Receiver shall be entitled to seek a Discharge of such Additional Liability and any legally binding, written Discharge in form and substance acceptable to the Purchaser shall reduce the downward adjustment of the Purchase Price on account of such Additional Liability on a dollar-for-dollar basis. There shall be no adjustments to the Purchase Price on account of any Additional Liability discovered by the Purchaser after the Notification Deadline.

- (c) For the purpose of determining the quantum of the dollar-for-dollar Purchase Price adjustments contemplated by Section 2.3(a) and Section 2.3(b), any Liabilities and/or Discharges that are expressed in a currency other than Canadian Dollars shall be converted to Canadian Dollars by applying the Bank of Canada’s exchange rate in effect as of 12:00 noon (Toronto Time) on the Notification Deadline.
- (d) For the purposes of Section 2.3(b), the Receiver shall ensure that the Purchaser has reasonable access to the employees, officers and representatives of the Purchased Entity and the Malta Subsidiary to identify any Person as being a creditor or counterparty of the Purchased Entity or the Malta Subsidiary or in respect of any Additional Liability.

2.4 Payment of Purchase Price

The Purchaser shall satisfy the Purchase Price in accordance with the following:

- (a) The cash deposit paid by the Purchaser to the Receiver concurrent with submitting this Agreement (the “**Deposit**”) shall be released by the Receiver and credited against the Purchase Price at Closing; and
- (b) An amount equal to the Purchase Price less the Deposit, as adjusted higher or lower in accordance with Section 2.3 (the “**Cash Purchase Price**”), shall be transferred to the Receiver, in immediately available funds, at Closing.

2.5 Encumbrances to be Discharged

Pursuant to the Approval and Vesting Order, all Encumbrances in respect of the Purchased Shares shall be Discharged from the Purchased Shares and shall no longer attach to the Purchased Shares from and after the Closing Time.

2.6 Taxes

The Parties agree that:

- (a) the Purchase Price is exclusive of all applicable Taxes and the Purchaser shall be liable for and shall pay any and all applicable Taxes pertaining to the acquisition

- of the Purchased Shares (other than any Taxes attributable to Materia or its Affiliates, including on account of income, capital gains or other similar Taxes);
- (b) the Purchaser shall pay any applicable Taxes on the acquisition of the Purchased Shares (other than any Taxes attributable to Materia or its Affiliates, including on account of income, capital gains or other similar Taxes) in addition to the Purchase Price, either to the Receiver or directly to the appropriate Governmental Authority, as required by Applicable Law;
 - (c) if applicable, the Receiver and the Purchaser shall jointly elect under section 167 of the Excise Tax Act that no HST will be payable pursuant to the Excise Tax Act with respect to the purchase and sale of the Purchased Share under this Agreement, and the Purchaser shall file such election(s) no later than the due date for its HST returns for the first reporting period in which HST would, in the absence of filing such election, become payable in connection with the purchase and sale of the Purchased Shares under this Agreement. Notwithstanding this election(s), in the event it is determined by a Governmental Authority that there is a liability of the Purchaser or of the Receiver to collect and remit, HST in respect of the purchase and sale of the Purchased Shares hereunder, the Purchaser shall forthwith pay such HST to the applicable Governmental Authority, or to the Receiver for remittance to the appropriate Governmental Authority, as the case may be, and the Purchaser shall indemnify and save harmless the Receiver from any taxes, penalties and interest which may be payable by or assessed against the Receiver (or its Representatives, agents, employees, directors or officers) under the Excise Tax Act.
 - (d) If requested by the Purchaser, the Receiver shall make a joint election to have the rules in subsection 20(24) of the Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Receiver in respect of undertakings which arise from the operation of the Business to which the Purchased Shares related and to which paragraph 12(1)(a) of the Tax Act applies.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Receiver

Subject to the issuance of the Approval and Vesting Order, the Receiver represents and warrants to the Purchaser as follows and acknowledges and agrees that the Purchaser is relying upon such representations and warranties in connection with the purchase by Purchaser of the Purchased Shares:

- (a) **Receiver Validly Appointed:** The Receiver has been validly appointed by the Court under Canadian Law as receiver and manager of the Purchased Shares pursuant to the Receivership Order.
- (b) **Recitals:** The Recitals hereto are true and correct as of the date of this Agreement.
- (c) **Due Authorization:** Subject to the Court granting the Approval and Vesting Order, the Receiver has all necessary power, authority, and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement.

- (d) **Execution and Binding Obligation:** Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a legal, valid and binding obligation of the Receiver, enforceable against it in accordance with its terms.
- (e) **Title to Purchased Shares:** The Receiver will transfer the Purchased Shares to the Purchaser, free and clear of all Encumbrances, pursuant to and in accordance with the Approval and Vesting Order. To the Receiver's knowledge (having made due enquiry of the Books and Records and the officers of the Purchased Entity and the Malta Subsidiary), the Purchased Shares, as set out in Schedule "A hereto, represent all of the issued and outstanding share capital of the Purchased Entity, which have all been duly and validly issued and outstanding as fully-paid and non-assessable securities of the Purchased Equity.
- (f) **Subsidiaries:** To the knowledge of the Receiver (having made due enquiry of the Books and Records and the officers of the Purchased Entity and the Malta Subsidiary), except for the Malta Subsidiary, the Purchased Entity does not own or have any agreement, commitment, understanding or other obligation of any kind or nature to acquire, directly or indirectly, any securities or proprietary interests in any Person. The Purchased Entity is the sole registered and beneficial owner of all of the issued and outstanding shares in the capital of the Malta Subsidiary, as set out in Schedule "A hereto
- (g) **No Options:** To the knowledge of the Receiver (having made due enquiry of the Books and Records and the officers of the Purchased Entity and the Malta Subsidiary), no Person (other than the Purchaser under this Agreement) has any written, oral or other agreement, option, commitment, understanding, right or privilege (whether by law, equity, pre-emptive or contractual) capable of becoming an agreement, commitment, understanding, right or privilege for the purchase or acquisition of any of the Purchased Shares, the Business or any asset, property or securities of the Purchased Entity or the Malta Subsidiary.
- (h) **Residence of the Receiver:** The Receiver is not a non-resident of Canada within the meaning of the Tax Act.

3.2 Representations and Warranties as to the Purchaser

The Purchaser represents and warrants to and in favour of the Receiver as follows and acknowledges and agrees that the Receiver is relying upon such representations and warranties in connection with the sale by the Receiver of the Purchased Shares:

- (a) **Incorporation and Status:** The Purchaser is incorporated and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to enter into, deliver and perform its obligations under, this Agreement.
- (b) **Corporate Authorization:** The execution, delivery and performance by the Purchaser of this Agreement has been authorized by all necessary corporate action of the Purchaser.
- (c) **Financial Ability:** The Purchaser has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.
- (d) **No Conflict:** The execution, delivery and performance by the Purchaser of this Agreement and the completion of the Transaction contemplated by this Agreement does not (or would not with the giving of notice, the lapse of time, or both, or the

happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the Organizational Documents of the Purchaser.

- (e) **Execution and Binding Obligation:** This Agreement has been duly executed and delivered by the Purchaser and this Agreement is a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject only to the Approval and Vesting Order.
- (f) **No Additional Due Diligence:** The Purchaser acknowledges and agrees that: (a) it has had an opportunity to conduct any and all due diligence regarding the Purchased Shares prior to the execution of this Agreement; (b) it has relied solely upon its own independent review, investigation and/or inspection of any documents related to or in connection with the Purchased Shares; (c) it is not relying upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, (by operation of Law or otherwise), regarding the Purchased Shares or the completeness or accuracy of any information provided in connection therewith, except as expressly stated in this Agreement; and (d) the obligations of the Purchaser under this Agreement are not conditional upon any additional due diligence.
- (g) **No Commissions:** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the Transaction contemplated by this Agreement based on any arrangement or agreement.

3.3 As is, Where is

Except as expressly provided in this Agreement, the Purchaser hereby acknowledges and agrees that:

- (a) the Purchased Shares are being purchased on an “*as is, where is*” basis as they exist at Closing and the Purchaser will accept the Purchased Shares in such states, understanding that the sale of the Purchased Shares is at the risk of the Purchaser. Other than those representations and warranties contained herein, no representation, warranty or condition is expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect of any other matter or thing whatsoever; and
- (b) the Receiver and Materia have not made and are not making any representations, warranties, conditions, statements or promises whatsoever, express or implied, statutory or otherwise, with respect to the Purchased Shares, including with respect to: (i) compliance or non-compliance with laws, regulations, including environmental rules; and (ii) existence of Encumbrances or any other matter or thing whatsoever affecting the Purchased Shares or the Purchased Entity.

ARTICLE 4 COVENANTS

4.1 Target Closing Date

The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on the Target Closing Date and in any event prior to the Outside Date.

4.2 Motion for Approval and Vesting Order

As soon as practicable after the selection of this Agreement as the Successful Malta Share Bid pursuant to the terms of the Sale Process, the Receiver shall diligently use its commercially reasonable efforts to seek the issuance and entry of the Approval and Vesting Order and the Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Approval and Vesting Order. The Receiver will provide to the Purchaser a reasonable opportunity to review and comment on a draft of the motion materials to be served and filed with the Court, it being acknowledged that such motion materials should be served as promptly as reasonably possible following the determination that this Agreement is the Successful Malta Share Bid, and will serve such materials on the current service list and on such other interested parties, and in such manner, as the Purchaser may reasonably require. The Receiver will promptly inform counsel for the Purchaser of any and all threatened or actual objections to the motion for the issuance of the Approval and Vesting Order of which it becomes aware, and will promptly provide to the Purchaser a copy of all written objections received.

4.3 Interim Period

During the Interim Period, the Receiver shall advise the Purchaser promptly if it becomes aware of or receives notice of any Material Adverse Change with respect to the Purchased Entity, any of its Affiliates or the Business. During the Interim Period, the Purchased Entity and the Malta Subsidiary shall (a) operate in the ordinary course, (b) not enter into any contract or agreement outside of the ordinary course of business, and (c) not incur any additional Liabilities other than Liabilities incurred in the ordinary course of business.

4.4 Access During Interim Period

During the Interim Period, the Receiver shall facilitate, on a reasonable efforts basis, requests by the Purchaser for access to the Purchased Entity and the Malta Subsidiary, including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business and the Personal Property of the Purchased Entity and the Malta Subsidiary as the Purchaser reasonably deems necessary or desirable to further familiarize itself with the Business or the Personal Property of the Purchased Entity and the Malta Subsidiary. Without limiting the generality of the foregoing, the Purchaser and its Representatives shall be permitted reasonable access during normal business hours to all documents in the Receiver's possession or control relating to information scheduled or required to be disclosed under this Agreement and to the employees of Materia, the Purchased Entity and the Malta Subsidiary. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk and cost, during normal business hours, and without undue interference with the Purchased Entity's operations and the Receiver shall use reasonable efforts to facilitate cooperation by the Purchased Entity and the Malta Subsidiary with such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser and in the Receiver's possession or control.

4.5 Regulatory Approvals and Consents

- (a) Each of the Parties (in case of the Receiver, so long as the Receiver is not discharged) shall use its commercially reasonable efforts to: (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any Applicable Law or otherwise to consummate and make effective the Transaction; (ii) obtain any consents, approvals or orders required to be obtained or made in connection with the authorization, execution

and delivery of this Agreement and the consummation of the Transaction; and (iii) make all filings and give any notice, and thereafter make any other submissions either required or reasonably deemed appropriate by each of the Parties or required under any Applicable Law, for the purpose of consummating the Transaction.

- (b) The Parties shall use reasonable efforts to cooperate and consult with each other in connection with the making of any such filings and notices, including providing copies of all such documents to the non-filing Party and its advisors within a reasonable period of time prior to filing or the giving of notice. Up to the Closing Time, each Party shall pay for its own filing fees and other charges arising out of the actions taken under this Section 4.5 and following the Closing Time, such costs and fees shall be borne by the Purchaser.

4.6 Books and Records

The Purchaser shall preserve and keep the Books and Records acquired by it pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such Books and Records (to the extent such electronic copies exist or could be reasonably made), available to the Receiver, Materia, their successors, and any trustee in bankruptcy of Materia, and shall, at such party's expense, permit any of the foregoing persons to take copies of such Books and Records as they may reasonably require. As soon as practicable following Closing and in any event no later than 45 days following Closing, the Receiver shall deliver, at the cost of the Purchaser any and all Books and Records reasonably requested by the Purchaser, provided such Books and Records are in the Receiver's possession and control.

ARTICLE 5 CLOSING ARRANGEMENTS

5.1 Closing

The Closing shall take place virtually by exchange of documents in PDF format at 12:00 noon (the "**Closing Time**") on the Closing Date, or at such other time or such other place as may be agreed in writing by the Receiver and the Purchaser.

5.2 Receiver's Closing Deliveries

At the Closing, the Receiver shall deliver or cause to be delivered to the Purchaser the following:

- (a) a copy of the Approval and Vesting Order, as issued and entered by the Court;
- (b) a share transfer agreement for the Purchased Shares, with Materia as transferor and the Purchaser as transferee, in customary form under Maltese law and notarized in Malta, providing for, among other things, payment of the Purchase Price as a condition precedent to the share transfer, in form and substance satisfactory to the Purchaser;
- (c) a certificate of status, compliance, good standing or like certificate with respect to Materia Malta issued by the appropriate government official of its jurisdiction of incorporation;
- (d) a certificate dated as of the Closing Date and executed by the Receiver confirming and certifying that each of the conditions in Sections 6.1 and 6.3 have been

satisfied and that each of the representations and warranties contained in Sections 3.1 are true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date;

- (e) the Books and Records of the Purchased Entity and the Malta Subsidiary that are in the Receiver's possession and control;
- (f) a release and discharge executed by each of the Materia Lenders, Materia and its Affiliates (other than the Purchased Entity and the Malta Subsidiary) in favour of the Purchaser, the Purchased Entity and the Malta Subsidiary, in form acceptable to the Purchaser, unconditionally and irrevocably forever releasing and discharging any and all Encumbrances against or in respect of the Purchased Shares, the Purchased Entity, the Malta Subsidiary, the Business and their respective assets and properties; and
- (g) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the Transaction provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

5.3 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver or cause to be delivered to the Receiver the following:

- (a) payment of the Cash Purchase Price, in immediately available funds;
- (b) a certificate of status, compliance, good standing or like certificate with respect to the Purchaser issued by the appropriate government official of its jurisdiction of formation;
- (c) a share transfer agreement for the Purchased Shares with Materia as transferor and the Purchaser as transferee, in customary form under Maltese law and notarized in Malta, providing for, among other things, payment of the Purchase Price as a condition precedent to the share transfer, in form and substance satisfactory to the Purchaser;
- (d) a certificate dated as of the Closing Date and executed by an executive officer of the Purchaser confirming and certifying that each the conditions in Sections 6.1 and 6.2 have been satisfied and that the representations and warranties contained in Section 3.2 are true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date; and
- (e) such other agreements, documents and instruments as may be reasonably required by the Receiver to complete the Transaction provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

ARTICLE 6 CONDITIONS OF CLOSING

6.1 Conditions for the Benefit of the Purchaser and the Receiver

The respective obligations of the Purchaser and of the Receiver to consummate the Transaction are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Shares pursuant to this Agreement shall be in effect;
- (b) this Agreement shall be selected as the Successful Malta Share Bid; and
- (c) the Approval and Vesting Order shall have been issued and entered on or before the Outside Date or on or before such later date as the Parties agree to in writing, and shall not have been vacated, appealed, set aside or stayed.

6.2 The Purchaser's Conditions

The Purchaser shall not be obligated to complete the Transaction contemplated by this Agreement, unless, at or before the Closing Time, each of the conditions listed below in this Section 6.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing; provided that if the Purchaser does not waive a condition(s) and completes the Closing, such condition(s) shall be deemed to have been waived by the Purchaser. The Receiver shall take, and shall use best efforts to ensure that the Purchased Entity and the Malta Subsidiary each takes, all such commercially reasonable actions, steps and proceedings as are reasonably within its control to ensure that the conditions listed below in this Section 6.2 are fulfilled at or before the Closing Time.

- (a) **Receiver's Deliverables.** The Receiver shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 5.2.
- (b) **No Violation of Orders or Law.** During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of: (a) making the Transaction illegal; or (b) otherwise prohibiting, preventing or restraining the consummation of the Transaction contemplated by this Agreement.
- (c) **No Breach of Representations and Warranties.** Except as such representations and warranties may be affected by the occurrence of events or the Transaction specifically contemplated by this Agreement (including the Approval and Vesting Order), each of the representations and warranties contained in Section 3.1 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (d) **No Breach of Covenants.** The Receiver shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Receiver on or before the Closing.
- (e) **Consents.** All Authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of this Agreement by the Receiver hereunder or the purchase of the Purchased Shares hereunder shall have been obtained.
- (f) **Certificate of Status.** The receipt by the Purchaser of a certificate of status, compliance, good standing or like certificate with respect to the Purchased Entity and the Malta Subsidiary issued by the appropriate government official of its jurisdiction of incorporation, to the extent such certificate exists in such jurisdiction.

- (g) **Material Adverse Change.** From the date of this Agreement to the Closing Time there shall not have occurred any Material Adverse Change.
- (h) **Encumbrances Released.** Neither the Purchased Entity nor the Malta Subsidiary has any obligation or Liability (whether as borrower, obligor, guarantor or otherwise) in respect of, and there are not in existence any Encumbrances in respect of the Purchased Entity, the Malta Subsidiary or their respective assets, property or the Business to secure, support or satisfy the payment of, any Funded Indebtedness (including any indebtedness owing to the Material Lenders or to Material or any of its Affiliates), except and solely to the extent of any such Funded Indebtedness that is Discharged at or before the Closing Time.

6.3 The Receiver's Conditions

The Receiver shall not be obligated to complete the Transaction contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 6.3 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Receiver, and may be waived by the Receiver in whole or in part, without prejudice to any of their rights of termination in the event of nonfulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Receiver only if made in writing. The Purchaser shall take all such actions, steps and proceedings as are reasonably within the Purchaser's control as may be necessary to ensure that the conditions listed below in this Section 6.3 are fulfilled at or before the Closing Time.

- (a) **Purchaser's Deliverables.** The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Receiver at the Closing all the documents and payments contemplated in Section 5.3.
- (b) **No Violation of Orders or Law.** During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of: (a) making the Transaction contemplated by this Agreement illegal; or (b) otherwise prohibiting, preventing or restraining the consummation of any of the Transaction contemplated by this Agreement.
- (c) **No Breach of Representations and Warranties.** Each of the representations and warranties contained in Section 3.2 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (d) **No Breach of Covenants.** The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing, which shall have been performed in all respects.
- (e) **Consents.** All Authorizations, approvals, consents, filings with or notice to, any Governmental Authority, court or other Person required in connection with the execution, delivery or performance of this Agreement by the Receiver hereunder or the purchase of the Purchased Shares hereunder shall have been obtained.

6.4 Receiver's Certificate

When the conditions to Closing set out in Sections 6.1, 6.2 and 6.3 have been satisfied and/or waived by the Receiver or the Purchaser, as applicable, the Receiver shall: (i) issue forthwith its Receiver's Certificate concurrently to Material and the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file, as soon as practicable, a copy of the Receiver's Certificate with the Court (and provide a copy of such filed certificate to the Purchaser).

ARTICLE 7 TERMINATION

7.1 Grounds for Termination

- (a) This Agreement may be terminated on or prior to the Closing Date:
 - (i) by the mutual written agreement of the Receiver and the Purchaser;
 - (ii) automatically and without any action or notice by the Receiver to the Purchaser or by the Purchaser to the Receiver, immediately upon the determination by the Receiver of a Successful Malta Share Bid (pursuant to the Sale Process) that is not this Agreement;
 - (iii) by the Purchaser or the Receiver, at any time following the Outside Date, if Closing has not occurred on or prior to 11:59 p.m. (Eastern Time) on the Outside Date, provided that the reason for the Closing not having occurred is not due to any act or omission, or breach of this Agreement, by the Party seeking to terminate this Agreement pursuant to this Section 7.1(a)(iii);
 - (iv) by the Purchaser, on the one hand, or the Receiver, on the other hand, upon written notice to the other Parties if: (i) the Approval and Vesting Order has not been obtained by the Outside Date; or (ii) the Court finally declines to grant the Approval and Vesting Order with no opportunity to return to Court to seek a revised Approval and Vesting Order, and in each case for reasons other than a breach of this Agreement by the Party seeking to terminate the Agreement pursuant to this Section 7.1(a)(iv);
 - (v) by the Receiver or the Purchaser, if the quantum of Additional Liabilities resulting in a reduction of the Purchase Price pursuant to Section 2.3(b) exceeds \$300,000;
 - (vi) by the Receiver, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty of the Purchaser in this Agreement which would prevent the satisfaction of, or compliance with, any condition set forth in Section 6.2, as applicable, by the Outside Date and such violation or breach has not been waived by the Receiver or cured within five (5) Business Days of the Receiver providing written notice to the Purchaser of such breach, unless the Receiver is in material breach of any agreement, covenant, representation or warranty of the Receiver in this Agreement; or
 - (vii) by the Purchaser, if there has been a material violation or breach by the Receiver of any agreement, covenant, representation or warranty which would prevent the satisfaction of, or compliance with, any condition set forth in Section 6.3, as applicable, by the Target Closing Date and such violation or breach has not been waived by the Purchaser or cured within five (5) Business Days of the Purchaser providing notice to the Receiver of such breach, unless the Purchaser is in material breach of its obligations under this Agreement.
- (b) Prior to the Receiver agreeing to or electing to any termination pursuant to this Section 7.1, the Receiver shall first consult with Ela.

7.2 Effect of Termination

If this Agreement is terminated pursuant to Section 7.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections 7.3 (*Deposit*), 8.2 (*Expenses*), 8.3 (*Public Announcements*), 8.4 (*Notices*), 8.8 (*Waiver and Amendment*), 8.11 (*Governing Law*), 8.12 (*Dispute Resolution*), 8.13 (*Attornment*), 8.14 (*Successors and Assigns*), 8.15 (*Assignment*), 8.16 (*No Liability*), and 8.17 (*Third Party Beneficiaries*), each of which shall survive such termination. For the avoidance of doubt, any Liability incurred by a Party pursuant to this Agreement prior to the termination of this Agreement shall survive such termination.

7.3 Deposit

Notwithstanding any other term or condition of this Agreement, if the Closing does not occur solely due to the termination of this Agreement by the Receiver pursuant to Section 7.1(a)(vi), the Deposit shall become the property of and be retained by the Receiver, as the sole and exclusive compensation and remedy of the Receiver, Materia and its Affiliates for such termination and the breaches and violations. If the Closing does not occur for any other reason, the full amount of the Deposit shall be returned forthwith to the Purchaser or as it may direct in writing.

ARTICLE 8 GENERAL

8.1 Survival

Subject to Section 7.2, all representations, warranties, covenants and agreements of the Receiver or the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement.

8.2 Expenses

Each Party shall be responsible for its own costs and expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement, the Transaction (including the fees and disbursements of legal counsel, bankers, agents, investment bankers, accountants, brokers and other advisers).

8.3 Public Announcements

The Receiver shall be entitled to disclose the terms of this Agreement to the Court and to the Materia Lenders (provided that such party is not a Qualified Bidder with respect to a transaction involving the acquisition of the Purchased Shares, the Purchased Entity, the Malta Subsidiary or any of their respective assets, property or the Business) and this Agreement may be included in any motion record of the Receiver seeking approval of this Agreement as the Successful Malta Share Bid and posted on the Receiver's website maintained in connection with the Receivership Proceedings in connection therewith; provided that any information which the Purchaser (acting reasonably) advises the Receiver in writing as being confidential shall be redacted. Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein) or where required to meet obligations of the Parties under the Sale Process, Applicable Laws or stock exchange rules, the Receiver shall not issue (prior to or after the Closing) any press release or make any public statement or public communication with respect to this Agreement or the

Transaction contemplated hereby without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

8.4 Notices

Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if: (i) delivered personally; (ii) sent by prepaid courier service; or (iii) sent by email, in each case, to the applicable address set out below:

- (a) if to the Receiver to:

KSV Restructuring Inc.
220 Bay Street
13th Floor, PO Box 20
Toronto, ON M5J 2W4

Attention: Noah Goldstein and Eli Brenner
Tel: 416-932-6207 and 416-932-6028
Email: ngoldstein@ksvadvisory.com and
ebrenner@ksvadvisory.com

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

Miller Thomson LLP
40 King Street West
#5800
Toronto, ON M5H 3S1

Attention: Asim Iqbal
Tel: 416-597-6008
Email: aiqbal@millerthomson.com

- (b) If to the Purchaser:

JMCC (Canada) Corp.
c/o Goodmans LLP
Bay Adelaide Centre
333 Bay Street
Suite 3400
Toronto, ON M5H 2S7

Attention: Neil Sheehy
Tel: 416.597.4229
E-mail: nsheehy@goodmans.ca

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

Any Party may from time to time change its address under this Section 8.4 by notice to the other Parties given in the manner provided by this Section 8.4.

8.5 Time of Essence

Time shall be of the essence of this Agreement in all respects.

8.6 Further Assurances

The Receiver and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Parties may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

8.7 Entire Agreement

This Agreement and the deliverables delivered by the Parties in connection with the Transaction contemplated herein constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

8.8 Waiver and Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the Receiver and Purchaser. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

8.9 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

8.10 Remedies Cumulative

The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

8.11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.12 Dispute Resolution

If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 7, such dispute shall be determined by the Court within the Receivership Proceedings, or by such

other Person or in such other manner as the Court may direct. The Parties irrevocably submit and attorn to the exclusive jurisdiction of the Court.

8.13 Attornment

Each Party agrees: (a) that any Legal Proceeding relating to this Agreement shall be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (b) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Court on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 8.13. Each Party agrees that service of process on such Party as provided in this Section 8.13 shall be deemed effective service of process on such Party.

8.14 Successors and Assigns

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

8.15 Assignment

Prior to Closing, the Purchaser may assign, upon written notice to the Receiver, all or any portion of its rights and obligations under this Agreement to an Affiliate, including the rights of the Purchaser to purchase from the Receiver the Purchased Shares prior to the issuance of the Approval and Vesting Order; provided that no such assignment shall relieve the Purchaser of any of its obligations or Liabilities under this Agreement. The Receiver may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

8.16 No Liability

The Purchaser acknowledges and agrees that the Receiver, acting in its capacity as the Receiver of Materia, will have no Liability, in its personal capacity, in connection with this Agreement whatsoever.

8.17 Third Party Beneficiaries

Unless where provided to the contrary by the specific terms hereof, this Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.18 Independent Legal Advice

The Purchaser warrants that it has received independent legal advice in connection with this Agreement.

8.19 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Parties by e-mail in pdf format or

by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

[Signature Page Follows.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as Court-appointed receiver and receiver and manager of **11157353 CANADA CORP.**, and not in its personal or corporate capacity

By: 

Name: Noah Goldstein

Title: Managing Director

JMCC (CANADA) CORP.

By: _____

Name: Diane A. Scott

Title: Director

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as Court-appointed receiver and receiver and manager of **11157353 CANADA CORP.**, and not in its personal or corporate capacity

By: _____
Name:
Title:

JMCC (CANADA) CORP.

By:  _____
Name: Diane A. Scott
Title: Director

SCHEDULE "A"
PURCHASED SHARES AND OWNERSHIP INTEREST

Person	Purchased Shares		
	Class of Shares	Number of Shares Issued and Outstanding	Ownership Information
Materia Ventures Malta Ltd.	Ordinary	1,250	100% owned by 11157353 CANADA Corp., on both non-diluted and fully-diluted basis
Materia Malta Operating Limited	Ordinary	120,000	100% owned by Materia Ventures Malta Ltd., on both non-diluted and fully-diluted basis

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	TUESDAY, THE 12 TH
)	
JUSTICE OSBORNE)	DAY OF APRIL, 2023

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and –

11157353 CANADA CORP.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order) of 11157353 Canada Corp. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by the share purchase agreement (the "**Sale Agreement**") between the Receiver and Reflourish Capital Limited (the "**Purchaser**") dated February 14, 2023, as described in the Report of the Receiver dated February 17, 2023 ("**Pre-Filing Report**") and appended to the Affidavit of Benjamin Trefler sworn February 15th, 2023 (the "**Trefler Affidavit**"), and vesting in the Purchaser the Debtor's right, title and interest in and to Purchased Shares (as defined in the Sale Agreement), was heard this day by Zoom video conference. .

ON READING the and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, Counsel for the Purchaser, and such other counsel as were present and listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shallon Garrafa sworn April [●], 2023 filed:

1. **THIS COURT ORDERS** that the time and manner of service of the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Shares to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Shares described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated February 21, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares shall stand in the place and stead of the Purchased Shares, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Shares with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that, following the closing of the Transaction, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares.

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

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

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

SCHEDULE "A"

Court File No. 23-00694886-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and -

11157353 CANADA CORP.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the "**Court**") dated February 21, 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order), of 11157353 Canada Corp. (the "**Debtor**").

B. Pursuant to an Order of the Court dated April 12, 2023, the Court approved the share purchase agreement dated February 15, 2023 (the "**Sale Agreement**") between the Receiver and Reflourish Capital Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Shares, which vesting is to be effective with respect to the Purchased Shares upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Shares; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV RESTRUCTURING INC., in its
capacity as Receiver of the undertaking,
property and assets of 11157353 Canada Corp.,
and not in its personal or corporate capacity**

Per:

Name:

Title:

Schedule B – Purchased Shares

100% of the issued and outstanding shares in the share capital of Materia Deutschland GmbH, more particularly described below:

Company	Purchased Shares			
	Class of Shares	Number of Shares owned by Materia	% of Issued and Outstanding Shares owned by Materia (non-diluted)	% of Issued and Outstanding Shares owned by Materia (fully diluted)
Materia Deutschland GmbH	Not specified	25,000 (in a nominal amount of EUR 1.00 each)	100%	100%

ELA CAPITAL INC.

Applicant

- 8 - and

11157353 CANADA CORPORATION

Respondent

Court File No. CV-23-00694886-00CL

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

Proceeding Commenced at
Toronto

APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Asim Iqbal LSO# 61884B

aiqbal@millerthomson.com
Tel: 416.597.6008

Monica Faheim LSO#82213R

mfaheim@millerthomson.com
Tel: 416.597.6087

Lawyers for the Proposed Receiver,
KSV Restructuring Inc.

TAB 4

Court File No. 23-00694886-00CL

ONTARIO

SUPERIOR COURT

OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE _____

)

~~WEEKDAY, THE #~~

)

JUSTICE OSBORNE

TUESDAY, THE 12TH

)

)

~~DAY OF MONTH,~~
20^{YR} APRIL, 2023

B E T W E E N:-

~~PLAINTIFF~~

Plaintiff

ELA CAPITAL INC.

Applicant

- and -

~~DEFENDANT~~

Defendant

Respondent

11157353 CANADA CORP.

APPROVAL AND VESTING ORDER

THIS MOTION, made by [RECEIVER'S NAME] KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the ~~undertaking, property~~ assets, undertakings and ~~assets of [DEBTOR]~~ properties other than the Excluded Assets (as defined in the

Receivership Order) of 11157353 Canada Corp. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by ~~an~~ the share purchase agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and ~~[NAME OF PURCHASER]~~ Reflourish Capital Limited (the "**Purchaser**") dated ~~[DATE]~~ and appended to February 14, 2023, as described in the Report of the Receiver dated ~~[DATE]~~ (the "February 17, 2023 ("Pre-Filing Report"),") and appended to the Affidavit of Benjamin Trefler sworn February 15th, 2023 (the "Trefler Affidavit"), and vesting in the Purchaser the Debtor's right, title and interest in and to ~~the assets described~~ Purchased Shares (as defined in the Sale Agreement (the "Purchased Assets"),), was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ by Zoom video conference. .

ON READING the ~~Report~~ and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~, counsel for the Applicant, Counsel for the Purchaser, and such other counsel as were present and listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ Shallon Garrafa sworn ~~[DATE]~~ April [●], 2023 filed¹:-

1. **THIS COURT ORDERS** that the time and manner of service of the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

~~1.2.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.- The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased ~~Assets~~ Shares to the Purchaser.

~~2.3.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased ~~Assets~~ Shares described in the Sale Agreement ~~[and listed on Schedule "B" hereto]~~⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and

¹ ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: -(i) any encumbrances or charges created by the Order of the Honourable Justice [NAME]Osborne dated [DATE]February 21, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; ~~and (iii) those Claims listed on Schedule C hereto~~ (all of which are collectively referred to as the "**Encumbrances**", ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased ~~Assets~~Shares are hereby expunged and discharged as against the Purchased ~~Assets~~Shares.

3. ~~THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act~~⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

⁵~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

⁶~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased AssetsShares shall stand in the place and stead of the Purchased AssetsShares, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased AssetsShares with the same priority as they had with respect to the Purchased AssetsShares immediately prior to the sale⁸, as if the Purchased AssetsShares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

~~7.6.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;-
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and-
- (c) any assignment in bankruptcy made in respect of the Debtor;

~~⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

~~⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

the vesting of the Purchased ~~Assets~~Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8.7. THIS COURT ORDERS ~~AND DECLARES~~ that, following the closing of the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario), the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares.

9.8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada ~~or in~~ the United States or in Germany to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. –All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A—Form of Receiver's Certificate

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

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

SCHEDULE "A"

Court File No. 23-00694886-00CL
ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N: _

~~PLAINTIFF~~

Plaintiff

ELA CAPITAL INC.

Applicant

- and -

~~DEFENDANT~~

Defendant

11157353 CANADA CORP.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. ~~A.~~ Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Osborne of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ February 21, 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the ~~undertaking, property and assets of [DEBTOR]~~, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order), of 11157353 Canada Corp. (the "**Debtor**").-

B. ~~B.~~ Pursuant to an Order of the Court dated ~~[DATE]~~, April 12, 2023, the Court approved the ~~agreement of share purchase and sale made as of [DATE OF AGREEMENT]~~ agreement dated February 15, 2023 (the "**Sale Agreement**") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ Reflourish Capital Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased ~~Assets~~ Shares, which vesting is to be effective with respect to the Purchased ~~Assets~~ Shares upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased ~~Assets~~ Shares; (ii) that the conditions to Closing as set out in ~~section 6~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. ~~C.~~ Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. ~~1.~~ The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased ~~Assets~~ Shares payable on the Closing Date pursuant to the Sale Agreement;
2. ~~2.~~ The conditions to Closing as set out in ~~section 6~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. ~~3.~~ The Transaction has been completed to the satisfaction of the Receiver.
4. ~~4.~~ This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

-

KSV RESTRUCTURING INC., in its
capacity as Receiver of the undertaking,
property and assets of 11157353 Canada
Corp., and not in its personal or corporate
capacity

-

Per: _____

Name:

Title:

-

Schedule B – Purchased Shares

100% of the issued and outstanding shares in the share capital of Materia Deutschland GmbH,
more particularly described below:

<u>Company</u>	<u>Purchased Shares</u>			
	<u>Class of Shares</u>	<u>Number of Shares owned by Materia</u>	{NAME OF RECEIVER}, in its capacity as Receiver of the undertaking, property and assets of {DEBTOR}, and not in its personal capacity <u>% of Issued and Outstanding</u>	<u>% of Issued and Outstanding Shares owned by Materia (fully diluted)</u>

			<u>Shares owned by Materia (non-diluted)</u>	
<u>- Materia Deutschland GmbH</u>	<u>- Not specified</u>	<u>25,000 (in a nominal amount of EUR 1.00 each)</u>	<u>Per: - 100%</u>	<u>- 100%</u>

Name:-

Title:-

Schedule B—Purchased Assets

~~Schedule C — Claims to be deleted and expunged from title to Real Property~~

**~~Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)~~**

-

-

ELA CAPITAL INC.

and

11157353 CANADA CORPORATION

Court File No. CV-23-00694886-00CL

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at
Toronto

APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

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Lawyers for the Proposed Receiver,
KSV Restructuring Inc.

TAB 5

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	TUESDAY, THE 12 TH
)	
JUSTICE OSBORNE)	DAY OF APRIL, 2023

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and –

11157353 CANADA CORP.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order) of 11157353 Canada Corp. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by the share purchase agreement (the "**Sale Agreement**") between the Receiver and JMCC (Canada) Corp. dated March 31, 2023 and appended to the Report of the Receiver dated April 3, 2023 (the "**Report**"), and vesting in JMCC (Canada) Corp. or such other person as it may designate (the "**Purchaser**") the right, title and interest of the Debtor and the Receiver in and to the Purchased Shares (as defined in the Sale Agreement), was heard this day by videoconference.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Purchaser, and such other counsel as were present and listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shallon Garrafa sworn April [●], 2023 filed:

1. **THIS COURT ORDERS** that the time and manner of service of the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized, ratified and approved, with such amendments as may be agreed between the Receiver and the Purchaser. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Shares to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Shares described in the Sale Agreement including as listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, pledges, rights or options to acquire, or other claims of any kind or nature whatsoever, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, whether or not they have attached or been perfected, registered or filed, and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Justice Osborne dated February 21, 2023 (including, without limitation, the Receiver's Charge, the Receiver's Borrowing Charge and the KERP Charge, each as defined therein), and any other Order of the Court granted in the within proceedings;

(ii) all Claims of the Material Lenders; (iii) all Claims of Lyphe Group Limited and its affiliates; (iv) all Claims of the Debtor and its Affiliates (other than the Purchased Entity and the Malta Subsidiary); and (v) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares shall stand in the place and stead of the Purchased Shares, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Shares with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other

reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that, following the closing of the Transaction, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares and to register the Purchased Shares in the name of the Purchaser in the register of members of the Purchased Entity.

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

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

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

SCHEDULE "A"

Court File No. 23-00694886-00CL

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

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and -

11157353 CANADA CORP.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties, other than the Excluded Assets (as defined in the Receivership Order), of 11157353 Canada Corp. (the "**Debtor**").

B. Pursuant to an Order of the Court dated April 12, 2023, the Court approved the share purchase agreement dated March 31, 2023 (the "**Sale Agreement**") between the Receiver and JMCC (Canada) Corp. and provided for the vesting in JMCC (Canada) Corp. or such other person as it may designate (the "**Purchaser**") of the right, title and interest of the Debtor and the Receiver in and to the Purchased Shares, which vesting is to be effective with respect to the Purchased Shares upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Shares; (ii) that the

conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV RESTRUCTURING INC., in its
capacity as Receiver of the undertaking,
property and assets of 11157353 Canada
Corp., and not in its personal or corporate
capacity**

Per:

Name:

Title:

SCHEDULE "B"
PURCHASED SHARES

Person	Purchased Shares		
	Class of Shares	Number of Shares Issued and Outstanding	Ownership Information
Materia Ventures Malta Ltd.	Ordinary	1,250	100% owned by 11157353 CANADA Corp., on both non-diluted and fully-diluted basis

ELA CAPITAL INC.

and - 8 -

11157353 CANADA
CORPORATION

Court File No. CV-23-00694886-00CL

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at
Toronto

APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

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Tel: 416.597.6087

Lawyers for the Receiver,
KSV Restructuring Inc.

TAB 6

Court File No. ~~23-00694886-00CL~~

ONTARIO

SUPERIOR COURT

OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE ~~_____~~

)

~~WEEKDAY, THE #~~

)

JUSTICE ~~_____~~ OSBORNE

TUESDAY, THE 12TH

)

)

DAY OF ~~MONTH,~~
~~20YR~~ APRIL, 2023

B E T W E E N:—

~~PLAINTIFF~~

~~Plaintiff~~

ELA CAPITAL INC.

Applicant

- and -

~~DEFENDANT~~

~~Defendant~~

11157353 CANADA CORP.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the ~~undertaking, property assets, undertakings~~ and ~~assets~~ properties other than the Excluded Assets (as defined in the Receivership Order) of ~~[DEBTOR]~~ 11157353 Canada Corp. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by ~~an agreement of the share purchase and sale agreement~~ (the "Sale

Agreement") between the Receiver and ~~[NAME OF PURCHASER] (the "Purchaser")~~ JMCC (Canada) Corp. dated ~~[DATE]~~ March 31, 2023 and appended to the Report of the Receiver dated ~~[DATE]~~ April 3, 2023 (the "Report"), and vesting in JMCC (Canada) Corp. or such other person as it may designate (the "Purchaser") the ~~Debtor's~~ right, title and interest of the Debtor and the Receiver in and to the ~~assets described~~ Purchased Shares (as defined in the Sale Agreement ~~(the "Purchased Assets"))~~, was heard this day ~~at 330 University Avenue, Toronto, Ontario.~~

by _____ videoconference.

ON READING the Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~, counsel for the Applicant, counsel for the Purchaser, and such other counsel as were present and listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ Shallon Garrafa sworn ~~[DATE]~~ April [●], 2023 filed⁺:

1. THIS COURT ORDERS that the time and manner of service of the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

1.2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized, ratified and approved, with such ~~minor~~ amendments as may be agreed between the Receiver ~~may deem necessary and the Purchaser~~. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased ~~Assets~~ Shares to the Purchaser.

2.3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased ~~Assets~~ Shares described in the Sale Agreement ~~and including as~~ listed on **Schedule "B"** hereto⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security

⁺ ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, pledges, rights or options to acquire, or other financial or monetary claims of any kind or nature whatsoever, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, whether or not they have attached or been perfected, registered or filed, and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: —(i) any encumbrances or charges created by the ~~Order~~Orders of the Honourable Justice [NAME]Osborne dated [DATE];February 21, 2023 (including, without limitation, the Receiver's Charge, the Receiver's Borrowing Charge and the KERP Charge, each as defined therein), and any other Order of the Court granted in the within proceedings; (ii) all Claims of the Materia Lenders; (iii) all Claims of Lyphe Group Limited and its affiliates; (iv) all Claims of the Debtor and its Affiliates (other than the Purchased Entity and the Malta Subsidiary); and (v) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system; ~~and (iii) those Claims listed on Schedule C hereto~~ (all of which are collectively referred to as the "**Encumbrances**", ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D)~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased ~~Assets~~Shares are hereby expunged and discharged as against the Purchased ~~Assets~~Shares.

3. ~~THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]~~⁶, the Land Registrar is hereby directed to enter the

⁵The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶Elect the language appropriate to the land registry system (Registry vs. Land Titles).

~~Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased AssetsShares shall stand in the place and stead of the Purchased AssetsShares, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased AssetsShares with the same priority as they had with respect to the Purchased AssetsShares immediately prior to the sale⁸, as if the Purchased AssetsShares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

~~7.6.~~ **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;-

⁷ ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

⁸ ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and-

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased ~~Assets~~Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

7. THIS COURT ORDERS that, following the closing of the Transaction, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares and to register the Purchased Shares in the name of the Purchaser in the register of members of the Purchased Entity.

9.8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada~~-or in,~~ the United States, Malta or any other foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. -All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

~~Schedule A—Form of Receiver's Certificate~~

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

10. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. prevailing Eastern Time on the date of this Order without any need for entry and filing.

SCHEDULE "A"

Court File No. 23-00694886-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

B E T W E E N: _

PLAINTIFF

Plaintiff

ELA CAPITAL INC.

Applicant

- and -

DEFENDANT

Defendant

11157353 CANADA CORP.

Respondent

RECEIVER'S CERTIFICATE_

RECITALS_

A. A. Pursuant to an Order of the Honourable [NAME OF JUDGE] Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated [DATE OF ORDER], [NAME OF RECEIVER] February 21, 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of [DEBTOR] (the "Debtor"), of 11157353 Canada Corp. (the "Debtor").

B. ~~B.~~ Pursuant to an Order of the Court dated ~~[DATE]~~, April 12, 2023, the Court approved the ~~agreement of share purchase and sale made as of [DATE OF AGREEMENT]~~ agreement dated March 31, 2023 (the "Sale Agreement") between the Receiver ~~[Debtor] and [NAME OF PURCHASER]~~ (the "Purchaser") and JMCC (Canada) Corp. and provided for the vesting in ~~the JMCC (Canada) Corp. or such other person as it may designate (the "Purchaser")~~ of the ~~Debtor's~~ right, title and interest of the Debtor and the Receiver in and to the Purchased ~~Assets~~ Shares, which vesting is to be effective with respect to the Purchased ~~Assets~~ Shares upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased ~~Assets~~ Shares; (ii) that the conditions to Closing as set out in ~~section~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. ~~C.~~ Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. ~~1.~~ The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased ~~Assets~~ Shares payable on the Closing Date pursuant to the Sale Agreement;
2. ~~2.~~ The conditions to Closing as set out in ~~section~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. ~~3.~~ The Transaction has been completed to the satisfaction of the Receiver.
4. ~~4.~~ This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

-

KSV RESTRUCTURING INC., in its
capacity as Receiver of the undertaking,
property and assets of 11157353 Canada
Corp., and not in its personal or corporate
capacity

-

Per:

Name:

Title:

-

SCHEDULE "B"
PURCHASED SHARES

<u>Person</u>	<u>Purchased Shares</u>			
	<u>Class of Shares</u>	{NAME OF RECEIVER}, in its capacity as Receiver of the undertaking, property and assets of {DEBTOR}, and not in its personal capacity <u>Number of Shares Issued and Outstanding</u>	<u>Ownership Information</u>	
<u>Materia Ventures Malta Ltd.</u>	<u>Ordinary</u>	<u>1,250</u>	Per <u>100% owned by 11157353 CANADA Corp., on both non-diluted and fully-diluted basis</u>	

Name:-

Title:-

Schedule B—Purchased Assets

~~Schedule C — Claims to be deleted and expunged from title to Real Property~~

~~Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property~~

~~(unaffected by the Vesting Order)~~

ELA CAPITAL INC.

and

11157353 CANADA
CORPORATION

Court File No. CV-23-00694886-00CL

Applicant

Respondent

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

Proceeding Commenced at
Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver,
KSV Restructuring Inc.

TAB 7

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

TUESDAY, THE 12TH

JUSTICE OSBORNE

)

DAY OF APRIL, 2023

)

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and -

11157353 CANADA CORP.

Respondent

ANCILLARY ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order) of 11157353 Canada Corp. was heard this day by videoconference.

ON READING the First Report of the Receiver dated April [____], 2023 (“**First Report**”) and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, and such other counsel as were present and listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shallon Garrafa sworn April [____], 2023 filed:

DEFINED TERMS

1. **THIS COURT ORDERS** that all terms capitalized but not defined herein shall have the meanings ascribed to such terms in the First Report.

APPROVAL OF THE RECEIVER’S ACTIVITIES

2. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Receiver as set out therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize, in any way, such approvals.

SEALING

3. **THIS COURT ORDERS** that Confidential Appendices “1” and “2” appended to the First Report are sealed until the earlier of (a) the date immediately following the closing of the Malta Transaction, or (b) further order of this Court.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that following closing of the Transactions, the Receiver is authorized and directed to pay from the net proceeds of the Transactions amounts secured by the Receiver’s Borrowing Charge and the KERP Charge, (i) up to and only to the extent of the net

proceeds available from the closing of the Transactions, and (ii) with respect to amounts owing to Reflourish, after accounting for reductions of the amount secured by the Receiver's Borrowing Charge because of the credit bid made by Reflourish to purchase the Germany Shares.

GENERAL

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

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

ELA CAPITAL INC.

and - 4 -

11157353 CANADA
CORPORATION

Court File No. CV-23-00694886-00CL

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at
Toronto

ANCILLARY ORDER

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ELA CAPITAL INC.

and

11157353 CANADA CORPORATION

Court File No. CV-23-00694886-00CL

Applicant

Respondent

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at
Toronto

MOTION RECORD

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