

## AGENCY AGREEMENT

April 28, 2022

Element Nutritional Sciences Inc.  
1100 Walkers Line, Suite 401  
Burlington, ON L7N 2G3

**Attention:** Stuart Lowther  
Chief Executive Officer

Dear Sir:

The undersigned, Canaccord Genuity Corp. (the “**Agent**”) as sole lead agent and bookrunner, understands that Element Nutritional Sciences Inc. (the “**Company**”) proposes to issue and sell a minimum of 12,000,000 and up to a maximum of 20,000,000 common shares of the Company (the “**Offered Shares**”) at a price of \$0.25 per common share (the “**Offering Price**”) for aggregate gross proceeds of a minimum of \$3,000,000 (the “**Minimum Offering**”) and up to a maximum of \$5,000,000.

The Company also hereby grants to the Agent an option (the “**Over-Allotment Option**”), which may be exercised by the Agent in whole or in part at any time in the Agent’s sole discretion and without obligation, to offer and sell as agent up to an additional 3,000,000 common shares of the Company (the “**Additional Shares**”), at the Offering Price, for the purposes of covering the Agent’s over-allocation, if any, and for market stabilization purposes. The Over-Allotment Option may be exercised for a period of 30 days from and including the Closing Date. If the Agent elects to exercise such Over-Allotment Option, the Agent shall provide written notice to the Company of its election to exercise the Over-Allotment Option, which notice shall specify the number of Additional Shares to be purchased and the date (the “**Option Closing Date**”) on which such Additional Shares are to be purchased, provided that the Option Closing Date shall not be less than two Business Days (as hereinafter defined) and no more than seven Business Days after the date of such notice, and in any event not later than the 30th day following the Closing Date. In the event that the Company shall subdivide, consolidate, reclassify or otherwise change its Common Shares during the period in which the Over-Allotment Option is exercisable, appropriate adjustments will be made to the exercise price of the Over-Allotment Option and to the number of Additional Shares issuable on exercise thereof such that the Agent is entitled to receive the same number and type of securities that the Agent would have otherwise received had they exercised such Over-Allotment Option immediately prior to such subdivision, consolidation, reclassification or other change.

Unless the context otherwise requires, all references to the “**Offered Shares**” shall include the Additional Shares and assume the full exercise of the Over-Allotment Option, and the offering of the Offered Shares by the Company is hereinafter referred to as the “**Offering**”.

The Agent understands that the Company has prepared and filed the Preliminary Prospectus (as hereinafter defined) with the Commissions (as hereinafter defined) in the Qualifying Jurisdictions (as hereinafter defined) pursuant to the Passport Procedures (as hereinafter defined) and has obtained the decision document in respect of the Preliminary Prospectus. The Agent will distribute the Offered Shares in Canada pursuant to the Final Prospectus (as hereinafter defined) in the manner contemplated by this Agreement.

Upon and subject to the terms and conditions set forth herein, the Agent hereby agrees to act, and upon acceptance hereof the Company hereby appoints the Agent, as the Company’s exclusive agent to offer for sale, on a best efforts agency basis, without underwriter liability, the Offered Shares and to arrange for purchasers resident in the Qualifying Jurisdictions (as hereinafter defined) where the Offered Shares may

be lawfully offered and sold, provided that any Offered Shares offered or sold in any jurisdictions outside of Canada are lawfully offered and sold on a basis exempt from the prospectus, registration or similar requirements of any such jurisdictions, including continuous disclosure obligations. It is understood and agreed that the Agent is under no obligation to purchase any of the Offered Shares.

The Offering will be subject to subscriptions being received for the Minimum Offering. All funds received by the Agent will be held in trust until the Minimum Offering has been attained. All subscription funds received by the Agent will be returned, without any interest or deductions, to investors if the Minimum Offering is not attained by the date that is 90 days following the date of issuance of a receipt of the Final Prospectus.

The parties acknowledge that the Offered Shares, the Agent Warrants (as hereinafter defined) and the Agent Warrant Shares (as hereinafter defined) have not been and will not be registered under the U.S. Securities Act (as hereinafter defined) or the securities laws of any state of the United States and may not be offered or sold in the United States, or to or for the account or benefit of, U.S. Persons (as hereinafter defined).

The Agent acknowledges that the Agent Warrants may not be exercised in the United States or by, or for the account or benefit of, any U.S. Person or person in the United States, except pursuant to an exemption from the registration requirements of the U.S. Securities Act. In connection with the issuance of the Agent Warrants and the Agent Warrant Shares, as the case may be, the Agent represents and warrants that (i) it is not a U.S. Person and it is not acquiring the Agent Warrants and the Agent Warrant Shares in the United States, or on behalf of a U.S. Person or a person located in the United States, (ii) this Agreement was executed and delivered outside the United States, and (iii) it is acquiring the Agent Warrants and the Agent Warrant Shares as principal for its own account and not for the benefit of any other person.

The Company agrees that the Agent will be permitted to appoint as the Selling Group (as hereinafter defined) other registered dealers (or other dealers duly licensed or registered in their respective jurisdictions) as their agents to assist in the Offering and that the Agent may determine the remuneration payable to such other dealers appointed by them. Such remuneration shall be payable by the Agent.

In consideration of the services to be rendered by the Agent pursuant to this Agreement and in connection with all other matters relating to the issue and sale of the Offered Shares, the Company shall pay to the Agent at the Closing Time (as hereinafter defined) and the Option Closing Time (as hereinafter defined) the Agent's Fee (as hereinafter defined). As additional consideration, the Company shall issue and deliver to the Agent the Agent Warrants. The obligation of the Company to pay the Agent's Fee and issue the Agent Warrants shall arise at the Closing Time against payment for the Offered Shares, and the Agent's Fee and the Agent Warrants shall be fully earned by the Agent at that time; provided that in respect of any Agent's Fee payable and Agent Warrants issuable in respect of Additional Shares sold upon exercise of the Over-Allotment Option subsequent to the Closing Date, such Agent's Fee and Agent Warrants shall be fully earned by the Agent at the Option Closing Time.

The Offered Shares, Agent Warrants, Agent Warrant Shares and Additional Shares are collectively referred to as the "**Securities**".

## **1. DEFINITIONS**

1.1 In this Agreement, including any schedules forming a part of this Agreement:

- (a) "**Additional Shares**" has the meaning given to that term on page 1 of this Agreement;
- (b) "**Agent**" has the meaning given to that term on page 1 of this Agreement;

- (c) “**Agent’s Fee**” means the cash commission equal to 8.0% of the gross proceeds realized by the Company in respect of the sale of the Offered Shares (including, for certainty, any Additional Shares issued and sold by the Company on exercise of the Over-Allotment Option);
- (d) “**Agent Warrants**” means the non-transferable agent warrants to be issued to the Agent at the Closing Time, or the Option Closing Time, if applicable, which shall entitle the Agent to subscribe for that number of Common Shares as is equal to 8.0% of the total number of Offered Shares sold pursuant to the Offering, including, for certainty, the Additional Shares sold on any exercise of the Over-Allotment Option, at an exercise price per Agent Warrant Share that is equal to the Offering Price for a period of 24 months following the Closing Date;
- (e) “**Agent Warrant Certificates**” means the certificates representing the Agent Warrants and containing the terms thereof;
- (f) “**Agent Warrant Share**” means the Common Shares issuable on exercise of the Agent Warrants;
- (g) “**Agreement**” means this agreement and includes the schedules hereto;
- (h) “**Ancillary Documents**” means all agreements, certificates (including any certificates representing the Securities and officer’s certificates), notices and other documents executed and delivered, or to be executed and delivered, by the Company in connection with the Offering and pursuant to this Agreement;
- (i) “**Annual Financial Statements**” has the meaning given to that term in subsection 4.1(w);
- (j) “**Applicable Securities Laws**” means the securities laws, acts, regulations, instruments, policies, companion policies, notices, recognitions, designating assignments and rules, and the blanket orders, rulings and policies and written interpretations of, multilateral or national instruments, published policy statements, instruments, orders and rulings of the Regulatory Authorities applicable to the Company if used in reference to the Company or applicable to the Agent if used in reference to the Agent of each of the Qualifying Jurisdictions or, as the context may require, any one or more of the Qualifying Jurisdictions;
- (k) “**Business Day**” means any day that is not a Saturday, Sunday or statutory or civic holiday in the City of Vancouver, British Columbia;
- (l) “**Claims**” has the meaning given to that term in Section 9.1 hereto;
- (m) “**Closing**” and “**Closing Date**” have the meanings given to those terms in Section 8.1;
- (n) “**Closing Time**” means 7:30 AM (Vancouver time) on the Closing Date or such other time as may be agreed to by the Company and the Agent;
- (o) “**Commissions**” means, collectively, the securities regulatory bodies (other than stock exchanges) of the Qualifying Jurisdictions, and “**Commission**” means the securities regulatory body of a specified Qualifying Jurisdiction;

- (p) “**Company**” has the meaning given to that term on page 1 of this Agreement;
- (q) “**Company’s Financial Statements**” has the meaning given to that term in Subsection 4.1(w);
- (r) “**Continuous Disclosure Materials**” has the meaning given to that term in Subsection 4.1(i) hereto;
- (s) “**distribution**” (or “distribute” as derived therefrom) has the meaning given to that term in the *Securities Act* (British Columbia);
- (t) “**environmental laws**” has the meaning given to that term in Subsection 4.1(l);
- (u) “**Exchange**” means the Canadian Securities Exchange;
- (v) “**Final Prospectus**” means the (final) short form prospectus of the Company prepared in connection with the qualification for distribution of the Offered Shares, the Over-Allotment Option and the Agent Warrants, including the documents incorporated therein by reference, and including any Supplementary Material thereto;
- (w) “**IFRS**” means International Financial Reporting Standards, as the same may be amended or supplemented from time to time;
- (x) “**Indemnified Parties**” has the meaning given to that term in Section 9.1 hereto;
- (y) “**Legal Opinions**” has the meaning given to that term in Subsection 5.1(f)(i) hereto;
- (z) “**Lock-up Agreements**” has the meaning given to that term in Subsection 7.1(k) hereto;
- (aa) “**material adverse effect**” means any fact, change, effect, event, occurrence or circumstances which, individually or in the aggregate (a) is, or is reasonably likely to be, materially adverse to the business, operations, revenues, capital, assets, properties, results of operations, cash flow, affairs, assets, capitalization, condition (financial or otherwise), rights or liabilities (contingent or otherwise) of the Company or the Subsidiaries (taken as a whole); or (b) would result in the Prospectuses or any Supplementary Material containing a misrepresentation;
- (bb) “**material change**” has the meaning given to that term in the *Securities Act* (British Columbia);
- (cc) “**Material Contracts**” has the meaning given to that term in Subsection 4.1(gg) hereto;
- (dd) “**Minimum Offering**” has the meaning given to that term on page 1 of this Agreement;
- (ee) “**material fact**” has the meaning given to that term in the *Securities Act* (British Columbia);
- (ff) “**misrepresentation**” has the meaning given to that term in the *Securities Act* (British Columbia);
- (gg) “**NI 41-101**” means National Instrument 41-101 *General Prospectus Requirements*;
- (hh) “**NI 44-101**” means National Instrument 44-101 *Short Form Prospectus Distributions*;

- (ii) “**NI 45-102**” means National Instrument 45-102 *Resale of Securities*;
- (jj) “**NI 51-102**” means National Instrument 51-102 *Continuous Disclosure Obligations*;
- (kk) “**Offering**” has the meaning given to that term on page 1 of this Agreement;
- (ll) “**Offered Shares**” means the Offered Shares of the Company to be sold under the Offering;
- (mm) “**Offering Price**” has the meaning given to that term on page 1 of this Agreement;
- (nn) “**Officers’ Certificate**” has the meaning given to that term in Subsection 5.1(f)(ii) hereto;
- (oo) “**Option Closing Date**” has the meaning given to that term on page 1 of this Agreement;
- (pp) “**Option Closing Time**” means 7:30 AM (Vancouver time) on the Option Closing Date or such other time on the Option Closing Time as may be agreed to by the Company and the Agent;
- (qq) “**Over-Allotment Option**” has the meaning given to that term on page 1 of this Agreement;
- (rr) “**Passport Procedures**” means the procedures provided for under National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* among the securities commissions and other securities regulatory authorities in each of the provinces of Canada;
- (ss) “**Preliminary Prospectus**” means the preliminary short form prospectus of the Company dated March 17, 2022 prepared in connection with the qualification for distribution of the Offered Shares, the Over-Allotment Option and the Agent Warrants, including the documents incorporated therein by reference, and including any Supplementary Material thereto;
- (tt) “**Principals**” has the meaning given to that term in Subsection 4.1(z);
- (uu) “**Prospectuses**” means collectively, the Preliminary Prospectus and the Final Prospectus;
- (vv) “**Purchasers**” means, collectively, the purchasers of the Offered Shares under the Offering;
- (ww) “**Qualifying Jurisdictions**” means all the provinces and territories of Canada except Quebec, and such other jurisdictions as mutually agreed to by the Company and the Agent and “**Qualifying Jurisdiction**” means any one of them;
- (xx) “**Regulatory Authorities**” means collectively the Commissions and the Exchange;
- (yy) “**Rejuvenate RTD Products**” means the products the Company refers to as “Rejuvenate RTD (Ready-To-Drink) Products” or “Rejuvenate RTD (Ready-To-Drink) Products”, as more particularly described in the Prospectus;
- (zz) “**Securities**” has the meaning given to that term on page 2 of this Agreement;
- (aaa) “**Selling Group**” means, collectively, those registered dealers (or other dealers duly licensed or registered in their respective jurisdictions) appointed by the Agent as its agents

to assist in the Offering as contemplated in this Agreement, and each member of the Selling Group being a “**Selling Firm**”;

- (bbb) “**Subsidiaries**” means Hammock Pharmaceuticals, Inc., Element Nutrition Inc., Element Nutrition Ltd. and JAKTRX Inc.;
- (ccc) “**Supplementary Material**” means, collectively (a) any amendment or supplement to the Prospectuses; (b) any amendment or supplemental prospectus or ancillary materials that may be filed by or on behalf of the Company under Applicable Securities Laws relating to the qualification for distribution of the Offered Shares; or (c) any other document that is delivered or intended to be delivered to a purchaser of Offered Shares; including, for greater certainty, any marketing material and any standard term sheet approved by the Company in accordance with Section 2;
- (ddd) “**trade**” has the meaning given to that term in the *Securities Act* (British Columbia);
- (eee) “**United States**” means the United States of America, its territories and possessions, any state of the United States and the District of Columbia;
- (fff) “**U.S. Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder;
- (ggg) “**U.S. Person**” means a “**U.S. Person**” as defined in Rule 902(k) of Regulation S under the U.S. Securities Act;
- (hhh) “**U.S. Securities Act**” means the United States Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder; and
- (iii) “**U.S. Securities Laws**” means all applicable securities Laws in the United States, including without limitation, the U.S. Securities Act, the U.S. Exchange Act and any applicable state securities Laws.
- (jjj) All references to dollar figures in this Agreement are to Canadian dollars.
- (kkk) Where any representation or warranty contained in this Agreement is expressly qualified by reference to the “knowledge” of the Company, or where any other reference is made herein to the “knowledge” of the Company, it will be deemed to refer to the actual knowledge of Stuart Lowther, Shaun Power, Lino Fera or Sean Bromley after having made due enquiry of appropriate and relevant persons and after reviewing relevant documentation.

## **2. FILING OF THE PROSPECTUSES AND QUALIFICATION FOR DISTRIBUTION**

- 2.1 The Company will prepare and use reasonable commercial efforts to prepare and file promptly, and in any event no later than 8:00 p.m. (Vancouver time) on the day of the execution and delivery of this Agreement, the Final Prospectus and will subsequently obtain a receipt (or deemed receipt) therefor from the Commission in each of the Qualifying Jurisdictions (under Passport Procedures), and will have taken all other steps and proceedings that may be necessary to be taken by the Company in order to qualify the Offered Shares for distribution in each of the Qualifying Jurisdictions by the Agent under Applicable Securities Laws.

- 2.2 In connection with the distribution of the Offered Shares:
- (a) the Agent will prepare, in consultation with the Company, any marketing materials (including any template version thereof) to be provided to potential investors in the Offered Shares, and the Company will approve in writing any such marketing materials (including any template version thereof), as may reasonably be requested by the Agent, such marketing materials to comply with Applicable Securities Laws and to be acceptable in form and substance to the Agent and its counsel, acting reasonably;
  - (b) the Company and the Agent will approve in writing any such marketing materials, as contemplated by the Applicable Securities Laws, prior to any marketing materials being provided to potential investors of Offered Shares and/or filed with the Commissions; and
  - (c) the Company will: (i) file any such marketing materials (or any template version thereof) with the Commissions as soon as reasonably practicable after such marketing materials are so approved in writing by the Company and the Agent, and in any event on or before the day the marketing materials are first provided to any potential investor of Offered Shares; and (ii) remove or redact any comparables from any template version so filed, in compliance with NI 44-101, prior to filing such template version with the Commissions (provided that a complete template version containing such comparables and any disclosure relating to the comparables, if any, will be delivered to the Commissions in compliance with NI 44-101 by the Company, and a copy thereof provided to the Agent as soon as practicable following the such filing).
- 2.3 Each of the Company and the Agent covenants and agrees that, during the distribution of the Offered Shares, it will not provide any potential investor with any materials or information in relation to the distribution of the Offered Shares or the Company other than the Prospectuses and any Supplementary Material in accordance with this Agreement, provided that: (a) any such materials that constitute marketing materials have been approved and filed in accordance with Section 2(3); and (b) any such materials that constitute standard term sheets have been approved in writing by the Company and the Agent and are provided in compliance with Applicable Securities Laws in each case only in the Qualifying Jurisdictions.
- 2.4 Notwithstanding Section 2.2 and Section 2.3, following the approval and filing of a template version of marketing materials in accordance with Section 2.2, the Agent may provide a limited-use version of such template version to potential investors in the Offered Shares in accordance with Applicable Securities Laws.
- 2.5 Until the earlier of the date on which: (a) the distribution of the Offered Shares is completed; or (b) the Agent has exercised its termination rights pursuant to Section 10, the Company will promptly take commercially reasonable steps and proceedings that may from time to time be required under Applicable Securities Laws to continue to qualify the distribution of the Offered Shares or, in the event that the Offered Shares or any of them, have, for any reason, ceased to so qualify, to so qualify again such securities, as applicable, for distribution in the Qualifying Jurisdictions.
- 3. DISTRIBUTION AND CERTAIN OBLIGATIONS OF THE AGENT AND THE COMPANY**
- 3.1 The Agent shall, and shall require any Selling Firm to, comply with Applicable Securities Laws in connection with the distribution of the Offered Shares and shall offer the Offered Shares for sale to the public directly and through Selling Firms upon the terms and conditions set out in the



Prospectuses and this Agreement. The Agent shall: (i) use all commercially reasonable efforts to complete and to cause each Selling Firm to complete the distribution of the Offered Shares as soon as reasonably practicable; and (ii) promptly notify the Company when, in their opinion, the Agent and the Selling Firms have ceased distribution of the Offered Shares and provide a breakdown of the number of Offered Shares distributed in each of the Qualifying Jurisdictions where such breakdown is required for the purpose of calculating fees payable to the Commissions within 30 days after the Closing Date or Option Closing Date, as applicable.

- 3.2 The Agent shall, and shall require any Selling Firm to, offer for sale to the public and sell the Offered Shares only in those jurisdictions where there may be lawfully offered for sale or sold. The Agent shall, and shall require any Selling Firm to, distribute the Offered Shares in a manner which complies with and observes all applicable laws and regulations in each jurisdiction into and from which it may offer to sell the Offered Shares or distribute the Offering Documents in connection with the distribution of the Offered Shares and will not, directly or indirectly, offer, sell or deliver any Offered Shares or deliver the Offering Documents to any person in any jurisdiction other than in the Qualifying Jurisdictions except in a manner which will not require the Company to comply with the registration, prospectus, continuous disclosure or other similar requirements under the Applicable Securities Laws of such other jurisdictions.
- 3.3 The Company will deliver without charge to the Agent, as soon as practicable and in any event within one (1) Business Day of obtaining a receipt for the Final Prospectus, and thereafter from time to time during the distribution of the Offered Shares, as many commercial copies of the Final Prospectus, as the Agent may reasonably request for the purposes contemplated by the Applicable Securities Laws. The Agent will advise the Company of the quantity and delivery instructions for such commercial copies concurrently with the filing of the Prospectuses. The Company will similarly cause to be delivered to the Agent commercial copies of any Supplementary Material required or intended to be delivered to purchasers or prospective purchasers of the Offered Shares.
- 3.4 Each delivery of the Prospectuses and any Supplementary Material will have constituted and will constitute the Company's consent to the use of the Prospectuses and any Supplementary Material by the Agent for the distribution of the Offered Shares in the Qualifying Jurisdictions in compliance with the provisions of this Agreement and the Applicable Securities Laws and U.S. Securities Laws, as applicable.
- 3.5 Each delivery of the Prospectuses and any Supplementary Material to the Agent by, or on behalf of, the Company will constitute the representation and warranty of the Company to the Agent that (except for information and statements relating solely to the Agent and furnished by it specifically for use in the Prospectuses and except for any information or statement in or incorporated by reference in the Preliminary Prospectus, Final Prospectus or any Supplementary Materials, as applicable, that has been superseded by any subsequent information or statement in or incorporated by reference in such documents), at the respective times of delivery:
  - (a) the Prospectus being delivered and any Supplementary Material being delivered contains no misrepresentation as of the respective dates thereof;
  - (b) the Prospectus being delivered, and any Supplementary Material being delivered, constitutes full, true and plain disclosure of all material facts relating to the Company and the Offered Shares; and



- (c) the Prospectus being delivered and the Supplementary Material being delivered complies in all material respects with the requirements of Applicable Securities Laws pursuant to which it was filed.
- 3.6 The Company will also deliver to the Agent without charge contemporaneously with, or prior to, the filing of the Final Prospectus:
- (a) a copy of the Final Prospectus, manually signed on behalf of the Company by the persons and in the form required by Applicable Securities Laws, including copies of any documents incorporated by reference therein which have not previously been delivered to the Agent (provided that any documents incorporated by reference therein which are publicly available on SEDAR will be deemed to be delivered to the Agent);
  - (b) upon reasonable request by the Agent, a copy of any other document filed with, or delivered to, the Commissions by the Company under Applicable Securities Laws in connection with the Offering;
  - (c) evidence satisfactory to the Agent of the approval of the listing and posting for trading on the Exchange of the Offered Shares and the Agent Warrant Shares issuable upon the exercise of the Agent Warrants; and
  - (d) a customary “long-form” comfort letter dated the date of the Final Prospectus in a form and substance acceptable to the Agent, acting reasonably, addressed to the agent and the Company, from the auditor of the Company, and based on a review completed no more than two (2) Business Days prior to the date of the Final Prospectus, with respect to financial and accounting information relating to the financial information in the Final Prospectus or incorporated therein, which letter will be in addition to the auditor’s consent contained in the Final Prospectus and any auditor’s comfort letter addressed to the Commissions and filed with or delivered to the Commissions under Applicable Securities Laws.
- 3.7 Comfort letters and other documents substantially similar to those referred to in this section of this Agreement will be delivered, as required, to the Agent and the Company, and their respective counsel, as applicable, with respect to any Supplementary Material, contemporaneously with, or prior to the filing or delivery of, any Supplementary Material.
- 3.8 The Agent agrees not to offer or sell the Offered Shares to Purchasers in the United States or to, or for the account or benefit of, persons in the United States or U.S. Persons, except in transactions exempt from the registration requirements of the U.S. Securities Act and any applicable securities laws of any state of the United States.
- 3.9 The Agent:
- (a) may offer and resell the Offered Shares outside the United States only in accordance with the exclusion from the registration requirements of the U.S. Securities Act provided by Rule 903 of Regulation S under the U.S. Securities Act; and
  - (b) may offer and sell the Offered Shares within the United States only to, or for the account or benefit of, persons in the United States or U.S. Persons in accordance with Rule 15a-6 under the U.S. Exchange Act, to a limited number of U.S. Accredited Investors pursuant to the exemption from registration provided by Rule 506(b) of Regulation D of the U.S.

Securities Act and in compliance with applicable securities laws of any state of the United States.

#### 4. REPRESENTATIONS AND WARRANTIES

4.1 The Company represents and warrants to the Agent, and acknowledges that the Agent is relying upon such representations and warranties in entering into this Agreement, that:

- (a) the Company is a duly constituted company and validly existing and in good standing under the laws of its jurisdiction of incorporation and no proceedings have been instituted or, to the knowledge of the Company, are pending for the dissolution or liquidation or winding-up of the Company;
- (b) the Company has no subsidiaries or affiliates other than the Subsidiaries and each of the Subsidiaries is duly incorporated and validly existing and in good standing under the laws of their jurisdiction of incorporation and no proceedings have been instituted or are pending for the dissolution or liquidation or winding-up of the Subsidiaries;
- (c) the Company (i) is and will at the Closing Time be, a reporting issuer (within the meaning of Applicable Securities Laws) in the provinces of British Columbia, Alberta, Saskatchewan, and Ontario; (ii) the Company became a reporting issuer by filing a prospectus in the provinces of British Columbia, Alberta, Saskatchewan and Ontario; and (iii) is not in default of any of the requirements of the Applicable Securities Laws of the Qualifying Jurisdictions;
- (d) the common shares of the Company (the “**Common Shares**”) are listed for trading on the Exchange and the Company is not in default of any material listing requirement of the Exchange applicable to the Company including any requirement that shareholder approval be obtained for the Offering or the issuance of the Offered Shares;
- (e) the Company has authorized share capital consisting of an unlimited number of Common Shares, of which 97,573,916 Common Shares are issued and outstanding as of the date of this Agreement, and has an aggregate of 8,400,000 stock options and 32,048,580 Common Share purchase warrants outstanding as of the date of this Agreement;
- (f) other than as set out in **Schedule “A”**, no person, firm or corporation has any agreement, option, right or privilege, whether pre-emptive, contractual or otherwise, capable of becoming an agreement for the purchase, acquisition, subscription for or issuance of any of the unissued shares of the Company or the Subsidiaries, or other securities convertible, exchangeable or exercisable for shares of the Company or the Subsidiaries;
- (g) there are no material facts or material changes relating to the Company or its Subsidiaries, or their respective businesses, which have not been publicly disclosed in the Company’s continuous disclosure filings with the Regulatory Authorities;
- (h) no confidential material change report has been filed that remains confidential as of the date hereof;
- (i) all documents previously published or filed by the Company with the Regulatory Authorities (the “**Continuous Disclosure Materials**”) contain no untrue statement of a material fact as at the date thereof nor do they omit to state a material fact which, at the

date thereof, was required to have been stated or was necessary to prevent a statement that was made from being false or misleading in the circumstances in which it was made and were prepared in accordance with and complied with Applicable Securities Laws in all material respects, and the Company is not in default of its filings under, nor has it failed to file or publish any document required to be filed or published under, Applicable Securities Laws;

- (j) each of the Company and the Subsidiaries hold all licences and permits that are required for carrying on its business in the manner in which such business has been carried on except as would not have a material adverse effect and is duly qualified to carry on business in all jurisdictions in which it carries on business;
- (k) each of the Company and the Subsidiaries has good and marketable title to its respective intellectual and other properties, business and assets or the interests in the intellectual and other properties, business or assets as disclosed in the Continuous Disclosure Materials, all agreements by which the Company holds an interest in its intellectual or other property, business or assets are in good standing according to their terms and the intellectual and other properties are in good standing under the applicable laws of the jurisdictions in which they are situated and all filings required to maintain the intellectual and other properties in good standing have been properly recorded and filed in a timely manner with the appropriate regulatory body and there are no mortgages, liens, charges, encumbrances or any other interests in or on such intellectual or other properties other than as disclosed in the Continuous Disclosure Materials;
- (l) each of the Company and the Subsidiaries has conducted and is conducting its business in compliance in all material respects with all applicable laws, rules and regulations of each jurisdiction in which its business is carried on, is in compliance with all material terms and provisions of all contracts, agreements, indentures, leases, policies, instruments and licences that are material to the conduct of its business and all such contracts, agreements, indentures, leases, policies, instruments and licences are valid and binding in accordance with their terms and in full force and effect, in each case in all material respects, and no breach or default by the Company, or the Subsidiaries or event which, with notice or lapse or both, could constitute a material breach or material default by the Company, or the Subsidiaries, exists with respect thereto;
- (m) the Company has all requisite corporate power and capacity to enter into this Agreement and the Ancillary Documents and to perform the transactions contemplated hereby and thereby and the issuance and sale by the Company of the Offered Shares have been duly authorized by all necessary corporate action of the Company, and this Agreement and the Ancillary Documents have been duly executed and delivered by the Company and are valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and except as limited by the application of equitable remedies which may be granted in the discretion of a court of competent jurisdiction and that enforcement of the rights to indemnity and contribution set out in this Agreement and the Ancillary Documents as may be limited by applicable law;
- (n) the Offered Shares have been duly and validly authorized for issuance and sale and when issued and delivered by the Company pursuant to this Agreement, against payment of the consideration set forth herein, the Offered Shares will be validly issued as fully-paid and non-assessable Common Shares;

- (o) the Agent Warrants have been duly created and authorized for issuance with attributes corresponding in all material respects to the description thereof set forth in this Agreement and, when issued and delivered by the Company pursuant to this Agreement, the Agent Warrants will be validly issued;
- (p) when issued and sold by the Company in accordance with the terms hereof, the terms of the Offered Shares shall have the rights, privileges, restrictions and conditions that conform to the rights, privileges, restrictions and conditions attaching to Common Shares in the capital of the Company;
- (q) the Common Shares issuable upon exercise of the Agent Warrants have been duly created, authorized and reserved for issuance and such shares will be, when issued upon due exercise of the Agent Warrants, if any, including payment of the applicable exercise price, validly issued as fully paid and non-assessable Common Shares;
- (r) the Offered Shares are qualified investments under the *Income Tax Act* (Canada) for a trust governed by a registered retirement savings plan, a registered retirement income fund, a deferred profit-sharing plan, a registered education savings plan, a registered disability savings plan and for a tax-free savings account;
- (s) at the Closing Time and the Option Closing Time, as applicable, the Common Shares underlying the Agent Warrants will be approved for listing and trading on the Exchange;
- (t) Endeavor Trust Corporation at its principal office in the City of Vancouver, British Columbia, has been duly appointed as registrar and transfer agent for the Common Shares of the Company;
- (u) the corporate records of the Company and the Subsidiaries made available to counsel for the Agent in connection with its due diligence investigation of the Company and the Subsidiaries are all of the corporate records of the Company and the Subsidiaries and contain copies of all material proceedings (or certified copies thereof or drafts thereof pending approval) of the shareholders, the directors and all committees of directors of the Company and the Subsidiaries to the date of review of such corporate records and there have been no other meetings, resolutions or proceedings of the shareholders, directors or any committees of the directors of the Company or the Subsidiaries to the date of this Agreement not reflected in such corporate records;
- (v) each of the Company and the Subsidiaries maintains insurance against loss of, or damage to, its material assets including property and casualty insurance for all of its operations; and all of the policies in respect of such insurance are in amounts and on terms that in the view of Company's management are reasonable for operations such as these, and are in good standing and not in default;
- (w) the audited financial statements of the Company for its fiscal year ended December 31, 2020, and notes thereto (the "**Annual Financial Statements**"), are true and correct in every material respect and present fairly and accurately reflect the consolidated financial position and results of the operations of the Company for the period then ended and such financial statements have been prepared in accordance with IFRS applied on a consistent basis;
- (x) the unaudited financial statements of the Company for the three and nine months ended September 30, 2021 and notes thereto (together with the Annual Financial Statements, the

“**Company’s Financial Statements**”) are true and correct in every material respect and present fairly and accurately reflect the consolidated financial position and results of the operations of the Company for the period then ended and such financial statements were prepared in accordance with IFRS applied on a consistent basis;

- (y) there has been no change in any material respect in accounting policies or practices of the Company or the Subsidiaries since September 30, 2021, except as disclosed to the Agent;
- (z) none of the Company nor the Subsidiaries is indebted to any of its directors or officers (collectively, the “**Principals**”), other than on account of directors fees or expenses accrued but not paid, or to any of its shareholders;
- (aa) the Company does not owe any monetary amount to any Principal or shareholder on any account whatsoever, other than for (i) payment of salary, bonus and other employment or consulting compensation, (ii) reimbursement for expenses duly incurred in connection with the business of the Company or its Subsidiaries, and (iii) for other standard employee benefits made generally available to all employees;
- (bb) none of the Company nor the Subsidiaries has guaranteed or agreed to guarantee any debt, liability or other obligation of any kind whatsoever of any person, firm or corporation whatsoever;
- (cc) there are no material liabilities of the Company or the Subsidiaries, whether direct, indirect, absolute, contingent or otherwise which are not disclosed or reflected in the Company’s Financial Statements, except those incurred in the ordinary course of its business, since September 30, 2021;
- (dd) since September 30, 2021, except as disclosed in the Continuous Disclosure Materials, there has not been any adverse material change of any kind whatsoever in the financial position or condition of the Company, or the Subsidiaries or any damage, loss or other change of any kind whatsoever in circumstances materially affecting their respective business, affairs, capital, prospects or assets, or the right or capacity of the Company or the Subsidiaries to carry on their business, such business having been carried on in the ordinary course except as disclosed to the Agent;
- (ee) the directors, officers and key employees of the Company are as disclosed in the Continuous Disclosure Materials, and there are no pensions, profit sharing, group insurance or similar plans or other deferred compensation plans of any kind whatsoever affecting the Company;
- (ff) the Company has not completed any “significant acquisitions”, “significant dispositions” or “significant probable acquisitions” which would be required to be disclosed by the Company pursuant to Applicable Securities Laws which have not yet been publicly disclosed;
- (gg) all contracts and agreements material to the Company and the Subsidiaries, collectively, other than those entered into in the ordinary course of its business as presently conducted (collectively the “**Material Contracts**”), have been disclosed in the Continuous Disclosure Materials and neither the Company nor the Subsidiaries has approved, entered into any binding agreement in respect of, or has any knowledge of, the purchase of any material property or assets or any interest therein or the sale, transfer or other disposition of any

material property or assets or any interest therein currently owned, directly or indirectly, by the Company or a Subsidiary, whether by asset sale, transfer of shares or otherwise;

- (hh) there are no amendments to the Material Contracts that have been proposed to be, or are required to be, made other than as disclosed in the Continuous Disclosure Materials;
- (ii) all tax returns, reports, elections, remittances, filings, withholdings and payments of the Company and the Subsidiaries required by law to have been filed or made, have been filed or made (as the case may be) and are substantially true, complete and correct and all taxes owing of the Company as at December 31, 2020 have been paid or accrued in the Company's Financial Statements;
- (jj) the Company and each of its Subsidiaries have been assessed for all applicable taxes and have received all appropriate refunds, made adequate provision for taxes payable for all subsequent periods and the Company is not aware of any material contingent tax liability of the Company or any of its Subsidiaries not adequately reflected in the Company's Financial Statements;
- (kk) other than the pending claim which the Company considers to be immaterial to the business of the Company as disclosed in the Continuous Disclosure Materials, there are no material actions, suits, judgments, investigations or proceedings of any kind whatsoever outstanding or, to the Company's knowledge, pending, threatened against or affecting the Company or the Subsidiaries, at law or in equity or before or by any federal, provincial, state, municipal or other governmental department, commission, board, bureau or agency of any kind whatsoever and, to the Company's knowledge, there is no basis therefor;
- (ll) none of the Company nor the Subsidiaries has been, in any material respect, in violation of, in connection with the ownership, use, maintenance or operation of its property and assets, any applicable federal, provincial, state, municipal or local laws, by-laws, regulations, orders, policies, permits, licences, certificates or approvals having the force of law, domestic or foreign, relating to environmental, health or safety matters or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "**environmental laws**"); without limiting the generality of the foregoing:
  - (i) the Company and the Subsidiaries have received, handled, used, stored, treated, shipped and disposed of all pollutants, contaminants, hazardous or toxic materials, controlled or dangerous substances or wastes in material compliance with all applicable environmental laws and have received all permits, licenses or other approvals required of them under applicable environmental laws to conduct their respective businesses; and
  - (ii) there are no orders, rulings or directives issued against the Company or the Subsidiaries, and there are no orders, rulings or directives pending or, to the knowledge of the Company, threatened against the Company or the Subsidiaries under or pursuant to any environmental laws requiring any material work, repairs, construction or capital expenditures with respect to the Company or its Subsidiaries;
- (mm) no notice with respect to any of the matters referred to in the immediately preceding paragraph, including any alleged violations by the Company or the Subsidiaries with respect thereto has been received by the Company or the Subsidiaries, and, to the



knowledge of the Company, no writ, injunction, order or judgement is outstanding, and no legal proceeding under or pursuant to any environmental laws or relating to the ownership, use, maintenance or operations of the Company or the Subsidiaries is in progress, threatened or, to the best of the Company's knowledge, pending, and, to the best of the Company's knowledge, there are no grounds or conditions which exist, on which any such legal proceeding might be commenced with any reasonable likelihood of success or with the passage of time, or the giving of notice or both, would give rise;

- (nn) none of the Company nor the Subsidiaries and, to the knowledge of the Company, their respective directors or officers are in breach of any law, ordinance, statute, regulation, by-law, order or decree of any kind whatsoever, except as would not have a material adverse effect on the Company and the Subsidiaries, taken as a whole;
- (oo) the Company's auditors are independent public accountants as required under Applicable Securities Laws and such auditors, who audited the Annual Financial Statements and who provided their audit report thereon, were, as at the date of their audit report independent, public accountants as required under Applicable Securities Laws and there has never been a reportable event (within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations*) between the Company and such auditors nor has there been any event which has led the Company's current auditors to threaten to resign as auditors;
- (pp) the Company will fulfill and comply with the necessary requirements of the Applicable Securities Laws in order to enable the Offered Shares to be lawfully distributed in the Qualifying Jurisdictions through the Agent or any other investment dealers or brokers registered as such in the Qualifying Jurisdictions and acting in accordance with the terms of their registrations and the Applicable Securities Laws;
- (qq) the Continuous Disclosure Materials contain no untrue statement of a material fact nor omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made;
- (rr) to the knowledge of the Company, none of the Company, the Subsidiaries nor, to the Company's knowledge, any of their respective employees or agents have, in connection with the affairs of the Company, made any unlawful contribution or other payment to any official of, or candidate for, any federal, state, provincial or foreign office, or failed to disclose fully any contribution, in violation of any law, or made any payment to any foreign, Canadian, United States or provincial or state governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or permitted by applicable laws;
- (ss) no material labour dispute with the employees of the Company or any Subsidiary currently exists or, to the knowledge of the Company and the Subsidiaries, is imminent. Neither the Company nor any Subsidiary is a party to any collective bargaining agreement and, to the knowledge of the Company and the Subsidiaries no action has been taken or is contemplated to organize any employees of the Company or any Subsidiary;
- (tt) all documents required to be filed with or delivered to the Commissions by the Company, and all proceedings required to be taken by the Company under Applicable Securities Laws, have been filed or delivered and taken in order to qualify the distribution of the Offered Shares in each of the Qualifying Jurisdictions and, other than post-Closing filings required under Applicable Securities Laws, no other documents will be required to be filed,



proceedings taken, or approvals, permits, consents or authorizations obtained by the Company under Applicable Securities Laws to permit the trading in the Qualifying Jurisdictions of the Securities, through registrants duly registered under Applicable Securities Laws or in circumstances in which there is an exemption from the registration requirements of such applicable laws;

- (uu) all information and documentation concerning the Company and the Subsidiaries (including but not limited to the Material Contracts), the Offered Shares, and the Offering that has been provided in writing to the Agent on its request by the Company in connection with this Agreement is accurate and complete in all material respects and not misleading and does not omit to state any fact or information which would be material to a lead manager and Agent performing the services contemplated herein;
- (vv) the execution and delivery of this Agreement, the issue, sale and delivery of the Offered Shares at the Closing Time, as applicable, pursuant to this Agreement and the performance or the consummation of the transactions contemplated in this Agreement do not and will not, in any material respect, conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under (whether after notice or lapse of time or both), the provisions of the constating documents or resolutions of the directors of the Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over them or any of their properties;
- (ww) other than the Agent (or any members of the Selling Group) pursuant to this Agreement, the Company is not a party to any contract, agreement or understanding with any person that would give rise to a valid claim against the Company or the Agent for a brokerage commission, finder's fee or like payment in connection with the issuance of the Offered Shares;
- (xx) the Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with IFRS, and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any difference, (v) material information relating to the Company and the Subsidiaries is made known to those responsible for the preparation of the financial statements during the period in which the financial statements have been prepared and that such material information is disclosed to the public within the time periods required by applicable laws, and (vi) all significant deficiencies and material weaknesses in the design or operation of such internal controls that could have a material adverse effect on any of the Company's or the Subsidiaries' ability to disclose to the public information required to be disclosed by them in accordance with Applicable Securities Laws and all fraud, whether or not material, that involves management or employees that have a significant role in the Company's or the Subsidiaries' internal controls have been disclosed to the audit committee of the Company;
- (yy) the Company has devised and maintains a system of disclosure controls and procedures designed to ensure that information required to be disclosed by it under Applicable Securities Laws is recorded, processed, summarized and reported within the time periods specified thereunder. Such disclosure controls and procedures include controls and

procedures designed to ensure that information required to be disclosed is accumulated and communicated to the management of the Company, including the Chief Executive Officer and Chief Financial Officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and such disclosure controls and procedures are effective;

- (zz) the operations of the Company are and have been conducted at all times in material compliance with applicable financial recordkeeping and reporting requirements of the money laundering statutes in all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental authority (collectively, the “**Money Laundering Laws**”) and no action, suit or proceeding by or before any court of governmental authority or any arbitrator non-governmental authority involving the Company with respect to the Money Laundering Laws is to the best knowledge of the Company pending or threatened;
- (aaa) to the knowledge of the Company, none of the Company nor any of its subsidiaries, nor any director, officer, agent, employee or other person associated with or acting on behalf of the Company has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated any applicable anti-bribery, export control and economic sanctions laws including any provision of the *Corruption of Foreign Official Act* (Canada), the *Foreign Corrupt Practices Act* (United States) or any similar legislation applicable in the jurisdictions where the Company carries on business; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; and
- (bbb) the Company has taken no steps to wind-up, appoint a liquidator, receiver, administrative receiver or administrator over or in respect of the Company or any of its assets.

4.2 The Agent (for and on behalf of itself and any other members of the Selling Group) represents and warrants to the Company, and acknowledges that the Company is relying upon such representations and warranties in entering into this Agreement, that:

- (a) in respect of the offer and sale of the Offered Shares, it will comply, and shall require any other member of the Selling Group to comply, in all material respects with all Applicable Securities Laws and U.S. Securities Laws and all applicable laws of jurisdictions outside of Canada and the United States in which it offers the Offered Shares;
- (b) it is, and will remain so, until the completion of the Offering, appropriately registered under Applicable Securities Laws so as to permit it to lawfully fulfill its obligations hereunder;
- (c) upon the Company obtaining the necessary receipts therefor from each of the Commissions, it will deliver one copy of the Final Prospectus and any Supplementary Materials thereto to each of the Purchasers in the Qualifying Jurisdictions;
- (d) by its execution of this Agreement, certifies that the Agent is not a person or company in respect of which the Company is a “connected issuer” or a “related issuer” within the respective meanings of those terms in National Instrument 33-105 *Underwriting Conflicts* of the Canadian Securities Administrators;

- (e) it is a valid and subsisting corporation under the laws of the jurisdiction in which it was incorporated, continued or amalgamated; and
- (f) it has all requisite corporate power and capacity under the laws of its jurisdiction of existence and has good and sufficient right and authority to enter into this Agreement and complete the transactions contemplated under this Agreement on the terms and conditions set forth herein.

4.3 The representations and warranties of the Company and the Agent contained in this Agreement will be true at the Closing Time as though they were made at the Closing Time and they will survive the completion of the transactions contemplated under this Agreement in accordance with Section 11.5.

## **5. ADDITIONAL COVENANTS**

5.1 The Company covenants and agrees with the Agent that it will:

- (a) file with the Exchange all required documents and pay all required filing fees, and do all things required by the rules and policies of the Exchange in connection with the Offering;
- (b) during the period prior to the completion of the Offering, promptly notify the Agent in writing of any material change (actual or proposed) in the business, affairs, operations, assets or liabilities (contingent or otherwise) prospects, financial position or capital of the Company, and the Company will, within any applicable time limitation, comply with all filing and other requirements under the Applicable Securities Laws of the Qualifying Jurisdictions, and with the rules of the Exchange, applicable to the Company as a result of any such change. In addition to the foregoing, the Company will, in good faith, discuss with the Agent any material change in circumstances (actual or proposed) which is of such a nature that there is or ought to be consideration given by the Company as to whether notice in writing of such change need be given to the Agent pursuant to this subparagraph;
- (c) prior to the Closing Time, fulfill to the satisfaction of the Agent all legal requirements (including, without limitation, compliance with Applicable Securities Laws) to be fulfilled by the Company to enable the Offered Shares to be distributed free of resale restrictions in the Qualifying Jurisdictions;
- (d) use commercially reasonable efforts to maintain its status as a “reporting issuer” or the equivalent not in default in each of the Qualifying Jurisdictions for a period of two years from the Closing Date, other than in connection with a merger, amalgamation, arrangement, take-over bid, going private transaction or other similar transaction involving the purchase of all of the outstanding Offered Shares of the Company;
- (e) use commercially reasonable efforts to maintain its listing of its Common Shares on the Exchange (or a similar stock exchange or quotation system) for a period of two years from the Closing Date, other than in connection with a merger, amalgamation, arrangement, take-over bid, going private transaction or other similar transaction involving the purchase of all of the outstanding securities of the Company;
- (f) deliver to the Agent and its legal counsel, as applicable:

- (i) at the Closing Time, such legal opinions (the “**Legal Opinions**”) of the Company’s legal counsel addressed to the Agent and dated as of the Closing Date, in form and content acceptable to the Agent, acting reasonably, relating to the matters set forth in **Schedule “B”**;
- (ii) at the Closing Time, a certificate (the “**Officers’ Certificate**”) of the Company signed by its Chief Executive Officer and Chief Financial Officer, addressed to the Agent and dated as of the Closing Date, in form and content acceptable to the Agent, acting reasonably, certifying for and on behalf of the Company and not in their personal capacities that, to the actual knowledge of the persons signing such certificate, after having made due and relevant inquiry:
  - (A) the Company has complied, in all material respects, with all covenants and satisfied all terms and conditions of this Agreement on its part to be complied with and satisfied at or prior to the Closing Time on the Closing Date;
  - (B) no order, ruling or determination having the effect of ceasing or suspending trading in any securities of the Company or prohibiting the sale of the Offered Shares or any of the Company’s issued securities has been issued and no proceeding for such purpose is pending or, to the knowledge of such officers, threatened;
  - (C) the Company is a “reporting issuer” or its equivalent under the securities laws of each of the Qualifying Jurisdictions, and no material change relating to the Company has occurred since the date of this Agreement with respect to which the requisite material change report has not been filed and no such disclosure has been made on a confidential basis that remains subject to confidentiality; and
  - (D) all of the representations and warranties made by the Company in this Agreement are true and correct as of the Closing Time in all material respects (except those representations and warranties which are qualified by materiality which will be true and correct in all respects) with the same force and effect as if made at and as of the Closing Time after giving effect to the transactions contemplated hereby;
- (iii) certificates dated the Closing Date signed by the Chief Executive Officer of the Company or another officer acceptable to the Agent, acting reasonably, in form and content satisfactory to the Agent, acting reasonably, with respect to the constating documents of the Company;
- (iv) the resolutions of the directors of the Company relevant to the Offering, including the allotment, issue (or reservation for issue) and sale of the Offered Shares, the authorization of this Agreement, the Exchange listing and the transactions contemplated by this Agreement and the Ancillary Documents, and the incumbency and signatures of signing officers of the Company;
- (v) at the Closing Time, a certificate of good standing (or equivalent) for the Company dated within one business day (or such earlier or later date as the Agent may accept) of the Closing Date;

- (vi) at the Closing Time, a certificate of the registrar and transfer agent of the Common Shares of the Company, which certifies the number of Common Shares of the Company issued and outstanding on the date prior to the Closing Date;
  - (vii) at the Closing Time, executed Lock-up Agreements; and
  - (viii) at the Closing Time, such other materials (the “**Closing Materials**”) as the Agent may reasonably require and as are customary in a transaction of this nature, and the Closing Materials will be addressed to the Agent and to such parties as may be reasonably directed by the Agent and will be dated as of the Closing Date or such other date as the Agent may reasonably require;
- (g) do all such acts and things necessary to ensure that all of the representations and warranties of the Company contained in this Agreement and the Ancillary Documents remain materially true and correct and not do any such act or thing that would render any representation or warranty of the Company contained in this Agreement and the Ancillary Documents materially untrue or incorrect;
- (h) not, until the date which is 90 days after Closing, without the consent of the Agent, whose consent will not be unreasonably withheld, issue, or announce any intention to issue, any additional equity securities, except in conjunction with: (i) the grant or exercise of stock options and other similar issuances pursuant to the share incentive plan of the Company and other share compensation arrangements, (ii) the exercise of warrants or options which are outstanding as of the date of this Agreement, and (iii) the issuance of securities in connection with acquisitions in the normal course of business;
- (i) upon Closing, the Company hereby grants to the Agent a right of first refusal to act as lead manager, underwriter, private placement agent and/or exclusive financial advisor (as the case may be, depending upon the nature of the transaction) if, within 12 months of Closing, the Company (i) requires additional equity or debt financing, (ii) proposes to acquire or dispose of any assets out of the ordinary course of business, (iii) decides to hedge, lock-in or swap any currency or interest rate exposure relating to its business, (iv) proposes a material corporate transaction, such as an amalgamation, recapitalization, merger, take-over bid, joint venture, plan of arrangement or reorganization, or (v) receives an unsolicited take-over bid (each such occurrence a “**Subsequent Transaction**”). If the Company determines that it will proceed with a Subsequent Transaction, the Company will provide notice to the Agent of the proposed terms thereof (including any compensation terms) and the Agent will have the right to accept the role of lead agent or underwriter to the Company on the terms and conditions contained in such notice within 10 days of receipt. If the Agent declines to act as agent or underwriter on the terms set out in the notice, the Company may proceed with retaining another agent or underwriter on the terms (including any compensation terms) set out in the notice, provided that the arrangements with such other agent or underwriter are entered into within 30 days thereafter. The terms and conditions relating to any such services will be outlined in a separate engagement letter, underwriting agreement or agency agreement and the fees for such services will be in addition to the fees payable under this Agreement, will be negotiated separately and in good faith and will be consistent with fees paid to North American investment bankers for similar services;
- (j) advise the Agent, promptly after receiving notice or obtaining knowledge thereof; of:  
(i) the suspension of the qualification of the Common Shares for offering or sale in any of

the Qualifying Jurisdictions and (ii) the institution, threatening or contemplation of any proceeding for any such purposes;

- (k) not reproduce, disseminate, quote from or refer to any written or oral opinions, advice, analysis or materials provided by the Agent to the Company in connection with the Offering in whole or in part at any time, in any manner or for any purpose, without the Agent's prior written consent in each specific instance, and the Company will and will cause its affiliates, officers, directors, shareholders, agents and advisors (including those shareholders who have an advisory relationship with the Company and the directors, officers, and employees of such shareholders) to keep confidential the opinions, advice, analysis and materials furnished to the Company by the Agent and its counsel in connection with the Offering;
- (l) forthwith notify the Agent of any breach of any covenant of this Agreement or any Ancillary Documents by any party thereto, or upon it becoming aware that any representation or warranty of the Company contained in this Agreement or any Ancillary Document is or has become untrue or inaccurate in any material respect;
- (m) ensure that any news release relating to the Offering will be in the form and content agreed to by the Agent, acting reasonably. In addition, the Agent will have the right to disseminate the pre-approved press release to such Canadian news services as it sees fit;
- (n) use the net proceeds of the Offering substantially in the manner set out in herein; and
- (o) make management of the Company available to provide such assistance in marketing the Offering as the Agent may reasonably request.

5.2 With respect to material changes during the distribution of the Offered Shares, the Company further covenants and agrees with the Agent that it will:

- (a) promptly inform the Agent at first orally, and then in writing, any time prior to the Closing Time, of the full particulars of:
  - (i) any material change (whether actual, anticipated, threatened, contemplated) in respect of the Company;
  - (ii) any material fact (whether actual, anticipated, threatened, contemplated, or proposed) that has arisen or has been discovered that has not been disclosed to the Agent; and
  - (iii) any change (whether actual, anticipated, threatened, contemplated, or proposed by, to, or against) in any material fact or any misstatement of any material fact contained in any of the Continuous Disclosure Materials or otherwise disclosed to the Agent, or the coming into existence of any new material fact; and

in all cases which change or new material fact is, or could reasonably be expected to be, of such a nature as:

- (iv) to render any of the Continuous Disclosure Materials, as they exist taken together in their entirety immediately prior to such change or new material fact, misleading or untrue in any material respect or could result in any of such documents, as they



- exist taken together in their entirety immediately prior to such change or material fact, containing a misrepresentation;
- (v) could result in any of the Continuous Disclosure Materials, as they exist taken together in their entirety immediately prior to such change or material fact, not complying with any Applicable Securities Laws; or
  - (vi) to constitute a Material Adverse Effect as it relates to the Company;
- (b) comply with Part 6 of NI 41-101, and if and when applicable, prepare and file or deliver promptly any Supplementary Material, which in the opinion of the Company and its counsel may be necessary, and until the distribution of the Offered Shares is complete, otherwise comply with all applicable filing, delivery and other requirements under Applicable Securities Laws arising as a result of such fact or change necessary to continue to qualify the Securities for distribution in each of the Qualifying Jurisdictions;
  - (c) if the Final Prospectus (prior to amendment), during the period from the date thereof to the later of: (a) the Closing Date; and (b) the date of the completion of the distribution of the Offered Share, contains a misrepresentation, the Company will promptly prepare and file with the Commissions in the Qualifying Jurisdictions any amendment or supplement thereto which in the opinion of the Agent and the Company, acting reasonably, may be necessary or advisable to correct such misrepresentation;
  - (d) if, during the period from the date hereof to the later of: (a) the Closing Date; and (b) the date of the completion of the distribution of the Offered Shares, it will be necessary to file or deliver any Supplementary Material to comply with any Applicable Securities Laws, the Company will, in co-operation with the Agent, make any such filing and/or delivery as soon as reasonably possible;
  - (e) in addition to the provisions of Sections 5.2(a) and 5.2(b), the Company will, in good faith, discuss with the Agent, any change, event, development or fact, contemplated, anticipated, threatened, or proposed in Sections 5.2(a) and 5.2(b) that is of such a nature that there may be reasonable doubt as to whether written notice should be given to the Agent under this Section 5.2 and will consult with the Agent with respect to the form and substance of any Supplementary Material proposed to be filed or delivered by the Company, it being understood and agreed that no such Supplementary Material will be filed by the Company with any Commission or delivered to any Purchaser or prospective purchaser until the Agent and its legal counsel: have been given a reasonable opportunity to (i) review; and (ii) approve such material, acting reasonably.

## **6. AGENT'S FEES AND EXPENSES**

- 6.1 In consideration of the services to be rendered by the Agent to the Company under this Agreement, the Company agrees to, at the time and in the manner specified in this Agreement, pay to the Agent the Agent's Fee and issue to the Agent the Agent Warrants. Each Agent Warrant will be exercisable, for a period of 24 months following the Closing Date, to acquire one Common Share (each, a "**Agent Warrant Share**") at an exercise price per Agent Warrant Share that is equal to the Offering Price, subject to adjustment in certain events.
- 6.2 Whether or not the purchase and sale of the Offered Shares will be completed, all costs and expenses of or incidental to the sale and delivery of the Offered Shares and of or incidental to all



matters in connection with the transactions herein will be borne by the Company, including all fees and disbursements of its legal counsel, expenses related to road shows and marketing activities, filing fees, the Agent's reasonable out-of-pocket expenses and the fees and disbursements of legal counsel to the Agent. The Company will also pay any eligible taxes on the foregoing amounts. Notwithstanding the foregoing, the Agent's expenses will be capped at a maximum of \$100,000 (including legal fees) plus applicable disbursements and taxes. Any expenses incurred greater than the \$100,000 plus applicable disbursements and taxes will be subject to the approval of the Company.

- 6.3 The Company will be entitled to and will act on any notice, waiver, extension or other communication given by the Agent.

## **7. CONDITIONS PRECEDENT**

- 7.1 The following are conditions to the obligations of the Agent to complete the transactions contemplated in this Agreement, which conditions may be waived in writing in whole or in part by the Agent in its sole discretion:

- (a) all actions required to be taken by or on behalf of the Company, including without limitation the passing of all requisite resolutions of directors of the Company approving the transaction contemplated hereunder, will have been taken so as to obtain the requisite approval of the Offering and to validly offer, sell and distribute the Offered Shares;
- (b) the Company will have made all necessary filings with and obtained all necessary approvals, consents and acceptances of the Regulatory Authorities for the Offering;
- (c) the Company will have, within the required time set out hereunder, delivered or caused the delivery of the required Legal Opinions, Officers' Certificate, and other Closing Materials as the Agent may reasonably require in form and substance satisfactory to the Agent and its counsel, acting reasonably;
- (d) no order ceasing or suspending trading in any securities of the Company, or ceasing or suspending trading by the directors, officers or promoters of the Company, or any one of them, or prohibiting the trade or distribution of any of the securities referred to herein will have been issued and no proceedings for such purpose, to the knowledge of the Company, will be pending or threatened;
- (e) as of the Closing Time, there will be no reports or information that in accordance with the requirements of Regulatory Authorities in Canada must be made publicly available in connection with the sale of the Offered Shares that have not been made publicly available as required;
- (f) the Agent will have received at the Closing Time a letter from the transfer agent of the Company dated the date of Closing and signed by an authorized officer of such transfer agent confirming the number of issued and outstanding Common Shares of the Company;
- (g) the Agent not having exercised any rights of termination set forth in this Agreement;
- (h) there will not have occurred between September 30, 2021 and the Closing Time, any adverse material change (actual, anticipated, contemplated or, to the knowledge of the Company, threatened, whether financial or otherwise) in the business, affairs, operations,

assets, liabilities (contingent or otherwise), financial position or capital of the Company not disclosed in the Continuous Disclosure Materials;

- (i) the Company will have, as of the Closing Time, complied in all material respects with all of its covenants and agreements contained in this Agreement and the Ancillary Documents, including without limitation all requirements for approval of the Offering and the listing and posting for trading of the Offered Shares on the Exchange as required to be provided prior to the Closing Time;
- (j) the representations and warranties of the Company contained in this Agreement and the Ancillary Documents will be true and correct as of the Closing Time in all material respects (except those representations and warranties which are qualified by materiality which will be true and correct in all respects) as if such representations and warranties had been made as of the Closing Time; and
- (k) each of the directors and officers of the Company will agree not to, directly or indirectly, offer, sell, contract to sell, grant any option to purchase, make any short sale, or otherwise dispose of, or transfer, or announce any intention to do so, any Common Shares, whether now owned directly or indirectly, or under their control or direction, or with respect to which each has beneficial ownership, or enter into any transaction or arrangement that has the effect of transferring, in whole or in part, any of the economic consequences of ownership of Common Shares, whether such transaction is settled by the delivery of Common Shares, other securities, cash or otherwise other than pursuant to a take-over bid or any other similar transaction made generally to all of the shareholders of the Company, for a period of 90 days after the Closing Date (the “**Lock-up Agreements**”).

## **8. CLOSING**

- 8.1 The issuance and sale of the Offered Shares (and Additional Shares, if applicable) shall be completed at the Closing Time (and the Option Closing Time, if applicable) as contemplated under this Agreement (the “**Closing**”) at the offices of Cozen O'Connor LLP, legal counsel to the Company, in Vancouver, Canada at the Closing Time on May 6, 2022 or such other time and date as may be agreed to by the Company and the Agent (the “**Closing Date**”).
- 8.2 At the Closing Time or the Option Closing Time, as applicable, the Company shall, subject to the terms and conditions of this Agreement: (a) provide electronic evidence of issuance or certificates in definitive form of the Offered Shares or Additional Shares, as the case may be, in the names and denominations reasonably requested by the Agent; and (b) the certificates representing the Agent Warrants, registered as directed by the Agent, on behalf of the Agent, against payment at the direction of the Company, in lawful money of Canada by electronic wire transfer to the Company’s designated bank account, of the aggregate subscription price for the Offered Shares or Additional Shares, as the case may be, less: (x) the Agent’s Fee; and (y) the out-of-pocket costs and expenses of the Agent, including the fees and disbursements of counsel to the Agent, as set out in Section 6.
- 8.3 At the Closing Time, the Company will deliver to the Agent such documents set forth in Subsection 5.1(f).

## **9. INDEMNITY**

- 9.1 In consideration for the provisions of services by the Agent pursuant to this Agreement (for the purposes of this Section 9, the “**Engagement**”), the Company agrees to indemnify and hold

harmless the Agent, each of its subsidiaries and affiliates and each of their respective directors, officers, employees, partners, agents, shareholders, each other person, if any, controlling the Agent, or any of its/their respective subsidiaries and affiliates (collectively, the “**Indemnified Parties**” and individually, an “**Indemnified Party**”), from and against any and all losses, expenses, claims (including shareholder actions, derivative or otherwise), actions, damages and liabilities, joint or several, including without limitation the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of their counsel (collectively, the “**Losses**”) that may be suffered by, imposed upon or asserted against an Indemnified Party as a result of, in respect of, connected with or arising out of any action, suit, proceeding, investigation or claim that may be made or threatened by any person or in enforcing this Section 9 (collectively the “**Claims**”) insofar as the Claims relate to, are caused by, result from, arise out of or are based upon, directly or indirectly, the Engagement, whether performed before or after the Company’s execution of the Agreement. The Company agrees to waive any right the Company may have of first requiring an Indemnified Party to proceed against or enforce any other right, power, remedy or security or claim payment from any other person before claiming under this Section 9. The Company also agrees that no Indemnified Party will have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or any person asserting Claims on behalf of or in right of the Company for or in connection with the Engagement. The Company will not, without the prior written consent of the Agent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any Claim in respect of which indemnification may be sought under this Section 9 (whether or not any Indemnified Party is a party to such Claim) unless the Company has acknowledged in writing that the Indemnified Parties are entitled to be indemnified in respect of such Claim and such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Party from any liabilities arising out of such Claim without any admission of negligence, misconduct, liability or responsibility by or on behalf of any Indemnified Party.

- 9.2 Promptly after receiving notice of a Claim against the Agent, or any other Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from the Company, the Agent or any such other Indemnified Party will notify the Company in writing of the particulars thereof, provided that the omission so to notify the Company will not relieve the Company of any liability which the Company may have to any Indemnified Party except and only to the extent that any such delay in or failure to give notice as required prejudices the defense of such Claim or results in any material increase in the liability which the Company has under this Section 9. The Company will have 14 days after receipt of the notice to undertake, conduct and control, through counsel of their own choosing and at their own expense, the settlement or defense of the Claim. If the Company undertakes, conducts or controls the settlement or defense of the Claim, the relevant Indemnified Parties will have the right to participate in the settlement or defense of the Claim.
- 9.3 The Company also agrees to reimburse the Agent for the time spent by its personnel in connection with any Claim at their normal per diem rates. The Agent may retain counsel to separately represent it in the defense of a Claim, which will be at the Company’s expense if (i) the Company does not promptly assume the defense of the Claim no later than 14 days after receiving actual notice of the Claim (as set forth above), (ii) the Company agrees to separate representation, or (iii) the Agent is advised by counsel that there is an actual or potential conflict in the Company’s and the Agent’s respective interests or additional defenses are available to the Agent, which makes representation by the same counsel inappropriate.
- 9.4 The foregoing indemnity will not apply to the extent that a court of competent jurisdiction in a final judgment that has become non-appealable has determined that such Losses to which the

Indemnified Party may be subject were caused solely by the gross negligence, intentional fault or willful misconduct of the Indemnified Party.

- 9.5 If for any reason the foregoing indemnity is unavailable (other than in accordance with the terms hereof) to the Agent, or any other Indemnified Party or insufficient to hold the Agent or any other Indemnified Party harmless in respect of a Claim, the Company will contribute to the amount paid or payable by the Agent or the other Indemnified Party as a result of such Claim in such proportion as is appropriate to reflect not only the relative benefits received by the Company on the one hand and the Agent or any other Indemnified Party on the other hand but also the relative fault of the Company, the Agent or any other Indemnified Party as well as any relevant equitable considerations; provided that the Company will in any event contribute to the amount paid or payable by the Agent or any other Indemnified Party as a result of such Claim any excess of such amount over the amount of the fees received by the Agent under this Agreement.
- 9.6 The Company hereby constitutes the Agent as trustee for each of the other Indemnified Parties of the Company's covenants under this Section 9 with respect to those persons and the Agent agrees to accept that trust and to hold and enforce those covenants on behalf of those persons.
- 9.7 The obligations of the Company hereunder are in addition to any liabilities which the Company may otherwise have to the Agent or any other Indemnified Party.

## **10. TERMINATION OF AGREEMENT**

- 10.1 The Agent may terminate its obligations under this Agreement on or before the Closing Time in any of the following circumstances:
- (a) *Restrictions on Distribution.* Any inquiry, action, suit, investigation or other proceeding (whether formal or informal) is commenced, announced or threatened or any order is made or issued under or pursuant to any federal, provincial, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality (including, without limitation, the Exchange or any securities regulatory authority) or there is a change in any law, rule or regulation, or the interpretation or administration thereof, which, in the reasonable opinion of the Agent, operates to prevent, restrict or otherwise materially adversely affect the distribution or trading of the Offered Shares.
  - (b) *Material Change.* There will occur or come into effect any material change in the business, affairs or financial condition of the Company or the Subsidiaries or any change in any material fact, or there should be discovered any previously undisclosed fact which, in each case, in the reasonable opinion of the Agent, has or could reasonably be expected to have a significant effect on the market price or value or marketability of the Offered Shares.
  - (c) *Disaster Out.* There should develop, occur or come into effect or existence any event, action, state, or condition or any action, law or regulation, inquiry, including, without limitation, terrorism, accident or major financial, political or economic occurrence of national or international consequence, or any action, government, law, regulation, inquiry or other occurrence of any nature, which, in the reasonable opinion of the Agent, materially adversely affects or involves, or may materially adversely affect or involve, the financial markets in Canada or the United States or the business, operations or affairs of the Company or the marketability of the Offered Shares.

- (d) *Adverse Order.* An order will have been made or threatened to cease or suspend trading in the Offered Shares, or to otherwise prohibit or restrict in any manner the distribution or trading of the Offered Shares, or proceedings are announced or commenced for the making of any such order by any securities regulatory authority or similar regulatory or judicial authority or the Exchange, which order has not been rescinded, revoked or withdrawn.
- (e) *Market Out.* In the reasonable opinion of the Agent, the Offered Shares cannot be marketed profitably.
- (f) *Breach.* The Company is in breach of any term, condition or covenant of this Agreement that may not be reasonably expected to be remedied prior to Closing Time or any representation or warranty given by the Company becomes or is false.
- (g) *Due Diligence.* If the Agent is not satisfied in their sole discretion with their due diligence review and investigations in respect of the Company.

10.2 The Agent will make reasonable best efforts to give notice to the Company (in writing or by other means) of the occurrence of any of the events referred to in Section 10.1 provided that neither the giving nor the failure to give such notice will in any way affect the entitlement of the Agent to exercise its rights under Section 10.1, at any time prior to or at the Closing Time on the Closing Date.

10.3 The rights of termination contained in this Section 10 as may be exercised by the Agent, are in addition to any other rights or remedies the Agent may have in respect of any default, act or failure to act or non-compliance by the Company in respect of any of the matters contemplated by this Agreement.

10.4 If the obligations of the Agent are terminated under this Agreement pursuant to these termination rights, the Company's liabilities to the Agent will be limited to the Company's obligations under Section 5.2, Section 9 and Section 10.

## **11. GENERAL**

11.1 Any notice to be given hereunder will be in writing and may be given by electronic mail (email) or by hand delivery and will, in the case of notice to the Company, be addressed and e-mailed or delivered to:

Element Nutritional Sciences Inc.  
1100 Walkers Line, Suite 401  
Burlington, ON L7N 2G3

Attention: Stuart Lowther  
Email: slowther@elementnutrition.com

with a copy to:

Cozen O'Connor LLP  
Bentall 5 550 Burrard Street, Suite 1008  
Vancouver, British Columbia V6C 2B5

Attention: Brian Fast

Email: bfast@cozen.com

and in the case of the Agent, be addressed and emailed or delivered to:

Canaccord Genuity Corp.  
2200 - 609 Granville Street  
Vancouver, British Columbia V7Y 1H2

Attention: Shoaib Ansari  
Email: sansari@cgf.com

with a copy to:

Morton Law LLP  
#1200 – 750 West Pender Street  
Vancouver, British Columbia V6C 2T8

Attention: Jed M. Hops  
Email: jmh@mortonlaw.ca

The Company and the Agent may change their respective addresses for notice by notice given in the manner referred to above.

- 11.2 Time and each of the terms and conditions of this Agreement will be of the essence of this Agreement and any waiver by the parties of this Section 11 or any failure by them to exercise any of their rights under this Agreement will be limited to the particular instance and will not extend to any other instance or matter in this Agreement or otherwise affect any of their rights or remedies under this Agreement.
- 11.3 This Agreement constitutes the entire agreement between the parties hereto in respect of the matters referred to herein and there are no representations, warranties, covenants or agreements, expressed or implied, collateral hereto other than as expressly set forth or referred to herein and this Agreement supersedes any previous agreements, arrangements or understandings among the parties.
- 11.4 The headings in this Agreement are for reference only and do not constitute terms of the Agreement.
- 11.5 Except as expressly provided for in this Agreement, all warranties, representations, covenants and agreements of the Company herein contained, or contained in, documents submitted or required to be submitted pursuant to this Agreement, will survive the purchase by the Agent of the Offered Shares and will continue in full force and effect, regardless of the closing of the sale of the Offered Shares and regardless of any investigation which may be carried on by the Agent, or on their behalf, subject only to the applicable limitation period prescribed by law. For greater certainty, the provisions contained in this Agreement in any way related to the indemnification or the contribution obligations, including those provided for in Section 9, will survive and continue in full force and effect, subject only to the applicable limitation period prescribed by law.
- 11.6 No alteration, amendment, modification or interpretation of this Agreement or any provision of this Agreement will be valid and binding upon the parties hereto unless such alteration, amendment, modification or interpretation is in written form executed by the parties directly affected by such alteration, amendment, modification or interpretation.

- 11.7 The parties hereto will execute and deliver all such further documents and instruments and do all such acts and things as any party may, either before or after the Closing Date, reasonably require in order to carry out the full intent and meaning of this Agreement.
- 11.8 This Agreement may not be assigned by any party hereto without the prior written consent of all of the parties hereto.
- 11.9 This Agreement will be subject to, governed by, and construed in accordance with the laws of the Province of British Columbia and the Canadian federal laws applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each of the Company and the Agent irrevocably submits to the exclusive jurisdiction of the courts of the Province of British Columbia with respect to any matter arising hereunder or relating hereto.
- 11.10 The invalidity or unenforceability of any particular provision of this Agreement will not affect or limit the validity or enforceability of the remaining provisions of this Agreement.
- 11.11 The parties may sign this Agreement in as many counterparts as may be deemed necessary and may be delivered by facsimile, all of which so signed and delivered will be deemed to be an original and together will constitute one and the same instrument.

If the foregoing is in accordance with your understanding and agreed to by you, please signify your acceptance on the accompanying counterparts of this Agreement and return same to the Agent whereupon this Agreement as so accepted will constitute an agreement between the Company and the Agent enforceable in accordance with its terms.

*[Signature page follows]*



Yours truly,

**CANACCORD GENUITY CORP.**

By: “Shoaib Ansari”

Name: Shoaib Ansari

Title: Managing Director, Investment  
Banking

The foregoing is accepted and agreed to effective as of the date appearing on the first page of this Agreement.

**ELEMENT NUTRITIONAL SCIENCES INC.**

By: “Stuart Lowther”

Name: Stuart Lowther

Title: Chief Executive Officer

**SCHEDULE “A”****OUTSTANDING CONVERTIBLE SECURITIES AS OF APRIL 28, 2022**

<b>Class</b>	<b>Number</b>	<b>Exercise Price</b>	<b>Expiry Date</b>
Options	500,000	\$0.25	December 22, 2025
Options	1,300,000	\$0.25	January 18, 2026
Options	3,400,000	\$0.25	March 10, 2026
Options	1,700,000	\$0.81	July 5, 2024
Options	1,500,000	\$0.70	August 19, 2026
Management Performance Warrants	24,000,000	\$0.25	January 18, 2026
Warrants	231,440	\$0.25	February 1, 2023
Warrants	155,520	\$0.25	March 15, 2023
Warrants	785,000	\$0.25	May 13, 2023
Warrants	1,631,520	\$0.25	May 14, 2023
Warrants	4,167,000	\$1.00	June 18, 2023
Warrants	583,380	\$0.60	June 18, 2023

## **SCHEDULE "B"**

### **LEGAL OPINION**

1. the Company is a corporation duly incorporated, continued, or amalgamated, as the case may be, and validly existing and is in good standing under the laws of the jurisdiction in which it was incorporated, continued, or amalgamated, as the case may be;
2. the Company has all requisite corporate power and capacity to (i) carry on its business as now conducted as described in the Continuous Disclosure Materials and to own its assets described in the Continuous Disclosure Materials and (ii) execute and deliver this Agreement and the Ancillary Documents and to carry out the transactions contemplated hereby and thereby and (iii) issue the Securities;
3. the authorized and issued capital of the Company immediately prior to the closing of the Offering;
4. all necessary corporate action having been taken by Company to authorize the execution and delivery of this Agreement and the Ancillary Documents and the performance by the Company of its obligations hereunder and thereunder and to authorize the issuance, sale and delivery of the Securities;
5. the Offered Shares and Additional Shares have been validly created and will be issued as fully-paid and non-assessable Common Shares in the capital of the Company upon full payment therefor;
6. the Agent Warrants have been validly created and issued by the Company;
7. the Common Shares underlying the Agent Warrants have been duly and validly authorized, allotted and reserved for issuance, and upon due exercise of the Agent Warrants in accordance with their respective terms, the Common Shares will be validly issued as fully paid and non-assessable shares in the capital of the Company;
8. the form of Agent Warrant Certificate has been duly approved and adopted by the board of directors of the Company and complies in all material respects with the constating documents of the Company, applicable corporate law, and the requirements of the Exchange;
9. this Agreement and the Ancillary Documents have been duly executed and delivered by the Company and constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject to (i) bankruptcy, insolvency and other laws affecting the rights of creditors generally; (ii) the qualification that equitable remedies may be granted in the discretion of a court of competent jurisdiction; (iii) the qualification that enforcement of rights to indemnity, contribution and waiver of contribution set out in this Agreement and the Ancillary Documents may be limited by applicable law and may or may not be ordered by a court on grounds of public policy, and (iv) the qualification that the costs of proceedings authorized to be taken in court or before a judge are under the discretion of the court or judge before which such proceedings are brought and a court or judge has full power to determine by whom and to what extent the costs of such proceedings will be paid;
10. the execution and delivery of this Agreement and the Ancillary Documents, the fulfillment of the terms hereof by the Company and the offering, issuance, sale and delivery of the Securities do not and will not result in a breach of or default under, and do not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of or default under, and do not and will

not conflict with any of the terms, conditions or provisions of the constating documents of the Company;

11. the statements under the heading “Eligibility for Investment” in the Final Prospectus in so far as they purport to describe the provisions of the laws referred to therein, are fair and accurate summaries of the matters discussed therein, all in a form and substance acceptable to the Agent, acting reasonably
12. Endeavor Trust Corporation is the duly appointed Canadian registrar and transfer agent for the Common Shares of the Company; and
13. the Company is a reporting issuer under the Applicable Securities Laws of British Columbia, Alberta, Saskatchewan and Ontario and is not included in a list of defaulting reporting issuers maintained by the Commission in such jurisdictions.