



No. S229486
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF SECTION 288 OF THE BUSINESS CORPORATIONS ACT,
S.B.C. 2002, CHAPTER 57, AS AMENDED**

AND

**IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT AMONG
BLACKHAWK GROWTH CORP., ITS SHAREHOLDERS,
AND 1286409 B.C. LTD.**

BLACKHAWK GROWTH CORP.

PETITIONER

**ORDER MADE AFTER APPLICATION
(Final Order)**

BEFORE THE HONOURABLE JUSTICE)

January 19, 2023

Stephen S.)
)

ON THE APPLICATION of the Petitioner, Blackhawk Growth Corp. ("**Blackhawk**") coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on January 19, 2023 and UPON HEARING Campbell Brooks, counsel for the Petitioner; and no one appearing on behalf of any holder (the "**Shareholders**") of common shares of Blackhawk (the "**Common Shares**") or any other person affected; AND UPON READING the Petition to the Court herein dated November 28, 2022; AND UPON READING the Interim Order of Master Hughes made herein on November 30, 2022; AND UPON READING Affidavits #1, #2 and #3 of Fredrick Pels sworn on November 28, 2022, January 3, 2023, and January 16, 2023 respectively; AND UPON IT APPEARING that notice of the time and place of the hearing of this application was given to the Shareholders; AND UPON the requisite approval of the Shareholders having been obtained at the special meeting of Blackhawk held on December 22, 2022; AND UPON CONSIDERING the fairness to the parties affected thereby of the terms and conditions of the Arrangement (as defined below) and of the transactions contemplated by the Arrangement;

THIS COURT ORDERS that:

1. Pursuant to the provisions of Section 291(4) of the *Business Corporations Act*, S.B.C. 2002, C. 57, as amended (the "**BCBCA**"), the arrangement (the "**Arrangement**") as

provided for in the plan of arrangement attached hereto as **Schedule "A"** (the "**Plan of Arrangement**"), including the terms and conditions thereof and the exchanges of securities contemplated therein, are substantively and procedurally fair and reasonable to the Shareholders;

2. The Arrangement as provided for in the Plan of Arrangement be and hereby is approved pursuant to the provisions of s. 291(4)(a) of the BCBCA;
3. The Arrangement shall be implemented in the manner and sequence set forth in the Plan of Arrangement, and pursuant to Sections 291, 292 and 296 of the BCBCA, the Arrangement will take effect as of the Effective Time, as defined in the Plan of Arrangement;
4. The Arrangement as set forth in the Plan of Arrangement shall be binding on Blackhawk and the Shareholders upon the taking effect of the Arrangement pursuant to Section 297 of the BCBCA; and
5. Blackhawk and 1286409 B.C. LTD. shall be at liberty to seek the advice and direction of this Court as to the implementation of this Order or to apply for such further order or orders as may be appropriate.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of lawyer for the Petitioner
Campbell Brooks



By the Court

Registrar



SCHEDULE "A"

PLAN OF ARRANGEMENT
PLAN OF ARRANGEMENT UNDER SECTION 288
OF THE
***BUSINESS CORPORATIONS ACT* (BRITISH COLUMBIA)**

ARTICLE 1 - INTERPRETATION

- 1.1 In this Plan of Arrangement (this "**Plan of Arrangement**"), the following terms have the following meanings:
- (a) "**Act**" means the *Business Corporations Act* (British Columbia), SBC 2002, c 57 and the regulations made thereunder, as in effect on the date hereof;
 - (b) "**Arrangement**", "herein", "hereof", "hereto", "hereunder" and similar expressions mean and refer to the arrangement under Section 288 of the Act on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations made in accordance with: (i) Article 12 of the Arrangement Agreement, (ii) Article 6 of this Plan of Arrangement; or (iii) at the discretion of the Court in either the Interim Order or the Final Order with the prior written consent of Blackhawk and SpinCo, each acting reasonably;
 - (c) "**Arrangement Agreement**" means the arrangement agreement dated November 25, 2022 between Blackhawk and SpinCo with respect to the Arrangement, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof;
 - (d) "**Arrangement Resolution**" means the special resolution in respect of the Arrangement in substantially the form attached as Appendix A to the Information Circular to be voted upon by Blackhawk Shareholders at the Meeting;
 - (e) "**Assumed Obligation**" has the meaning set out in Section 3.1(b)(i);
 - (f) "**Blackhawk**" means Blackhawk Growth Corp., a company incorporated under the laws of the Province of British Columbia;
 - (g) "**Blackhawk Shares**" means common shares in the capital of Blackhawk;
 - (h) "**Blackhawk Shareholders**" means a holder of Blackhawk Shares;
 - (i) "**Blackhawk Warrants**" means the common share purchase warrants of Blackhawk to acquire Blackhawk Shares set forth in Schedule E of the Arrangement Agreement;
 - (j) "**Business Day**" means any day, excepting Saturdays, Sundays and statutory holidays observed in Vancouver, British Columbia;
 - (12) "**Court**" means the Supreme Court of British Columbia;

- (k) **"Digital"** means Digital Mind Technology Pty Ltd., a company incorporated under the laws of Australia;
- (l) **"Digital Business"** means clinical trial stage trials developing digital interventions to treat mental health conditions;
- (m) **"Digital Shares"** means the ordinary shares of Digital;
- (n) **"Dissent Rights"** means rights of dissent in respect of the Arrangement as described in Article Article 5 hereof, as modified by the Interim Order and the Final Order;
- (o) **"Dissenting Shareholder"** means a registered holder of Blackhawk Shares who has duly and validly exercised its Dissent Rights in respect of its Blackhawk Shares and has not withdrawn or been deemed to have withdrawn such exercise of its Dissent Rights;
- (p) **"Effective Date"** means the date agreed to by Blackhawk and SpinCo in writing as the effective date of the Arrangement after all of the conditions precedent to the completion of the Arrangement as set out in the Arrangement Agreement have been satisfied or waived and the Final Order has been granted by the Court;
- (q) **"Effective Time"** means 12:01 a.m. (Vancouver time) on the Effective Date, or such other time agreed to by Blackhawk and SpinCo;
- (r) **"Exchange"** means the Canadian Securities Exchange;
- (s) **"Final Order"** means the final order of the Court approving the Arrangement pursuant to Section 291 of the Act (in form acceptable to Blackhawk and SpinCo each acting reasonably), as such order may be affirmed, amended or modified by any court of competent jurisdiction (with the consent of Blackhawk and SpinCo, each acting reasonably) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to Blackhawk and SpinCo, each acting reasonably) on appeal;
- (t) **"Information Circular"** means the notice of Meeting and accompanying management information circular and proxy statement of Blackhawk to be mailed to the Blackhawk Shareholders in connection with the holding of the Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the Arrangement Agreement;
- (u) **"Interim Order"** means the interim order of the Court concerning the Arrangement under Section 291 of the Act (in form acceptable to Blackhawk and SpinCo, each acting reasonably), containing declarations and directions with respect to the Arrangement and the holding of the Meeting as such order may be affirmed, amended or modified by any court of competent jurisdiction (with the prior consent of Blackhawk and SpinCo, each acting reasonably);
- (v) **"Meeting"** means the special meeting of the Blackhawk Shareholders, including any adjournments or postponements thereof, to be called and held in accordance with the Arrangement Agreement and Interim Order to permit the Blackhawk Shareholders to consider and vote on the Arrangement Resolution;

- (w) "Mindbio" means Mindbio Therapeutics Pty Ltd., a company incorporated under the laws of Australia.
 - (x) "Person" includes any individual, partnership, association, organization, firm, body corporate, trust, estate, trustee, executor, administrator, legal representative, government (including governmental authority), agency, instrumentality, or other entity, whether or not having legal status;
 - (y) "Plan of Arrangement" means this plan of arrangement and any amendments or variations hereto made in accordance with the Arrangement Agreement and Article Article 6 hereof or made at the direction of the Court in either the Interim Order or the Final Order with the prior written consent of Blackhawk and SpinCo, each acting reasonably;
 - (z) "Registrar" has the meaning set out in the Act;
 - (aa) "SpinCo" means 1286409 B.C. Ltd., a company existing under the laws of the Province of British Columbia;
 - (bb) "SpinCo Board" means the board of directors of SpinCo as may be constituted from time to time;
 - (cc) "SpinCo Shares" means the common shares in the capital of SpinCo;
 - (dd) "SpinCo Shareholders" means the holders of SpinCo Shares;
 - (ee) "Tax Act" means the Income Tax Act (Canada), together with any and all regulations promulgated thereunder, each as amended; and
 - (ff) "Transfer Agent" means Odyssey Trust Company.
- 1.2 The division of this Plan of Arrangement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement.
- 1.3 Unless reference is specifically made to some other document or instrument, all references herein to articles and sections are to articles and sections of this Plan of Arrangement.
- 1.4 Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa; and words importing any gender shall include all genders.
- 1.5 In the event that the date on which any action is required to be taken hereunder by any of the parties is not a Business Day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a Business Day in such place.
- 1.6 References in this Plan of Arrangement to any statute or sections thereof shall include such statute as amended or substituted and any regulations promulgated thereunder from time to time in effect.

ARTICLE 2 - ARRANGEMENT AGREEMENT

- 2.1 This Plan of Arrangement is made pursuant and subject to the provisions of, and forms part of, the Arrangement Agreement.
- 2.2 The Arrangement will become effective at the Effective Time and will be binding on and after the Effective Time on: (i) all legal and beneficial Blackhawk Shareholders; (ii) Blackhawk; and (iii) SpinCo.

ARTICLE 3 - ARRANGEMENT

- 3.1 The Arrangement involves the following steps that will occur and will be deemed to occur sequentially, in five minute increments, unless otherwise noted, starting at the Effective Time without any further act or formality:
- (a) the Blackhawk Shares held by Dissenting Shareholders who have properly exercised Dissent Rights that remain valid immediately prior to the Effective Time shall, as of the Effective Time, be deemed to have been transferred to Blackhawk free and clear of all liens, claims and encumbrances, and cancelled and cease to be outstanding, and, as of the Effective Time, such Dissenting Shareholders shall cease to have any rights as Blackhawk Shareholders, other than the right to be paid the fair value of their Blackhawk Shares;
 - (b) SpinCo shall effect a name change to "MindBio Therapeutics Corp." or such other name as approved by the directors of SpinCo;
 - (c) Blackhawk shall transfer, assign and convey to SpinCo and SpinCo shall accept all of the Digital Shares in consideration for:
 - (i) SpinCo agreeing to use its best efforts to issue one SpinCo Share to the holder of each validly exercised Blackhawk Warrant, upon receiving from Blackhawk a copy of the corresponding exercise form and confirmation that it received the exercise price in respect of such Blackhawk Warrant, subject to any approvals required by the Canadian Securities Exchange or the holders of the SpinCo Shares to effect such issuance (such SpinCo Shares to be subject to any restrictions or restrictive legends in accordance with applicable securities laws and the policies of the Canadian Securities Exchange) (the "Assumed Obligation")
 - (ii) the issuance by SpinCo of that number of fully paid and non-assessable SpinCo Shares as is equal to the product of: (A) the amount by which the fair market value of the Digital Shares exceeds the fair market value of the Assumed Obligation as of the Effective Time, multiplied by (B) a fraction, the numerator of which is the number of SpinCo Shares issued and outstanding immediately after the step described at 3.1(a), and the denominator of which is the fair market value of the issued and outstanding SpinCo Shares immediately after the step described at 3.1(a); and the aggregate amount added to the capital of the SpinCo Shares will be equal to the amount by which the fair market value of the Digital Shares exceeds the fair market value of the Assumed Obligation as of the Effective Time;

- (d) authorized share capital of SpinCo shall be amended to consolidate or split, as applicable, the SpinCo Shares outstanding on the basis of an exchange of one new SpinCo Share for a particular number of issued and outstanding SpinCo Shares, such that the number of issued and outstanding Spinco Shares after the consolidation or split, as applicable, shall equal the number of Blackhawk Shares issued and outstanding immediately after the step described at Section 3.1(a);
- (e) the authorized share structure of Blackhawk shall be deemed to be altered by:
 - (i) renaming and re-designating all of the issued and unissued Blackhawk Shares as Class A common shares without par value and amending the restrictions attached to those shares to provide the holders thereof with two votes in respect of each share held, being the “**Blackhawk Class A Shares**”;
 - (ii) creating a new class consisting of an unlimited number of common shares without par value with terms and special rights and restrictions identical to those of the Blackhawk Shares immediately prior to the Effective Time, being the “**New Blackhawk Shares**”; and
 - (iii) the Articles of Blackhawk shall be amended to reflect the alterations in Section 3.1(d)(i) and 3.1(d)(ii);
- (f) in the course of a reorganization of Blackhawk’s capital within the meaning of section 86 of the Tax Act, each Blackhawk Class A Share (excluding any Blackhawk Class A Shares held by Dissenting Shareholders) will be deemed to be exchanged by the Blackhawk Shareholders (free and clear of all liens, claims and encumbrances) for:
 - (i) one New Blackhawk Share; and
 - (ii) one SpinCo Share;
- (g) simultaneously with the step at Section 3.1(e):
 - (i) the aggregate amount added to the capital of the New Blackhawk Shares will be equal to (a) aggregate paid-up capital (as that term is used for purposes of the Tax Act) of the Blackhawk Class A Shares (excluding Blackhawk Shares held by Dissenting Shareholders) immediately prior to the exchange effected pursuant to Section 3.1(f), less (b) the fair market value of the SpinCo Shares distributed pursuant to Section 3.1(f) at the time of distribution;
 - (ii) the Blackhawk Class A Shares, none of which will be issued or outstanding once the exchange in Section 3.1(f) is completed, will be cancelled with the appropriate entries being made in the central securities register of Blackhawk and the authorized share structure of Blackhawk will be amended by eliminating the Blackhawk Class A Shares; and
 - (iii) the Articles of Blackhawk shall be amended to reflect the alterations in Section 3.1(g)(i).

3.2 Each of Blackhawk, SpinCo and the Transfer Agent shall be entitled to deduct and withhold from any cash payment or any issue, transfer or distribution of New Blackhawk

Shares or SpinCo Shares, made pursuant to this Plan of Arrangement such amounts as may be required to be deducted and withheld pursuant to the Tax Act or any other applicable law, and any amount so deducted and withheld will be deemed for all purposes of this Plan of Arrangement to be paid, issued, transferred or distributed to the person entitled thereto under the Plan of Arrangement. Without limiting the generality of the foregoing, any New Blackhawk Shares or SpinCo Shares so deducted and withheld may be sold on behalf of the person entitled to receive them for the purpose of generating cash proceeds, net of brokerage fees and other reasonable expenses, sufficient to satisfy all remittance obligations relating to the required deduction and withholding, and any cash remaining after such remittance shall be paid to the person forthwith.

ARTICLE 4 - OUTSTANDING CERTIFICATES AND FRACTIONAL SECURITIES

- 4.1 From and after the Effective Time, certificates or DRS statements formerly representing Blackhawk Shares under the Arrangement shall represent only the right to receive the consideration to which the Blackhawk Shareholders are entitled under the Arrangement, or as to those held by Dissenting Shareholders, other than those Dissenting Shareholders deemed to have participated in the Arrangement pursuant to Section 5.1, to receive the fair value of the Blackhawk Shares represented by such certificates or DRS statements.
- 4.2 On the Effective Date, or as soon as practicable thereafter, SpinCo shall execute and deliver to the Transfer Agent a treasury order or such other direction as may be requested by the Transfer Agent to effect the issuances and delivery of the SpinCo Shares issuable in Section 3.1(f)(ii) above to such Blackhawk Shareholders in accordance with the terms of this Plan of Arrangement.
- 4.3 No fractional SpinCo Shares shall be issued pursuant to the Arrangement and any fractional number of SpinCo Shares shall be rounded up or down to the nearest whole number of SpinCo Shares without any additional compensation.
- 4.4 From and after the Effective Date, share certificates and DRS statements representing Blackhawk Shares immediately before the Effective Date, except for those deemed to have been cancelled pursuant to Article Article 5, shall for all purposes be deemed to be certificates or DRS statements, as applicable, representing New Blackhawk Shares, and no new certificates or DRS statements shall be issued with respect to the New Blackhawk Shares issued in connection with the Arrangement.

ARTICLE 5 - DISSENTING SHAREHOLDERS

- 5.1 Each registered holder of Blackhawk Shares may exercise dissent rights with respect to any Blackhawk Shares held by such holder ("**Dissent Rights**") in connection with the Arrangement pursuant to and in the manner set forth in Division 2 of Part 8 of the Act, as modified by the Interim Order, the Final Order, and this Section 5.1 provided that, notwithstanding Section 242 of the Act, the written objection to the Arrangement Resolution referred to in Section 242 of the Act must be received by the Blackhawk not later than 5:00 p.m. (Vancouver time) on the Business Day that is two (2) Business Days immediately preceding the date of the Meeting (as it may be adjourned or postponed from time to time). Each dissenting Blackhawk Shareholder who duly exercise such Blackhawk Shareholder's Dissent Rights shall, notwithstanding anything to the contrary in Section 245 of the Act, be deemed to have transferred for cancellation the Blackhawk

Shares held by such holder and in respect of which Dissent Rights have been validly exercised to the Blackhawk free and clear of all liens (other than the right to be paid fair value for such Blackhawk Shares as set out in this Section 5.1), as provided in Section 3.1 and if they:

- (a) are entitled to be paid fair value for such Blackhawk Shares: (i) shall be deemed not to have participated in the transactions in Article 3 (other than Section 3.1(a)); (ii) will be entitled to be paid by the Blackhawk the fair value of such Blackhawk Shares, which fair value shall be determined in accordance with the procedures applicable to the payout value set out in Sections 244 and 245 of the Act and determined as of the close of business on the Business Day before the Arrangement Resolution was adopted; and (iii) will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holder not exercised their Dissent Rights in respect of such Blackhawk Shares; or
- (b) ultimately are not entitled, for any reason, to be paid fair value for such Blackhawk Shares shall be deemed to have participated in the Arrangement on the same basis as a Blackhawk Shareholder that did not exercise Dissent Rights and shall be entitled to receive only the same consideration the Blackhawk Shareholder would have received pursuant to the Arrangement if such registered Blackhawk Shareholder had not exercised Dissent Rights.

ARTICLE 6 - AMENDMENTS

- 6.1 Blackhawk and SpinCo may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that each such amendment, modification and/or supplement must be: (i) set out in writing; (ii) filed with the Court and, if made following the Meeting, approved by the Court; and (iii) communicated to Blackhawk Shareholders, if and as required by the Court.
- 6.2 Any amendment, modification or supplement to this Plan of Arrangement may be proposed by Blackhawk and SpinCo at any time prior to or at the Meeting (provided that the other parties shall have consented in writing prior thereto) with or without any other prior notice or communication, and if so proposed and accepted, in the manner contemplated and to the extent required by the Arrangement Agreement, by the persons voting at the Meeting (other than as may be required under the Interim Order or other order of the Court), shall become part of this Plan of Arrangement for all purposes.
- 6.3 Any amendment, modification or supplement to this Plan of Arrangement which is approved or directed by the Court following the Meeting shall be effective only: (i) if it is consented to by Blackhawk and SpinCo (each acting reasonably); and (ii) if required by the Court, it is consented to by Blackhawk Shareholders.
- 6.4 Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Time but shall only be effective if (x) it is consented to by Blackhawk and SpinCo and (y) it concerns a matter which, in the reasonable opinion of Blackhawk, is merely of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of Blackhawk or SpinCo or any former Blackhawk Shareholder.

ARTICLE 7 - MISCELLANEOUS

- 7.1 Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in the Plan of Arrangement without any further act or formality, each of Blackhawk and SpinCo shall make, do and execute, or cause to be made, done or executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required in order further to document or evidence any of the transactions or events set out herein.

No. S229486
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF SECTION 288 OF THE BUSINESS CORPORATIONS ACT,
S.B.C. 2002, CHAPTER 57, AS AMENDED

AND

IN THE MATTER OF A PROPOSED ARRANGEMENT INVOLVING
GENALTA POWER INC. AND CAPSTONE POWER CORP.

BLACKHAWK GROWTH CORP.

PETITIONER

**ORDER MADE AFTER APPLICATION
(FINAL ORDER)**

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