

**Form 7**  
[Rule 3.8]

Clerk's stamp



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Feb. 23, 2021  
Justice Eidsvik

COURT FILE NUMBER	2101 02279
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF AN APPLICATION UNDER SECTION 85 OF THE <i>CIVIL ENFORCEMENT ACT</i> , R.S.A. 2000, c. C-15
	-and-
	IN THE MATTER OF AN APPLICATION UNDER SECTION 13(2) OF THE <i>JUDICATURE ACT</i> , R.S.A. 2000, c. J-2
APPLICANTS	<b>ALEKSANDR GORODETSKY, BRUCE LEONARD, and KENNETH WILLIS</b>
RESPONDENT	<b>ALTER NRG CORP.</b>
DOCUMENT	<b><u>ORIGINATING APPLICATION FOR THE APPOINTMENT OF A RECEIVER</u></b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLennan Ross LLP #1900, 600 3 Ave SW Calgary, Alberta T2P 0G5 Attention: Michael Aasen  Email: maasen@mross.com Ph. (403) 403.303.1686 Fx. (403) 403.5439150 File No.:

**NOTICE TO THE RESPONDENT: ALTER NRG CORP.**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: February 23, 2021

Time: 2:00 p.m.

Where: Calgary Courts Centre, Calgary, Alberta

**Via Web-Ex - Virtual Courtroom 60 Link:**

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Before Whom: The Honourable Justice K.M. Eidsvik

Go to the end of this document to see what you can do and when you must do it.

### **BASIS FOR THIS CLAIM**

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Affidavit of Aleksandr Gorodetsky, sworn February 17, 2021.
2. Alter was in the business of developing renewable energy projects. Alter holds various assets, including but not limited to, the Alter Technology.
3. Alter has slowly terminated its employees.
4. Alter has been unresponsive to the request of the Applicants and have largely ignored the Applicants and other creditors in an effort to avoid paying amounts due and owing to creditors.
5. After many failed attempts to recover amounts due and owing to them, the Applicants had to obtain the Judgment and Writ of Enforcement (the "**Writ**").

### **Appointment of Receiver**

6. Pursuant to section 85 of the *Civil Enforcement Act*, RSA 2000, c c-15 where certain exigible property of an enforcement debtor cannot otherwise be conveniently realized, the Court may appoint a receiver over such property.
7. The Applicants are each an enforcement creditor of Alter, pursuant to the Judgment and Writ.
8. Given the lack of interest by the officers, directors and shareholder of Alter to manage the company, the Receiver should be granted the authority to deal with all aspects of Alter including the power to file a proposal under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**").
9. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, the Court has the inherent jurisdiction to appoint a receiver when it is just and convenient to do so.
10. The appointment of a receiver over Alter is necessary, just and convenient in order to: (i) protect the interests of the Applicants and any other creditors of Alter who have been ignored to date; (ii) to allow the monetization of the Alter Technology; and (iii) to realize the Property in an efficient way.

11. KPMG Inc. has consented to act as the Receiver should the Court so appoint it.

Restructuring Agreement / Termination Fee

12. The Applicants have limited means to realize upon the Judgment and have already expended a considerable amount of money to obtain the Judgement.
13. Refacture is prepared to assist the creditors of Alter, including the Applicants, to realize amounts owing to them.
14. Pursuant to the terms of the Restructuring Agreement, Refacture is prepared to acquire the Alter Technology and the shares of Alter for consideration which will then be used by the Receiver to fund a BIA Proposal to creditors.
15. In order to protect the time, effort, and financial resource expended by Refacture to date, it requires the protection of the Termination Fee. With the fee to form a third ranking Charge against the Property.
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**REMEDY SOUGHT:**

17. The Applicants, respectfully seeks an Order, in substantially the form attached hereto as **Schedule "A"**:
  - (a) appointing KPMG Inc., as receiver and receiver and manager of the property, assets and undertakings of Alter pursuant to section 85 of the *Civil Enforcement Act*, RSA 2000, c C-15 and section 13(2) of the *Judicature Act*, RSA 2000, c J-2;
  - (b) granting the Receiver the power to enter into the Restructuring Agreement, in the form attached hereto as **Schedule "B"**, with Refacture;
  - (c) authorizing and approving the Termination Fee;
  - (d) granting the TF Charge against the Property, to be ranked as a third charge behind the receiver's charge and the receiver's borrowing charge;
  - (e) granting the Receiver the power to enter into a BIA Proposal and complete any reorganization permitted by law, if necessary; and
  - (f) granting such further and other relief as this counsel may seek and this Honourable Court may deem just and appropriate.

**AFFIDAVIT OR OTHER EVIDENCE TO BE USED IN SUPPORT OF THIS APPLICATION:**

18. The Affidavit of Aleksandr Gorodetsky, sworn February 17, 2021, filed.
19. Bench Brief, dated February 17, 2021, filed.
20. Such further and other materials as counsel may advise and this Honourable Court may permit.

**APPLICABLE RULES:**

21. *Alberta Rules of Court*, Alta. Reg. 124/2010.
22. Such further and other rules as counsel may advise and this Honourable Court may consider.

**APPLICABLE ACTS AND REGULATIONS:**

23. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
24. *Civil Enforcement Act*, RSA 2000, c C-15.
25. *Judicature Act*, RSA 2000, c J-2, as amended.
26. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may consider.

**How the application is proposed to be heard or considered:**

27. Via Webex in Chambers before the presiding Justice.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**SCHEDULE "A" – DRAFT RECEIVERSHIP ORDER  
TOGETHER WITH BLACKLINE AGAINST TEMPLATE**

Clerk's Stamp:

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF

CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF  
ALTER NRG CORP.

IN THE MATTER OF AN APPLICATION UNDER  
SECTION 85 OF THE CIVIL ENFORCEMENT ACT,  
R.S.A. 2000, c. C-15

-and-

IN THE MATTER OF AN APPLICATION UNDER  
SECTION 13(2) OF THE JUDICATURE ACT, R.S.A.  
2000, c. J-2

APPLICANTS

**ALEKSANDR GORODETSKY, BRUCE LEONARD,  
and KENNETH WILLIS**

RESPONDENT

**ALTER NRG CORP.**

DOCUMENT

**RECEIVERSHIP ORDER**

CONTACT INFORMATION OF PARTY  
FILING THIS DOCUMENT:

McLennan Ross LLP  
#1900, 600 3 Ave SW  
Calgary, Alberta T2P 0G5  
Attention: Michael Aasen / Jamie Flanagan  
Email: maasen@mross.com  
Ph. (403) 403.303.1686  
Fx. (403) 403.5439150  
File No.:

**DATE ON WHICH ORDER WAS  
PRONOUNCED:**

February 23, 2021

**LOCATION OF HEARING:**

Calgary, AB

**NAME OF JUDGE WHO MADE THIS  
ORDER:**

The Honourable Madam Justice K.M. Eidsvik

**UPON** the application of **Aleksandr Gorodetsky, Bruce Leonard, and Kenneth Willis** (collectively the "**Applicants**") in respect of Alter NRG Corp. (the "**Debtor**"); **AND UPON** having read the Originating Application, the Affidavit of Aleksandr Gorodetsky; and the Affidavit of Service of ●, filed; **AND UPON** reading the consent of **KPMG Inc.** to act as receiver and receiver and manager (the "**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the Applicants, counsel for the proposed Receiver and

any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### **SERVICE**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

### **APPOINTMENT**

2. Pursuant to section 85 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15 and section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, KPMG Inc. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”).

### **RECEIVER'S POWERS**

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (j) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding **\$50,000**, provided that the aggregate consideration for all such transactions does not exceed **\$250,000**; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.
- (l) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a



purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to register a copy of this Order in British Columbia pursuant to the *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29;
- (q) is authorized and empowered to make an application to the British Columbia Supreme Court in accordance with Division 11 of the *Business Corporations Act*, S.B.C. 2002, c. 57, ("**BCBCA**") in order to have the Receiver be declared a "related person" for the purposes allowing the Receiver to make an application for full restoration of the Debtor under the BCBCA;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (t) to file a proposal to creditors pursuant to s.50(1)(b) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") in order to implement the Restructuring Agreement (defined and described below) and to act as the proposal trustee of said proposal;

- (u) to assign the Debtor into bankruptcy, if necessary; and
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion

deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that nothing in this Order shall:
  - (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
  - (b) prevent the filing of any registration to preserve or perfect a security interest;

- (c) prevent the registration of a claim for lien; or
  - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Receiver, or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Receiver, or as may be ordered by this Court.

### RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

### LIMITATION ON ENVIRONMENTAL LIABILITIES

14. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or

- B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
  - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
  - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

- 15. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

#### **RECEIVER'S ACCOUNTS**

- 16. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$350,000**, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.
- 17. The Receiver and its legal counsel shall pass their accounts from time to time.

18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

19. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed **\$350,000** (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
20. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
21. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
23. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

## **APPROVAL OF RESTRUCTURING AGREEMENT**

24. The Receiver is authorized and empowered to enter into the restructuring agreement attached hereto as Schedule "B" with Refacture Inc. (the "**Restructuring Agreement**") in order to fund a proposal to creditors under the BIA. The Receiver is authorized and directed to do all things as are reasonably necessary to give effect to the Restructuring Agreement, and to take such additional steps and execute such additional documents and make such minor amendments to the Restructuring Agreement as may be necessary or desirable for the completion of the terms of the Restructuring Agreement.
25. Refacture Inc. shall be entitled to the benefit of and is hereby granted a charge ("**TF Charge**") against the Property to secure the Termination Fee (as defined in the Restructuring Agreement).
26. The TF Charge shall rank in third priority behind the Receiver's Charge and the Receiver's Borrowing Charge.
27. The filing, registration or perfection of the TF Charge shall not be required, and the TF Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected prior to or subsequent to the TF Charge coming into existence, notwithstanding any failure to file, register, record, possess or perfect.

## **ALLOCATION**

28. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

## **GENERAL**

29. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
30. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
31. Nothing in this Order shall prevent the Receiver from acting as a proposal trustee of the Debtor.
32. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.



33. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
34. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
35. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
36. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

#### **FILING**

37. The Receiver shall establish and maintain a website in respect of these proceedings at **[insert website address]** (the "**Receiver's Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
38. Service of this Order shall be deemed good and sufficient by:
  - (a) serving the same on:

- (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
  - (ii) any other person served with notice of the application for this Order;
  - (iii) any other parties attending or represented at the application for this Order; and
- (b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

39. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that **KPMG Inc.**, the receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of **ALTER NRG. CORP** appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the [day] day of [month], [year] (the "**Order**") made in action numbers [●], has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of [\$], being part of the total principal sum of [\$] that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the ● day of each month] after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of [●] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**KPMG INC.**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

~~Clerk's Stamp:~~

Clerk's Stamp:

COURT FILE NUMBER

COURT

JUDICIAL CENTRE OF

COURT OF QUEEN'S BENCH OF ALBERTA

●  
CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF  
ALTER NRG CORP.

IN THE MATTER OF AN APPLICATION UNDER  
SECTION 85 OF THE CIVIL ENFORCEMENT ACT,  
R.S.A. 2000, c. C-15

-and-

IN THE MATTER OF AN APPLICATION UNDER  
SECTION 13(2) OF THE JUDICATURE ACT, R.S.A.  
2000, c. J-2

~~APPLICANT:~~APPLICANTS

ALEKSANDR GORODETSKY, BRUCE LEONARD,  
and KENNETH WILLIS

RESPONDENT(S):

ALTER NRG CORP.

DOCUMENT

~~ALBERTA TEMPLATE~~ RECEIVERSHIP ORDER  
{LAW FIRM NAME}

CONTACT INFORMATION OF PARTY

{Address}

{Address}

FILING THIS DOCUMENT:

Solicitor: ●-

Telephone: ●-

Facsimile: ●-

Email: ●-

File Number: ●-

McLennan Ross LLP

#1900, 600 3 Ave SW

Calgary, Alberta T2P 0G5

Attention: Michael Aasen / Jamie Flanagan

Email: [maasen@mross.com](mailto:maasen@mross.com)

Ph. (403) 403.303.1686

Fx. (403) 403.5439150

File No.:

**DATE ON WHICH ORDER WAS  
PRONOUNCED:**

February 23, 2021

**LOCATION OF HEARING:**

Calgary, AB

**NAME OF JUDGE WHO MADE THIS  
ORDER:**

The Honourable Madam Justice K.M. Eidsvik

**LOCATION OF HEARING:**

~~[\*NOTE: DO NOT USE THIS ORDER AS A PRECEDENT WITHOUT REVIEWING THE ACCOMPANYING EXPLANATORY NOTES.]~~

UPON the application of [NAME] Aleksandr Gorodetsky, Bruce Leonard, and Kenneth Willis (collectively the "Applicants") in respect of [DEBTOR'S NAME] Alter NRG Corp. (the "Debtor"); AND UPON having read the Originating Application, the Affidavit of Aleksandr Gorodetsky; and the Affidavit of Service of [if applicable], filed; AND UPON reading the consent of [NAME] KPMG Inc. to act as ~~interim~~ receiver and receiver and manager (the "Receiver") of the Debtor, filed; AND UPON ~~noting the consent endorsed hereon of [if applicable]; AND UPON~~ hearing counsel for the Applicants, counsel for the proposed Receiver and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### SERVICE

1. The time for service of the notice of application for this order (the "Order") is hereby abridged and deemed good and sufficient [if applicable] and this application is properly returnable today.

### APPOINTMENT

2. Pursuant to section ~~243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "BIA"), and sections 85 of the Civil Enforcement Act, R.S.A. 2000, c. C-15 and section 13(2) of the Judicature Act, R.S.A. 2000, c. J-2, 99(a) of the Business Corporations Act, R.S.A. 2000, c. B-9, and 65(7) of the Personal Property Security Act, R.S.A. 2000, c. P-7~~ [choose applicable statute(s)] [RECEIVER'S NAME] KPMG Inc. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").

### RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
4. to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, ~~[which shall include the Receiver's ability to abandon, dispose of or otherwise release any interest in any of the Debtors' real property, or any right in any immoveable, and any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority, in respect of such interest in real property or immoveable, including pursuant to section 14.06(4) of the BIA,~~

~~notwithstanding the provisions of the Oil and Gas Conservation Act, RSA 2000, c O-6, the Pipeline Act, RSA 2000, or any other similar provincial legislation;]~~<sup>1</sup>

- (a) ~~i~~
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- ~~(e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;~~
- ~~(e)~~ (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- ~~(f)~~ (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- ~~(g)~~ (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- ~~(h)~~ (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- ~~(i)~~ (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review

<sup>1</sup>On January 31, 2019, the Supreme Court of Canada released its decision in ~~Orphan Well Association v. Grant Thornton Limited~~ (2019 SCC 50) relating to the effect of disclaimer by receivers and trustees of real property. The impact of this decision on the template receivership order is currently under consideration.[]

in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

(j) ~~(k)~~ to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) ~~(l)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding ~~[\$], \$50,000~~, provided that the aggregate consideration for all such transactions does not exceed ~~[\$]250,000~~; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

(l) ~~(m)~~ to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) ~~(n)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(n) ~~(o)~~ to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing



Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;<sup>2</sup>

- (o) ~~(p)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to register a copy of this Order in British Columbia pursuant to the *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29;
- (q) is authorized and empowered to make an application to the British Columbia Supreme Court in accordance with Division 11 of the *Business Corporations Act*, S.B.C. 2002, c. 57, (“BCBCA”) in order to have the Receiver be declared a “related person” for the purposes allowing the Receiver to make an application for full restoration of the Debtor under the BCBCA;
- (r) ~~(q)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) ~~(r)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (t) to file a proposal to creditors pursuant to s.50(1)(b) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) in order to implement the Restructuring Agreement (defined and described below) and to act as the proposal trustee of said proposal;
- (u) to assign the Debtor into bankruptcy, if necessary; and
- (v) ~~(s)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having

~~<sup>2</sup> This suggested language should be considered where there is real property, to facilitate the registration of the Receivership Order with the Land Titles Office in Alberta, or in another province or territory as the case may be, notwithstanding certain provincial or territorial statutory requirements.~~

notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

6. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph **[6]** of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

## NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

## NO EXERCISE OF RIGHTS ~~OF~~ REMEDIES

10. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, ~~[including, without limitation, any rights or remedies or provisions in any agreement, construction, ownership and operating agreement, joint venture agreement or any such similar agreement or agreements to which the Debtor is a party that purport to effect or cause a cessation of operatorship as a result of the occurrence of any default or non-performance by or the insolvency of the Debtor, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings and under no circumstances shall the Debtor be replaced as operator pursuant to any such agreements without further order of this Court]<sup>3</sup> provided, however, ~~[that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided]~~ provided, however, that nothing in this Order shall:~~

- (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
- (b) prevent the filing of any registration to preserve or perfect a security interest;
- (c) prevent the registration of a claim for lien; or

<sup>3</sup>~~This suggested language should be considered where Property includes oil & gas assets subject to one or more joint operating or similar agreements.~~

- (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
11. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the ~~Monitor~~[Receiver](#) at the first available opportunity.

#### **NO INTERFERENCE WITH THE RECEIVER**

12. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Receiver, or leave of this Court ~~[Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.] [See Explanatory Notes.]~~

#### **CONTINUATION OF SERVICES**

13. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Receiver, or as may be ordered by this Court.

## RECEIVER TO HOLD FUNDS

14. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

## EMPLOYEES

- ~~14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act, S.C. 2005, c.47 ("WEPPA").~~
- ~~15. Pursuant to clause 7(3)(c) of the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.~~

## LIMITATION ON ENVIRONMENTAL LIABILITIES

15. ~~16.~~(a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

- (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or
    - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
  - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
    - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
    - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

#### LIMITATION ON THE RECEIVER'S LIABILITY

16. ~~17.~~ Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

#### RECEIVER'S ACCOUNTS

17. ~~18.~~ The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "Receiver's Charge") on the Property, which charge shall not exceed an aggregate amount of ~~[\$] \$350,000.~~ as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts,<sup>4</sup> liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) ~~[and 88]~~ of the BIA. ~~[See Explanatory Notes.]~~

18. ~~19.~~ The Receiver and its legal counsel shall pass their accounts from time to time.

19. ~~20.~~ Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

~~<sup>4</sup> The Alberta Court of Appeal has granted leave to appeal in *Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2017 ABQB 550 [Canada North], where the Court held that court ordered super-priority charges for a Receiver's Charge may take priority over statutory deemed trusts. The Court in *Canada North* further held that the onus on a variation application depends on whether notice is provided to affected parties. Notice of the application to affected parties is encouraged to the extent possible. To the extent it is not possible or practical in the circumstances, the affected parties can rely on the comeback clause in paragraph 33 of this Order to seek to set aside the priority granted to the Receiver's Charge or Receiver's Borrowing Charge, subject to the protection of lenders, receivers, or other parties that have relied on the charges between the date the receivership order is granted and the date it is varied.~~

## FUNDING OF THE RECEIVERSHIP

20. ~~21.~~ The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed ~~[\$]~~350,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) ~~{and 88}~~ of the BIA.
21. ~~22.~~ Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
22. ~~23.~~ The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
23. ~~24.~~ The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
24. ~~25.~~ The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

## APPROVAL OF RESTRUCTURING AGREEMENT

25. The Receiver is authorized and empowered to enter into the restructuring agreement attached hereto as Schedule "B" with Refacture Inc. (the "**Restructuring Agreement**") in order to fund a proposal to creditors under the BIA. The Receiver is authorized and directed to do all things as are reasonably necessary to give effect to the Restructuring Agreement, and to take such additional steps and execute such additional documents and make such minor amendments to



the Restructuring Agreement as may be necessary or desirable for the completion of the terms of the Restructuring Agreement.

26. Refacture Inc. shall be entitled to the benefit of and is hereby granted a charge ("TF Charge") against the Property to secure the Termination Fee (as defined in the Restructuring Agreement).

27. The TF Charge shall rank in third priority behind the Receiver's Charge and the Receiver's Borrowing Charge.

28. The filing, registration or perfection of the TF Charge shall not be required, and the TF Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected prior to or subsequent to the TF Charge coming into existence, notwithstanding any failure to file, register, record, possess or perfect.

#### **ALLOCATION**

29. ~~26.~~ Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### **GENERAL**

30. ~~27.~~ The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. ~~28.~~ Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

32. Nothing in this Order shall prevent the Receiver from acting as a proposal trustee of the Debtor.

33. ~~29.~~ Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

34. ~~30.~~ This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in

any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

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

36. ~~32.~~ The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

37. ~~33.~~ Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

## FILING

~~34. — This Order is issued and shall be filed in Court of Queen's Bench Action No. ●, and Court of Queen's Bench in Bankruptcy Action No. ●, which actions are not consolidated. All further proceedings shall be taken in both actions unless otherwise ordered. [See Explanatory Notes, footnote 4.]~~

38. ~~35.~~ The Receiver shall establish and maintain a website in respect of these proceedings at **[insert website address]** (the "**Receiver's Website**") and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publically available; and
- (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

~~36. — The E-Service Guide of the Alberta Court of Queen's Bench Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [●]) shall be valid and effective service. Subject to Rules 11.25 and 11.26, this Order shall constitute an order for substituted service pursuant to Rule 11.28 of the Alberta Rules of Court. Subject to~~

~~paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. A Case Website shall be established in accordance with the Guide with the following URL [●].~~

39. ~~37.~~ Service of this Order shall be deemed good and sufficient by:

- (a) serving the same on:
  - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
  - (ii) any other person served with notice of the application for this Order;
  - (iii) any other parties attending or represented at the application for this Order; and
- (b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

40. ~~38.~~ Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order. ~~[See Explanatory Notes re: e-service.]~~

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Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ **KPMG Inc.**, the ~~interim~~ receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ **ALTER NRG. CORP** appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the [day] day of [month], [year] (the "Order") made in action numbers [●], has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of [\$], being part of the total principal sum of [\$] that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the ● day of each month] after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of [●] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME]~~ **KPMG INC.**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:



SCHEDULE "B"  
RESTRUCTURING AGREEMENT

Document comparison by Workshare 9.5 on February 17, 2021 1:32:52 PM

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Padding cell	

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Moved to	4
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Total changes	218
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**SCHEDULE "B"**  
**RESTRUCTURING AGREEMENT**

## RESTRUCTURING AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 2021

BETWEEN:

**REFACTURE INC. ("Refacture")**

- and -

**ALTER NRG CORP.**, through KPMG Inc., in its capacity as Court-appointed receiver and manager and not in its personal or corporate capacity (the "**Receiver**");

**WHEREAS** Refacture has agreed, subject to certain terms and conditions, to; (i) purchase the IP Assets (defined herein) of Alter; and (ii) subscribe for new shares of Alter, on the terms and conditions set forth herein, including the settlement or compromise of all Claims with respect to Alter, with the result that Refacture will become the sole shareholder of Alter;

**AND WHEREAS** it is contemplated that pursuant to an order of the Court of Queen's Bench of Alberta, the Receiver will be appointed over all current and future assets, undertakings and properties of Alter;

**AND WHEREAS** it is further contemplated that pursuant to the said order, the Receiver will be authorized to enter into this Agreement with Refacture and bring it forward to the general body of Alter's creditors for their consideration pursuant to a proposal advanced under Division I of Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

**AND WHEREAS** the parties hereto have entered into this Agreement to provide for the matters referred to in the foregoing recitals and for other matters relating to such agreement;

**NOW THEREFORE** this Agreement witnesseth that in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as set forth below.

### **ARTICLE 1** **INTERPRETATION**

- 1.1 Definitions.** In this Agreement, unless the context otherwise requires, defined terms shall have the meanings set forth in Schedule A attached to this Agreement.
- 1.2 Interpretation Not Affected by Headings.** The division of this Agreement into articles, sections, subsections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.
- 1.3 Article References.** Unless the contrary intention appears, references in this Agreement to an article, section, subsection, paragraph or schedule by number or letter or both refer to the article,

section, subsection, paragraph or schedule, respectively, bearing that designation in this Agreement.

- 1.4 Number.** In this Agreement, unless the contrary intention appears, words importing the singular include the plural and vice versa, words importing gender shall include all genders.
- 1.5 Date for Any Action.** 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, such action shall be required to be taken on the next succeeding day which is a Business Day.
- 1.6 Currency.** Unless otherwise stated, all references to currency shall be deemed to refer to Canadian Dollars.
- 1.7 Schedules.** The following schedules are incorporated by reference into this Agreement and form part hereof:

Schedule A    Definitions

- 1.8 Statutes.** References in this Agreement to any statute or sections thereof shall include such statute as amended or substituted and any regulations promulgated thereunder.

## **ARTICLE 2**

### **IP ASSET PURCHASE**

- 2.1 Purchase by Refacture.** Subject to compliance with the conditions set forth in Section 4.1, Refacture agrees to purchase the IP Assets of Alter for consideration equal to \$2,900,000, in accordance with an asset purchase agreement to be entered into with the Receiver (the "**IP Asset Purchase**").

## **ARTICLE 3**

### **SUBSCRIPTION**

- 3.1 Subscription by Refacture.** Subject to compliance with the conditions set forth in Section 4.1, Refacture agrees to subscribe for up to 10 trillion common shares (the "**Shares**") for consideration equal to \$100,000.
- 3.2 Sequence of Actions.** Subject to the terms and conditions herein, the parties agree that in order to implement the BIA Proposal, the following actions shall occur in the following order, as further outlined in the BIA Proposal:
- (a) the IP Asset Purchase takes place;
  - (b) Refacture will subscribe for the Shares;
  - (c) the articles of Alter will be amended, if necessary, to allow for consolidation of shares;
  - (d) Alter's shares shall be consolidated pursuant to a ratio, to be determined by Refacture and the Receiver, that will result in the Existing Shares becoming a fractional share;
  - (e) automatic cancellation of the fractional share pursuant to the BCBCA; and

- (f) any outstanding rights to acquire Alter's shares shall be cancelled without compensation.

**3.3 Acknowledgments, Representations and Warranties of the Subscriber.** Refacture hereby acknowledges, represents and warrants to the Receiver as follows and acknowledges that the Receiver is relying on such acknowledgements, representations and warranties in connection with the transactions contemplated herein:

- (a) Refacture is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority to execute and deliver this Agreement, to subscribe for the Shares as contemplated herein and to carry out and perform its covenants and obligations hereunder and has obtained all necessary approvals in respect thereof, and the individual signing this Agreement has been duly authorized to execute and deliver this Agreement;
- (b) This Agreement has been duly authorized, executed and delivered by, and constitutes a legal, valid and binding agreement of Refacture, enforceable against Refacture in accordance with its terms.
- (c) The execution and delivery of this Agreement, the performance and compliance with the terms hereof, the subscription for the Shares and the completion of the transactions described herein by Refacture will not result in any material breach of, or be in conflict with or constitute a material default under, or create a state of facts which, after notice or lapse of time, or both, would constitute a material default under any term or provision of the constating documents, by-laws or resolutions of Refacture, applicable securities laws or any other laws applicable to Refacture, any agreement to which Refacture is a party, or any judgment, decree, order, statute, rule or regulation applicable to Refacture.
- (d) Refacture confirms that it:
  - (i) has such knowledge in financial and business affairs as to be capable of evaluating the merits and risks of its investment in the Shares, including the potential loss of its entire investment;
  - (ii) is aware of the characteristics of the Shares and understands the risks relating to an investment therein; and
  - (iii) is able to bear the economic risk of loss of its investment in the Shares.
- (e) Refacture has had the opportunity to ask and have answered any and all questions which Refacture wished to have answered with respect to the subscription for the Shares made hereunder.
- (f) Notwithstanding paragraph (e) above and Section 4.1(b) below, the Shares are being issued without any representation or warranty from Alter or the Receiver on an "as is" basis. Refacture has not received or been provided with a prospectus, offering memorandum, or any sales or advertising literature in connection with its subscription hereunder or any document purporting to describe the business and affairs of Alter which has been prepared for review by prospective purchasers to assist in making an investment decision in respect of the Shares and Refacture's decision to subscribe for the Shares was not based upon, and Refacture has not relied upon, any oral or written

representations as to facts made by or on behalf of Alter or the Receiver, or any employee, agent or affiliate thereof or any other person associated therewith.

- (g) Refacture is subscribing for the Shares as principal for its own account and not for the benefit of any other person.
- (h) The Shares will be subject to an indefinite “restricted period” under applicable securities laws during which time Refacture may not trade the Shares under applicable securities laws without filing a prospectus in accordance with such laws or being able to rely on one of the limited exemptions under applicable securities laws.
- (i) Alter is relying on an exemption from the requirement to provide Refacture with a prospectus under securities laws and, as a consequence of acquiring the Shares pursuant to such exemption:
  - (i) certain protections, rights and remedies provided by securities laws, including statutory rights of rescission, or damages and certain statutory remedies against Alter and its directors and officers that are available to investors who acquire securities offered by a prospectus, will not be available to Refacture,
  - (ii) the common law may not provide Refacture with an adequate remedy in the event that it suffer investment losses in connection with Shares acquired hereby,
  - (iii) Refacture may not receive information that would otherwise be required to be given under securities laws, and
  - (iv) Alter is relieved from certain obligations that would otherwise apply under securities laws.

The acknowledgements, representations and warranties of Refacture contained in this Agreement shall be true and correct as of the closing date of the transactions contemplated herein and shall survive such closing and shall continue in full force and effect for the benefit of Alter and the Receiver for a period of two years following the closing

#### **ARTICLE 4** **CONDITIONS**

**4.1 Refacture Conditions.** The obligations of Refacture to close the IP Asset Purchase and subscribe for the Shares is subject to fulfillment of the following conditions before the Proposal Implementation Date:

- (a) the Termination Fee shall be secured by way of priority charge against all current and future assets, undertakings and properties of every nature and kind of Alter, pursuant to the Receivership Order;
- (b) there shall be no Equity Claims, except as may be acceptable to Refacture;
- (c) there shall be no Secured Claims, except as may be acceptable to Refacture;
- (d) Unsecured Claims shall not exceed \$3,000,000;

- (e) the BIA Proposal shall, in form and substance, be satisfactory to Refacture;
- (f) the Court shall have granted the Approval Order, in form and substance satisfactory to Refacture, and all periods to appeal, set aside, vary or amend such order shall have expired without any appeal or application to set aside, vary or amend being either outstanding or resolved adversely to Refacture;
- (g) there shall be no action taken under any existing Applicable Law, nor any statute, rule, regulation or order which is enacted, enforced, promulgated or issued by any court, department, commission, board, regulatory body, government or governmental authority or similar agency, domestic or foreign, that:
  - (i) makes it illegal or otherwise directly or indirectly restrains, enjoins or prohibits the implementation of the BIA Proposal or any of the other transactions contemplated in this Agreement,
  - (ii) results in a judgment or assessment of material damages, directly or indirectly, relating to the BIA Proposal of the transactions contemplated herein,
  - (iii) prohibits Refacture's or Alter's ownership or operation of all or any material portion of the business or assets of Alter, compels Refacture or Alter to dispose of or hold separately all or any portion of the business or assets of Alter, or prohibits Refacture's ownership of the Shares, or
  - (iv) imposes or confirms material limitations on the ability of Refacture to effectively exercise full rights of ownership of the Shares including, without limitation, the right to vote any such securities;
- (h) there shall not have occurred any actual or threatened change (including a proposal by the Minister of Finance of Canada) to amend the *Income Tax Act* (Canada) or any announcement, governmental or regulatory initiative, condition, event or development involving a change or a prospective change that, in the reasonable judgment of Refacture, directly or indirectly, has or may have a material adverse effect on the value of the Tax Pools;
- (i) the amount of the Tax Pools has not been materially reduced, except as a result of entering into the BIA Proposal and operations in the normal course;
- (j) no person shall have any agreement or option or any right or privilege, whether by law, pre-emptive right, contract or otherwise, capable of becoming an agreement, option or right for the purchase, subscription, allotment or issuance of any unissued securities of Alter other than in connection with the BIA Proposal or other than as contemplated herein;

The foregoing conditions precedent are for the benefit of Refacture and may be waived in whole or in part by Refacture in writing at any time. If any of the said conditions shall not be complied with or waived by Refacture on or before the date required for the performance thereof, Refacture may, in addition to the other remedies it may have at law or equity, rescind and terminate this Agreement by written notice to the Receiver.

**ARTICLE 5**  
**COVENANTS**

- 5.1 Covenants of Receiver.** Receiver covenants and agrees that, until the Proposal Implementation Date or the day upon which this Agreement is terminated, whichever is earlier, it:
- (a) will use commercially reasonable efforts to satisfy or cause the satisfaction of the conditions precedent set forth in Article 4 to the extent the same is within its control and to take, or cause to be taken, all other action and to do, or cause to be done, all necessary filings and applications and other things necessary, proper or advisable under Applicable Law to implement the BIA Proposal and complete the transactions contemplated herein, including using commercially reasonable efforts to obtain the Approval Order;
  - (b) will make available and cause to be made available to Refacture, its agents and advisors, as soon as possible, all available books, records, documents and agreements in any way relating to or affecting its business, financial condition, operations, prospects, properties, assets and affairs, and such other available documents or agreements as may be necessary to enable such parties to effect a thorough investigation of Alter's business, properties and financial status, except where it is contractually precluded from making such document or agreement available in which case it shall co-operate with Refacture in undertaking such reasonable efforts to secure access to any such documentation not in its possession or under its control; and
  - (c) subject to the legal obligations of the Receiver owed under the BIA and at law, the Receiver will not take any action, or refrain from taking any action, inconsistent with this Agreement or which might, directly or indirectly, interfere with or adversely affect the consummation of the BIA Proposal.

**ARTICLE 6**  
**TERMINATION**

- 6.1 Termination.** Refacture may terminate this Agreement at any time prior to the Proposal Implementation Date, without prejudice to any other remedy available to such party, upon notice to the other party:
- (a) if any condition precedent set out in Section 4.1 is not performed or satisfied to the reasonable satisfaction of Refacture;
  - (b) if the Unsecured Creditors do not approve the BIA Proposal;
  - (c) if the Approval Order has not been granted on or before May 31, 2021 or such later date agreed upon by the parties; or
  - (d) substantially all the assets of Alter are transferred to a third party.
- 6.2 Effect of Termination.** Upon the termination of this Agreement pursuant to this Article 6, no party shall have any liability or further obligation to the other party hereunder, except that the

obligation to pay the Termination Fee to Refacture as set forth in Section 6.3 herein shall survive termination of this Agreement.

- 6.3 Termination Fee.** In the event that the transaction herein contemplated is not completed for any reason other than Refacture's breach of this Agreement, then Refacture shall be entitled to the sum of \$300,000 (the "**Termination Fee**"), as compensation for Refacture's time and as a genuine pre-estimate of the costs incurred by Refacture. Payment of the Termination Fee shall be an obligation solely of Alter, and not of the Receiver in its personal or corporate capacity.

## **ARTICLE 7** **GENERAL**

- 7.1 Notices.** Any notice of other communication to be delivered hereunder must be in writing and refer to this Agreement and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail, email or by facsimile addressed to the recipient as follows:

If to the Receiver:

KPMG Inc.  
#3100 – 205 5 Ave SW  
Calgary, AB T2P 4B9  
Attention: Neil Honess  
E-mail: [neilhoness@kpmg.ca](mailto:neilhoness@kpmg.ca)

with a copy to:

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, AB T2P 5C5  
Attention: Jeffrey Oliver  
E-mail: [joliver@cassels.com](mailto:joliver@cassels.com)

If to Refacture:

Refacture Inc.  
Attention: Nick Narsavidze  
Email: [nnars@refacture.com](mailto:nnars@refacture.com)

with a copy to:

Dentons Canada LLP  
15 Flr-850 2 Street SW  
Calgary, AB T2P 0R8  
Attention: David W. Mann / Afshan Naveed  
E-mail: [david.mann@dentons.com](mailto:david.mann@dentons.com) / [afshan.naveed@dentons.com](mailto:afshan.naveed@dentons.com)

or to such other address as any such party may from time to time notify the others in accordance with this Section. Any such communication so given or made will be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing, email or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed, emailed or sent before



5:00 p.m. (Calgary time) on such day. Otherwise, such communication will be deemed to have been given and made and to have been received on the next following Business Day.

**7.2 Time of Essence.** Time shall be of the essence in this Agreement.

**7.3 Further Assurances.** Subject to the conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as is practicable the transactions contemplated herein, including the execution and delivery of such documents as the other party thereto may reasonably require, and use of best efforts to obtain all necessary waivers, consents and approvals and the effecting of all necessary registrations and filings, including, but not limited to, filings under Applicable Law and submissions of information requested by governmental authorities. Each of the parties hereto, where appropriate, shall reasonably cooperate with the other party in taking such actions.

**7.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein but the reference to such laws shall not, by conflict of laws rules or otherwise, require the application of the law of any jurisdiction other than the Province of Alberta. Each party hereto hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta in respect of all matters arising under or in relation to this Agreement.

**7.5 Execution in Counterparts.** This Agreement may be executed and delivered in as many counterparts as may be necessary, no one of which needs to be executed by all signatories. Each counterpart, including a facsimile or an electronic copy of this Agreement (whether signed or transmitted by facsimile, email or other electronic means), shall be deemed to be an original and shall have the same force and effect as an original. All counterparts together shall constitute one and the same instrument notwithstanding the date of execution.

**7.6 Waiver.** No waiver by any party hereto shall be effective unless in writing and any waiver shall affect only the matter, and the occurrence thereof, specifically identified and shall not extend to any other matter or occurrence.

**7.7 Amendment.** This Agreement may, at any time and from time to time before the Proposal Implementation Date, be amended by written agreement of the parties hereto.

**[REMAINDER INTENTIONALLY LEFT BLANK]**

**7.8 Enurement and Assignment.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and respective successors and assigns. This Agreement may not be assigned by any party hereto without the prior written consent of the other party hereto; provided Refacture may assign this Agreement to a subsidiary of Refacture.

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

**REFACTURE INC.**

Per: \_\_\_\_\_

**KPMG INC.**, in its capacity as Court-appointed receiver and manager of Alter NRG Corp., and not in its personal or corporate capacity

Per: \_\_\_\_\_

**SCHEDULE “A”**  
**DEFINITIONS**

“**Alter**” means Alter NRG Corp. and all Affiliates which are Controlled by it;

“**Affiliate**” means, in relation to any Person, any other Person or group of Persons acting in concert, directly or indirectly, that Controls, is Controlled by or under common Control with the first mentioned Person;

“**Applicable Law**” means, in relation to any person, transaction or event, all applicable provisions of law, statutes, rules, regulations, official directives and orders of, and the terms of all judgments, orders and decrees issued by any Authorized Authority by which such Person is bound or having application to the transaction or event in question;

“**Approval Order**” means the Order of the Court approving the BIA Proposal, in substance and form acceptable to Refacture;

“**Authorized Authority**” means, in relation to any person, transaction or event, any:

- (a) federal, provincial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign;
- (b) agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government;
- (c) court, arbitrator, commission or body exercising judicial, quasi judicial, administrative or similar functions; and
- (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, transaction or event.

“**BCBCA**” means the *Business Corporations Act*, RSA 2000, c B-9;

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3;

“**BIA Proceedings**” means proceedings commenced in Court with respect to the BIA Proposal.

“**BIA Proposal**” means the proposal filed by the Receiver, pursuant to the BIA, in form and substance satisfactory to Refacture;

“**Books and Records**” means all books, records, files and papers used or intended for use in connection with the ownership of the IP Assets, including title documentation, manuals, research and development reports, engineering and consulting reports, as-built drawings, appraisals, electrical and mechanical plans and studies, and all other documents, files, records, correspondence and other information (whether in written, printed, electronic or computer printout form, or stored electronically, digitally or on computer related media);

**“Business Day”** means a day on which banks are generally open for the transaction of commercial business in Calgary, Alberta, but does not in any event include a Saturday or Sunday or a bank holiday under Applicable Law;

**“Claim”** includes any right or claim (including, without limitation, an Equity Claim) of any Person that may be asserted or made in whole or in part against Alter, whether or not asserted or made, in connection with any indebtedness, liability, obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (i) is based in whole or in part on facts prior to the Filing Date, (ii) relates to a time period prior to the Filing Date, or (iii) is a right or claim of any kind that would be a debt provable in bankruptcy within the meaning of the BIA had Alter become bankrupt on the Filing Date.

**“Control”** means the possession, directly or indirectly, by such Person or group of Persons acting in concert, of the power to direct or cause the direction of the management and policies of the first mentioned Person, whether through the ownership of voting securities, other voting interests or otherwise;

**“Court”** means an Authorized Authority having jurisdiction in the BIA Proceedings or the Receivership Proceedings, as applicable;

**“Creditor”** means any Person having a Claim against Alter;

**“Encumbrance”** means any mortgage, charge, security interest, pledge, assignment, hypothecation, title retention, finance lease or trust (whether contractual, statutory or otherwise) securing payment or performance of any Claim, or any lien, restriction, option, adverse claim, right of others or other encumbrance of any kind;

**“Equity Claim”** has the meaning ascribed to it in the BIA;

**“Equity Interest”** has the meaning ascribed to it in the BIA;

**“Filing Date”** means the date the BIA Proposal is filed with the Office of the Superintendent of Bankruptcy, in Canada;

**“IP Assets”** means all of the rights, title, and interest of Alter in and to all of the tangible and intangible Intellectual and Industrial Property wherever located including:

- (a) the patents and patent applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, re-examinations and renewals thereof;

- (b) the trademark registrations and applications, together with the goodwill connected with the use thereof and symbolized thereby and all issuances, extensions and renewals thereof;
- (c) the copyright registrations and exclusive copyright licenses and all issuances, extensions and renewals thereof;
- (d) all rights of any kind whatsoever of Alter accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions and otherwise throughout the world;
- (e) any and all royalties, fees, income, payments and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and
- (f) the Books and Records relating to the IP Assets.

**"Intellectual and Industrial Property"** means tangible or intangible property in which Intellectual and Industrial Property Rights subsist and/or that is subject to Intellectual and Industrial Property Rights including, without limitation, patents, trademarks, industrial designs and copyrights, formulae, algorithms, concepts, techniques, processes, procedures, methodologies, plans, systems, research, information, documentation, data compilations, specifications, requirements, diagrams, inventions, technology, computer programs (including all related code), products, knowledge, know-how and trade secrets;

**"Intellectual and Industrial Property Rights"** means:

- (a) any and all proprietary rights anywhere in the world provided under: patent law, copyright law, trademark law, design, patent or industrial design law, semiconductor chip or mask work law, trade secret law, or any other statutory provision or common law principle that provides a right in either intellectual property or the expression or use of intellectual property; and
- (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing, both domestic and foreign, whether or not any of the foregoing is registered.

**"Order"** means any order of the Court respecting the Receivership Proceedings or the BIA Proceedings;

**"Parties"** means Refacture and the Receiver and "Party" means any one of them;

**"Person"** includes an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

**"Proposal Implementation Date"** means the Business Day following the satisfaction or waiver of the conditions precedent to the implementation of the BIA Proposal or such other date as may be agreed to by Refacture and the Receiver;

**"Proven Claim"** means a Claim to the extent that such Claim is finally determined and valued in accordance with the provisions of the BIA or an Order in the BIA Proceedings;

**“Receiver”** means KPMG Inc.

**“Receivership Order”** means the Order of the Court appointing the Receiver and authorizing and approving the Receiver’s execution of this Agreement;

**“Receivership Proceedings”** means the proceedings commenced in Court to obtain the Receivership Order;

**“Refacture”** means Refacture Inc.;

**“Secured Claims”** means all Proven Claims that are secured by an Encumbrance;

**“Shares”** has the meaning ascribed to it in Article 3.1;

**“Tax Pools”** means the aggregate of all amounts which are deductible, directly or indirectly, in the computation of, or may reduce the amount of, income or taxable income under the *Income Tax Act* (Canada) or any provincial taxation statute applicable to either of the parties and without restricting the generality of the foregoing includes such party’s “undepreciated capital cost” and “non-capital loss”, all as defined for the purposes of the *Income Tax Act* (Canada) and applicable provincial income tax legislation

**“Termination Fee”** has the meaning ascribed to it in Article 6.3;

**“Unsecured Creditor”** means all Proven Claims that are not secured by an Encumbrance;