

COURT FILE NUMBER

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ARNAKI LTD.

RESPONDENT SOLVAQUA INC.

DOCUMENT **APPLICATION TO APPOINT A RECEIVER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Chitiz Pathak LLP
77 King Street West, Suite 700
TD North Tower, P.O. Box 118
Toronto, Ontario M5K 1G8

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Email: ebirnboim@cpllp.com / mcrampton@cpllp.com

Attention: Elliot Birnboim / Michael Crampton

NOTICE TO RESPONDENT: Solvaqua Inc.

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

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

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

Date: Friday, August 19, 2022
Time: 11:00 AM
Where: Calgary Law Courts – Via Webex
Before Whom: Honourable Justice Neufeld – Commercial List

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

Remedy claimed or sought:

1. An Order, substantially in the form attached hereto as Schedule "A" (the "**Receivership Order**"):
 - (a) if necessary, deeming service of notice of intention to enforce security under s. 244(1) of the *Bankruptcy and Insolvency Act* abridging the time for service of this application and supporting materials, to the time actually given and deeming service of notice of this application and supporting materials good and sufficient;
 - (b) appointing MNP Ltd. ("**MNP**") as receiver and manager over all of the current and future assets, undertakings and properties of Solvaqua Inc. ("**Solvaqua**" or the "**Borrower**");

2. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.
3. Any terms not defined herein shall have the meaning ascribed to them in the Affidavit of Ariel S. Belilo sworn August 15, 2022.

Grounds for making this application:

Parties

1. The Plaintiff, Arnaki Ltd., is a corporation incorporated pursuant to the laws of the British Virgin Islands with offices in Road Town, Tortola, British Virgin Islands. Arnaki's parent, Murchinson Ltd., is an investment firm headquartered in Toronto, Ontario, and has been overseeing recovery of Arnaki's loans to the Respondent, Solvaqua Inc. ("**Solvaqua**").
2. Solvaqua, is a corporation incorporated pursuant to the laws of the Province of Alberta with a registered office in Calgary, Alberta.

Loans to Solvaqua

3. Solvaqua is in the business of providing proprietary wastewater management solutions based on nanopolymerization technology that allows isolated areas to reuse water, thereby decreasing freshwater usage. Based out of Calgary, Alberta, Solvaqua's business plan intended to implement the technology in foreign jurisdictions pursuant to three "Project Charters" with two United States-based companies: VivaVentures Inc., and the Clear Capital Group of Companies.
4. Arnaki and Solvaqua entered into a series of loan agreements pursuant to which Arnaki advanced funds to Solvaqua:
 - (a) Under a Loan Agreement dated August 31, 2020, Arnaki loaned Solvaqua a principal amount of two million United States dollars (USD\$2,000,000) (the "**First Tranche**") to be repaid on the maturity date of April 1, 2021.
 - (b) Under a Loan Agreement dated January 4, 2021, Arnaki loaned Solvaqua a principal amount of two million United States dollars (USD\$2,000,000) (the "**Second Tranche**") to be repaid on the maturity date of September 1, 2021.
 - (c) Under a Loan Agreement dated February 1, 2021, Arnaki loaned Solvaqua a principal amount of two million United States dollars (USD\$2,000,000) (the "**Third Tranche**", and together with the First Tranche the Second Tranche, the "**Loans**") to be repaid on the maturity date of September 1, 2021.
5. The funds advanced pursuant to the Loans were each tied to contracts for overseas sale of Solvaqua's water management systems. Solvaqua's contracts with their overseas buyers were insured by Export Development Canada ("**EDC**").

Security Granted to Arnaki

6. As security for the Loans, Solvaqua granted Arnaki security over all of Solvaqua's present and future undertakings, assets and property (the "**Collateral**"), pursuant to the following (collectively, the "**GSAs**"):
 - (a) General Security Agreement dated August 31, 2020.
 - (b) General Security Agreement dated January 4, 2021.
 - (c) General Security Agreement dated February 1, 2021.

7. Arnaki's security interest under the above GSAs was perfected through the filing of the security agreement registered in the Alberta Personal Property Registry as registration number 20091025542.
8. Section 6.8 of the GSAs specifically allows for the appointment of a receiver or receiver-manager of the Collateral any time after the security interests granted to Arnaki over the Collateral become enforceable.

Default, Extension and Partial Recovery from EDC

9. Solvaqua failed to repay Arnaki the principal amount owing under Loan Agreement for the First Tranche on the maturity date of April 1, 2021. Pursuant to an Extension Agreement dated April 1, 2021, Arnaki and Solvaqua agreed to extend the maturity date for the First Tranche to May 1, 2021 in consideration for Solvaqua promising to pay Arnaki an extension fee of USD\$200,000 on May 1, 2021.
10. Following Solvaqua's failure to repay Arnaki the principal amount owing under the Loan Agreements for the Second Tranche and Third Tranche by their September 1, 2021 maturity dates, Solvaqua requested an extension of the maturity dates. Arnaki charge an extension fee of USD\$225,000 for the Second Tranche and an extension fee of USD\$225,000 for the Third Tranche.
11. An insurance claim was made under the insurance provided by EDC on Solvaqua's contract with its buyer connected with the First Tranche after the buyer failed to complete the purchase of equipment from Solvaqua. EDC agreed to pay USD\$1,386,000 on the claim. The \$1,386,000 was repaid to Arnaki pursuant to an assignment of the insurance proceeds given by Solvaqua, and applied against the First Tranche.
12. No amounts have been repaid to Arnaki by Solvaqua in satisfaction of the Second Tranche and the Third Tranche. Each of the First Tranche, Second Tranche and Third Tranche are now due and payable, as the applicable maturity date for each of those tranches has now passed.
13. As of July 25, 2022, the outstanding amounts owing to Arnaki from Solvaqua under the Loan Agreements for the First Tranche, Second Tranche, Third Tranche and their related extensions, including interest to July 25, 2022 but exclusive of legal fees and other costs and expenses and interest continuing to accrue, total to **USD\$6,052,288.63** (the "**Indebtedness**").
14. Pursuant to the terms of the Loan Agreements, Solvaqua committed an Event of Default by failing to pay Arnaki the amounts that became due upon the extended maturity dates. Additionally, the failure of Solvaqua's overseas customers to complete the purchase of Solvaqua's equipment pursuant to their contracts with Solvaqua constitute a material adverse change, as determined by Solvaqua, and are further Events of Default.

Demand Letters and Notice of Intention to Enforce Security

15. On July 27, 2022, Arnaki, by its counsel, sent (by overnight courier):
 - (a) a demand letter to Solvaqua (the "**Demand Letter**"); and,
 - (b) a notice of intention to enforce security under the BIA.
16. Following failure of delivery at two separate notice addresses for Solvaqua included in the GSAs and on Solvaqua's website, and advice from DLA Piper LLP that it no longer acted as Solvaqua's agent for service, a copy of the Demand Letter and notice of intention to enforce security were emailed on August 3, 2022 to Don McLeod, a consultant that had been acting as Arnaki's contact at Solvaqua since its sole director and CEO, Chris Tesarski ("**Tesarski**"), stepped aside, purportedly for medical reasons. On August 4, 2022, Mr. McLeod acknowledge receipt of Arnaki's demand letter and notice of intention to enforce security on behalf of Solvaqua and advised that

he would notify Tesarski and Solvaqua's other creditors of Arnaki's intention to enforce its security.

17. The 10-day period reference in section 244(2) of the BIA has since expired.

Appointment of Receiver

18. The Loans remain in default and have matured. Solvaqua has failed to comply with the Demand Letter requiring the immediate repayment of the Indebtedness. As such, the full amount of the Indebtedness remains due, owing and payable immediately.
19. Arnaki seeks the appointment of a receiver and manager to manage the Collateral subject to the GSAs and to realize on the GSAs.
20. The GSAs provide for the appointment of a receiver.
21. It is just and convenient to appoint a receiver over the assets, undertakings and properties of Solvaqua to protect the security granted by the GSAs as well as to protect the interests of other creditors.
22. MNP Ltd. has consented to act as receiver and manager of the assets, undertakings and properties of Solvaqua.

Material or evidence to be relied on:

41. Affidavit of Ariel S. Belilo sworn August 15, 2022;
42. The Consent to Act as Receiver executed by MNP; and
43. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

44. The *Alberta Rules of Court*, including Rules 1.2, 1.3, 1.4, 6.1, 6.2, 6.3 and 6.47; and
45. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

46. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular section 243 thereof;
47. *Judicature Act*, RSA 2000, c J-2, as amended, and in particular section 13(2) thereof; and
48. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

49. None.

How the application is proposed to be heard or considered:

50. Via Webex.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the

Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and 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"

Clerk's Stamp:



COURT FILE NUMBER

COURT

JUDICIAL CENTRE OF

APPLICANT:

RESPONDENT(S):

DOCUMENT

CONTACT INFORMATION OF PARTY

FILING THIS DOCUMENT:

COURT OF QUEEN'S BENCH OF ALBERTA

CALGARY

ARNAKI LTD.

SOLVAQUA INC.

ORDER

Chitiz Pathak LLP
77 King Street West, Suite 700
TD North Tower, P.O. Box 118
Toronto, Ontario M5K 1G8

Telephone 416-368-6200
Facsimile 416-368-0300
Email: ebirnboim@cpllp.com /
mcrampton@cpllp.com

Attention: Elliot Birnboim / Michael Crampton
File Number: 005267

DATE ON WHICH ORDER WAS

AUGUST 19, 2022

PRONOUNCED:

NAME OF JUDGE WHO MADE THIS

JUSTICE NEUFELD

ORDER:

LOCATION OF HEARING:

Calgary

UPON the application of Arnaki Ltd. in respect of Solvaqua Inc. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavit of Ariel S. Belilo affirmed August 15, 2022; and the Affidavit of Service of ● [if applicable], filed; **AND UPON** reading the consent of MNP Ltd., to act receiver and manager (the "**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the Applicant, counsel for the proposed Receiver and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. Service of notice of intention to enforce security under s. 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") is deemed effective upon the Debtor as of August 4, 2022 and 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 243(1) of the BIA, and sections 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7, MNP Ltd. 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 purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
 - (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;
 - (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;

- (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;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (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 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;
- (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;
- (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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$200,000.00; 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.

- (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;
- (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;

- (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 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;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) 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 OF 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, 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 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 Monitor 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.

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

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

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

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 \$200,000.00, 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.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
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.

FUNDING OF THE RECEIVERSHIP

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 \$200,000.00 (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.
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.
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.
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.
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.

ALLOCATION

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

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.
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.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
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.
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.
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.
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. The Receiver shall establish and maintain a website in respect of these proceedings at <https://mnpdebt.ca/en/corporate/corporate-engagements/solvaqua-inc>. (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.
35. 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.
36. 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.

The Honourable Justice Neufeld

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that **[RECEIVER'S NAME]**, the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of **[DEBTOR'S NAME]** 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], solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title: