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ARNAKI LTD.

RESPONDENT

SOLVAQUA INC.

DOCUMENT

SECOND REPORT OF THE RECEIVER IN THE MATTER OF THE RECEIVERSHIP OF SOLVAQUA INC.

DATED

June 20, 2023

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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COM
July 13, 2023

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INTRODUCTION

1. On August 19, 2022 (the “**Receivership Date**”), the Court of King’s Bench of Alberta, known as the Court of Queen’s Bench of Alberta at the time (the “**Court**”), granted an Order (the “**Receivership Order**”) appointing MNP Ltd. as Receiver (the “**Receiver**”), without security, over all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”) of SolvAQUA Inc. (“**SolvAQUA**” or the “**Company**”).
2. The Receivership Order was granted following an application by Arnaki Ltd. (“**Arnaki**”), who has a secured claim of approximately \$7.9 million (the “**Arnaki Claim**”) pursuant to various general security agreements (the “**Arnaki Security**”).
3. SolvAQUA was incorporated in the Province of Alberta on June 19, 2019, with Mr. Chris Tesarski being listed as its sole director and shareholder. The Company was in the business of providing proprietary wastewater management solutions based on nanopolymerization technology (the “**Technology**”) that allowed isolated areas to reuse water, thereby decreasing freshwater usage. SolvAQUA’s business plan involved implementing the Technology in foreign jurisdictions. At the Receivership Date, SolvAQUA had very limited operations and did not have any designated office space.
4. Copies of the relevant documents relating to these proceedings are available on the Receiver’s website at <https://mnpdebt.ca/en/corporate/corporate-engagements/Solvaqua-inc>.

NOTICE TO READER

5. In preparing this report and making comments herein, the Receiver has relied upon, certain unaudited, draft or internal financial information, including the Company’s books and records, and information from other third-party sources (collectively, the “**Information**”). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada (the “**Standards**”). Additionally, none of the Receiver’s procedures were intended to disclose defalcations or other irregularities. If the Receiver were to perform additional procedures or to undertake an audit examination of the Information in accordance with the Standards, additional matters may have come to the Receiver’s attention. Accordingly, the Receiver does not express an opinion, nor does it provide any other form of assurance on the financial or other information presented herein. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.

6. The Receiver assumes no responsibility or liability for any loss of damage occasioned by any party as a result of the use of this report. Any use, which any party makes of this report, or any reliance or decision to be made based on this report, is the sole responsibility of such party.
7. All amounts included herein are in Canadian dollars unless otherwise stated.

PURPOSE OF THE REPORT

8. The First Report of the Receiver was dated October 11, 2022 (the “**First Report**”).
9. This report constitutes the Second Report of the Receiver (the “**Second Report**”). The Second Report is being filed in support of the Receiver’s application to this Honourable Court returnable on July 13, 2023 (the “**July 13 Hearing**”) requesting the following relief:
 - 9.1. Approving the transaction (the “**Stalking Horse Transaction**”) contemplated in the stalking horse asset purchase agreement, a copy of which is attached hereto as “Schedule 1” (the “**Stalking Horse Agreement**”) between the Receiver and 2464525 Alberta Ltd. (the “**Stalking Horse Purchaser**”), as amended by the amending agreement dated June 19, 2023, between the Receiver and the Stalking Horse Purchaser (the “**Amendment**”), including the Receiver paying the Priority Claims (as subsequently defined) and making the other payments set out thereunder. A copy of the Amendment, is attached hereto as “Schedule 2”;
 - 9.2. Approving the actions and activities of the Receiver as set out in this Second Report, provided that only the Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals;
 - 9.3. Approving the professional fees and disbursements of the Receiver and Cassels, Brock & Blackwell LLP, legal counsel to the Receiver (“**Cassels**”), for the period ended May 31, 2023, as well as the estimated professional fees and disbursements to complete the administration of the receivership; and
 - 9.4. Discharging the Receiver upon the filing of a certificate confirming the completion of the Receiver’s remaining obligations (the “**Discharge Certificate**”) and, upon the discharge of the Receiver:
 - 9.4.1. Releasing the Receiver from liability for any acts or omissions on its part save and except for any liability arising out of any fraud, gross negligence, or willful misconduct; and
 - 9.4.2. Staying any action or proceedings against the Receiver without prior leave of this Honourable Court on notice to the Receiver.

ACTIVITIES OF THE RECEIVER

10. The Receiver's activities since the date of the Second Report include, among other things:
 - 10.1. Communicating with Rotating Right (2016) Inc. ("**Rotating Right**"), regarding its claims in respect of the equipment and chemicals used to implement the Technology (the "**Equipment**"), which is primarily being held at Rotating Right's premises located at 101, 3903 - 75 Avenue in Leduc, Alberta (the "**Premises**");
 - 10.2. Communicating with Export Development Canada ("**EDC**") regarding their claims in respect of two units, both with serial number J-888011-A (the "**Vivakor Equipment**") that were manufactured pursuant to a contract between SolvAQUA and Vivaventures, Inc., a wholly owned subsidiary of Vivakor Inc., and form part of the Equipment;
 - 10.3. Assisting Canada Revenue Agency ("**CRA**") in completing a payroll audit for SolvAQUA following which CRA has assessed an outstanding claim for payroll source deductions of approximately \$7,900 (the "**CRA Claim**");
 - 10.4. Consulting with Cassels on various matters related to the administration of the receivership proceedings;
 - 10.5. Managing the sale and investor solicitation process (the "**SISP**") that was approved by this Honourable Court pursuant to an Order granted on October 20, 2022 (the "**SISP Approval Order**") and working with the Stalking Horse Purchaser to finalize the Stalking Horse Agreement, as amended;
 - 10.6. Communicating with Arnaki and its legal counsel regarding the administration of the receivership proceedings;
 - 10.7. Responding to various other creditor/ stakeholder inquiries; and
 - 10.8. Maintaining the Receiver's website for the proceedings.

THE EQUIPMENT

11. The Equipment was comprised of (i) five large and four small wastewater management units in various stages of completion and the associated chemicals (the "**Chemicals**") that are being held at the Premises and (ii) one additional small unit, which was sent overseas for use in a client demonstration. The Equipment consists of various components assembled to implement the Technology, which are assigned serial numbers by Rotating Right.
12. The Vivakor Equipment was made up of two of the five large units. The Receiver is advised that Vivakor is in default under the terms of the Vivakor Contract for failing to pay for the Vivakor Equipment (the "**Vivakor Default**").

13. The Equipment, excluding the Vivakor Equipment and the Chemicals, will be referred to as the “**Remaining Equipment**”).

Claims against the Vivakor Equipment

14. The Receiver understands that the following claims are being asserted in respect of the Vivakor Equipment:

- 14.1. Rotating Right is asserting a claim for unpaid storage fees, as further described below (the “**Rotating Right Storage Claim**”);

- 14.2. Export Development Canada (“**EDC**”) is asserting claim(s) against the Vivakor Equipment based on the following:

- 14.2.1. SolvAQUA held an export receivables policy no. SE102960 (the “**EDC Policy**”) with EDC. A copy of the Coverage Certificate and the General Terms and Conditions for the EDC Policy are attached hereto as “Schedule 3”. A claim was advanced under the EDC Policy related to the Vivakor Default (the “**Vivakor Claim**”). EDC partially accepted the Vivakor Claim, resulting in a payment of approximately \$1.4 million US (the “**Vivakor Payout**”) being issued to Murchinson Inc. (Arnaki’s parent company) as the first loss payee under the EDC Policy.

- 14.2.2. Based on the Vivakor Payout, EDC is claiming an interest in the Vivakor Equipment. As set out in the First Report, the Receiver originally understood that EDC was asserting an ownership claim based on Section 26 of the EDC Policy – General Terms and Conditions as well as an assignment agreement between EDC and SolvAQUA, effective February 8, 2022 (the “**EDC Claim**”). Cassels completed a preliminary review of the EDC Claim and were of the view that, while EDC has taken an assignment of all rights in debts and choses in action related to the Vivakor Claim, they did not have an ownership interest in the Vivakor Equipment as that remains subject to the Arnaki Security. EDC has subsequently indicated that the EDC Claim may also be advanced by way of an equitable interest by way of equitable subrogation, unjust enrichment, or a constructive trust. EDC registered a security interest at the Alberta Personal Property Registry on August 24, 2022, which appears to relate to the Vivakor Equipment. However, the Receiver is not aware of any security agreement having been executed between EDC and SolvAQUA.

Claims against the Remaining Equipment

15. The Receiver understands that, in addition to the Rotating Right Storage Claim, Rotating Right is asserting an ownership claim in respect of the Remaining Equipment (the “**Rotating Right Ownership Claim**”) on the basis that, as the Remaining Equipment was not fully completed, title was never transferred from Rotating Right to SolvAQUA. Cassels has considered how the *Sale of*

Goods Act (Alberta) may apply to the Rotating Right Ownership Claim and, based on the information available, cannot conclusively opine on which party has title to the Remaining Equipment without a detailed examination of the underlying facts and evidence and the assistance of this Honourable Court.

16. To the extent that Rotating Right were to be determined to hold title to the Remaining Equipment, the Receiver notes that the Remaining Equipment is subject to a claim by North River Limited Partnership (the “**North River Claim**”), who took steps to seize Rotating Right’s personal property (the “**Seizure**”), including the Equipment pursuant to a Notice of Seizure of Personal Property, dated December 20, 2021 (the “**Seizure Notice**”). A copy of the Seizure Notice is attached hereto as “Schedule 4”. The Receiver understands that the North River Claim relates to rental arrears pursuant to a lease between North River and Rotating Right for the Premises. The Receiver notes that the Seizure Notice also references the Vivakor Equipment. However, Rotating Right is not asserting an ownership interest or other claim in the Vivakor Equipment, outside of the Rotating Right Storage Claim. As such, based on the Receiver’s discussions with Cassels, the Vivakor Equipment would appear to be outside of scope of the Seizure.
17. Attached as “Schedule 5” hereto is correspondence sent by the Receiver to parties known to be asserting claims against the Equipment (including Arnaki, EDC, Rotating Right and North River) of the relief being sought at the July 13 Hearing and encouraging those parties to establish a timeline in connection with any material to be filed in relation to the July 13 Hearing. The Receiver has put interested parties on notice of the various applications so that they can advance their own evidence and arguments at the July 13 Hearing.

SALE AND INVESTOR SOLICITATION PROCESS

18. The SISP was developed in conjunction with the Stalking Horse Agreement to market the Business and Property to a wide audience in an open and transparent manner and to maximize realizations. A copy of the SISP, which sets out the terms whereby a competing bidder would be determined to have submitted an offer that was superior to the Stalking Horse Agreement, is attached as “Schedule 1” to the First Report.
19. The SISP was conducted over a five-week period beginning immediately following the SISP Approval Order being granted on October 20, 2022, with the deadline for the submission of binding offers being November 23, 2022. The Receiver notes the following with respect to the SISP:
 - 19.1 Notice of the SISP was published in the Globe and Mail (National Edition) on October 26, 2022;

- 19.2 An information summary and confidentiality agreement was circulated to approximately 45 interested parties on October 20, 2022, with follow up emails being sent on November 12, 2022 and November 22, 2022; and
- 19.3 Three parties executed confidentiality agreements and viewed the information contained in the electronic data room.
20. The SISP had an established bid deadline of November 23, 2022 (the “**Bid Deadline**”). The Receiver did not receive any offers on the Bid Deadline.
21. In the Receiver’s view, the Property was adequately exposed to the market pursuant to the SISP. As noted in the First Report, the appeal of the Property to third-party purchasers is limited by the fact that SolvAQUA’s business is largely dormant, the Equipment is highly specialized, and the units are in various stages of completion.

PROPOSED STALKING HORSE AGREEMENT

22. Following the granting of the SISP Approval Order, the Stalking Horse Agreement was executed. A copy of the fully executed Stalking Horse Agreement is attached hereto as “Schedule 1”.
23. As noted above, the Stalking Horse Agreement was amended by the Amendment, which is attached hereto as “Schedule 2”. The Amendment was entered into to remove the Remaining Equipment from the purchased assets (as a result of, among other things, the unresolved Rotating Right Ownership Claim), reduce the purchase price under the original Stalking Horse Agreement (as a result of the addition of the Vivakor Equipment and the removal of the Remaining Equipment) and extend the closing date. The Amendment is subject to Court approval at the July 13 Hearing.
24. The key terms of the Stalking Horse Transaction (as amended) are summarized below:
- 24.1. The Property included in the Stalking Horse Transaction is being conveyed on an “as is, where is” basis;
- 24.2. The purchase price under the Stalking Horse Agreement is comprised of:
- 24.2.1. a cash payment (the “**Cash Component**”) sufficient to pay the “**Priority Payables**” (*i.e.*, any amounts that rank in priority to the Arnaki Security), including the costs associated with the administration of the Receivership, the Receiver’s Borrowings (as subsequently defined), the CRA Claim and a holdback to provide for amounts required to complete the Stalking Horse Transaction (the “**Holdback Amount**”); and
- 24.2.2. the payment of the balance of the purchase price being \$1.0 million, to be paid by way of set-off against (as a non-cash credit reduction of) the Arnaki Claim. As noted above, approximately \$7.9 million was outstanding pursuant to the Arnaki Claim at the Receivership Date. The Receiver’s legal counsel, Cassels, has completed an

independent review of the Arnaki Security and determined that, subject to the usual assumptions and qualifications (as further detailed in the First Report), the Arnaki Security is valid and enforceable against the Property.

- 24.3. The Amendment establishes that the Stalking Horse Agreement is conditional on a determination by this Honourable Court that (i) EDC has no ownership or equitable interest in the Purchased Assets; and (ii) any security interest in the Equipment (if at all) is subordinate to the Arnaki Security. The only remaining substantive condition to closing is Court approval.
- 24.4. The Stalking Horse Agreement contemplated the payment of a deposit in the amount of \$100,000 (the “**Deposit**”), which was paid to and is being held in trust by Cassels. The Deposit will be applied towards the Cash Component.
25. The Stalking Horse Agreement contemplates that the Vivakor Equipment will be transferred to the Stalking Horse Purchaser subject to the Rotating Right Storage Claim, the quantum of which may be subject to further determination by this Honourable Court at a future date and outside of this proceeding. Attached hereto as “Schedule 6” is Rotating Right’s invoice number 8880982 dated July 14, 2022, in the amount of \$112,000 plus GST, which includes monthly storage fees of \$8,000 per month for fourteen months (the “**Storage Invoice**”). The Receiver notes as follows with respect to the Storage Invoice:
- 25.1. The Receiver had originally understood that the Storage Invoice related only to the Vivakor Equipment since Rotating Right has asserted the Rotating Right Ownership Claim over the Remaining Equipment. Rotating Right has now indicated that the Storage Invoice includes monthly storage fees of \$3,200 plus GST for the Vivakor Equipment and \$4,800 plus GST for the Remaining Equipment. As such, only \$54,400 plus GST of the Storage Invoice relates to the Vivakor Equipment (the “**Vivakor Storage Fees**”).
- 25.2. The Vivakor Equipment is stored in two 20-foot sea cans. Rotating Right has indicated that the Vivakor Equipment takes up approximately 900 square feet of the Premise since additional space must be left around the sea cans.
- 25.3. The Receiver made inquiries as to the cost of storing two 20-foot sea cans and received quotes of between \$150 and \$500 per month for storage, which would result in the Vivakor Storage Costs totaling between \$2,700 and \$9,000 for an eighteen-month period. As such, in the Receiver’s view the storage fees attributed to the Vivakor Equipment by Rotating Right are well in excess of typical commercial rates.
- 25.4. The Receiver contacted Rotating Right to inquire as to whether there were additional matters that should be considered relative to the quantum of the Vivakor Storage Fees. The Receiver

was advised that the cost was reflective of the fact that the Premises were not a storage facility but a manufacturing and production facility.

- 25.5. To the Receiver's knowledge, there was no agreement between Rotating Right and SolvAQUA with respect to either the manufacture or storage of the Equipment.
26. The Receiver understands that the Stalking Horse Purchaser and Rotating Right have been unable to come to an agreement that would allow for the inclusion of the Remaining Equipment in the Stalking Horse Transaction. As such, the Remaining Equipment has been excluded from the Stalking Horse Agreement, as further set out in the Amendment. Following the completion of the Stalking Horse Transaction and based on the results of the SISP, the Receiver does not anticipate undertaking any further efforts to market the Remaining Equipment.
27. The Receiver is supportive of the Amendment based on the following:
 - 27.1. It allows for the sale of the Property, outside of the Remaining Equipment, to the Stalking Horse Purchaser;
 - 27.2. The Receiver is supportive of the reduction in the purchase price contemplated in the Amendment based on the following:
 - 27.2.1. The Remaining Equipment forms a significant portion of SolvAQUA's tangible assets; and
 - 27.2.2. In the Receiver's view, the value of the Vivakor Equipment is highly uncertain based on the specialized nature of the Vivakor Equipment and the results of the SISP.
 - 27.3. it will allow for the timely conclusion of the receivership proceedings; and
 - 27.4. the Sales Process was transparent, the Property was sufficiently exposed to the market and the Receiver is of the view that the outcome of the SISP would not have been different with the reduced purchase price and the exclusion of the Remaining Assets.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

28. Attached hereto as "Schedule 7" is an Interim Statements of Receipts and Disbursements for the period from August 19, 2022, to June 16, 2023 (the "**SolvAQUA SRD**") that also include receipts and disbursements incurred during the receivership proceedings.
29. As reflected in the SolvAQUA SRD, as at June 16, 2023, approximately \$500 was being held in trust by the Receiver.
30. The SolvAQUA SRD reflects total receipts of approximately \$130,200 of which \$130,000 was provided by way of borrowings, advanced pursuant to the Receivership Order (the "**Borrowings**").

31. The SolvAQUA SRD reflects total disbursements of approximately \$129,700 that include the following:
 - 31.1. Legal fees and disbursements totaling approximately \$61,400 for the period ended September 30, 2022;
 - 31.2. The Receiver's fees and disbursements totaling approximately \$40,300 for the period ended October 8, 2022; and
 - 31.3. Property and commercial liability insurance (the "Insurance") totaling approximately \$21,800. Additional insurance costs of \$13,800 were paid directly by the Receiver and are included in the disbursements invoiced by the Receiver.

PROFESSIONAL FEES

32. Attached as "Schedule 8" is a summary of the following:
 - 32.1. The Receiver's total professional fees totaling approximately \$80,700 plus disbursements of approximately \$18,400 and GST of approximately \$5,000 for a total of approximately \$104,100 for the period ended May 31, 2023 (the "**Receiver's Fees**"); and
 - 32.2. Cassel's total professional fees totaling approximately \$120,300 plus disbursements of approximately \$1,300 and GST of approximately \$6,000 for a total of approximately \$127,600, also for the period ended May 31, 2023 (the "**Receiver's Legal Fees**").
33. The Receiver currently estimates that additional Receiver's Fees of \$15,000 plus GST for a total of approximately \$15,800 and additional Receiver's Legal Fees of \$35,000 plus GST for a total of approximately \$36,800 will be required to complete the administration of the receivership estate (collectively, the "**Estimates to Complete**").
34. At the July 13 Hearing, the Receiver is seeking approval of the Receiver's Fees and the Receiver's Legal Fees, including the Estimates to Complete (collectively, the "**Professional Fees**"). The Professional Fees have been charged by the Receiver and Cassels at their standard hourly rates and, in the Receiver's experience, are comparable to the standard rates of other providers of similar services in Alberta. The Receiver will make copies of both its accounts and the accounts of Cassels (subject to redaction for privilege) available to this Honourable Court or any interested person upon further request.

DISCHARGE OF THE RECEIVER

35. The following administrative matters remain outstanding to complete the administration of the receivership:
 - 35.1. Completing the Stalking Horse Transaction and making the payments set out thereunder;

- 35.2. Paying any amounts that rank in priority to the Arnaki Security, including repaying the Borrowings, paying the Professional Fees and paying the CRA Claim (the "**Priority Claims**");
 - 35.3. Preparing and issuing the Receiver's final report pursuant to Section 246(3) of the *Bankruptcy and Insolvency Act*;
 - 35.4. Preparing any required Canada Revenue Agency returns and closing the corresponding business accounts;
 - 35.5. Preparing the Final Statement of Receipts and Disbursements that will be attached to the Receiver's Certificate; and
 - 35.6. Any other matters incidental to completing the administration of the Receivership.
36. Upon completion of the administrative matters described above, the Receiver intends to file the Discharge Certificate, subject to the approval by this Honourable Court of the relief being sought.


RECOMMENDATION AND CONCLUSION

37. The Second Report has been prepared to provide this Honourable Court with information on the relief sought by the Receiver at the July 13 Hearing, including approval of the Stalking Horse Transaction, the Amendment, the reported actions and activities of the Receiver, the Professional Fees, and the discharge of the Receiver, which relief is supported by the Receiver for the reasons set out herein.

All of which is respectfully submitted this 20th day of June 2023.

MNP Ltd., in its capacity as Receiver and Manager of SolvAQUA Inc. and not in its personal or corporate capacity

Per: _____


Vanessa Allen, B. Comm, CIRP, LIT
Senior Vice President

SCHEDULES

SCHEDULE 1

ASSET PURCHASE AGREEMENT

**MNP LTD., solely in its capacity as receiver and manager of
SOLVAQUA INC.
and not in its personal capacity**

as Seller

- and -

2464525 ALBERTA LTD.

as Buyer

October 17, 2022

PURCHASE AGREEMENT

THIS AGREEMENT is made as of October 17, 2022

B E T W E E N:

MNP LTD. ("**MNP**"), solely in its capacity as receiver and manager of the assets, undertakings and properties of SOLVAQUA INC. ("**SolvAQUA**" or the "**Debtor**"), a corporation formed under the laws of the Province of Alberta, and not in its personal capacity

(the "**Seller**" or the "**Receiver**")

- and -

2464525 ALBERTA LTD., a corporation incorporated under the laws of the Province of Alberta

(and any of its nominees, designees or assignees hereunder, as applicable, the "**Buyer**")

RECITALS:

- A. The Debtor carries on the business of providing proprietary wastewater management solutions, based on nanopolymerization technology, and implementing that technology in foreign jurisdictions (together with any other business in which the Debtor is engaged on the date hereof, the "**Business**").
- B. Pursuant to the order of the Honourable Justice Neufeld of the Alberta Court of Queen's Bench (the "**Court**"), pronounced August 19, 2022 (the "**Receivership Order**") in Court File No. 2201-09319 (the "**Receivership Proceedings**"), MNP was appointed as the receiver and manager of all of the assets, undertakings and properties of the Debtor (the "**Property**").
- C. Pursuant to the Receivership Order, the Receiver is authorized to:
 - (a) market any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
 - (b) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of the Court in respect of any transaction in which the purchase price exceeds \$50,000.
- D. The Receiver: (i) wishes to sell, and the Buyer wishes to purchase (and has agreed to act as a "stalking horse bidder" pursuant to the SISP (as defined herein) substantially all the assets and liabilities of the Business; and (ii) intends to seek a Court order approving this Agreement and the SISP.
- E. The Receiver has determined that it is in the best interests of the Debtor's stakeholders to enter into this Agreement and to consummate the transactions contemplated herein on the terms set forth herein.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) **“Adjustment Date”** has the meaning given to such term in Section 3.6;
- (b) **“affiliate”** of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“**A**”) controls another Person (“**B**”) where A has the power to determine the management and policies of B by contract or status (for example the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose;
- (c) **“Agreement”** means this Asset Purchase Agreement and all attached Schedules, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and all attached Schedules and unless otherwise indicated, references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Agreement;
- (d) **“Applicable Law”** means any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or license of any Governmental Authority, that applies in whole or in part to the Transaction, the Seller, the Debtors, the Buyer, the Business or any of the Purchased Assets;
- (e) **“Arnaki”** means Arnaki Ltd., a corporation incorporated under the laws of the British Virgin Islands;
- (f) **“Arnaki Loan”** means the loans advanced to the Debtor pursuant to the Arnaki Loan Agreements;
- (g) **“Arnaki Loan Agreements”** means the following loan agreements (as amended and restated) among Arnaki and the Debtor:
 - (i) loan agreement dated August 31, 2020;
 - (ii) loan agreement dated January 4, 2021; and
 - (iii) loan agreement dated February 1, 2021;
- (h) **“Arnaki Loan Contracts”** means the following:
 - (i) Arnaki Loan Agreements;
 - (ii) Arnaki Security;

- (iii) Assignment of Receivables Agreement dated February 1, 2021 between the Debtor and Arnaki; and
- (iv) Extension Agreement dated April 1, 2021 between the Debtor and Arnaki;
- (i) **“Arnaki Security”** means the following security agreements among Arnaki and the Debtor entered into pursuant to the Arnaki Credit Agreements:
 - (i) general security agreement dated August 31, 2020;
 - (ii) general security agreement dated January 4, 2021; and
 - (iii) general security agreement dated February 1, 2021;
- (j) **“Assumed Liabilities”** means those Liabilities incurred after Closing and relating to, or arising in connection with, the Purchased Assets, provided that such Liabilities continue to attach to the Purchased Assets following the granting of the Vesting Order;
- (k) **“Business”** has the meaning given to such term in Recital A;
- (l) **“Business Day”** means any day, other than a Saturday or Sunday, on which the principal commercial banks in Calgary are open for commercial banking business during normal banking hours;
- (m) **“Buyer”** has the meaning given to such term in the preamble to this Agreement, or its nominee;
- (n) **“Cash Component”** means an amount to be determined by the Parties, acting reasonably, provided that such amount is equal to or greater than the sum of the Priority Payables and the Holdback Amount and may include the Vivakor Equipment Purchase Price if it is determined that (i) the Vivakor Equipment is owned by a Person other than SolvAQUA, or (ii) a Person has an interest in the Vivakor Equipment that ranks in priority to the Arnaki Security, and (iii) the Buyer elects to include the Vivakor Equipment in the Purchased Assets;
- (o) **“Claim”** means any right, claim, cause of action or complaint of any Person that may be asserted or made in whole or in part against the Debtor or Seller, any of their respective affiliates and their respective Representatives, whether or not asserted or made in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including 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, claim, cause of action or complaint is executory or anticipatory in nature;
- (p) **“Closing”** means the completion of the Transaction at the Closing Time;
- (q) **“Closing Date”** means December 21, 2022, or such other date as the Parties may agree, acting reasonably;

- (r) **“Closing Documents”** means all contracts, agreements and instruments required by this Agreement to be delivered at or before the Closing;
- (s) **“Closing Time”** means 10:00 a.m. (Calgary time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place;
- (t) **“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to a Party by the other Party, including, without limitation, information about identifiable individuals, any information relating to a Party and its affiliates or any customer or supplier of a Party; provided that “Confidential Information” does not include information that:
 - (i) is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement;
 - (ii) is received by a Party from a third party that obtained it lawfully and was under no duty of confidentiality;
 - (iii) was lawfully in a Party’s possession prior to disclosure thereof by the other Party; or
 - (iv) was independently developed by a Party without use of, or reference to, the other Party’s Confidential Information;
- (u) **“Contracts”** means contracts, licences, permits, leases, agreements, commitments, entitlements or engagements to which the Debtor is party or by which the Debtor is bound;
- (v) **“Court”** has the meaning given to such term in Recital B;
- (w) **“Court Approval”** means the pronouncement of the SISP Order and the Vesting Order by the Court;
- (x) **“CRA Priority Payments”** means those deemed trust amounts validly owing by the Debtor to Canada Revenue Agency under the *Income Tax Act* (Canada) or the *Excise Tax Act* (Canada), or other similar provincial legislation as of the Closing Date that are in priority to the Arnaki Security;
- (y) **“Credit Bid Component”** has the meaning given to such term in Section 3.1;
- (z) **“Debtor”** has the meaning given to such term in the preamble to this Agreement;
- (aa) **“Deposit”** means the amount of \$100,000, comprising part of the Purchase Price;
- (bb) **“Employee Priority Payments”** means all amounts payable by the Debtor’s estate to current or former employees of the Debtor under Sections 81.4 and 81.6 of the *Bankruptcy and Insolvency Act* (Canada) that rank in priority to the Arnaki Security;
- (cc) **“Encumbrances”** means all mortgages, pledges, charges, liens, hypothecs, hypothecations, debentures, trust deeds, Claims, assignments by way of security or otherwise, security interests, Priority Charges, conditional sales contracts or other title retention agreements, security created under the *Bank Act* (Canada), rights of first refusal, reservations of ownership or similar interests or instruments charging or creating a security interest in the Purchased Assets or any part thereof or interest therein, and any agreements, leases, licenses, occupancy agreements, options, easements, rights of way, restrictions, executions, or other encumbrances (including notices or other registrations in

respect of any of the foregoing) affecting title to the Purchased Assets or any part thereof or interest therein;

- (dd) **"Equipment Interest Holder"** means the legal owner of the Vivakor Equipment (other than SolvAQUA) or a Person with an interest in the Vivakor Equipment that ranks in priority to the Arnaki Security;
- (ee) **"Excluded Assets"** means the Purchase Price;
- (ff) **"Expense Reimbursement and Transaction Fee"** has the meaning given to such term in Section 9.3(a);
- (gg) **"Final"** with respect to any order of any court of competent jurisdiction, means that leave to appeal or reconsideration shall not have been sought in respect of such order and that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and Seller) or vacated, and all time periods within which leave to appeal and reconsideration could at law be sought shall have expired or been waived and all time periods within which such order could at law be appealed shall have expired;
- (hh) **"GST"** means the sales tax payable under the GST Legislation;
- (ii) **"GST Legislation"** means Part IX of the *Excise Tax Act* (Canada);
- (jj) **"Governmental Authority"** means any government, regulatory authority, governmental department, agency, commission, bureau, court, judicial body, arbitral body or other law, rule or regulation-making entity:
 - (i) having jurisdiction over the Debtor, the Buyer or the Purchased Assets on behalf of any country, province, state, locality or other geographical or political subdivision thereof; or
 - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power;
- (kk) **"Governmental Authorizations"** means the permits, licences, approvals and authorizations, orders, certificates, consents, directives, notices, licences, permits, variances, registrations or other rights issued to or held or required by the Seller and/or the Debtors relating to the Business or any of the Purchased Assets by or from any Governmental Authority;
- (ll) **"Holdback Amount"** means the amount of \$75,000 paid by the Buyer to the Seller to account for any current or future Priority Payables, the amount of which Priority Payables cannot be definitively ascertained as at the Closing Date;
- (mm) **"including"** and **"includes"** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words "without limitation";
- (nn) **"Indebtedness"** means the aggregate of all debts, liabilities and obligations owing under the Arnaki Loan, inclusive of all interest, costs, fees, expenses and amounts that may accrue in accordance with the Arnaki Loan and Arnaki Loan Contracts;
- (oo) **"Intellectual Property"** means any, and all, of the following in any jurisdiction throughout the world:

- (i) trademarks, including all applications and registrations and the goodwill connected with the use and symbolized by the foregoing;
 - (ii) copyrights and industrial designs, including all applications and registrations relating to the foregoing;
 - (iii) trade secrets and confidential know-how;
 - (iv) patents and patent applications;
 - (v) websites and internet domain name registrations; and
 - (vi) other intellectual property and related proprietary rights, interests and protections.
- (pp) **“Liabilities”** means liabilities, obligations or commitments of any nature whatsoever, whether asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.
- (qq) **“Material Adverse Change”** or **“Material Adverse Effect”** means any change, development, effect, event, circumstance, fact or occurrence that, individually or in the aggregate with such other changes, developments, effects, events, circumstances, facts or occurrences, is, or would reasonably be expected to be, material and adverse to the properties, assets, liabilities (contingent or otherwise), condition (financial or otherwise), operations or results of operations of the Business; other than any change, development, effect, event, circumstance, fact or occurrence arising out of, attributable to or resulting from: (A) any action expressly required or permitted by this Agreement or relating to the Debtor's current financial condition, including the Receivership Proceedings; (B) general political, economic or financial conditions in Canada or elsewhere in the world; (C) any change generally affecting the industries in which the Business is conducted (including changes in general market prices, or regulatory changes in any such industry); (D) acts of terrorism or war (whether or not declared); (E) any changes to existing Applicable Law (including the interpretation thereof); (F) any changes to IFRS or the adoption, implementation or proposal of any new accounting principles; (G) hurricanes, earthquakes, storms, floods or other natural disasters, epidemics, pandemics (including COVID), outbreak or escalation of hostilities, the declaration of war, acts of terrorism, or acts of God; (H) any action consented to by the Buyer; (I) any failure by the Debtor to meet any projections or estimates (including internal projections or estimates) of revenues, earnings, working capital or performance for any period; or (J) any action, change, development, effect, event, circumstance, fact or occurrence that is attributable to or otherwise caused by the Seller, the Debtor or the Buyer;
- (rr) **“Parties”** means the Seller and the Buyer collectively, and **“Party”** means either the Seller or the Buyer; provided, however that, Parties and Party may also refer to the Debtors, as applicable;
- (ss) **“Permitted Encumbrances”** means those permitted encumbrances (if any) provided for in the Vesting Order;
- (tt) **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

- (uu) **"Priority Charges"** means any amounts that rank in priority to the Arnaki Security, including without limitation any Court ordered charges or statutory priority claims (whether arising in the Receivership Proceeding or any other proceeding involving the Debtor, including without limitation a bankruptcy proceeding), the Receivership Costs, the Employee Priority Payments and the CRA Priority Payments;
- (vv) **"Priority Payables"** means any current or future amounts owing as secured by the Priority Charges;
- (ww) **"Purchase Price"** has the meaning given to such term in Section 3.1;
- (xx) **"Purchased Assets"** means those assets, undertakings and properties listed in Schedule 1.1(xx), but for greater certainty, shall not include the Excluded Assets;
- (yy) **"Receiver"** has the meaning given to such term in Recital B;
- (zz) **"Receiver's Borrowing Charge"** has the meaning given to such term in the Receivership Order;
- (aaa) **"Receiver's Certificate"** means the certificate filed with the Court by the Receiver certifying that the Receiver is satisfied that: (i) all conditions to Closing set forth in Article 6 have been satisfied or waived; and (ii) the Buyer has paid, and the Seller has received, the Purchase Price;
- (bbb) **"Receiver's Charge"** has the meaning given to such term in the Receivership Order;
- (ccc) **"Receivership Costs"** means all of the taxable fees, costs and expenses associated with the Receiver's administration of the Debtor's estate pursuant to the Receivership Order, including without limitation, the Receiver's Fees, Receiver's Charge and Receiver's Borrowing Charge.
- (ddd) **"Receiver's Fees"** means the fees and disbursements of the Receiver and the Receiver's counsel incurred in connection with the receivership of the Debtor, secured by the Receiver's Charge, as approved by the Court from time to time;
- (eee) **"Receivership Order"** has the meaning given to such term in Recital B;
- (fff) **"Receivership Proceedings"** has the meaning given to such term in Recital B;
- (ggg) **"Representative"** means, in respect of a Person, each director, officer, employee, agent, legal counsel, accountant, consultant, contractor, professional advisor and other representative of such Person and its affiliates;
- (hhh) **"Seller"** has the meaning given to such term in the preamble to this Agreement;
- (iii) **"SISP"** means the sale and investment solicitation process set forth in Schedule "1.1(iii)" hereto;
- (jjj) **"SISP Order"** means an order of the Court substantially in the form attached as Schedule "1.1(jjj)" hereto that, among other things, approves the SISP and related matters, with any amendments thereto to be acceptable to each of the Seller and the Buyer, each acting reasonably.
- (kkk) **"SolvAQUA Claims"** means any and all claims of the Debtor, including but not limited to any claims related to alleged breaches under various contracts between SolvAQUA and

each of Vivaventures Inc. and Clear Capital Partners as well as any corresponding insurance claims related to coverage provided by Export Development Canada in relation to these contracts;

(lll) **“Successful Bid”** has the meaning ascribed to it in the SISP;

(mmm) **“Tax”** and **“Taxes”** means any and all:

(i) taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Authority, including those with respect to income, goods and services, harmonized sales, transfer, land transfer, use, real or personal property, and registration fees; and

(ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority on or in respect of amounts of the type described in clause (i) above or this clause (ii);

(nnn) **“Tax Act”** means the *Income Tax Act* (Canada), as amended;

(ooo) **“Transaction”** means, collectively, the sale and purchase of the Purchased Assets pursuant to this Agreement and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets;

(ppp) **“Transfer Taxes”** has the meaning given to such term in Section 7.7(c);

(qqq) **“Vesting Order”** means an order of the Court substantially in the same form as the Alberta Model Sale Approval and Vesting Order, with any amendments thereto to be acceptable to each of Seller and Buyer, each acting reasonably;

(rrr) **“Vivakor Equipment”** means two completed wastewater management units with serial number J-888011-A; and

(sss) **“Vivakor Equipment Purchase Price”** means an amount to be determined by the Equipment Interest Holder and the Buyer, acting reasonably, for the purchase of the Vivakor Equipment; provided that it is first determined by: (i) mutual agreement of the Receiver, Buyer and Equipment Interest Holder; or (ii) a decisions of the Court, that the Vivakor Equipment is owned by a Person other than SolvAQUA or that a Person has an interest in the Vivakor Equipment that ranks in priority to the Arnaki Security.

1.2 Schedules

The schedules to this Agreement are an integral part of this Agreement.

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(xx)	Purchased Assets
Schedule 1.1(iii)	SISP
Schedule 1.1(jjj)	Form of SISP Order

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.8 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as otherwise specifically set forth in this Agreement and any document required to be delivered pursuant to or in respect of this Agreement.

1.9 Waiver, Amendment

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

1.10 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the Transaction (whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the Court prior to a Final order of the Court terminating the Receivership Proceedings and thereafter to the Courts of Alberta for the resolution of any disputes arising under this Agreement. Each Party agrees that service of

process on such Party as provided in Section 11.6 shall be deemed effective service of process on such Party.

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Assets

- (a) Upon and subject to the terms and conditions of this Agreement at Closing and effective as of the Closing Time the Seller shall sell to the Buyer, and the Buyer shall purchase from the Seller, free and clear of all Encumbrances, the Purchased Assets.
- (b) Provided that Closing occurs, possession risk, beneficial and legal ownership of the Purchased Assets shall, transfer from the Seller to the Buyer in accordance with the Vesting Order and the terms of this Agreement.

2.2 “As is, Where Is”

The Buyer acknowledges and agrees that all of the Purchased Assets are being purchased on an “as is, where is” basis as they shall exist at Closing. Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, encumbrances, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Business and/or the Purchased Assets or the right of the Seller to sell or assign the same. Without limiting the generality of the foregoing, any and all conditions, warranties, or representations expressed or implied pursuant to the *Sale of Goods Act* (Alberta), as amended, or similar legislation do not apply hereto and have been waived by the Buyer. This Section 2.2 shall not merge on Closing and is deemed incorporated by reference into all Closing Documents and deliveries.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable by the Buyer to the Seller for the Purchased Assets (the “**Purchase Price**”) shall be the aggregate sum of:

- (a) a cash payment of the Cash Component; and
- (b) the balance of the Purchase Price, equal to the amount of \$2,500,000, to be paid by way of set off against (as a non-cash credit reduction of) the Indebtedness (the “**Credit Bid Component**”).

3.2 Deposit

- (a) The Deposit shall be paid by wire transfer in immediately available funds within two (2) Business Days of the SISP Order having been granted by the Court. The Deposit shall be held, pending Closing, by the Seller’s counsel in a non-interest bearing account.
- (b) If the Closing does not occur solely by reason of the default of the Buyer, the full amount of the Deposit, less any applicable withholding tax, shall become the property of and be retained by the Seller to compensate it for expenses incurred in connection with the Transaction contemplated in this Agreement and the delay caused to the Seller’s efforts to sell the Purchased Assets. The entitlement of the Seller to retain the Deposit in such

circumstances shall not limit the Seller's right to exercise any other rights which the Seller may have against the Buyer in respect of such default.

- (c) If the Closing does not occur for any reason other than the default of the Buyer, the full amount of the Deposit, less any applicable withholding tax, shall be returned forthwith to the Buyer. It is understood that non-completion of the transaction of purchase and sale contemplated by this Agreement by the Buyer because of the non-fulfillment of any conditions precedent set out in Section 6.1 (where such condition precedent was in favour of the Buyer) or 6.2 shall not be considered to be a default of the Buyer.

3.3 Satisfaction of Purchase Price

The Buyer shall satisfy the Purchase Price at the Closing Time by:

- (a) irrevocably and unconditionally authorizing the Seller's counsel to release the Deposit to the Seller, and the Buyer paying to the Receiver in trust the Cash Component (less the Deposit) by wire transfer in immediately available funds pursuant to wire transfer instructions to be provided by the Receiver to the Buyer no later than one (1) Business Day prior to the Closing Date; and
- (b) delivering an acknowledgement signed by the Buyer and Arnaki that the Indebtedness has been reduced by the amount of \$2,500,000 in consideration of the balance of the Purchase Price.

3.4 Purchase Price Allocation

The Purchase Price shall be allocated among the Purchased Assets as agreed by the Parties herein and/or in separate written instruments, acting reasonably. Such allocation shall be binding and the Buyer and the Seller shall report the purchase and sale of the Purchased Assets and file all filings which are necessary or desirable under the Tax Act and any other applicable Tax legislation to give effect to such allocations and shall not take any position or action inconsistent with such allocation.

3.5 Payment of Certain Liabilities

Upon payment of the Cash Component to the Seller, the Seller shall satisfy all known Priority Payables as required to be paid on Closing, in accordance with the Vesting Order.

3.6 Adjustments

The Parties will make, without duplication, the usual adjustments relating to the Purchased Assets, as of the Closing Date.

3.7 Determination of Final Purchase Price

In addition to those adjustments described in Section 3.6, the Parties acknowledge that adjustments will be required after the Closing Date to finally determine the Purchase Price once the final amount of the Priority Payables is known. The Purchase Price shall be finally determined on the date that the Receiver is discharged pursuant to a Discharge Order issued by the Court, or such other date as the parties agree to in writing ("**Adjustment Date**"). On the Adjustment Date, the Parties shall agree on the final Purchase Price and the Holdback Amount shall be distributed by the Seller as follows:

- (a) Seller shall pay from the Holdback any Priority Payables not previously satisfied under Section 3.5;

- (b) following the payment of any Priority Payables under Section 3.5 and Section 3.7(a), any remainder of the Holdback Amount shall be reimbursed to the Buyer; and
- (c) in the event the Holdback Amount is not sufficient to satisfy the Priority Payables, the Buyer shall pay to the Seller within two (2) Business Days of being notified of such deficiency, the deficiency by way of certified cheque, bank draft or guaranteed electronic funds.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER

The Seller represents and warrants to the Buyer and acknowledges that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets the matters set out below:

4.1 Validly Appointed

The Seller has been validly appointed by the Court as receiver and manager of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, pursuant to the Receivership Order.

4.2 Recitals

The Recitals hereto are true and correct as of the date of this Agreement.

4.3 Due Authorization and Enforceability of Obligations

Subject to Court Approval being obtained, the Seller has all necessary power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. This Agreement has been, and at the Closing Time the Closing Documents will be, duly executed and delivered by the Seller in its capacity as Receiver.

4.4 Residence of the Seller

The Seller is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

4.5 No Other Representations, Warranties or Covenants

All of the Purchased Assets are being purchased on an "as is where is" basis. Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Business and/or the Purchased Assets or the right of the Seller to sell or assign the same. The disclaimer in this Section 4.5 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with its sale of the Purchased Assets:

5.1 Existence

The Buyer is duly organized and validly existing under the laws of its jurisdiction of organization.

5.2 Recitals

The Recitals hereto are true and correct as of the date of this Agreement.

5.3 Due Authorization

The Buyer has all necessary power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action of the Buyer. This Agreement has been duly executed and delivered by the Buyer and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity.

5.4 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to any provision in its articles, by-laws or other constating documents or Applicable Laws or Governmental Authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licences, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults or any Applicable Laws or any Governmental Authorizations, approvals, orders, certificates, consents, directives, notices, licences, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material and adverse effect on the ability of the Buyer to consummate the transactions hereunder.

5.5 No Litigation

Other than the Receivership Proceedings, there is no Claim that is pending or, to the Buyer's knowledge, threatened in any court or before any Governmental Authority that would adversely affect the Buyer's ability to perform its obligations under this Agreement on a timely basis.

5.6 Approvals and Consents

Except for Court Approval, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority or any other Person is required in connection with the execution, delivery or performance by the Seller of any of its covenants and obligations under this Agreement and each of the Closing Documents to be executed and delivered by the Seller hereunder, including the purchase of any of the Purchased Assets hereunder.

5.7 GST Registration

The Buyer, or its nominee acquiring the Purchased Assets, is, or at the Closing Time will be, registered for purposes of the GST Legislation and will provide its registration number to the Seller.

5.8 Acquisition of Business

Buyer is acquiring under this Agreement all or substantially all the property that can reasonably be regarded as being necessary for it to carry on the Business as a business.

5.9 Financial Ability

The Buyer has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

5.10 No Additional Due Diligence

The Buyer acknowledges and agrees that: (a) it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets and the Business prior to the execution of this Agreement; (b) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or the Business; (c) it is not relying upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, (by operation of law or otherwise), regarding the Purchased Assets or the Business or the completeness of any information provided in connection therewith, except as expressly stated in this Agreement; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence.

ARTICLE 6 CONDITIONS

6.1 Conditions for the Benefit of the Buyer and the Seller

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

- (a) no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect;
- (b) the Receivership Order and the SISP Order shall have been issued and entered, and shall be Final, and the Receivership Proceedings shall be ongoing;
- (c) the Stalking Horse Bidder shall be the Successful Bidder (each, as defined in the SISP) under the SISP;
- (d) the Vesting Order shall have been issued and entered on or before November 30, 2022 or on or before such later date as the Parties agree to in writing, and shall be Final.

6.2 Conditions for the Benefit of the Buyer

The obligation of the Buyer to consummate the Transaction is subject to the satisfaction of, or compliance with, or waiver by the Buyer of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) the representations and warranties of the Seller set forth in this Agreement shall be true and correct at the Closing Time with the same force and effect as if made at and as of such time, except where any failure or failures of any such representations and warranties to be so true and correct would not, individually or in the aggregate cause a Material Adverse

Change (and, for this purpose, any reference to “material”, “Material Adverse Change” or any other concept of materiality in such representations and warranties shall be ignored);

- (b) the covenants contained in this Agreement to be performed by the Seller at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) and 6.2(b), signed for and on behalf of the Seller without personal liability by an authorized signatory of the Seller or other Persons reasonably acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer;
- (d) the Closing Documents, all other documents relating to the due authorization and completion of the Transaction and all actions and proceedings taken on or prior to the Closing in connection with the performance by the Seller of its obligations under this Agreement shall be satisfactory to the Buyer, acting reasonably, and the Buyer shall have received copies of all such documents and evidence that all such actions and proceedings have been taken as it may reasonably request in form and substance reasonably satisfactory to the Buyer;
- (e) the Purchased Assets shall be assigned and transferred to the Buyer free and clear of all Encumbrances, in accordance with the Vesting Order;
- (f) since the date first written above, no Material Adverse Change shall have occurred.

6.3 Conditions for the Benefit of the Seller

The obligation of the Seller to consummate the Transaction is subject to the satisfaction of, or compliance with, or waiver where applicable, by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) the representations and warranties of the Buyer set forth in this Agreement shall be true and correct in all material respects at the Closing Time with the same force and effect as if made at and as of such time, except where any failure or failures of any such representations and warranties to be so true and correct would not, individually or in the aggregate cause a Material Adverse Change (and, for this purpose, any reference to “material”, “Material Adverse Change” or any other concept of materiality in such representations and warranties shall be ignored);
- (b) the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time, including payment of the Purchase Price, shall have been performed in all material respects as at the Closing Time;
- (c) the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) and 6.3(b) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer or other persons reasonably acceptable to the Seller, in each case in form and substance reasonably satisfactory to the Seller;
- (d) all other Closing Documents required pursuant to this Agreement to be delivered by the Buyer on Closing in form and substance reasonably satisfactory to the Seller;
- (e) the Buyer shall have delivered to the Seller the Deposit as required under Section 3.2;

- (f) the Buyer shall have delivered to the Seller all of the deliverables contained in Section 10.2 in form and substance satisfactory to the Seller acting in its sole discretion;
- (g) the Buyer shall have obtained an acknowledgment from Arnaki confirming that the Indebtedness has been reduced by the amount of \$2,500,000 in consideration of the balance of the Purchase Price; and
- (h) the Buyer shall have delivered and released to the Seller the acknowledgment required under Section 3.3(b) confirming that the Indebtedness has been reduced by the amount of \$2,500,000 in consideration of the balance of the Purchase Price.

ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 Access to Information

Until the Closing Time, the Seller and/or the Debtor shall furnish the Buyer's personnel engaged in the Transaction and their accountants, legal advisers, consultants and representatives during normal business hours, all such information relating to the Purchased Assets as the Buyer may reasonably request in connection with the Transaction. Notwithstanding the foregoing, the Seller and/or the Debtor shall not be required to disclose any information, records, files or other data to the Buyer where prohibited by any Applicable Laws or such disclosure would have the effect of causing the waiver of any solicitor-client privilege.

7.2 Conduct of Business Until Closing Time

Except: (1) as expressly required by this Agreement; and (2) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed), as necessary or advisable in connection with or pursuant to the Receivership Proceedings, or as required by Applicable Law (including to the extent required by any Contract), to the extent reasonably necessary, and as practicable having regard to the Receivership Proceedings and any Court order issued in the Receivership Proceedings, the Seller shall:

- (a) not amend, terminate or assign any Contracts that are included in the Purchased Assets and material to the Business;
- (b) not waive or assign any material rights of the Business under any Contract included in the Purchased Assets and material to the Business; and
- (c) not enter into any lease, contract or agreement, licence or other commitment related to the Business that would constitute a personal property lease, real property lease or Contract except, in each case, in the ordinary course of the Business.

7.3 Further Assurances

Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use commercially reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement. Upon and subject to the terms and conditions of this Agreement and subject to the directions of any applicable courts to the Seller, the Parties shall use their commercially 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 under Applicable Laws to consummate and make effective the Transaction, including using commercially reasonable efforts to satisfy the conditions precedent to the obligations of the Parties hereto.

7.4 Tax Matters

- (a) The Buyer and the Seller agree to use commercially reasonable efforts to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) For purposes of any income Tax return related to the Transaction, the Buyer and, to the extent applicable, the Seller, agree to report the Transaction in a manner consistent with the Purchase Price allocation determined in accordance with Section 3.4, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the Tax Act and other similar forms in accordance with applicable Tax laws.
- (c) All amounts payable by the Buyer to the Seller pursuant to this Agreement are exclusive of any GST, or any other federal, provincial, state or local or foreign value-added, sales, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, transfer, land or real property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, "**Transfer Taxes**"). All Transfer Taxes are the responsibility of and for the account of the Buyer. The Buyer and the Seller agree to cooperate to determine the amount of Transfer Taxes payable in connection with the Transaction. If the Seller is required by Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer shall pay such amounts to the Seller concurrent with the payment of any consideration payable pursuant to this Agreement, and the Seller shall remit or account for such Transfer Taxes to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (d) The Seller and the Buyer shall jointly make, and the Buyer will file, the election provided for under GST Legislation such that no GST will be payable with respect to the purchase and sale of any of the Purchased Assets. The Buyer shall at all times indemnify and hold harmless the Seller and their directors, officers and employees, against and in respect of any and all amounts assessed by the Minister of National Revenue (Canada) as a consequence of such Minister determining, for any reason, that the election is unavailable, inapplicable, invalid or not properly made.

7.5 Fees and Expenses

Except as expressly provided in this Agreement, all fees and expenses incurred in connection with the negotiation and settlement of this Agreement and the completion of the Transaction, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the Person incurring such fees or expenses.

7.6 Advice and Direction

The Parties acknowledge that the Seller is entitled (but not required) to seek the advice and directions of the Court in respect of any determination to be made, consent right to be exercised or other action to be taken by the Seller under this Agreement.

**ARTICLE 8
COURT ORDER**

8.1 Vesting Order

- (a) The Seller shall file an application with the Court for the issuance of the Vesting Order, which Vesting Order shall only be effective upon the Buyer being determined to be the Successful Bidder and the Receiver filing a certificate substantially in the form attached to the SISP Order. Such application shall be scheduled for a date that is on or before December 14, 2022, or such later date as may be scheduled upon the agreement of the Parties (acting reasonably), due to court availability or pursuant to direction of the Court.
- (b) The Buyer shall cooperate with the Seller acting reasonably, as may be necessary, in obtaining the Vesting Order.
- (c) The Seller shall use its best efforts to obtain the Vesting Order as promptly as practicable.

**ARTICLE 9
TERMINATION**

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) subject to any approvals required from the Court or otherwise pursuant to the Receivership Proceedings, by mutual written consent of the Seller and the Buyer;
- (b) by either Party, upon written notice to the other, if a Governmental Authority issues an order prohibiting the transactions contemplated hereby, which order shall have become final and non-appealable;
- (c) by either Party, if this Agreement is not the Successful Bid (as determined pursuant to the SISP);
- (d) by either Party upon denial of the SISP Order or the Vesting Order (or if any such order is stayed, vacated or varied with the consent of the Parties);
- (e) by the Seller upon written notice to the Buyer if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.1 or 6.3 on the Closing Date and such violation or breach has not been waived by the Seller or cured within five (5) days after written notice thereof from the Seller, unless the Seller is in material breach of their obligations under this Agreement; and
- (f) by the Buyer upon written notice to the Seller, if there has been a material violation or breach by the Seller of any covenant (save and except for the covenants set out in Section 7.2), representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.1 or 6.2 on the Closing Date and such violation or breach has not been waived by the Buyer or cured within five (5) days after written notice thereof from the Buyer, unless the Buyer is in material breach of their obligations under this Agreement.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall forthwith become null and void, except as set forth in Sections 3.2 and Article 11, and nothing herein shall relieve

any Party from liability for any breach of this Agreement, or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

9.3 Expense Reimbursement and Transaction Fee

- (a) If the Buyer is not the Successful Bidder (as defined in the SISP) pursuant to the SISP, the Buyer shall be entitled to reimbursement for its expenses and a transaction fee in connection with the Transaction in the aggregate amount of \$175,000 the “**Expense Reimbursement and Transaction Fee**”). Such amount shall be payable by the Successful Bidder to the Buyer in immediately available funds to an account designated by the Buyer concurrently with such closing.
- (b) The payment of the Expense Reimbursement and Transaction Fee shall be approved in the Vesting Order, as contemplated by the SISP, and shall be made in priority to amounts secured by existing security, except as provided in the Vesting Order contemplated by the SISP. Each of the Parties acknowledges that the agreements contained in this Section 9.3 are an integral part of the Transaction and that, without those agreements, the Parties would not enter into this Agreement. The Parties further acknowledge and agree that the Expense Reimbursement and Transaction Fee is a payment of liquidated monetary damages which are a genuine pre-estimate of the costs and damages which the Buyer will suffer or incur as a result of the non-completion of this Agreement, that such payment is not for repayment of current Indebtedness, lost profits or a penalty, and that no Party shall take any position inconsistent with the foregoing. The Seller irrevocably waives any right it may have to raise as a defense that any such liquidated damages are excessive or punitive. Each of the Parties hereby acknowledge and agree that, under circumstances where the Buyer is entitled to the Expense Reimbursement and Transaction Fee and such amounts are paid in full to the Buyer, the Buyer shall be precluded from any other remedy against the Seller at law or in equity or otherwise in respect of damages for non-completion of this Agreement, and in any such case it shall not seek to obtain any recovery, judgment, or damages of any kind, including consequential, indirect, or punitive damages, against the Seller or any of its respective directors, officers, employees, partners, managers, members, shareholders or affiliates in connection with the non-completion of this Agreement or the Transaction.
- (c) Subject to the last sentence of the preceding paragraph, nothing in this Section 9.3 shall preclude any Party from seeking injunctive relief to restrain any breach or threatened breach of the covenants or agreements set forth in this Agreement or otherwise to obtain specific performance of any such covenants or agreement, and any requirement for securing or posting of any bond in connection with the obtaining of any such injunction or specific performance is hereby being waived.

ARTICLE 10 CLOSING

10.1 Location and Time of Closing

The Closing shall take place at the Closing Time on the Closing Date at the Calgary, Alberta offices of Cassels Brock & Blackwell LLP, or at such other location as may be agreed upon by the Parties hereto, which may include by virtual means.

10.2 Closing Deliveries

- (a) At the Closing, the Seller shall deliver to the Buyer the documents required to be delivered by the Seller pursuant to Sections 6.2 and Article 7.

- (b) At the Closing, the Buyer shall deliver to the Seller:
 - (i) the Cash Component, less the Deposit amount;
 - (ii) a duly executed election pursuant to GST Legislation and any certificates, elections or other documents required to be delivered pursuant to Article 7.
 - (iii) the documents required to be delivered by the Buyer pursuant to Section 6.3; and
 - (iv) any other documents reasonably requested by the Seller in order to effect or evidence the consummation of the Transaction or otherwise provided for under this Agreement.

10.3 Receiver's Capacity

The Parties hereby acknowledge and agree that the Receiver is entering into this agreement in its capacity as Court-appointed receiver of the Debtor, and not in its personal capacity.

ARTICLE 11 GENERAL MATTERS

11.1 Confidentiality

- (a) Except to the extent otherwise specifically provided in this Section 11.1, each Party, on behalf of itself and its affiliates, agrees to keep the other Party's Confidential Information confidential and not to use the other Party's Confidential Information in any manner except as required to perform the obligations set out in this Agreement. Each Party agrees to be responsible for any breach of this Section 11.1 by any of its affiliates and its and their respective directors, employees, advisors, agents and representatives.
- (b) Notwithstanding anything to the contrary herein, each Party maintains the right to disclose the other Party's Confidential Information if required to do so by Applicable Laws or requirement of a Governmental Authority, or to appropriate Tax authorities in order to describe the tax treatment and tax structure of the Transaction; provided that the disclosure of such Confidential Information will be limited only to that purpose and provided further that it will use reasonable efforts to cooperate with the other Party in limiting the disclosure of the Confidential Information.
- (c) At the other Party's request, a Party will destroy all of the other Party's Confidential Information, provided that it is permitted to retain one copy of any Confidential Information to the extent required by Applicable Laws or its internal record keeping policies.
- (d) Any Confidential Information of the Seller that constitutes part of the Purchased Assets will cease to be Confidential Information of the Seller and will become Confidential Information of the Buyer on Closing.

11.2 Public Notices

No press release or other announcement concerning the Transaction shall be made by the Seller or by the Buyer without the prior consent of the other (such consent not to be unreasonably withheld); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Receivership Proceedings) or by any insolvency or other court or securities commission or other similar regulatory authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice

to the other, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Seller with the Court; and (ii) the Transaction may be disclosed by the Seller to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Laws. The Parties further agree that:

- (a) the Seller may prepare and file reports and other documents with the Court containing references to the Transaction and the terms thereof; and
- (b) the Seller and their professional advisors may prepare and file such reports and other documents in the Receivership Proceedings containing references to the Transaction and the terms thereof as may reasonably be necessary to complete the Transaction or to comply with their obligations in connection therewith.

Each of the Parties may issue a press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by all of the Parties.

11.3 Survival

The representations and warranties of the Seller in this Agreement or in any agreement, document or certificate delivered pursuant to or in connection with this Agreement or the Transaction are set forth solely for the purpose of Section 6.2 and none of them shall survive Closing. The Seller shall have no liability, whether before or after the Closing, for any breach of the Seller's representations, and the Buyer acknowledges that its exclusive remedy for any such breach shall be termination of this Agreement prior to the Closing (but only if permitted by Section 9.1).

11.4 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate, agent, attorney or representative of the respective Parties hereto, in such capacity, shall have any liability for any obligations or liabilities of the Buyer, the Debtors or the Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transaction.

11.5 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of the other Party hereto, except that without such consent the Buyer may: (i) assign any or all of its rights and obligations hereunder to one or more of its subsidiaries or affiliates; or (ii) direct that title to all or some of the Purchased Assets be transferred to one or more of its subsidiaries or affiliates, provided that no such assignment or direction shall relieve the Buyer of its obligations hereunder; provided further that if the Buyer shall have assigned all of its rights and obligations hereunder the Buyer shall, immediately following the Closing, be deemed fully released from all of the Buyer's obligations hereunder. References to the Buyer's status under the *Investment Canada Act* are references to the ultimate Buyer. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person or entity not a Party to this Agreement other than the express third party beneficiaries of Section 11.4 hereof.

11.6 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five days after mailing via certified mail, return receipt requested.

All notices not delivered personally or by facsimile will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to the Buyer at:

2464525 Alberta Ltd. c/o Tingle Merrett LLP
1250, 639 - 5th Avenue S.W.
Calgary, AB T2P 0M9

Attention: Scott Reeves
Email: sreeves@tinglemerrett.com

(b) If to the Seller at:

MNP Ltd.
1500, 640 – 5th Avenue SW
Calgary, AB T2P 3G4

Attention: Vanessa Allen
Email: vanessa.allen@mnp.ca

with a copy to:

Cassels Brock & Blackwell LLP
Bankers Hall West
3810, 888 3rd Street SW
Calgary, AB T2P 5C5

Attention: Jeffrey Oliver
Email: joliver@cassels.com

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

11.7 Counterparts; Facsimile Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement by any of the Parties hereto may be evidenced by facsimile, scanned e-mail or internet transmission copy of this Agreement bearing such signature which, for all purposes, shall be deemed to be an original signature.

[Remainder of page intentionally blank]


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

MNP LTD., solely in its capacity as receiver of the assets, undertakings and properties of **SOLVAQUA INC.** and not in its personal capacity

By: _____

Name: Vanessa Allen
Title: Senior Vice President

2464525 ALBERTA LTD.

By: _____
DocuSigned by:

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Name: Scott Reeves
Title: Director

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

MNP LTD., solely in its capacity as receiver of the assets, undertakings and properties of **SOLVAQUA INC.** and not in its personal capacity

By: _____ 

Name: Vanessa Allen
Title: Senior Vice President

2464525 ALBERTA LTD.

By: _____

Name:
Title:

Schedule 1.1(xx)
Purchased Assets

All of the Debtor's right, title and interest in, to and under all of the tangible and intangible assets, properties and rights of every kind and nature and wherever located, other than the Excluded Assets, which relate to or are used or held for use in connection with the Business, including the following:

- (a) the Vivakor Equipment, unless the Buyer elects not to purchase the Vivakor Equipment;
- (b) the SolvAQUA Claims;
- (c) all accounts receivable, notes receivable and negotiable instruments of the Business;
- (d) all prepaid charges and expenses of the Business;
- (e) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories of the Business;
- (f) all equipment and other tangibles assets of the Debtor, including all water treatment equipment, vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvement, in each case, with any transferable warranty and service rights of the Debtor related thereto;
- (g) all Contracts;
- (h) all Intellectual Property;
- (i) all goodwill and intangibles;
- (j) all books and records;
- (k) all rights under insurance contracts and policies;
- (l) all telephone numbers, fax numbers and email addresses;
- (m) all non-disclosure agreements entered into by the Receiver on behalf of the Debtor in connection with the SISP;
- (n) all other additional assets, properties, privileges, rights and interest of the Debtor relating to the Business or the assets of the Debtor of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement; and
- (o) the Assumed Liabilities.

Schedule 1.1(iii)
SISP

SALE AND INVESTOR SOLICITATION

INTRODUCTION

By order of the Court of Queen's Bench of Alberta (the "**Court**") dated August 19, 2022 (the "**Appointment Order**"), MNP Ltd. ("**MNP**") was appointed as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings, and properties (the "**Property**") of SolvAQUA Inc. ("**SolvAQUA**" or the "**Company**").

THE OPPORTUNITY

It is anticipated that, on or about October 20, 2022, the Receiver will seek a Court order (the "**SISP Approval Order**") that will, among other things, (i) approve the terms of the binding purchase agreement (the "**Stalking Horse Agreement**") between the Receiver and 2464525 Alberta Ltd. (the "**Stalking Horse Bidder**"), and (ii) approve the stalking horse sale and investment solicitation process ("**SISP**") described herein.

The SISP sets out the manner in which (i) binding bids for transaction alternatives that are superior to the sale transaction to be provided for in the Stalking Horse Agreement will be solicited from interested parties, (ii) any such bid received will be addressed, (iii) any Successful Bidder will be selected, and (iv) Court approval of any Successful Bidder will be sought. Such transaction alternatives may include, among other things, the recapitalization of, investment in, arrangement of or reorganization of the Company or the business of SolvAQUA (the "**Business**") as a going concern or a sale of some or all of the Property or some combination thereof.

The SISP Approval Order, the procedures in respect of the SISP as contained herein (the "**SISP Procedures**"), a Court Order approving the transaction contemplated in the Successful Bid and vesting of the assets as contemplated therein (the "**Vesting Order**") and any subsequent orders issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids and ultimately determining the Successful Bid and Successful Bidder.

The purpose of these SISP Procedures is to determine whether a transaction that is superior to the Stalking Horse Transaction can be obtained by the Receiver. For the purposes of these SISP Procedures, a "**Superior Offer**" shall mean:

1. a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein), the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
2. an offer that provides for cash consideration in an amount equal to or greater than the Purchase Price (as defined in the Stalking Horse Agreement), plus (i) the Expense Reimbursement and Transaction Fee, (ii)

the Priority Payables, and (iii) the Holdback Amount (each as defined in the Stalking Horse Agreement). respectively.

Except to the extent otherwise set forth in a definitive agreement with a Successful Bidder, any sale of the Property or investment in SolvAQUA will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, or any of their respective agents, advisors or representatives, and, in the event of a sale, all of the right, title and interest of the Company in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to a Court order, except as otherwise provided in such Court order.

TIMELINE

The following table sets out the key milestones under the SISP:

Milestones	Estimated deadlines
SISP Approval Order granted/ commencement of SISP	October 20, 2022
Distribution of SISP Notice and Teaser	October 21, 2022
Publication of Notice	October 26, 2022
Bid Deadline	November 23, 2022
Auction (if required)	By November 30, 2022
Sale Approval Hearing	By December 14, 2022
Closing Date	By December 21, 2022

The Receiver will use reasonable efforts to complete the SISP Procedures in accordance with the timelines as set out herein. The Receiver shall be permitted to make such adjustments to the timeline that it determines are reasonably necessary, acting in its sole discretion.

SOLICITATION OF INTEREST

As soon as reasonably practicable:

1. the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Receiver or SolvAQUA indicating an interest in the opportunity, and (ii) any local and international strategic and financial parties who the Receiver believes may be interested in purchasing all or part of the Business and Property or investing in the Company pursuant to the SISP (collectively, "**Known Potential Bidders**");
2. the Receiver will arrange for a notice of the SISP (and such other relevant information which the Receiver considers appropriate) (the "**Notice**") to be published in The Globe and Mail (National Edition) and any other newspaper or journal as the Receiver considers appropriate, if any; and
3. the Receiver will prepare: (i) a process summary (the "**Teaser**") describing the opportunity, outlining the process under the SISP and inviting recipients of the Teaser to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (an "**NDA**").

The Receiver will publish the Notice and send the Teaser and NDA to all Known Potential Bidders beginning on October 21, 2022 and to any other party who requests a copy of the Teaser and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

INTERESTED PARTIES

Access to Confidential Data Room

Any party who wishes to participate in the SISP must provide to the Receiver, unless the Receiver advises otherwise, a NDA executed by the potential bidder and a letter setting forth the identity of the potential bidder, the contact information for such potential bidder and full disclosure of the direct and indirect principals of the potential bidder.

Upon receiving a NDA from a bidder, such bidder shall be deemed to be a "**Qualified Bidder**". For greater certainty, no bidder shall be deemed to be a Qualified Bidder without the approval of the Receiver.

At any time prior to the Bid Deadline, the Receiver may, in its reasonable business judgment eliminate a Qualified Bidder from the SISP, in which case such Qualified Bidder will no longer be a Qualified Bidder for the purposes of the SISP.

The Receiver will provide each Qualified Bidder with access to a confidential data room providing additional information considered relevant to the Potential Transaction (the "**Confidential Data Room**").

The Receiver and its respective advisors make no representation or warranty as to the information contained in the Confidential Data Room or otherwise made available pursuant to the SISP, except to the extent expressly

contemplated in any definitive agreement with a Successful Bidder ultimately executed and delivered by the Receiver.

Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any Transaction they enter into with the Receiver.

Due Diligence

The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property and Business as they deem appropriate. Due diligence access may include management presentations, access to electronic data, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver in its reasonable business judgment may agree.

The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from a Qualified Bidder and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property or Business to any person. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information.

FORMAL BINDING OFFERS

Qualified Bidders that wish to make a formal offer to purchase or make an investment in SolvAQUA, the Property and/or Business shall submit a binding offer (the "**Bid**") that complies with all of the following requirements to the Receiver at the addresses specified in Schedule "A" hereto (including by email or fax transmission). The Bids must be received by the Receiver by no later than 5:00 PM (Mountain Time) on November 23, 2022 (the "**Bid Deadline**"). A Bid may be an offer to acquire all, substantially all or a portion of the Property (a "**Sale Proposal**"), or to make an investment in, restructure, reorganize or refinance the Business (an "**Investment Proposal**"), or such other structure as the Bidder may propose. In order to constitute a "**Qualified Bid**", a Bid must comply with the following:

1. it provides for the payment in full in cash on closing of any Priority Payables and the Holdback Amount (each as defined in the Stalking Horse Agreement), unless otherwise agreed to by the applicable holders of such Priority Charge in their sole discretion;
2. it provides for the payment in full in cash on closing of the Vivakor Equipment Purchase Price (as defined in the Stalking Horse Agreement), provided that the Vivakor Equipment forms part of the purchased assets under the Bid and the Receiver advises that the Vivakor Equipment is not owned by SolvAQUA;
3. it provides a detailed 'sources and uses schedule' that identified, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value must be sufficient for payment in full

of the items contemplated in Sections 1 and 2 above and the Expense Reimbursement and Transaction Fee (as defined in the Stalking Horse Agreement);

4. in the case of a Sale Proposal, it identifies or contains the following:
 - a) the purchase price in Canadian dollars, including any requested allocation and details of any liabilities to be assumed by the Qualified Bidder;
 - b) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded; and
 - c) a specific indication of the financial capability of the Qualified Bidder and the expected structure and financing of the transaction;
5. in the case of an Investment Proposal, it identifies the following:
 - a) a description of how the Qualified Bidder proposes to structure the proposed investment;
 - b) the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars;
 - c) the underlying assumptions regarding the pro forma capital structure;
 - d) a specific indication of the sources of capital for the Qualified Bidder and the expected structure and financing of the transaction;
 - e) all conditions to closing that the Bidder may wish to impose; and
 - f) any other terms or conditions of the Investment Proposal that the Bidder believes are material to the transaction;
6. it includes a letter stating that the Qualified Bidder's offer is binding and irrevocable until the selection of the Successful Bid (as defined below), provided that if such Bid is selected as the Successful Bid, the Bid shall remain irrevocable until the closing of the Successful Bid;
7. it includes duly authorized and executed binding transaction document(s), which shall include the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
8. it includes a redline to the form of transaction document(s) provided by the Receiver, if applicable;
9. it includes written evidence of a Qualified Bidder's ability to fully fund and consummate the proposed transaction and satisfy its obligations under the transaction documents, including a binding, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a determination as to the Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
10. it does not include any request for or entitlement to any transaction fee, expense reimbursement or similar type of payment;
11. it is not conditional on:
 - a) approval from the Qualified Bidder's board of directors (or comparable governing body) or equity holder(s);

- b) the outcome of any further due diligence by the Qualified Bidder, apart from, if applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld during the due diligence process prior to the Bid Deadline; or
 - c) the Qualified Bidder obtaining financing;
12. it fully discloses the legal name and identity and contact information of each entity or person that will be entering into the proposed transaction, that is participating in, or benefiting from, such bid, including any equity holder(s);
13. it includes acknowledgments and representations from the Qualified Bidder that the Qualified Bidder:
- a) has had an opportunity to conduct any and all due diligence regarding the Property, and Business prior to making its offer (apart from, to the extent applicable, the disclosure of any due diligence materials representing proprietary or sensitive competitive information withheld during the due diligence process prior to the Bid Deadline);
 - b) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - c) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business or the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
14. it is accompanied by a non-refundable deposit paid by wire transfer in immediately available funds, which deposit shall be non-refundable upon the Qualified Bidder being selected as the Successful Bidder. The deposit amount shall not be less than:
- a. 10% of the Purchase Price offered for a Sales Proposal; and
 - b. 10% of the total new investment contemplated in the Bid for an Investment Proposal.
15. it includes a statement that the Qualified Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
16. it is received by the Bid Deadline;
17. it constitutes, in the reasonable business judgment of the Receiver, a Superior Offer; and
18. it contemplates closing the Transaction set out therein on or before December 14, 2022 (the "**Closing Date**").

The Receiver may (in its sole discretion) waive strict compliance with any one or more of the foregoing requirements and deem such non-compliant bids to be a Qualified Bid. For greater certainty, notwithstanding the requirements specified in Section 1 to 18 above, the Stalking Horse Agreement shall be deemed to be a Qualified Bid.

SELECTION OF SUCCESSFUL BIDDERS

Following the Bid Deadline, the Receiver will assess the Bids received. The Receiver shall approve the disqualification of any Bids that are deemed not to be Qualified Bids. Only Qualified Bidders whose Bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

The Receiver shall notify each Qualified Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days following the Bid Deadline, or at such later time as the Receiver deems appropriate.

If no Qualified Bids, other than the Stalking Horse Agreement have been received by the Bid Deadline, then the Receiver may consider an extension of the Bid Deadline for up to 7 business days to allow any party that submitted a Bid to consult with the Receiver and to revise their Bid such that it would provide for, or that might reasonably be expected to provide for, a Superior Offer.

Evaluation of Competing Bids

A Qualified Bid will be evaluated upon many factors, including, without limitation, items such as:

1. the Purchase Price and the net value provided by such Qualified Bid;
2. the identity, circumstances and ability of the Qualified Bidder to successfully complete their proposed transaction;
3. the proposed transaction documents;
4. factors affecting the speed, certainty and value of the proposed transaction;
5. the assets included or excluded from the Qualified Bid;
6. the likelihood and timing of consummating the proposed transaction; and
7. whether the proposed transaction results in a Superior Offer;

each as determined by the Receiver in its sole discretion.

Selection of Successful Bid

The Receiver shall:

1. first, review and evaluate each Qualified Bid, provided that the Receiver may contact any Qualified Bidder to clarify the terms of any Bid, and the applicable Qualified Bidder may amend, modify or vary such Bid for the purpose of clarification;
2. second, identify if any Qualified Bid is a Superior Offer; and
3. third, if one or more Qualified Bids (other than the Stalking Horse Agreement) are considered to be Superior Offers, the receiver shall proceed with an auction process to determine the successful bid(s) (the

"Auction"), which Auction shall be held on or before November 30, 2022 and shall be administered in accordance with the Auction Procedures set out in Schedule "B". The successful bid(s) selected in the Auction shall constitute the **"Successful Bid"**, and the Bidder making such Successful Bid, the **"Successful Bidder"**.

If no Superior Offer is received by the Bid Deadline, the Auction will not be held, the Stalking Horse Bidder will be declared to be the Successful Bidder and the Receiver shall proceed to apply for the Vesting Order. Upon the granting of the Vesting Order, all Qualified Bids other than the Stalking Horse Agreement, if any, shall be deemed rejected by the Receiver on and as of the date of the filing of the Vesting Order.

If the Successful Bidder is a Qualified Bidder other than the Stalking Horse Bidder, the Receiver shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the relevant milestones described under the "Timeline" section of this SISP and shall apply to the Court for an order or orders (among other things) approving such Successful Bid and implementing the transaction(s) contained in such Successful Bid. All Qualified Bids other than the Successful Bid, shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

DEPOSIT

All deposits shall be held by the Receiver in a single non-interest bearing account designated solely for such purpose. A deposit paid by a Successful Bidder shall be dealt with in accordance with these SISP Procedures and the definitive agreement(s) for the transactions contemplated by the Successful Bid. Deposits paid by Qualified Bidders not selected as the Successful Bidder shall be returned to such Qualified Bidder within five business days of Court approval of the Successful Bid.

AMENDMENTS

Any amendments to this SISP may only be made by the Receiver (acting reasonably), or by further order of the Court.

CONFIDENTIALITY AND ACCESS TO INFORMATION

All discussions regarding a proposed transaction, Sale Proposal, Investment Proposal, Bid or Successful Bid should be directed through the Receiver. Under no circumstances should the management of SolvAQUA or its customers be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP at the discretion of the Receiver.

Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bids, Qualified Bids, the details of any Bids or Qualified Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other Qualified Bidders in connection with the SISP, except to the extent that the Receiver, with the consent of the applicable participants, is seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Receiver share any material information concerning any of the Bids with any person, except as provided for in the Auction Procedure.

SUPERVISION OF THE SISP

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver and any Qualified Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver.

Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, the Successful Bidder, the Company or any other creditor or other stakeholder of the Company, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result of gross negligence or willful misconduct of the Receiver. By submitting a Bid, each Qualified Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver in respect of the SISP for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct by the Receiver.

Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Schedule "A"

Addresses of Receiver

To the Receiver

MNP Ltd.

1500, 640 5th Avenue SW

Calgary, AB T2P 3G4

Attention: Vanessa Allen

Email: vanessa.allen@mnp.ca

Schedule "B"

AUCTION PROCEDURES

1. Auction: If the Receiver receives at least one Qualified Bid (other than the Stalking Horse Agreement), the Receiver will conduct and administer the Auction on or before November 30, 2022 at 10:00 a.m. (Mountain Time) via video conference, in accordance with the terms of the SISP.
2. Participation: Not less than 48 hours prior to the Auction, the Receiver will:
 - a. advise those Qualified Bidders that provided a Qualified Bid by the Bid Deadline, including the Stalking Horse Bidder (collectively, the "**Qualified Parties**") that their Qualified Bid will be advanced to the Auction and they shall be eligible to participate in the Auction; and
 - b. provide the Qualified Parties with instructions to participate in the Auction.

Each Qualified Party must inform the Receiver no later than 24 hours prior to the Auction whether it intends to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Agreement shall be the Successful Bid.

3. Starting Bid. Not less than 24 hours prior to the Auction, the Receiver will advise the Qualified Parties which of the Qualified Bids the Receiver has determined in its reasonable business judgment, after consultation with its advisors, constitutes the then highest or otherwise best Bid (the "**Starting Bid**").
4. Auction Procedures: The Auction shall be governed by the following procedures:
 - a. Attendance. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Receiver and each Qualified Party shall be eligible to attend the Auction and only the authorized representative of each Qualified Party shall be eligible to make any Subsequent Bids (as defined below) at the Auction. All Qualified Parties participating in the Auction must have at least one individual representative with authority to bind the Qualified Parties present at the Auction.
 - b. Recording. The Auction shall be recorded by the Receiver for their exclusive use and shall not be recorded by any other party.
 - c. Bidding Disclosure. At the Auction, all Qualified Parties shall be permitted to increase their Qualified Bids in accordance with the procedures set forth herein (each, a "**Subsequent Bid**"). All Subsequent Bids presented during the Auction shall be made and received via video conference on an open basis. All participating Qualified Parties shall be entitled to be present for all bidding with the understanding that the true identity of each participating Qualified Party shall be fully disclosed to all other Qualified Parties and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Qualified Parties throughout the entire Auction.
 - d. Bidding Commencement. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Qualified Party that (i) improves upon the Starting Bid or such Qualified Party's immediately prior Subsequent Bid, as the case may be, (ii) proceeds in a minimum additional cash

- increment of \$50,000, and (iii) the Receiver determines, in its reasonable business judgment, after consultation with its advisors, such Subsequent Bid is a higher or otherwise better offer than the then current leading Starting Bid or Subsequent Bid.
- e. Evaluation of Subsequent Bids. For the purpose of evaluating the value of the consideration provided by each Subsequent Bid presented at the Auction, the value will: (i) be deemed to be the net consideration payable to the Receiver after considering, *inter alia*, any Expense Reimbursement and Transaction Fee due to the Stalking Horse Bidder under the Stalking Horse Agreement; and (ii) take into account any additional liabilities to be assumed by the Qualified Bidder.
 - f. Bidding Rounds. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the Subsequent Bid that the Receiver has determined in its reasonable business judgment, after consultation with its advisors, to be the then highest or best bid (the "**Leading Bid**"). A round of bidding will conclude after each participating Qualified Party has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
 - g. Bidding Conclusion. The Auction shall continue in one of more rounds and will conclude 30 minutes after each participating Qualified Party has had the opportunity to submit one or more Subsequent Bids with full knowledge of the Leading Bid but where no Qualified Party chooses to submit a Subsequent Bid or where any Subsequent Bid submitted is deemed not to be superior to the Leading Bid as determined by the Receiver acting in its sole discretion.
 - h. No Post-Auction Bids. No bids will be considered for any purpose after the Auction has concluded.
5. Selection of Successful Bid. Before the conclusion of the Auction, the Receiver will:
- a. review each Subsequent Bid considering those factors set out in the SISF, 4(e) of these Auction Procedures and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in subsection (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by December 21, 2022 (including factors such as the transaction structure and execution risk), (iv) the likelihood of the Court's approval of the Successful Bid, (v) the net benefit to the receivership estate, and (vi) any other factors the Receiver may reasonably deem relevant; and
 - b. identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**"), whereupon the Auction will be concluded.
6. Definitive Agreement. The Successful Party shall complete and execute binding agreements, contracts, instruments or other documents (collectively, the "**Definitive Agreements**") evidencing and containing the terms and conditions upon which the Successful Bid was made within one (1) business day of the Successful Bid being selected as such, unless extended by the Receiver in its sole discretion. The Definitive

Agreements shall be on substantially the same terms as the Successful Party's Qualified Bid, as modified by the terms of the Successful Bid.

7. Additional Rules. At the Auction, the Receiver, after consultation with its advisors, may employ and announce additional procedural rules that are fair and reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; provided, however, that such rules are (a) not inconsistent with the Auction Procedures, the *Bankruptcy and Insolvency Act (Canada)*, any order of the Courts entered in connection with the Auction Procedures, and (b) disclosed to each Qualified Party at the Auction.

**Schedule 1.1(jjj)
Form of SISP Order**

Clerk's Stamp:

COURT FILE NUMBER 2201-09319
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **ARNAKI LTD.**
DEFENDANT **SOLVAQUA INC.**
DOCUMENT **ORDER APPROVING SALE & INVESTOR SOLICITATION PROCESS AND STALKING HORSE BID**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Bankers Hall West
3810, 888 3rd St SW
Calgary, AB T2P 5C5

P: 403 351 2920
E: joliver@cassels.com / dmarechal@cassels.com

Attention: Jeffrey Oliver / Danielle Marechal

File No: 49076-20

DATE ON WHICH ORDER WAS PRONOUNCED: October 20, 2022
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, AB (via WebEx)
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice B.B. Johnston

UPON THE APPLICATION of MNP Ltd. ("**MNP**") in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of the current and future undertakings, property and assets of SolvaQUA Inc. (the "**Debtor**") for an order approving, among other things: (i) the Receiver's proposed sale and investor solicitation process (the "**SISP**"); and (ii) approving the stalking horse agreement between the Receiver and 2464525 Alberta Ltd. (the "**Stalking Horse Purchaser**") and the Receiver (the "**Stalking Horse Agreement**"), attached as Schedule 2 to the First Report of the Receiver dated October 11, 2022 (the "**First Report**");

AND UPON HAVING READ the order of the Honourable Justice R.A. Neufeld pronounced August 19, 2022, appointing MNP as Receiver (the "**Receivership Order**"), the First Report and the Affidavit of Service;

AND UPON HEARING the submissions of counsel to the Receiver, counsel to Arnaki Ltd. and the Stalking Horse Purchaser and any other interest parties in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. All capitalized terms not otherwise defined in this order (the "**Order**") shall have the meaning ascribed to them in the SISP attached as Schedule 1.1(iii) to the Stalking Horse Agreement attached as Schedule "A" hereto.

SERVICE

2. Service of notice of this application (the "**Application**") and materials in support of this Order is hereby declared to be good and sufficient, no other person is required to have been served with notice of the Application and time for service of the Application is abridged to that actually given.

APPROVAL OF RECEIVER'S ACTIVITIES

3. The Receiver's actions, conduct and activities, as reported in the First Report, are commercially reasonable and are approved.

APPROVAL OF THE STALKING HORSE AGREEMENT

4. The Stalking Horse Agreement, substantially in the form attached as Schedule "A" hereto, is hereby approved and execution of the Stalking Horse Agreement by the Receiver is hereby authorized and approved, and the Receiver is authorized and directed to take such additional steps and execute such additional documents and make such minor amendments to the Stalking Horse Agreement as may be necessary or desirable for the completion of the terms of the Stalking Horse Agreement, in all cases subject to the terms of this Order.
5. The Expense Reimbursement and Transaction Fee (as defined in the Stalking Horse Agreement) is hereby approved and the Receiver is authorized and directed to pay the Expense Reimbursement and Transaction Fee in the manner and circumstances described in the Stalking Horse Agreement and the SISP, as applicable.

APPROVAL OF THE SALE AND INVESTOR SOLICITATION PROCESS

6. The SISP is commercially reasonable and is hereby ratified and approved. The Receiver is authorized and directed to implement the SISP and do all things as are reasonably necessary to conduct and give effect to the SISP, and to take such additional steps and execute such additional documents, and make such minor amendments to the SISP as may be necessary or desirable and

not prejudicial to any stakeholder, for the completion of the terms of the SISP. Further, the Receiver is authorized to enter into any resulting agreement(s) or transaction(s), which may arise in connection with the SISP, as the Receiver determines is necessary or advisable.

7. Nothing herein shall act as authorization or approval of the transfer or vesting of any or all of the Debtor's property, assets or undertakings under any sale agreement, or otherwise. Such transfer and vesting shall be dealt with if and when a Successful Bid is selected and shall be subject to further order of this Honourable Court.
8. The Receiver is authorized to apply to this Honourable Court:
 - (a) to amend, vary or seek any advice, assistance or direction with respect to the SISP and Stalking Horse Agreement, as may be necessary in order to give full effect to the terms of this Order or as otherwise desirable in the Receiver's discretion; and
 - (b) for an order vesting title to the purchased assets in favour of the Successful Bidder in accordance with, and as defined in, the SISP.
9. The Receiver and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the SISP.
10. In connection with the SISP and pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver is authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"), in keeping with the SISP. Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of any Property, as defined in the SISP, 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 other personal information is destroyed.

FOREIGN RECOGNITION

11. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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 order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SERVICE

12. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on the persons listed on the service list created for this proceeding, as amended; and
 - (b) posting a copy of this Order on the Receiver's website at:
<https://mnpdebt.ca/en/corporate/corporate-engagements/SolvAQUA-inc>
- and service on any other person is hereby dispensed with.
13. 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.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

Stalking Horse Agreement

SCHEDULE 2

AMENDING AGREEMENT – ASSET PURCHASE AGREEMENT

THIS AGREEMENT made as of the 19th day of June, 2023 (the “**Amendment**”).

BETWEEN:

MNP LTD. (“MNP”) in its capacity as receiver and manager (in such capacity, the “Receiver” or the “Seller”) of the assets, undertakings and properties of SOLVAQUA INC. (“SolvAqua” or the “Debtor”) and not in its corporate or personal capacity
- and -

2464525 ALBERTA LTD.
(“Buyer” and together with the Receiver, the “Parties” and each a “Party”)

RECITALS:

- A. Pursuant to the order of the Honourable Justice Neufeld of the Alberta Court of King’s Bench (the “**Court**”), pronounced August 19, 2022 (the “**Receivership Order**”) in Court File No. 2201- 09319 (the “**Receivership Proceedings**”), MNP was appointed as the receiver and manager of all of the assets, undertakings and properties of the Debtor (the “**Property**”).
- B. On October 17, 2022, the Parties entered into an Asset Purchase Agreement (the “**APA**”) pursuant to which the Buyer agreed to purchase substantially all of the assets of the Debtor, other than the Excluded Assets (as defined in the APA) and to act as a stalking horse purchaser in the sale and investment solicitation process (“**SISP**”).
- C. Pursuant to the order of the Court pronounced on October 20, 2022 (the “**SISP Order**”) in the Receivership Proceedings, the APA was approved and the execution of the APA by the Receiver was authorized and approved.
- D. The SISP has been completed and no Superior Offer (as defined in the SISP attached as Schedule 1.1(iii) to the APA) were received by the Receiver.
- E. The Parties desire to amend the APA to remove certain assets and adjust the purchase price and the Closing Date accordingly.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the APA.
- 2. Amendments to APA. As of the Effective Date, the APA is hereby amended as follows:
 - (a) Section 1.1(n) of the APA is hereby deleted in its entirety and replaced by the following:

“Cash Component” means an amount to be determined by the Parties, acting reasonably, provided that such amount is equal to or greater than the sum of the Priority Payables and the Holdback Amount.
 - (b) Section 1.1(q) of the APA is hereby deleted in its entirety and replaced by the following:

“Closing Date” means July 31, 2023, or such other date as the Parties may agree, acting reasonably;

(c) Section 1.1(dd) of the APA is hereby deleted in its entirety.

(d) Section 1.1(ee) of the APA is hereby deleted in its entirety and replaced by the following:

“Excluded Assets” means the Purchase Price and the Excluded Equipment.

(e) Section 1.1(ss) of the APA is hereby deleted in its entirety and replaced by the following:

“Permitted Encumbrances” means those permitted encumbrances (if any) provided for in the Vesting Order, including without limitation any Encumbrance held by Rotating Right (2016) Inc. in and to the Vivakor Equipment;

(f) Section 1.1(kkk) of the APA is hereby deleted in its entirety and replaced by the following:

“SolvAQUA Claims” means any and all claims, demands, and causes of action of the Debtor of any kind whatsoever as against any party, including but not limited to any claims related to alleged breaches under various contracts between SolvAQUA and each of Vivaventures Inc. and Clear Capital Partners as well as any corresponding insurance claims related to coverage provided by Export Development Canada in relation to these contracts;

(g) Section 1.1(sss) of the APA is hereby deleted in its entirety.

(h) Section 1.1 of the APA is hereby amended by inserting the following new definition in the appropriate alphabetical order:

“Excluded Equipment” means the equipment held at the premises of Rotating Right (2016) Inc. located at 101, 3903 75 Avenue in Leduc, Alberta, outside of the Vivakor Equipment, described below:

SolvAQUA Inc. - in Receivership Equipment Summary			
State	Quantity	Container #	Serial No.
Completed	1	FXLU 7406810 25G1	J-888011-A
Completed	1	FXLU 7406889 25G1	J-888011-A
Partial	1	MRCU 7090084 25G1	888015
Partial	1	MRCU 7090058 25G1	888016
Partial	1	MRCU 7090016 25G1	888017
Demo	1	Not applicable	Not available
Demo - partial	3	Not applicable	888022/23/24

(i) Section 2.1(a) of the APA is hereby deleted in its entirety and replaced by the following:

(a) Upon and subject to the terms and conditions of this Agreement at Closing and effective as of the Closing Time the Seller shall sell to the Buyer, and the Buyer shall purchase from the Seller, free and clear of all Encumbrances other than the Permitted Encumbrances, the Purchased Assets.

- (j) Section 3.1(b) of the APA is hereby deleted in its entirety and replaced by the following:
- (b) the balance of the Purchase Price, equal to the amount of one million dollars (\$1,000,000) to be paid by way of set off against (as a non-cash credit reduction of) the Indebtedness (the “**Credit Bid Component**”).
- (k) Section 3.3(b) of the APA is hereby deleted in its entirety and replaced by the following:
- (b) delivering an acknowledgement signed by the Buyer and Arnaki that the Indebtedness has been reduced by the amount of one million dollars (\$1,000,000) in consideration of the balance of the Purchase Price.
- (l) Section 6.1(d) of the APA is hereby deleted in its entirety and replaced by the following:
- (d) the Vesting Order shall have been issued and entered on or before July 31, 2023, or on or before such later date as the Parties agree to in writing, shall approve and authorize the Receiver to enter into this Agreement and any amendments thereto, and shall be Final.
- (m) Section 6.1 of the APA is hereby amended through the addition of subsection (e) as follows:
- (e) The Court of King’s Bench of Alberta shall determine that:
- (i) EDC has no ownership or equitable interest in the Purchased Assets;
and
- (ii) any security interest of EDC in the Purchased Assets (if at all) is subordinate to the security interest of Arnaki.
- (n) Section 6.2(e) of the APA is hereby deleted in its entirety and replaced by the following:
- (e) the Purchased Assets shall be assigned and transferred to the Buyer free and clear of all Encumbrances other than the Permitted Encumbrances, in accordance with the Vesting Order;
- (o) Section 6.3(g) of the APA is hereby deleted in its entirety and replaced by the following:
- (g) the Buyer shall have obtained an acknowledgment from Arnaki confirming that the Indebtedness has been reduced by the amount of one million dollars (\$1,000,000) in consideration of the balance of the Purchase Price; and
- (p) Section 6.3(h) of the APA is hereby deleted in its entirety and replaced by the following:
- (h) the Buyer shall have delivered and released to the Seller the acknowledgment required under Section 3.3(b) confirming that the Indebtedness has been reduced by the amount of one million dollars (\$1,000,000) in consideration of the balance of the Purchase Price.
- (q) Item (a) of Schedule 1.1(xx) of the APA is hereby deleted in its entirety and replaced by the following:
- (a) the Vivakor Equipment;

- (r) Item (f) of Schedule 1.1(xx) of the APA is hereby deleted in its entirety and replaced by the following:

(f) all equipment and other tangibles assets of the Debtor other than the Excluded Equipment, including all water treatment equipment, vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvement, in each case, with any transferable warranty and service rights of the Debtor related thereto;

3. Date of Effectiveness.

This Amendment will be deemed effective as of July 13, 2023 (the "**Effective Date**"). Except as expressly provided in this Amendment, all of the terms and provisions of the APA are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the APA or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the APA to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import will mean and be a reference to the APA as amended by this Amendment.

4. Governing Law. This Amendment and all matters arising out of or relating to this Amendment are governed by and construed in accordance with the laws of Province of Alberta and any federal laws of Canada applicable therein.

5. Choice of Forum. Any action or proceeding arising out of this Amendment shall be instituted in the courts of the Province of Alberta, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding.

6. No Assignment. This Amendment and the rights and obligations created by this Amendment may not be assigned by either Party (except by operation of law in the case of merger, consolidation, amalgamation, dissolution, winding up or similar proceeding) without the prior written consent of the other Party, acting reasonably.

7. No Waiver. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

8. Entire Agreement. This Amendment constitutes the sole and entire agreement between the Parties with respect to changes to the Purchased Assets and the Purchase Price and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter. No provision of this Amendment may be amended, modified, waived or changed unless made in writing and signed by the Parties.

9. Illegality. If any term of this Amendment shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining terms hereof shall remain in full force and effect.


10. Counterparts. This Amendment may be executed, including by electronic means, in any number of counterparts, each of which is deemed an original, including any electronic transmission of an executed signature page, and all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF this Amendment has been executed by each of the Parties as of the date first written above.

**MNP LTD. IN ITS CAPACITY AS RECEIVER AND
MANAGER OF THE ASSETS, UNDERTAKINGS
AND PROPERTIES OF SOLVAQUA INC., AND
NOT IN ITS PERSONAL OR CORPORATE
CAPACITY**

By: _____
Name:
Title:

2464525 ALBERTA LTD.

By  _____
Name: Scott Reeves
Title: Director

SCHEDULE 3

Issued: November 26, 2020

Effective Date: November 1, 2020

This Policy is issued in Canada by **EXPORT DEVELOPMENT CANADA** (the “Insurer”, “we”, “us” and “our”) and is delivered to the Main Insured identified below (“you” and “your”), together, the “Parties”. This Coverage Certificate forms part of the Export Receivables Policy number **SE102960** and, as of its effective date, it replaces any previous Coverage Certificate.

Any capitalized terms (other than section headings) not specified in the Coverage Certificate are defined in the General Terms and Conditions of the Policy.

INSUREDS

Main Insured	SOLVAQUA INC. 1050-444 5 AVE SW CALGARY, AB, T2P 2T8 CANADA
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COVERAGE

Policy Period	From May 1, 2020 to April 30, 2021 If the Policy is cancelled earlier, the Policy Period will end on the day before the date of cancellation.
Annual Period	From May 1 to April 30 of each year of the Policy Period If the Policy is cancelled prior to April 30, the Annual Period will end on the day before the date of cancellation.
Insured Events	Bankruptcy Default (non-payment) Repudiation (refusal to accept Goods) Currency Conversion & Transfer Export Restrictions Import Restrictions War & Related Disturbances
Insured Percentage	90 %
Maximum Liability	Overall Maximum Liability: USD 2,000,000 for each Annual Period
Policy Currency	USD
Coverage Description	You are covered for Goods Shipped during the Policy Period under Contracts with Buyers located in countries set out in the Country Table below.
Deductible	USD 0

COVERAGE LIMITATIONS AND SPECIFICATIONS

Exclusions	Coverage under the Policy is subject to certain important exclusions, as set out in your Policy documentation.
Disputes	A Loss is not eligible for a claim payment under the Policy while there is a dispute between you and the Buyer. See Section 3 of the Policy General Terms and Conditions.
Goods Shipped when Buyer in Default	We are not liable for the payment of a claim for a Loss if, when the Goods were Shipped, the Buyer was in default of its payment obligations to you for more than 60 days.

PREMIUM AND DECLARATION OF SALES

For each Annual Period, you must pay the Minimum Annual Premium and any additional premium, as set out below, plus any applicable tax. The Minimum Annual Premium is calculated according to the following formula:

$$\text{Minimum Annual Premium} = \text{Anticipated Annual Insured Sales} \times \text{Premium Rate} \times 80 \%$$

The Premium Amount per Premium Period is payable, as invoiced, at the beginning of each Premium Period.

You must declare to us the total Actual Insured Sales for each Declaration Period no later than 20 days after the end of the Declaration Period. You do not have to declare Excluded Contracts.

“Actual Insured Sales” means the Invoice Value of all Goods Shipped during the Declaration Period pursuant to all Contracts with Buyers located in each of the countries listed in the Country Table below.

If the Actual Insured Sales for the Annual Period are less than 80 % of the Anticipated Annual Insured Sales, the Minimum Annual Premium remains unchanged.

If the Actual Insured Sales for the Annual Period are more than 80 % of the Anticipated Annual Insured Sales, you must also pay additional premium following the end of each Annual Period, as invoiced. The amount of the additional premium is calculated using the following formula:

$$\text{Additional Premium} = (\text{Actual Insured Sales} - (\text{Anticipated Annual Insured Sales} \times 80 \%)) \times \text{Premium Rate}$$

Minimum Annual Premium	USD 49,920
Anticipated Annual Insured Sales	USD 16,000,000
Premium Rate	0.390 %
Premium Amount per Premium Period	USD 12,480
Premium Period	Quarterly
Declaration Period	Annually

CLAIMS AND OVERDUES

Reporting Overdue Accounts	You must immediately notify us when a Buyer has been in default under Contracts for more than 60 days for an aggregate amount payable greater than or equal to \$ 100,000. “\$” means the Contract Currency if the Contract Currency is USD or CAD and if the Contract Currency is not USD or CAD, “\$” means the Policy Currency.
Waiting Period	120 days For Bankruptcy, there is no Waiting Period. For Repudiation, the Waiting Period is the period it takes you to resell or otherwise dispose of the Goods, with our approval.
Latest Date to Submit a Claim	150 days from the date of Loss

RECOVERIES

When we pay a claim, all amounts payable to you by the Buyer that are recovered or realized (other than from a taxation authority as a refund of sales tax) will be allocated as follows:

- first, to reimburse external recovery expenses paid or approved by us;
- second, to you and us in the same proportions in which the Loss Amount was shared between both Parties, until the aggregate of those amounts equals the Loss Amount;
- third, to default interest, these amounts to be allocated between you and us in the proportions earned; and
- last, to your account.

CREDIT LIMITS

For coverage to apply to sales to a Buyer, you must establish a Credit Limit for the Buyer.

Credit Approvals and Fees

A Credit Limit can be established by obtaining a Credit Approval from us. The Credit Approval may stipulate specific conditions that apply to, or restrict coverage for, that Buyer.

You must pay a Credit Approval fee equal to USD 7 multiplied by the number of Credit Approvals in effect on the last day of each quarter. The Credit Approval fees are payable, as invoiced, at the end of each quarter.

COUNTRY TABLE

Countries	Payment Terms
BRAZIL	91 to 180 days
UNITED STATES	Up to 90 days
UNITED STATES	91 to 180 days

PORTFOLIO CREDIT INSURANCE

EXPORT RECEIVABLES POLICY GENERAL TERMS AND CONDITIONS

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GENERAL TERMS AND CONDITIONS

These General Terms and Conditions, together with the Coverage Certificate and your Credit Approvals, determine your insurance coverage. They are legal documents so please read them carefully.

The Policy is issued and delivered to the Main Insured (“you” or “your”) by the Insurer (“we”, “us” or “our”), each a “Party”, and together the “Parties”, to this Policy. The Main Insured and the Insurer are identified in the Coverage Certificate.

Capitalized terms not defined in these General Terms and Conditions are set out in the Coverage Certificate.

COVERAGE

1. We insure you against the risk of non-payment of an undisputed amount payable by a Buyer under a Contract for Goods Shipped during the Policy Period, which non-payment causes you to sustain a loss (“Loss”). The Loss must be a direct result of the occurrence of an Insured Event to be eligible for coverage. This coverage is provided in consideration of your undertaking to pay all required premium and fees when due and is subject to all the terms and conditions of the Policy.
2. The only Insured Events covered by the Policy are those specified in the Coverage Certificate. Insured Events are also individually defined in Section 43 even though some may not be applicable to you.
3. If there is a dispute between you and the Buyer with regard to any matter which brings into question the amount owing (or whether there is any amount owing) to you by the Buyer, including disputes arising out of other sales contracts, shipments or commercial arrangements, covered or not under this Policy, we have no liability with respect to the claim or the Loss until the dispute is finally settled or resolved, by negotiation or otherwise and the amount of the Loss is clearly established. Once the dispute is finally settled or resolved, the Loss Amount will be calculated in accordance with Sections 20 and 21, as applicable, if the Loss is covered.
4. We agree to pay the Insured Percentage of the Loss Amount in connection with a Loss, subject to the terms and conditions of the Policy.

CREDIT LIMITS AND MAXIMUM LIABILITY

5. For coverage to apply to sales to a Buyer, the country in which the Buyer is located must be listed in the Coverage Certificate and you must establish a Credit Limit for the Buyer by following the procedures specified in the “Credit Limits” section of the Coverage Certificate.
6. (1) We may, at any time, by giving notice to you:
 - (a) change or cancel a Credit Approval or your Discretionary Credit Limit (if a Discretionary Credit Limit is set out in the Coverage Certificate);
 - (b) exclude a Buyer or a country; and
 - (c) change the conditions of coverage applicable to any Buyer or country.

Any of these changes, cancellations or exclusions apply only to Goods Shipped after you receive our notice. A Loss relating to Goods Shipped after you receive our notice of cancellation or exclusion is excluded from coverage. If the notice is a notice of change, a Loss for Goods Shipped after you receive the notice is subject to the changes set out in the notice.
- (2) If you request a Credit Approval for a Buyer in a country that is not in the Country Table of the Coverage Certificate, or for payment terms that are not in the Country Table of the Coverage Certificate, your Credit Approval request will be deemed to be a request to add the country or payment terms to the Coverage Certificate whether or not we agree to issue the Credit Approval. You will then have to declare all your sales in that country or with those payment terms, as the case may be, if the Policy requires you to declare your sales to us. Refer to the “Premium and Declaration of Sales” section of the Coverage Certificate.
7. Credit Approvals may be issued on the basis of the information you gave us. If that information is untrue, incomplete or incorrect, the Credit Approval will be void as if it had never been issued.

8. Regardless of the total amount of all Credit Limits, our maximum liability for all Losses in respect of Goods Shipped during each Annual Period is limited to the Overall Maximum Liability amount specified in the Coverage Certificate. Separate maximum liabilities applicable only to certain categories of Losses may also apply.

ADDITIONAL INSUREDS

9. (1) If there is an Additional Insured section in the Coverage Certificate, the terms and conditions of coverage that apply to you also apply to any Additional Insured specifically identified in that section.
- (2) We may cancel the coverage for any Additional Insured on 60 days' prior notice to you. We will not be liable for the payment of a claim for any Goods Shipped by the Additional Insured after the end of the notice period. Also, the Additional Insured continues to be bound by all of its respective Policy duties and obligations, including those relating to claims paid prior to the cancellation or that may be paid after the cancellation.
- (3) For each Additional Insured, the Main Insured must:
- (a) be the authorized agent for the Additional Insured to deal with us on its behalf in all matters relating to the Policy (for example: requesting Credit Limits, providing us with authorizations or releases of liability, filing claims, and receiving claim payments);
 - (b) be the only party communicating with us on behalf of the Additional Insured with respect to the Policy; and
 - (c) notify us immediately if the Main Insured stops acting as agent for the Additional Insured. Once we receive this advice, we may cancel coverage under the Policy for the Additional Insured with 60 days' notice.
- (4) In addition, for Additional Insureds located outside of Canada:
- (a) premium paid in respect of the Additional Insured's covered sales is exclusive of any tax (for example a tax on premium) which may be payable by the Additional Insured in the Additional Insured's country; and
 - (b) the Main Insured must notify us immediately if there is any material change to the information provided to us relating to the Additional Insured, including, a change in the ownership or location of the Additional Insured or in the sales of the Additional Insured.

DOCUMENTATION RISK

10. Although we may have received or commented on a Contract or any other documentation, you solely are responsible for ensuring the effectiveness of all documentation and ensuring the existence of a legally valid, binding and enforceable payment obligation by the Buyer and any applicable guarantor or other relevant party.

EXCLUSIONS

11. We are not liable for the payment of a claim for a Loss if:
- (1) at any time, you made any misrepresentation, or failed to disclose any information, that is material to our rights, liabilities or obligations under the Policy;
 - (2) you agreed with the Buyer to change the payment terms under the Contract;
 - (3) you do not have sole right, title and interest to the receivable (for example, you have factored or sold your receivable without entering into a Tripartite Agreement) or your rights and interests under the Contract are not free and clear of any third party claims or encumbrances;
 - (4) you or your agent caused the Loss or breached the Contract (for example by failing to perform under the Contract) or could have avoided the Loss by acting in a commercially reasonable manner;
 - (5) the Buyer failed to pay the down payment in accordance with the terms of the Contract, if the Contract provides for a down payment;

- (6) when the Goods were Shipped, the Buyer was in default of its payment obligations to you for a period longer than the period specified in the “Goods Shipped when Buyer in Default” section of the Coverage Certificate;
- (7) you or your agent, an Affiliate or an agent of an Affiliate have engaged in or knowingly been party to any action, in relation to the Contract, that is prohibited by Canada’s *Corruption of Foreign Public Officials Act* or by the criminal laws dealing with the bribery of public officials that are applicable in a country in which the agent or Affiliate is located. If however, the claim is payable to a third party pursuant to a Direction to Pay or Tripartite Agreement, we will make the claim payment to that third party, provided that the third party is not a Related Entity. In those cases, you must pay us on demand the amount of the claim payment plus interest at the Bank of Canada’s prime business rate determined on the date of our demand plus 2% per annum, calculated from the date the claim was paid to the date of demand. Additional interest may apply to any late payment as per Section 29;
- (8) when the Goods were Shipped, you or the Buyer did not have all permits, certificates, licenses or other approvals required to perform the Contract;
- (9) you are entitled to be indemnified for the Loss under any other insurance policy or other similar risk transfer agreement;
- (10) the Loss is directly or indirectly caused by, or contributed to by, or arises from:
 - (a) ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
 - (c) any weapon or war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- (11) regardless of the War and Related Disturbances Insured Event, the Loss is directly or indirectly caused by, or contributed to by, or arises from the occurrence of war (whether before or after the outbreak of hostilities) between any of the following five powers: The People’s Republic of China, France, the United Kingdom, the Russian Federation, and the United States of America.

YOUR DUTIES AND OBLIGATIONS

12. You must:

- (1) pay premium and Credit Approval fees, as specified in the Coverage Certificate, when due;
- (2) declare your sales as specified in the Coverage Certificate, if required by the terms of the Coverage Certificate;
- (3) notify us immediately of any event or circumstance of which you are aware that could cause a Loss, including any deterioration of the financial condition of the Buyer;
- (4) immediately notify us when a Buyer has been in default under Contracts (see the “Claims and Overdues” section of the Coverage Certificate for details);
- (5) take all reasonable steps, before and after the filing of a claim application, to prevent and minimize a Loss or potential Loss as though the Contract were not insured, including:
 - (a) follow reasonable commercial practices for collecting and monitoring overdue accounts;
 - (b) file a proof of claim in the bankruptcy of the Buyer if the Buyer enters bankruptcy;
 - (c) stop shipping to the Buyer when you become aware that the risk of non-payment is occurring or is likely to occur; and
 - (d) take any steps requested by us, which may include us asking you to stop shipping; and

- (6) comply with Sanctions legislation, immediately notify us of a Contract that becomes prohibited by Sanctions and discontinue all activities under the Contract if you have control over the discontinuation of the activity, and, in consultation and collaboration with us, seek the permits, certificates or other approvals that may be required or desirable when we request you to do so.

CLAIMS PROCESS

13. (1) When making a claim application, you must establish:
 - (a) that an Insured Event and a Loss have occurred;
 - (b) that the Loss is covered; and
 - (c) the Loss Amount.
- (2) If the Loss arises from business transacted by your agent, by an Additional Insured or an Affiliate, or their agent, you must have them sign, and you must remit to us, a form (provided by us) in which they make a declaration to the effect that they have not engaged in activities prohibited by criminal laws dealing with corruption or the bribery of foreign public officials in relation to the Contract in question.
14. We are not liable to pay a claim if you do not file your claim application prior to the 'Latest Date to Submit a Claim' which is specified in the Coverage Certificate.
15. We are entitled to investigate all aspects of each claim. You must assist us with the investigation and provide us with any Information that we reasonably request, including a copy of the Contract, documents evidencing the debt and the shipment and any Information required to determine whether any of the exclusions specified in the Policy apply to the claim. You must also keep in your possession all documents that support the claim for a period of 5 years and be ready to produce them to us upon request.
16. We have no obligation to assess a claim application until the Insured Event has occurred.
17. We will advise you of our decision on your claim application within 30 days of receipt of a complete claim application and all additional Information we may reasonably request.
18. If we pay a claim and later discover that you had no right to any part of the claim payment, we may demand repayment of the amount to which you were not entitled. If we discover that you did not comply with any of your recovery obligations under the Policy, we may demand repayment of the entire claim payment. You must pay the amount to be repaid, upon demand, plus interest at the Bank of Canada's prime business rate determined on the day of our demand plus 2% per annum, calculated from the date the claim was paid to the date of demand by us. Additional interest may apply to any late payment as per Section 29.
19. We reserve all our rights under the Policy. No action or failure to act on our part will constitute a waiver of our rights under the Policy (for example: investigating a claim or overdue payment, preventing or minimizing a Loss, or negotiating with a Buyer or any third party).

CALCULATION OF LOSS AMOUNT

20. The amount of a Loss is calculated in the Contract Currency, and is the lesser of:
 - (1) the Invoice Value of the Goods Shipped,
plus
any additional insurance, freight or other handling costs that you incurred as a result of any interruption or diversion of delivery directly caused by the occurrence of the Insured Event which resulted in the Loss (including demurrage costs caused by the Buyer's action or inaction, but excluding all other demurrage costs),
less:
 - (a) any amount which you have agreed the Buyer is entitled to take into account by way of payment, credit, set-off or counterclaim;
 - (b) all amounts received or recovered by you or on your behalf with respect to the Goods that are the subject of the Loss or realized through any security or guarantee in respect of the Goods;

- (c) all amounts received through the resale or disposal of the Goods; and
- (d) all costs included in the Invoice Value which, because of the occurrence of the Insured Event, you did not actually incur;

and

- (2) the Credit Limit for the Buyer less the amount of any previous claim payments made for the same Buyer (which have not been recovered).

The amount that is the result of the calculation above is referred to as the “Loss Amount”.

- 21. In case of a dispute between you and the Buyer as referenced in Section 3, the Loss Amount will not be calculated until the dispute is finally settled or resolved. If there is a settlement with the Buyer or a final ruling by a court or arbitrator resolving the dispute, that portion of the agreed settlement amount or the amount awarded to you in the ruling, that relates to the Loss, will be used to calculate the Loss Amount in Section 20 above, instead of the Invoice Value of the Goods Shipped, and any deductions listed in Section 20(1) already taken into account in the award or settlement amount will not apply.
- 22. If there is a Non-Qualifying Loss section in the Coverage Certificate, we are not liable for the payment of a claim for a Loss when the Loss Amount is equal to or less than the Non-Qualifying Loss amount.

DEDUCTIBLE

- 23. (1) The total Loss Amount of all Losses you sustain for Goods Shipped during an Annual Period must reach the amount of the Deductible specified in the Coverage Certificate before we are required to pay any claim for Goods Shipped during that Annual Period. A Loss must be eligible for a claim payment under the Policy to be allocated to the Deductible. Each Loss Amount calculated for Goods Shipped during an Annual Period is reduced by the amount of the Deductible remaining for that Annual Period. The amount of the Deductible is specified in the Coverage Certificate.
- (2) Deductibles apply to each Annual Period, which means that if Goods are Shipped over multiple Annual Periods, a separate Deductible (as applicable) will apply for each Annual Period, based on when the Goods were Shipped.

CLAIM PAYMENTS AND CURRENCY CONVERSIONS

- 24. Claims are paid in the Contract Currency if we offer the option of making the claim payment in that currency; otherwise claims are paid in the Policy Currency. The list of currencies available for claim payments can be obtained from us upon request and we may change it from time to time without any prior notice.
- 25. When necessary, currencies are converted to the Policy Currency at the exchange rate applicable on the Business Day immediately before the date you submit your claim (for example: to calculate the remaining maximum liability, a deductible, etc.). The exchange rate will be obtained from Reuters (or such other source as we may notify you) and “Business Day” means a day on which: (1) exchange rates are available from Reuters or such other source; and (2) EDC is open for business in Ottawa, Canada.

LOSS RECOVERY

- 26. (1) **If the Main Insured is located outside of Quebec**, on payment of a claim, including payments made directly to a third party pursuant to a Direction to Pay or Tripartite Agreement, we are subrogated to all your recovery rights for the entire amount due under the Contract (i.e., we take your place with respect to those rights), whether or not you are fully indemnified under the Policy for that amount. We may take legal action in your name to exercise any subrogated rights. On payment of a claim, you must:
 - (a) fully co-operate with us in our recovery efforts, which may include the defence of any counterclaim that is brought against us; and
 - (b) if we request, take all steps necessary or expedient to recover the Loss Amount, including:
 - (i) indemnify us against any liability that we may incur as a result of any reasonable action taken by us to recover the Loss or that we may incur as a result of your actions or omissions;

- (ii) bring legal proceedings, or provide us with any documentation or authorization necessary to allow us to give instructions on your behalf or bring legal proceedings in your name; and
 - (iii) transfer and assign to us all of your right, title and interest in all amounts owed to you under the Contract, or any security or guarantee in respect of the Loss, and give notice of the assignment only as directed by us.
- (2) **If the Main Insured is located in Quebec**, in accordance with Quebec law, on payment of a claim, including payments made directly to a third party pursuant to a Direction to Pay or Tripartite Agreement, we are subrogated to all your recovery rights under the Contract (i.e., we take your place with respect to those rights) up to the amount paid under the Policy. We may take legal action in our name to exercise any subrogated rights. On payment of a claim, you must:
- (a) fully co-operate with us in our recovery efforts, which may include the defence of any counterclaim that is brought against us; and
 - (b) if we request:
 - (i) indemnify us against any liability that we may incur as a result of any reasonable action taken by us to recover the Loss or that we may incur as a result of your actions or omissions; and
 - (ii) transfer and assign to us all of your right, title and interest in all amounts owed to you for the Loss, or any security or guarantee in respect of the Loss, up to the amount paid under the Policy.
- (3) In the case of Subsections 26(1) and 26(2) above, we waive all subrogation rights if the claim is paid to a third party pursuant to a Direction to Pay or Tripartite Agreement in circumstances where no claim payment would otherwise have been made as a result of the application of the corruption exclusion specified in Subsection 11(7) if no Direction to Pay or Tripartite Agreement had been in place.
27. If we pay a claim, we will share with you all reasonable external recovery and loss mitigation expenses that we previously approved. Our share of the expenses is limited to the Insured Percentage applicable to the Loss. We are not responsible for paying any expenses (including legal fees):
- (1) associated with a dispute between you and the Buyer;
 - (2) relating to the defence of any set-off or counterclaim by the Buyer; or
 - (3) incurred once the Loss Amount has been fully recovered.
28. After we pay a claim with respect to a Buyer, you must report to us all amounts you recover from that Buyer or from anyone on its behalf. All amounts recovered (other than from a taxation authority as a refund of sales tax) are applied as specified in the Coverage Certificate, if applicable. You must immediately remit amounts recovered that are due to us, and until paid, these amounts must be held in trust for us.

PAYMENTS AND CREDITS

29. (1) If you fail to pay any amount when due to us under this Policy as invoiced, you will pay interest calculated at a rate and in the manner as set out in your invoice.
- (2) You must pay all amounts invoiced by us in the currency of the invoice. If you do not pay in the currency of the invoice, we will convert the amount paid to the currency of the invoice at the foreign exchange rate applicable on the date we received payment. The exchange rate will be obtained from Reuters, or such other source as we may notify you. Any shortfall will be subject to late interest. Any overpayment will be credited to your account.
- (3) If you make a payment to us and do not direct us to apply this payment to any particular amount owing to us in connection with an EDC Product, we may apply that payment to any unpaid amount which you owe us, in the order and manner of our choice.
- (4) If we are unable to contact you to obtain your instructions within a period of 30 days with respect to the application of a credit in your favour under the Policy (other than a premium credit specified in the Coverage Certificate), we will choose to either:

- (a) apply the credit to any unpaid amount which you owe us in connection with any EDC Product, in the order and manner of our choice; or
 - (b) remit the amount to you.
- (5) We may reduce any amount we owe you under the Policy, by any amount you owe us under the Policy or under any other EDC Product. These rights are in addition to any other rights (including rights of set-off) that we may have.
- (6) You are responsible to pay all banking fees with respect to all payments made to us under this Policy, including banking fees for wire transfers and non-sufficient funds cheques.

POLICY CANCELLATION

30. (1) You may cancel the Policy immediately upon notice to us and we will not be liable for the payment of a claim for any Goods Shipped after the date of your notice.
- (2) We may cancel the Policy:
- (a) on 60 days' prior notice to you; or
 - (b) on 15 days' prior notice to you if you failed to fully and properly perform any of your duties or obligations when required under the Policy, unless you correct the failure within the 15-day notice period;
- and in either case, we will not be liable for the payment of a claim for any Goods Shipped after the end of the notice period.
- (3) We may also cancel the Policy immediately upon notice to you if you, your agent or Affiliate or an agent of an Affiliate has engaged in or knowingly been party to any action, in relation to any insured Contract, that is prohibited by Canada's *Corruption of Foreign Public Officials Act* or by the criminal laws dealing with the bribery of public officials that apply in a country in which the agent or Affiliate is located. In that case, we will not be liable for the payment of a claim for any Goods Shipped after the date of our notice.
- (4) When the Policy is cancelled, the Parties continue to be bound by all of their respective Policy duties and obligations, including those relating to claims paid prior to the cancellation or that may be paid after cancellation. No coverage is provided under any circumstances for Goods Shipped after the effective date of cancellation of the Policy.

OTHER CONDITIONS

31. The Policy and the Application on which the Policy is based form the entire contract of insurance. No other statements, undertakings or agreements will form part of the contract of insurance.
32. An entity is your agent for purposes of the Policy when you have authorized that entity to act on your behalf or when that entity can reasonably be considered to have been acting as your agent. Statements or actions of your agent in dealings with us or third parties will bind you. All references in the Policy to "you" include your agent, except where the context clearly requires otherwise. A payment by a Buyer to your agent is deemed to be a payment to you.
33. (1) The Policy is issued on the basis of the statements made and information provided by you or your agent during the registration process and in the Application. If any of those statements or any of that information is untrue, incomplete or incorrect, the Policy will be void as if the Policy had never been issued.
- (2) You must act with the utmost good faith at all times and disclose to us:
- (a) any material change to the statements made in the registration process and in the Application (for example if your corporate structure changes or you move outside of Canada); and
 - (b) all material facts and circumstances of which you become aware or should be aware relating to the risk covered under the Policy.

34. (1) The full, proper and timely performance of all of your duties and obligations under the Policy is a condition precedent to coverage and to any of our other obligations under the Policy, including our liability to pay claims. For greater clarity, every action specified in the Policy that you must perform, or not perform, is deemed to be one of your duties and obligations under the Policy (for example, your obligations in Section 13 regarding the claims process and in Section 9 regarding any Additional Insured).
- (2) No failure or delay on our part in the exercise of any right under this Policy is a waiver of that right. If at any time we waive the application of an exclusion or our right to enforce strict compliance by you of any of your duties or obligations under the Policy, we retain our right to enforce the exclusion and strict compliance with your duties and obligations in the future.
35. Upon our request, you must provide us with copies of any and all Information in connection with any matter under the Policy or give us access to and allow us to make copies of the Information. You will take all reasonable steps to allow us to obtain or review any Information that is in the possession of any other entity. We may request all Information with respect to any claim that has already been paid. You must keep all relevant Information for these purposes for a period of 5 years.
36. (1) Every notice of any kind, request, approval, waiver, consent and agreement (“Notice”) to be given or made under the Policy must be in writing. Notices must be delivered by hand, mail, email or through your online account with us. Notices to you will be sent to the address (including email address) you provided to us when you registered for your online account or that you provide to us from time to time after registration. Notices to us must be sent through your online account or, if by hand or mail, to 150 Slater St., Ottawa, ON, K1A 1K3, Canada (or another mailing address that EDC may notify you from time to time), and if by email, to the email address of your underwriter which can be found in your online account.
- (2) All Notices are effective when received. Notices are deemed received:
 - (a) upon delivery if delivered by hand;
 - (b) on the earlier of actual receipt and seven days after posting if sent by mail; and
 - (c) on the date of transmission if sent by email or through your online account.
37. Regardless of anything to the contrary in the Policy, if the provision of insurance, the payment of a claim, or the provision of any benefit under the Policy would expose us to any sanction, prohibition or restriction under Sanctions, then we will not be liable to pay any claim in relation to the affected coverage and we will have the right to cancel your Policy. Where permissible by law, we agree to use reasonable efforts consistent with our internal policy and legal and regulatory restrictions to cure or avoid such exposure (including applying for permits or certificates) if those efforts are not disadvantageous to us, in our reasonable judgment.
38. You cannot assign the Policy or any right, title or interest in it to anyone without our prior consent.
39. If any provision of the Policy is unenforceable to any extent, the rest of this Policy will not be affected and all other provisions of this Policy will be enforceable to the fullest extent permitted.
40. The collection, use and disclosure of any personal information in connection with the Policy will be made in compliance with the *Privacy Act*. The personal information will be retained by us as per the standard retention period under the *Privacy Act* or any longer retention period we deem appropriate to continue to conduct business with you. You may request access to your personal information under the *Privacy Act* by sending us a letter at our address specified in Section 36(1) above c/o “Compliance and Ethics/Privacy & Access to Information”, mentioning the *Privacy Act* and describing the information that you are seeking.
41. The Policy is governed by and will be interpreted in accordance with the laws of the Canadian province or territory where the Main Insured is located (as specified in the Coverage Certificate) and the federal laws of Canada applicable in that province or territory. Any legal proceeding with respect to the Policy must be brought to the courts of that province or territory, and, as a condition of receiving the benefit of the insurance coverage provided under this Policy, all insured parties consent and agree to submit to the jurisdiction of the courts of that province or territory in all matters in respect of the Policy.

42. Without prior consent of the other Party, no Party will release any information provided by the other Party that is not publicly available (“Confidential Information”) to anyone, other than to its shareholders, employees, officers, directors, agents, brokers, advisors, consultants, legal counsel and to regulatory authorities. This duty of confidentiality is subject to the requirements of law, regulation, legal process, and audit. We may also disclose the Confidential Information pursuant to Export Development Canada’s and Canada’s international commitments, to the extent required for us to comply with applicable laws and to our potential or actual reinsurers, retrocessionaires, co-insurers, insurers and service providers (including affiliates, directors, officers, employees, advisors, auditors, reinsurers, or agents of any of those entities).

INTERPRETATION AND DEFINITIONS

43. All references in this Policy to “days” mean calendar days, and an “entity” includes an individual, a partnership, a sole proprietorship and a body corporate. Unless the context requires otherwise, the singular includes the plural and vice versa.

The following definitions apply to the Policy:

- (1) “Affiliate” means an entity:
 - (a) which has a direct or indirect equity interest in you (i.e. your parent company);
 - (b) in which you have a direct or indirect equity interest (i.e. your subsidiary); or
 - (c) which is related to you through a common third party’s direct or indirect equity interest in both that entity and you (i.e. your sister-company);
- (2) “Annual Period” means the period specified in the Coverage Certificate;
- (3) “Application” means the application for insurance and any and all additional written information you or anyone on your behalf submitted to us for purposes of the issuance of the Policy;
- (4) “Bankruptcy” means circumstances where:
 - (a) the Buyer is the subject of bankruptcy or insolvency proceedings under the laws of its country; or
 - (b) a legally binding composition arrangement has been concluded among the Buyer and all its creditors, where creditors agree to receive partial payments for the amounts owed to them by the Buyer;
- (5) “Buyer” means your customer i.e., the entity that has the obligation to pay for the Goods;
- (6) “CAD” means the lawful currency of Canada;
- (7) “Confidential Information” has the meaning set out in Section 42;
- (8) “Contract” means a contract of sale:
 - (a) that is not an Excluded Contract;
 - (b) with a Buyer located in a country listed in the Coverage Certificate;
 - (c) with payment terms specified in the Country Table of the Coverage Certificate for the country in which the Buyer is located; and
 - (d) that complies with the provisions of any Credit Approval issued for the Buyer and any other applicable provisions set out in the Coverage Certificate;
- (9) “Contract Currency” means the currency in which the Buyer must pay under the Contract;
- (10) “Coverage Certificate” means the document that sets out terms and conditions of coverage specific to you and stipulates special conditions which amend these General Terms and Conditions;
- (11) “Credit Approval” means the document in which we set out the Credit Limit and specific terms on which we insure sales to a Buyer;
- (12) “Credit Limit” means the maximum Loss Amount for a Buyer covered under the Policy;
- (13) “Currency Conversion & Transfer” means:

- (a) the operation of a law (or a governmental directive having the force of law) in the Buyer's country which restricts or prevents the conversion or transfer of currency, provided that:
 - (i) the law or directive was not in effect on the date the Goods were Shipped but was in effect on the Due Date and continued to apply throughout the Waiting Period set out in the Coverage Certificate (a period of consecutive days starting on the date the law or directive came into effect);
 - (ii) the Buyer has complied with all requirements in its country for the conversion or transfer of currency to make the required payment; and
 - (iii) the Buyer has made an irrevocable deposit for transfer to you of a sum equal to the amount of the required payment in the Contract Currency (or the equivalent in the currency of the Buyer's country if the Contract Currency is not available to the Buyer), unless the Buyer was precluded from making the deposit by a law or any governmental directive having the force of law in that country;
 - (b) the operation of a law (or a governmental directive having the force of law) in the Buyer's country which restricts or prevents you from converting or transferring a payment made to you by the Buyer in its country within 30 days of the payment, provided that:
 - (i) the law or directive was not in effect on the date the Goods were Shipped but was in effect on the Due Date and continued to apply throughout the Waiting Period set out in the Coverage Certificate (a period of consecutive days starting on the date the law or directive came into effect); and
 - (ii) you have complied with all requirements in the Buyer's country for the conversion or transfer of currency to convert the payment made by the Buyer into a freely convertible currency or to transfer the payment out of the Buyer's country;
- (14) "Default" means the Buyer's failure to pay by the Due Date any part of the Invoice Value of the Goods and the failure was not remedied during the Waiting Period set out in the Coverage Certificate (a period of consecutive days starting on the Due Date), provided that, in the case of Goods that are not services, the Buyer (or someone on its behalf) took delivery of the Goods that were delivered in accordance with the terms of the Contract;
- (15) "Direction to Pay" means a document under which you direct us to pay claims to a third party and provide that party with certain information;
- (16) "Due Date" means the date on which payment under a Contract is owed;
- (17) "EDC Product" means any product provided by Export Development Canada ("EDC") to you or to a third party for your benefit (for example: this Policy or any other insurance product, a bonding product or a financing product). If a product is only administered by EDC but EDC is not the insurer or lender, that product is not an EDC Product;
- (18) "Excluded Contract" means a sales contract:
- (a) with a Buyer who is an individual acting in a personal capacity;
 - (b) with a Buyer that is a Related Entity, unless we specifically acknowledged your affiliation with the Buyer in a Credit Approval;
 - (c) with a federal, provincial, state, territorial, municipal or other government Buyer;
 - (d) to be entirely paid by an irrevocable letter of credit;
 - (e) to be entirely paid to you by a Canadian or American Buyer with hard currency, money order, bank draft, credit card or certified cheque before the Goods are delivered;
 - (f) that you are prohibited by law from performing;
 - (g) that violates Sanctions in place at the time the sales contract was entered into;
 - (h) which we notified you is not insured under the Policy; or
 - (i) which is not covered, as per the "Coverage Description" section of the Coverage Certificate;

- (19) “Export Restrictions” means the cancellation or non-renewal by a governmental or quasi-governmental authority of an existing export permit (or the imposition by a governmental or quasi-governmental authority of new restrictions which prevent the export of the Goods), after the Goods were Shipped and the cancellation, non-renewal or new restrictions remained effective throughout the Waiting Period set out in the Coverage Certificate (a period of consecutive days starting on the date the cancellation, non-renewal or new restrictions became effective). For a Loss caused by an Export Restriction to be covered, the Loss must be an amount that would have been payable by the Buyer if the Export Restriction had not occurred;
- (20) “Goods” means the goods and services that you sell;
- (21) “Import Restrictions” means the cancellation or non-renewal by a governmental or quasi-governmental authority of an existing import permit (or the imposition by a governmental or quasi-governmental authority of new restrictions which prevent the import of the Goods), after the Goods were Shipped and the cancellation, non-renewal or new restrictions remained effective throughout Waiting Period set out in the Coverage Certificate (a period of consecutive days starting on the date the cancellation, non-renewal or new restrictions became effective). For a Loss caused by an Import Restriction to be covered, the Loss must be an amount that would have been payable by the Buyer if the Import Restriction had not occurred;
- (22) “Information” means information or data of any kind that is in any way relevant to any matter under the Policy, regardless of the medium in which it is stored or through which it is transmitted, including all communications, financial records, accounts and other documents that you or an Affiliate possess or control that relate to any matter under the Policy;
- (23) “Insured Event” means any of the following (if listed in the Coverage Certificate):
- (a) Bankruptcy;
 - (b) Default;
 - (c) Repudiation;
 - (d) Currency Conversion and Transfer;
 - (e) Export Restrictions;
 - (f) Import Restrictions;
 - (g) War and Related Disturbances; and
 - (h) any other event expressly designated as an Insured Event in a Special Condition of the Coverage Certificate;
- (24) “Invoice Value” means the value of the Goods Shipped and of any insurance, freight or other handling costs, that you incurred on behalf of the Buyer at the time the Goods were Shipped, as invoiced, excluding:
- (a) any tax that is reimbursable by a taxation authority if not paid by the Buyer;
 - (b) any amount which the Contract allows the Buyer to withhold at its discretion (i.e., a holdback);
 - (c) any amount to be paid by an irrevocable letter of credit;
 - (d) any amount paid with hard currency, money order, bank draft, credit card or certified cheque, and any amount you secured with cash collateral, before the Goods are Shipped; and
 - (e) any default interest (i.e., interest on a late payment);
- (25) “Loss” has the meaning set out in Section 1;
- (26) “Loss Amount” means the amount of a Loss calculated in accordance with Section 20;
- (27) “Policy” means these General Terms and Conditions, the Coverage Certificate, the Credit Approvals and any amendments to these documents;

- (28) “Policy Period” means the period during which Goods Shipped are eligible for coverage under the Policy, as specified in the Coverage Certificate;
- (29) “Repudiation” means the failure by the Buyer to take delivery of the Goods within 30 days from the date the Goods were placed at the Buyer’s disposal in accordance with the delivery terms of the Contract and, following this failure, you have resold or otherwise disposed of the Goods with our prior approval;
- (30) “Related Entity” means:
- (a) an Affiliate; or
 - (b) an entity:
 - (i) who has a family relationship with you;
 - (ii) whose direct or indirect owner has a family relationship with you or your direct or indirect owner (for example, your shareholder is the brother of your Buyer’s shareholder); or
 - (iii) who has any other kind of non-arm’s length relationship with you, or with your direct or indirect owner, which could cause an insurer to believe that you might not act prudently with respect to sales to that entity, to our detriment (for example, your shareholder and your Buyer’s shareholder have a friendship that goes beyond a normal business relationship);
- (31) “Sanctions” means the economic or financial sanctions imposed by Canada or the United States of America or any of their respective governmental institutions, agencies and subdivisions;
- (32) “Shipped” means:
- (a) in the case of goods, that the goods you sold have been placed in transit for delivery to the destination specified by the Buyer or, where the Contract does not require you to place the goods in transit (for example goods sold out of consignment or goods already in the Buyer’s possession), that the Buyer has been invoiced for the goods; and
 - (b) in the case of services, that any part of the services you sold have been completed in accordance with the terms of the Contract;
- (33) “Tripartite Agreement” means an agreement among you, us and a third party who acquires an interest in all or some of the receivables that are insured under the Policy, outlining the conditions under which the Policy applies to the receivables;
- (34) “USD” means the lawful currency of the United States of America; and
- (35) “War and Related Disturbances” means war or hostilities between two or more countries, or rebellion, revolution, insurrection, civil commotion or acts of political terrorism, in any country other than Canada which continued throughout the Waiting Period set out in the Coverage Certificate (a period of consecutive days starting on the date the event began). This Insured Event does not include an event that was within the scope of marine cargo insurance that was available on the date the Goods were Shipped, whether or not marine cargo insurance was obtained. For a Loss caused by War and Related Disturbances to be covered, the Loss must be an amount that would have been payable by the Buyer if the War and Related Disturbances had not occurred.

SCHEDULE 4

Notice of Seizure of Personal Property

TO: Rotating Right (2016) Inc.
Bays 101, 102 and 103, 3903 - 75 Avenue, Leduc AB T9E 0K3
Name and Address of Debtor

Take notice that to satisfy a claim against you for the sum of \$186,677.86 plus costs and related Writs, if applicable.
North River Limited Partnership
c/o 4203 Roper Road NW, Edmonton Alberta T6B 3S5
Name and Address of Creditor

has caused the following personal property and personal property listed in the addendum to be seized:

- 2 20' SEA CAWS EQUIPPED FOR WASTE WATER MANAGEMENT
S/N SOLV AQUA J-888011-B and SOLV AQUA J-888011-A
C/W CONTENTS (see attached breakdown of attachments
provided by Debtor Company.
- 2 MICRO COMMERCIAL UNITS - SOLVA AQUA S/N 888022 and
888012 (see attached breakdown of attachments)
- 20 DIGITAL PHOTOS taken of SEIZED ASSETS

Addendum attached listing additional property. Yes No
Notice of Objection applicable to this seizure. Yes No

STRIKE OUT IF NOT APPLICABLE If you object to the seizure, you must deliver the Notice of Objection to the Civil Enforcement Agency listed below within 15 days from the day that the seizure documents were served.

Dated at LEduc, Alberta, on DECEMBER 20, 2021

Elly Duff
Bailliff's Signature

ELLY DUFF
Print Name

Civil Enforcement Agency



300 801 Manning Road NE, Calgary AB T2E 7M8 Ph: 403 262-8800 Fx: 403 262-8801
4482 97 Street, Edmonton AB T6E 5R9 Ph: 780 448-5833 Fx: 780 448-0698
Email: calgary@ccebailiff.ca / edmonton@ccebailiff.ca

Notice: If you have concerns about the way that this seizure was conducted, contact the Civil Enforcement Agency listed above. If you are unable to resolve your concerns with the Civil Enforcement Agency, you may contact the Sheriff - Civil Enforcement at (780) 422-2481.

SCHEDULE 5

Writer's Direct Line: 403-477-9661
Writer's Email: vanessa.allen@mnp.ca

VIA EMAIL

May 23, 2023

To parties asserting a claim against selected property of SolvQUA Inc.

RE: SolvAQUA Inc. – in Receivership (“SolvAQUA”)

As you are aware, MNP Ltd was appointed as the Receiver (the “**Receiver**”) of all of Solvaqua’s current and future assets, undertakings and properties (the “**Property**”) pursuant to a Receivership Order granted by the Court of King’s Bench of Alberta (the “**Court**”) on August 19, 2022. A copy of the Order can be found on the Receiver’s website at: <https://mnpdebt.ca/en/corporate/corporate-engagements/solvaqua-inc>.

The purpose of this correspondence is to provide all parties with advance notice that the Receiver intends to make an application to the Court between July 10 and July 14, 2023 (the “**July Application**”), which will include the following relief:

- Approving the transaction (the “**Stalking Horse Transaction**”) contemplated in the stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) between the Receiver and 2464525 Alberta Ltd. (the “**Stalking Horse Purchaser**”), as amended;
- Approving the reported actions and activities of the Receiver;
- Approving the professional fees and disbursements of the Receiver and its legal counsel; and
- Discharging the Receiver upon the completion of its remaining obligations.

Further information regarding the July Application is set out below.

Background

The Receivership Order was granted following an application by Arnaki Ltd. (“**Arnaki**”), who has a secured claim of approximately \$7.9 million (the “**Arnaki Claim**”) pursuant to various general security agreements (the “**Arnaki Security**”). The Receiver’s legal counsel has completed an independent review of the Arnaki Security and determined that, subject to the usual assumptions and qualifications, the Arnaki Security is valid and enforceable against the Property.

As you are aware, SolvAQUA was in the business (the “**Business**”) of providing proprietary wastewater management solutions based on nanopolymerization technology (the “**Technology**”) that allowed isolated areas to reuse water, thereby decreasing freshwater usage. The equipment and chemicals used to implement the Technology will be referred to as the “**Equipment**”.

The Equipment was comprised of five large and four small wastewater management units in various stages of completion and the associated chemicals and (ii) one additional small unit, which was sent overseas for use in a client demonstration. For the purposes of the matters being discussed herein, the Equipment is broken down as follows:

- Two of the large units, both with serial number J-888011-A, which were manufactured pursuant to a contract between SolvAQUA and Vivaventures, Inc., a wholly owned subsidiary of Vivakor Inc. will be referred to as the “**Vivakor Equipment**”.
- The Equipment, excluding the Vivakor Equipment, will be referred to as the “**Remaining Equipment**”.

The Stalking Horse Transaction

A Sale and Investor Solicitation Process (the “**SISP**”) was developed in conjunction with the Stalking Horse Agreement and was approved by the Court pursuant to an Order granted on October 20, 2022. The SISP was conducted over a five-week period but did not generate any offers. Based on the results of the SISP, in the Receiver’s view, the only likely realization scenario for the Business and Property involves the completion of the Stalking Horse Transaction, as amended.

The key terms of the Stalking Horse Agreement, as originally approved, included the following:

- The Property included in the Stalking Horse Transaction was being conveyed on an “as is, where is” basis;
- The purchase price under the Stalking Horse Agreement was comprised of:
 - a cash payment sufficient to pay any amounts that ranked in priority to the Arnaki Security (the “**Priority Claims**”) and a holdback to provide for amounts required to complete the Stalking Horse Transaction; and
 - the payment of the balance of the purchase price being \$2.5 million, to be paid by way of a set-off against (as a non-cash credit reduction of) the Arnaki Claim.
- The Stalking Horse Agreement was unconditional, subject to Court approval.
- The Stalking Horse Agreement contemplated the payment of a deposit in the amount of \$100,000 (the “**Deposit**”), which was paid to and is being held in trust. The Deposit was to be used to pay the Priority Claims with any unused balance being returned to the Stalking Horse Purchaser.

As noted above, an Amendment is being executed in respect of the Stalking Horse Agreement, which included the following changes:

- A reduction to the non-cash portion of the purchase price in the Stalking Horse Agreement from \$2.5 million to \$1.0 million based on the exclusion of the Remaining Equipment and the inclusion of the Vivakor Equipment, subject to any commercially reasonable claim related to the storage of the Vivakor Equipment (the “**Storage Claim**”) by Rotating Right, to the extent that such Storage Claim is subsequently determined to be valid and to have priority to the Arnaki Security; and

- The closing of the Stalking Horse Transaction by July 31, 2023, or such other date as may be agreed upon by the Receiver and the Stalking Horse Purchaser.

The Receiver would encourage parties to establish a timeline in connection with any material to be filed in connection with the July Application.

Should you have any questions, please contact the undersigned.

Yours truly,

MNP Ltd., in its capacity as Receiver of
Solvaqua Inc. and not in its personal or
corporate capacity



Vanessa Allen, CIRP, LIT
Senior Vice President

SCHEDULE 6



INVOICE

Rotating Right (2016) Inc.

#101, 3903-75 Avenue
 Leduc, AB T9E 0K3
 Phone: 1-780-485-2010
 Email: len.kerekanich@rotatingright.com

DATE:
 7/14/22

Invoice#
 8880982

Bill To:

SOLVAQUA Inc.
 Suite 300, 340 Midpark Park Way SE
 Calgary, AB, Canada T2X 1P1

Ship To:

PO#

QTY	PART #	DESCRIPTION	UNIT PRICE	TOTAL
17	STRG888	STORAGE OF TWO 25K BPD WATER CLARIFICATION UNITS 03/01/21-07/30/22	\$ 3,200.00	\$ 54,400.00
12	STRG888	STORAGE OF THREE 25K BPD WATER CLARIFICATION UNITS 08/01/21-07/30/22	\$ 4,800.00	\$ 57,600.00
DUE ON RECEIPT				
Subtotal				\$112,000.00
GST # 743305526RT0001 GST				\$5,600.00
Total USD				\$117,600.00

Make all cheques payable to Rotating Right (2016) Inc.
 If you have any questions concerning this invoice, please contact:
 Len Kerekanich, Phone: 1-780-485-2010

THANK YOU FOR YOUR BUSINESS

SCHEDULE 7

SolvAQUA Inc.
Interim Statement of Receipts and Disbursements
For the Period from August 19, 2022 to June 16, 2023

		Notes
Receipts:		
Receiver's borrowings	\$ 130,000	1
Cash held in financial institutions	183	
Interest	8	
Total receipts:	130,191	
Disbursements:		
Legal fees and disbursements	61,409	2
Receiver's fees and disbursements	40,311	3
Insurance	21,775	4
GST Paid	5,082	
Contractors	1,050	
Miscellaneous expenses	73	
Total disbursements:	129,699	
Net available cash:	\$ 491	

Notes - general:

1. On August 19, 2022, the Court of King's Bench of Alberta granted an Order (the "Receivership Order") appointing MNP Ltd. as Receiver, without security, over all of SolvAQUA's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof.

Notes - specific:

1. Represents borrowings advanced pursuant to the Receivership Order.
2. Represents the professional fees and disbursements of the Receiver's legal counsel, Cassels Brock & Blackwell LLP for the period ended September 30, 2022.
3. Represents the professional fees and disbursements of the Receiver for the period ended October 8, 2022.
4. Represents payments for property and commercial liability insurance.

SCHEDULE 8

SolvAQUA Inc.
Summary of Professional Fees and Disbursements

MNP Ltd.

Invoice date	Invoice number	Description	Professional fees	Disbursements	Subtotal	GST	Total
October 11, 2022	10616751	For the period ended October 8, 2022	\$ 39,133	\$ 1,178	\$ 40,311	\$ 2,016	\$ 42,326
November 14, 2022	10658993	For the period ended October 31, 2022	15,650	283	15,933	797	16,729
December 8, 2022	10696121	For the period ended November 30, 2022	6,211	-	6,211	311	6,522
January 6, 2023	10728786	For the period ended December 31, 2022	4,278	2,755	7,033	352	7,385
February 23, 2023	10798828	For the period ended January 31, 2023	9,545	3,000	12,545	627	13,172
May 11, 2023	11026955	For the period ended April 30, 2023	3,347	11,248	14,595	730	15,325
June 16, 2023	11094169	For the period ended May 31, 2023	2,518	-	2,518	126	2,644
Subtotal			80,682	18,464	99,146	4,957	104,103
Estimate to complete			15,000	-	15,000	750	15,750
			\$ 95,682	\$ 18,464	\$ 114,146	\$ 5,707	\$ 119,853

Cassels, Brock & Blackwell LLP

Invoice date	Invoice number	Description	Professional fees	Disbursements	Subtotal	GST	Total
September 9, 2022	2177441	For the period ended August 31, 2022	\$ 23,456	\$ 43	\$ 23,499	\$ 1,175	\$ 24,673
October 12, 2022	2180528	For the period ended September 30, 2022	37,144	767	37,910	1,892	39,802
November 17, 2022	2183584	For the period ended October 31, 2022	23,000	458	23,458	1,166	24,624
December 12, 2022	2186209	For the period ended November 30, 2022	19,750	21	19,771	988	20,759
December 31, 2022	2188894	For the period ended Deember 31, 2022	2,591	-	2,591	130	2,720
February 7, 2023	2191610	for the period ended January 31, 2023	10,697	-	10,697	535	11,232
June 7, 2023	2202107	For the period ended May 31, 2023	3,643	-	3,643	182	3,825
Subtotal			120,279	1,288	121,567	6,068	127,635
Estimate to complete			35,000	-	35,000	1,750	36,750
			\$ 155,279	\$ 1,288	\$ 156,567	\$ 7,818	\$ 164,385
Total Professional Fees and Disbursements			\$ 250,961	\$ 19,752	\$ 270,713	\$ 13,525	\$ 284,238