

Clerk's Stamp

COURT FILE NUMBER: 25-2802560

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE BANKRUPTCY AND  
INSOLVENCY ACT, RSC 1985, C B-3, AS AMENDED  
  
AND IN THE MATTER OF THE RECEIVERSHIP OF  
VERTEX DOWNHOLE LTD.

APPLICANT MNP LTD. AS RECEIVER AND MANAGER OF 2012145  
ALBERTA LTD., PREVIOUSLY LEGALLY NAMED  
VERTEX DOWNHOLE LTD.

RESPONDENT ELECTROMATE INC.

DOCUMENT **AMENDED APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Gowling WLG (Canada) LLP  
421 7 Ave SW Suite 1600  
Calgary, AB T2P 4K9  
Attn: Sam Gabor  
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Email: sam.gabor@gowlingwlg.com  
File No.: A170044

## NOTICE TO THE RESPONDENT

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

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

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

Date: December 20, 2023  
Time: 3:00 P.M.  
Where: Calgary Courts Center, via Webex  
<https://albertacourts.webex.com/meet/virtual.courtroom60> - See Schedule "B" "C"  
Before: The Honourable Justice Feasby

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

**Remedy claimed or sought:**

1. MNP Ltd., in its capacity as the receiver (“MNP” or the “Receiver”) over the assets, properties and undertakings (the “Property”) of 2012145 Alberta Ltd., previously legally named Vertex Downhole Ltd. (the “Debtor”) seeks an order amending and restating the Receivership Order of the Honourable Justice Jeffrey dated June 13, 2023 in the form attached as Schedule “A” to amend the debtor’s name to 2012145 Alberta Ltd. and a further order substantially in the form attached hereto as **Schedule “A” “B”**:
  - (a) Amending the title of these proceedings to:
 

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC  
1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF 2012145 ALBERTA  
LTD.
  - (b) declaring that the amount of USD\$163,554.91 (as defined below as the Reconciled Amount) is due, owing, and forthwith payable by Electromate Inc. (“Electromate”) to the Receiver with interest thereon;
  - (c) that Electromate shall pay to the Receiver the amount of USD\$163,554.91 in respect of the Reconciled Amount (as defined below), plus interest from June 14, 2022 up to the date of payment at a rate of interest as set forth in the *Judgment Interest Act*, RSA 2000, c J-1, as amended, plus post judgment interest at a rate of interest as set forth in the *Judgment Interest Act*, RSA 2000, c J-1, as amended;
  - (d) costs of this application;
  - (e) such further and other relief as counsel may advise and this Honourable Court may deem just.

**Grounds for making this application:*****Background***

2. The Debtor was in the business of selling and renting downhole drilling equipment in Canada, the United States and elsewhere for the oil and gas industry.

3. On February 4, 2022, the Debtor filed a notice of intention to make a proposal under Part III, Division I of the *Bankruptcy and Insolvency Act*. MNP Ltd. was named proposal trustee of the Debtor (the “**Proposal Proceedings**”).
4. On July 13, 2022, MNP was appointed by the Court as Receiver of the Debtor and on same date this Honourable Court granted a sale approval and vesting order (“**SAVO**”) of an asset sale agreement (“**Sale Agreement**”) between the Receiver and 2435819 Alberta Ltd., now legally named to as Vertex Technologies Ltd. (the “**Purchaser**”) for the sale of certain assets of Vertex, including all purchase orders of the Debtor with third party suppliers. The Sale Agreement closed in 2022. The Sale Agreement provides that all prepaid expenses, deposits and cash equivalents of the Debtor were excluded assets in the Sale Agreement.

***Amendment of Title of Proceedings and Amendment to Receivership Order***

5. The Receiver sold the Debtor’s intellectual property to the Purchaser, including the tradename “Vertex”, and thereafter changed its name on September 27, 2022 to 2012145 Alberta Ltd. as a term of the Sale Agreement.
6. Canada Revenue Agency has issued GST refund cheques to the Receiver in the name of 2012145 Alberta Ltd. (“**GST Cheques**”) which the Receiver is unable to deposit as its receivership account is in the name of Vertex Downhole Ltd. The Receiver needs to amend the Receivership Order and the title of these proceedings to name 2012145 Alberta Ltd. as debtor in order to deposit the GST Cheques.

***Reconciled Amount Owing to the Receiver***

7. In or around the first quarter of 2019, Electromate agreed to sell to the Debtor 250 Maxon motors which the Debtor used as parts in the downhole drilling equipment the Debtor sold or rented to the Debtor’s customers (the “**Units**”) at a price of USD\$2,750 per unit (the “**Original Price**”).
8. In or around May 2019, Electromate requested that the Debtor purchase an additional 500 Units, 750 total, at a revised price of USD\$2,295 per unit (the “**Revised Price**”). Subsequently the Debtor issued Electromate purchase orders (“**POs**”) for Units agreed to be delivered by Electromate to the Debtor from time to time in 2020-2022 in various tranches, each at the Revised Price.

9. The Debtor's PO terms and conditions state that the Debtor may make changes in quantities by notice to Electromate, and any claim by Electromate for a change in price shall be settled by negotiation between the parties. Electromate's terms and conditions ("**Electromate Terms**") indicate that Electromate reserves the right to adjust the pricing on any open order should the release quantity be changed by the customer. The Debtor has advised the Receiver that no express written agreement was entered into between the Debtor and Electromate indicating which of the parties' terms and conditions would apply to the purchase and sale of the Units.
10. Between November 2021 and January 2022, the Debtor placed orders for 150 Units, and in January 2022, a deposit in the amount of USD\$50,859.25 was paid by the Debtor to Electromate to purchase the 150 Units ("**Deposit 1**").
11. In June 2022, a second deposit in the amount of USD\$96,390 was paid by the Debtor to Electromate in order for the Debtor to purchase another 100 Units from Electromate ("**Deposit 2**", with Deposit 1, the "**Deposits**").
12. In or around June 14, 2022, during the Proposal Proceedings, Electromate issued the Debtor a statement of account (the "**Statement of Account**") wherein Electromate acknowledged in writing the Deposits, three credit memos in the total amount of USD\$43,391.25 reflecting credits owing by Electromate to the Debtor (the "**Credit Memos**"), other payments made by the Debtor to Electromate and two invoices owing by the Debtor to Electromate totaling USD\$14,747.67 (the "**Outstanding Invoices**").
13. As of the date of the appointment of the Receiver (July 13, 2022), the Debtor had ordered, received and paid for in full under the POs or otherwise, 478 Units at the Revised Price. A further 272 units remained unsold to the Debtor (the "**Unsold Units**").
14. In September and December 2022, following the closing of the Sale Agreement, the Purchaser purchased all of the Unsold Units from Electromate at a price of \$2,655 per unit (the "**Mitigated Price**") under the POs or otherwise, and accordingly Electromate mitigated any alleged or actual damages it may have suffered as a result of the Debtor failing to purchase the Unsold Units. The sale of the Unsold Units to the Purchaser has resulted in a net benefit to Electromate in the amount of \$97,920 (the "**Net Benefit**").

15. The Receiver, with the assistance of the Debtor, performed a reconciliation of the Deposits, Credit Memos, Outstanding Invoices and other pre-filing amounts owing between the Debtor and Electromate prior to the receivership which provides that Electromate owes the Debtor's estate \$163,554.91 (the "**Reconciled Amount**").
16. The Receiver has made demand upon Electromate for payment of the Reconciled Amount, but Electromate has refused and continues to refuse to repay the Reconciled Amount to the Receiver.
17. Electromate has alleged that it is entitled to setoffs of a minimum of USD\$217,490 including on the basis it can contractually back charge the Debtor the Original Price with respect to the Unsold Units based on the Electromate Terms notwithstanding Electromate having fully mitigated any alleged or actual damages it suffered resulting from the Debtor's failure to purchase the Unsold Units and Electromate receiving the Net Benefit.
18. Electromate retaining the Reconciled Amount based on Electromate's alleged setoffs would:
  - a) entirely negate the Receiver's recovery of the Reconciled Amount for the benefit of the Debtor's stakeholders, in particular HSBC Bank Canada;
  - b) provide Electromate with an inequitable windfall in the amount of the Reconciled Amount, in addition to the Net Benefit it has already received; and
  - c) enrich Electromate to the detriment of the Debtor's stakeholders without juristic reason.
19. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Affidavit or other Evidence and Materials to be used in Support of this Application:**

20. The Receiver intends to rely upon the following materials:
  - (a) Receivership Order, filed;
  - (b) The First Report of the Receiver, dated July 15, 2022;
  - (c) Third Report of the Receiver, dated December 11, 2023 ~~to be filed~~;
  - (d) Brief of Law of the Receiver, to be filed; and

- (e) such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

21. The Receiver intends to rely on the following Rules:
- (a) *Alberta Rules of Court*, AR 124/2010, as amended; and
- (b) such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

22. The Receiver will rely upon and refer to the provisions of the
- (a) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, in particular section 243;
- (b) *Sale of Goods Act*, RSA 2000, c S-2;
- (c) *Sale of Goods Act*, R.S.O. 1990, c. S.1.

**Any Irregularity Complained of or Objection Relied On:**

23. None.

**How the Application is Proposed to be Heard or Considered:**

24. By Webex video conference before the Honourable Justice Feasby commencing at 3:00 p.m. on December 20, 2023, or so soon thereafter as counsel may be heard.

**WARNING**

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

**SCHEDULE "A"**

ESTATE NUMBER           **25-2802560**

COURT                      Court of King's Bench of Alberta

JUDICIAL CENTRE         Calgary

MATTER                    IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
RSC 1985, C B-3, AS AMENDED  
AND IN THE MATTER OF THE RECEIVERSHIP OF 2012145  
ALBERTA LTD.

APPLICANT                **HSBC BANK CANADA**

DOCUMENT                **AMENDED AND RESTATED RECEIVERSHIP ORDER**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT                **Fasken Martineau DuMoulin LLP**  
550 Burrard Street, Suite 2900  
Vancouver, British Columbia, V6C 0A3  
  
**Attention: Kibben Jackson / Mihai Tomos**  
Tel: 403 261- 5350 / 403-261-7386  
Email: kjackson@fasken.com / mtomos@fasken.com  
Facsimile: 604-631-4786 / 403-261-5351  
File No.: 245056.00321

**DATE ON WHICH ORDER WAS PRONOUNCED:**         December 20, 2023

**NAME OF JUSTICE WHO MADE THIS ORDER:**         The Honourable Justice Feasby

**LOCATION OF HEARING:**                                 Calgary, Alberta

**UPON** the prior application of HSBC Bank Canada ("**HSBC**"), in respect of 2012145 Alberta Ltd. (the "**Debtor**"); **AND UPON** having read the Application, the Fourth Report of the Proposal Trustee, and the Affidavit of Service; **AND UPON** reading the consent of MNP Ltd. to act as receiver and manager (the "**Receiver**") of the Debtor, filed;

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**AND UPON** the application of the Receiver dated December 11, 2023; **AND UPON** having read the Application, the Third Report of the Receiver dated December 11, 2023, and the Affidavit of Service of Kristy Delure dated December \_\_, 2023, filed; **AND UPON** noting that that the name of the Debtor changed from Vertex Downhole Ltd. to 2012145 Alberta Ltd. effective July 27, 2022;

**AND UPON** hearing counsel for HSBC and counsel for the Receiver, and any other counsel or other interested parties attending the within hearing;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

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

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), and section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, MNP Ltd. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;



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

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

- (k) to, market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

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

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for

registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

#### DUTY TO PROVIDE ACCESS AND CO-operation to the receiver

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver

all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

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

NO Proceedings against the receiver

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

No proceedings against the DEBTOR or the property

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

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” (as defined in the BIA), and further provided that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health,

safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

#### NO INTERFERENCE WITH THE RECEIVER

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

continuation of services

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

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver or exercising any other remedy provided under such agreements or arrangements, and this Court directs that the Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile

numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### RECEIVER TO HOLD FUNDS

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

#### EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("**WEPPA**").
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### Limitation on environmental liabilities

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



the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

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

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

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

REceiver's accounts

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property as security for their professional fees and disbursements, incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4), 81.6(2) and 88 of the BIA. Notwithstanding the foregoing, the Administration Charge, as such term is defined in paragraph 4 of the Order (Extension of Time to File Proposal, Approval of Administration Charge, and Substitution of Proposal Trustee) granted by The Honourable Justice K.M. Horner in the within proceedings on March 4, 2022, shall rank in priority to the Receiver’s Charge.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed **\$500,000** (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall

be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges set out in sections 14.06(7), 81.4(4), 81.6(2) and 88 of the BIA.

22. Neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver’s Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

#### ALLOCATION

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

#### GENERAL

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

28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any foreign jurisdiction, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. HSBC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of HSBC's security or, if not so provided by HSBC's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

filing

34. The Receiver shall establish and maintain a website in respect of these proceedings at <https://mnpdebt.ca/en/corporate/corporate-engagements/vertex-downhole-ltd> (the “**Receiver’s Website**”) and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
35. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - (ii) any other person served with notice of the application for this Order; and
    - (iii) any other parties attending or represented at the application for this Order; and
  - (b) posting a copy of this Order on the Receiver’s Website,
- and service on any other person is hereby dispensed with.
36. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of King’s Bench of  
Alberta

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that MNP Ltd., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2012145 Alberta Ltd., appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated the 13<sup>th</sup> of July, 2022 (the "**Order**") made in action numbers \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

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

MNP Ltd., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

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

Name:

Title:

Clerk's Stamp

**SCHEDULE "A" "B"**

COURT FILE NUMBER: 2201-02948

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE BANKRUPTCY AND  
INSOLVENCY ACT, RSC 1985, C B-3, AS AMENDED  
  
AND IN THE MATTER OF THE RECEIVERSHIP OF  
VERTEX DOWNHOLE LTD.

APPLICANT MNP LTD. AS RECEIVER AND MANAGER OF 2012145  
ALBERTA LTD., PREVIOUSLY LEGALLY NAMED  
VERTEX DOWNHOLE LTD.

RESPONDENT ELECTROMATE INC.

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Gowling WLG (Canada) LLP  
421 7 Ave SW Suite 1600  
Calgary, AB T2P 4K9  
Attn: Sam Gabor  
Ph. 1 403 298 1946  
Email: sam.gabor@gowlingwlg.com /  
File No.: A170044

DATE ON WHICH ORDER WAS PRONOUNCED: December 20, 2023

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Justice Feasby

LOCATION OF HEARING: Calgary, Alberta

**UPON THE APPLICATION** by MNP Ltd. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets 2012145 Alberta Ltd., previously legally named Vertex Downhole Ltd. (the "**Debtor**"), for an order directing Electromate Inc. ("**Electromate**") pay to the Receiver the amount owing by Electromate to the Debtor pursuant to the Reconciled Amount as defined in the Third Report of the Receiver dated December 11, 2023 (the "**Third Report**") and for other relief;



**AND UPON** having read the Third Report;

**AND UPON** hearing the submissions of counsel for the Receiver, counsel for Electromate, counsel for HSBC Bank Canada and any other interested parties in attendance at the Application,

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Third Report.

2. The title of these proceedings is amended as follows:

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985,  
C B-3, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF 2012145 ALBERTA LTD.

3. The Reconciled Amount is due, owing, and forthwith payable by Electromate to the Receiver with interest thereon.

4. Electromate shall pay to the Receiver the amount of USD\$163,554 in respect of the Reconciled Amount, plus interest from June 14, 2022 up to the date of payment at a rate of interest as set forth in the *Judgment Interest Act*, RSA 2000, c J-1, as amended, plus post judgment interest at a rate of interest as set forth in the *Judgment Interest Act*, RSA 2000, c J-1, as amended.

5. The Receiver is awarded costs of this application in the amount of \$\_\_\_\_\_, payable forthwith by Electromate to the Receiver.

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Justice of the Court of King's Bench of Alberta

**SCHEDULE “B” “C”**  
**WEBEX DETAILS**

**Virtual Courtroom 60** has been assigned for the above noted matter:

Virtual Courtroom Link:

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

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.