

COURT FILE NUMBER 2201-09319
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



PLAINTIFF ARNAKI LTD.
DEFENDANT SOLVAQUA INC.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, AB T2P 5C5
Telephone 403-351-2920
Facsimile 403-648-1151
Email: joliver@cassels.com / dmarechal@cassels.com

File No. 49076-20

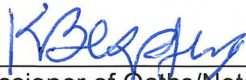
Attention: Jeffrey Oliver/Danielle Marechal

AFFIDAVIT OF: MARY-LEE GREEN
SWORN ON: JULY 6, 2023

I, **Mary-Lee Green**, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am employed as a Legal Assistant by Cassels Brock & Blackwell LLP, counsel to MNP Ltd. in its capacity as court-appointed receiver and manager of the assets of SolvaQUA Inc., and as such, I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I verily believe the same to be true.
2. Attached hereto and marked as **Exhibit "A"** is a copy of a revised Amending Agreement – Asset Purchase Agreement, which was attached as Schedule 2 in the Second Report of the Receiver dated June 20, 2023.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 6th day of July 2023.



Commissioner of Oaths/Notary Public in and for Alberta



MARY-LEE GREEN

KIMBERLEY D. BESPFLUG
Commissioner for Oaths in and for Alberta
My Commission expires November 17, 2025

This is Exhibit " A " referred to in the affidavit of

Mary-Lee Green

AMENDING AGREEMENT – ASSET PURCHASE AGREEMENT

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

sworn before me this 6th day of July, 2023


A Commissioner for Oaths in and for Alberta

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")

KIMBERLEY D. BESPFLUG
Commissioner for Oaths in and for Alberta
My Commission expires November 17, 2025

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:

Equipment Summary

State	Quantity	Container #	Serial No.
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.

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