

<b>COURT FILE NO.</b>	<b>2201-09319</b>	<b>Clerk's Stamp</b>
<b>COURT</b>	<b>COURT OF KING'S BENCH OF ALBERTA</b>	
<b>JUDICIAL CENTRE</b>	<b>CALGARY</b>	
<b>PLAINTIFF</b>	<b>ARNAKI LTD.</b>	
<b>RESPONDENT</b>	<b>SOLVAQUA INC.</b>	
<b>DOCUMENT</b>	<b>THIRD REPORT OF THE RECEIVER IN THE MATTER OF THE RECEIVERSHIP OF SOLVAQUA INC.</b>	
<b>DATED</b>	<b>August 30, 2023</b>	
<b>ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT</b>	<b>Counsel</b> <b>Cassels Brock &amp; Blackwell LLP</b> <b>Suite 3810, Bankers Hall West</b> <b>888 3<sup>rd</sup> Street SW</b> <b>Calgary, AB T2P 5C5</b>  <b>Telephone: 403-351-2921</b> <b>Facsimile: 403-648-7151</b> <b>Email: <a href="mailto:joliver@cassels.com">joliver@cassels.com</a></b>  <b>Attention: Jeffrey Oliver</b>  <b>Receiver</b> <b>MNP Ltd.</b> <b>Suite 1500, 640 5th Avenue SW</b> <b>Calgary, AB T2P 3G4</b>  <b>Telephone: 403-477-9661</b> <b>Facsimile: 403-269-8450</b> <b>Email: <a href="mailto:vanessa.allen@mnp.ca">vanessa.allen@mnp.ca</a></b>  <b>Attention: Vanessa Allen</b>	

**Table of Contents**

INTRODUCTION..... 1  
NOTICE TO READER..... 1  
COURT PROCEEDINGS AND ADJOURNMENT OF JULY 13, 2023 APPLICATION ..... 2  
PURPOSE OF THE REPORT ..... 3  
ACTIVITIES OF THE RECEIVER..... 4  
THE EQUIPMENT..... 5  
THE SETTLEMENT ..... 5  
THE UPDATED AMENDMENT ..... 7  
INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS..... 9  
PROFESSIONAL FEES..... 9  
RECOMMENDATION AND CONCLUSION ..... 10

## **SCHEDULES**

Schedule 1	Stalking Horse Asset Purchase Agreement
Schedule 2	Amending Agreement - Asset Purchase Agreement
Schedule 3	Settlement Agreement
Schedule 4	Interim Statement of Receipts and Disbursements for the Period from August 19, 2022, to August 29, 2023
Schedule 5	Summary of Professional Fees and Disbursements for the Period ended July 31, 2023, Including Estimates to Complete the Administration of the Estate

## 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. The First Report of the Receiver was dated October 11, 2022. The Second Report of the Receiver was dated June 20, 2023 (the “**Second Report**”).
5. 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

6. 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.

7. 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.
8. All amounts included herein are in Canadian dollars unless otherwise stated.

#### **COURT PROCEEDINGS AND ADJOURNMENT OF JULY 13, 2023 APPLICATION**

9. The Second Report was filed in support of the Receiver's application to this Honourable Court returnable on July 13, 2023 (the "**July 13 Application**") 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 "**Original Amendment**"). A copy of the Original Amendment, is attached as "Schedule 2" to the Second Report.
  - 9.2 Approving the actions and activities of the Receiver as set out in the 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 (the "**Activity Approval Application**").
  - 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 (the "**Fee Approval Application**").
  - 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.
10. As set out in the Second Report, the Stalking Horse Agreement and Original Amendment contemplated that certain equipment (defined below as the Vivakor Equipment) would be purchased

by the Stalking Horse Purchaser as part of the Stalking Horse Transaction. However, the Vivakor Equipment is subject to a claim (the “**EDC Equipment Claim**”) by Export Development Canada (“**EDC**”) and a claim for unpaid storage fees (the “**Rotating Right Storage Claim**” and together with the EDC Equipment Claim, the “**Vivakor Equipment Claims**”) by Rotating Right (2016) Inc. (“**Rotating Right**”). As a result of the Vivakor Equipment Claims, the Vivakor Equipment could not be sold (whether pursuant to the Stalking Horse Agreement or otherwise), until such time as the Vivakor Equipment Claims were resolved.

11. In addition to the EDC Equipment Claim, EDC also disputes the assignability of the insurance related claims (the “**EDC Insurance Claims**”) contained in the definition of “**SolvAQUA Claims**” (as that term is defined in the Stalking Horse Agreement, as amended) to the Stalking Horse Purchaser (the “**EDC Assignability Dispute**”).
12. As a result of the foregoing, the July 13 Application was ultimately adjourned to provide for further negotiations between Arnaki (on behalf of the Stalking Horse Purchaser), EDC and Rotating Right to resolve the Vivakor Equipment Claims and the EDC Assignability Dispute ahead of the application to approve the Stalking Horse Transaction and the other relief that was scheduled to be heard at the July 13 Application (the “**Adjourned Relief**”).
13. As discussed in more detail below, since the adjournment of the July 13 Application, the Receiver, Arnaki, EDC and Rotating Right have been in discussions to resolve or narrow some of the issues to be determined by this Honourable Court. As a result of these discussions, the Receiver has now filed a new application (the “**September Application**”), returnable September 6, 2023 (the “**September 6 Hearing**”), during which application a modified version of the Adjourned Relief and certain other relief will be sought.

## **PURPOSE OF THE REPORT**

14. This report constitutes the Third Report of the Receiver (the “**Third Report**”). The Third Report, together with the Second Report, is being filed in support of the September Application, requesting the following relief:
  - 14.1 Approval of the Stalking Horse Transaction contemplated in the Stalking Horse Agreement, as amended by an amending agreement dated August 29, 2023 (the “**Updated Amendment**”). A copy of the Updated Amendment is attached hereto as “Schedule 2”. The Original Amendment was subject to Court approval and was not executed by the Receiver. As such, the Updated Amendment is intended to replace the Original Amendment. Together, the Stalking Horse Agreement and Updated Amendment will be referred to as the Amended Stalking Horse Agreement.

- 14.2 Approving the actions and activities of the Receiver as set out in the Second Report and this Third 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.
- 14.3 Approving the professional fees and disbursements of the Receiver and Cassels, Brock & Blackwell LLP, legal counsel to the Receiver (“**Cassels**”), for the period ended July 31, 2023, as well as the estimated professional fees and disbursements to complete the administration of the receivership.
- 14.4 Approving the Receiver’s Interim Statement of Receipts and Disbursements for the Period from August 19, 2022, to August 29, 2023 (the “**Interim SRD**”).
- 14.5 Approving a settlement agreement dated August 28, 2023 (the “**Settlement Agreement**”) between the Receiver, Arnaki, Rotating Right and EDC (the “**Settlement Parties**”). A copy of the Settlement Agreement is attached hereto as “Schedule 3”.
- 14.6 Discharging the Receiver (the “**Discharge Application**”) 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:
  - 14.6.1. 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
  - 14.6.2. Staying any action or proceedings against the Receiver without prior leave of this Honourable Court on notice to the Receiver.
15. The Second Report includes additional information regarding the Adjourned Relief. Amendments to the Adjourned Relief and the new relief being sought are discussed further herein with selected sections of the Second Report being duplicated for ease of reference.

#### **ACTIVITIES OF THE RECEIVER**

16. The Receiver’s activities since the date of the Second Report include, among other things:
  - 16.1. Preparing for and attending the July 13 Hearing;
  - 16.2. Communicating with Arnaki, Rotating Right and EDC with respect to the Settlement Agreement;
  - 16.3. Completing required Canada Revenue Agency (“**CRA**”) filings;
  - 16.4. Working with Cassels to prepare the Settlement Agreement and the Updated Amendment and consulting with Cassels on various matters related to the administration of the receivership proceedings;

16.5. Responding to various creditor/ stakeholder inquiries; and

16.6. Maintaining the Receiver's website for the proceedings.

## **THE EQUIPMENT**

17. As set out in the Second Report, SolvAQUA held an interest in equipment 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 Rotating Right's premises located at 101, 3903 - 75 Avenue in Leduc, Alberta (the "**Premises**") and (ii) one additional small unit, which was sent overseas for use in a client demonstration (collectively, the "**Equipment**"). The Equipment consists of various components assembled to implement the Technology, which are assigned serial numbers by Rotating Right.
18. Two of the five large units were manufactured pursuant to a contract between SolvAQUA and Vivaventures, Inc., a wholly owned subsidiary of Vivakor Inc. (the "**Vivakor Equipment**"). The Equipment excluding the Vivakor Equipment will be referred to as the "**Remaining Equipment**".

## **THE SETTLEMENT**

19. Following the adjournment of the July 13 Application, the Settlement Parties entered into discussions in an attempt to settle the Vivakor Equipment Claims and ultimately entered into the Settlement Agreement. As noted above, the Settlement Agreement is attached hereto as "Schedule 3".
20. The Settlement Agreement broadly contemplates that:
- 20.1. the Vivakor Equipment will no longer be a purchased asset under the Amended Stalking Horse Agreement;
  - 20.2. Rotating Right will be authorized to market and sell the Vivakor Equipment in accordance with the terms of the Settlement Agreement; and
  - 20.3. the net proceeds from the sale of the Vivakor Equipment (the "**Equipment Proceeds**") will be distributed as between Rotating Right, EDC and the Receiver in accordance with the terms of the Settlement Agreement.
21. For clarity, the Settlement Agreement does not address the EDC Assignability Dispute, which is expected to be determined by the Court at the September 6 Hearing.
22. The Settlement Agreement includes the following key terms:
- 22.1. Within ten days of the Settlement Agreement being approved by the Court, Rotating Right will present the Settlement Parties with a marketing plan for the sale of the Vivakor Equipment;



- 22.2. Rotating Right will report to the Settlement Parties monthly with respect to the marketing of the Vivakor Equipment and will present all offers received for the Vivakor Equipment to the Settlement Parties for their consideration and approval;
- 22.3. The Equipment Proceeds will be distributed as follows:
- 22.3.1. Firstly, to pay Rotating Right's monthly storage fees of \$3,200 from March 1, 2021, up to the date that the Settlement Order (as defined in the Settlement Agreement) is granted (the "**Storage Fees**"), which Storage Fees are estimated to be \$93,333 plus GST if the Settlement Agreement is approved on September 6, 2023; and
  - 22.3.2. Secondly, any remaining net sale proceeds after the payment of the Storage Fees (the "**Residual Proceeds**") shall be distributed equally between Rotating Right, EDC and the Receiver; provided however that the distribution to the Receiver of its share of the Residual Proceeds (the "**Receiver's Distribution**") shall not exceed the total professional fees and disbursement (the "**Professional Fees**") of the Receiver and Cassels incurred in administering the receivership proceedings (the "**Cap Amount**"). In the event that the Receiver's Distribution exceeds the Cap Amount, any amount of the Receiver's Distribution in excess of the Cap Amount shall be redistributed equally between Rotating Right and EDC. The Receiver's Distribution shall be applied by the Receiver to satisfy the Professional Fees. Should the Professional Fees have been otherwise satisfied, then the Receiver shall provide a direction to pay any residual amount of the Receiver's Distribution to Arnaki.
- 22.4. Rotating Right shall both provide an accounting of the Equipment Proceeds and distribute the Residual Proceeds within five days of the sale of the Vivakor Equipment being completed;
- 22.5. Various releases are being granted specifically related to the Vivakor Equipment Claims; and
- 22.6. The Settlement Agreement is subject to Court approval.
23. It is the view of the Receiver that the Settlement Agreement is fair and reasonable in the circumstances and that the Settlement Agreement offers an effective solution to the Vivakor Equipment Claims, without the estate incurring further costs to sell the Vivakor Equipment or otherwise resolve the Vivakor Equipment Claims.

## THE UPDATED AMENDMENT

24. As noted above, a copy of the fully executed Stalking Horse Agreement has been attached hereto for ease of reference as “Schedule 1”. The key terms of the Stalking Horse Agreement are described in paragraph 24 of the Second Report.
25. A copy of the Original Amendment is attached as “Schedule 2” to the Second Report. As noted above, the Updated Amendment is, subject to the approval of this Honourable Court, intended to replace the Original Amendment. The Updated Amendment provides for the following changes to the Stalking Horse Agreement (among others):
  - 25.1. The removal of the Equipment, including the Vivakor Equipment, from the purchased assets and a corresponding reduction of the purchase price under the Stalking Horse Agreement (as described below). Following the removal of the Equipment from the definition of purchased assets under the Amended Stalking Horse Agreement, the primary assets being conveyed to the Stalking Horse Purchaser pursuant to the Stalking Horse Transaction will be the SolvAQUA Claims (as defined in the Stalking Horse Agreement);
  - 25.2. The extension of the closing date under the Stalking Horse Agreement to September 20, 2023; and
  - 25.3. The amendment of the purchase price in the Stalking Horse Agreement, to include the following:
    - 25.3.1. a cash payment (the “**Cash Component**”) sufficient to pay 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, CRA’s proven claim for payroll source deductions and a holdback to provide for amounts required to complete the Stalking Horse Transaction (the “**Holdback Amount**”); and
    - 25.3.2. the payment of the balance of the purchase price, being \$500,000, to be paid by way of set-off against (as a non-cash credit reduction of) the Arnaki Claim. 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.
  - 25.4. Confirmation that, in the event that the Stalking Horse Agreement is not approved by the Court, the deposit of \$100,000 paid pursuant to the Stalking Horse Agreement will be used to satisfy the Professional Fees; and

- 25.5. The addition of conditions precedent providing for the execution and Court approval of the Settlement Agreement.
26. The Receiver is supportive of the Updated Amendment based on the following:
- 26.1. In conjunction with the Settlement Agreement, it allows for the sale of the SolvAQUA Claims (including the EDC Insurance Claims) to the Stalking Horse Purchaser and provides for a resolution of the Vivakor Equipment Claims without a contested application to determine the underlying issues.
- 26.2. The Equipment forms a significant portion of SolvAQUA's tangible assets and, as such the reduction in the purchase price contemplated in the Updated Amendment is reasonable. In particular, the Receiver notes the following:
- 26.2.1. The amount of the Cash Component being paid under the Amended Stalking Horse Agreement remains unchanged and the only reduction is to the amount of the Credit Bid Component (which is being reduced from \$2.5 million to \$500,000). Under the Amended Stalking Horse Agreement, the only assets being purchased are the SolvAQUA Claims. As noted in the paragraph 18 of the First Report, any realization from the SolvAQUA Claims is highly uncertain.
- 26.2.2. The Updated Amendment is conditional on Court approval of the Settlement Agreement. If approved, the Settlement Agreement allows for the sale of the Vivakor Equipment and provides for a potential distribution to the Receiver from the Equipment Proceeds. As such, in the Receiver's view, the Updated Amendment provides the best opportunity for the estate to obtain a recovery from the Vivakor Equipment; and
- 26.2.3. As noted in the Second Report, 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 Amended Stalking Horse Agreement. Following the completion of the amended 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. In conjunction with the Discharge Application, the Receiver will be seeking to assign all right, title and interest of Solvaqua in the Remaining Equipment to Arnaki, without prejudice to the rights or claims of any party to the Remaining Equipment (the "**Assignment**"). While any realization from the Remaining Equipment is uncertain, the Assignment will preserve any possible recovery from the Remaining Equipment for Arnaki.
- 26.3. It will allow for the timely conclusion of the receivership proceedings; and

26.4. The sale process was transparent, the Property was sufficiently exposed to the market and the Receiver views it as unlikely that the outcome of the SISP would not have been different with the reduced purchase price and the exclusion of the Equipment.

#### **INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

27. Attached hereto as “Schedule 4” is an Interim Statements of Receipts and Disbursements for the period from August 19, 2022, to August 29, 2023 (the “**SolvAQUA SRD**”). An interim Statement of Receipts and Disbursements for the period from August 19, 2022, to June 16, 2023 (the “**SolvAQUA Second Report SRD**”) was attached as “Schedule 7” to the Second Report and is described in the Second Report. The SolvAQUA SRD is unchanged from the SolvAQUA Second Report SRD except for the receipt of additional interest that was earned during the intervening period.

#### **PROFESSIONAL FEES**

28. Attached as “Schedule 5” is a summary of the following:

28.1. The Receiver’s total professional fees totaling approximately \$90,200 plus disbursements of approximately \$18,500 and GST of approximately \$5,400 for a total of approximately \$114,100 for the period ended July 31, 2023 (the “**Receiver’s Fees**”); and

28.2. Cassel’s total professional fees totaling approximately \$133,200 plus disbursements of approximately \$1,500 and GST of approximately \$6,700 for a total of approximately \$141,400, also for the period ended July 31, 2023 (the “**Receiver’s Legal Fees**”).

29. The Receiver currently estimates that additional Receiver’s Fees of \$12,500 plus GST for a total of approximately \$13,100 and additional Receiver’s Legal Fees of \$30,000 plus GST for a total of approximately \$31,500 will be required to complete the administration of the receivership estate (collectively, the “**Estimates to Complete**”).

30. At the September 6 Hearing, the Receiver is seeking approval of the Professional Fees (inclusive of the Estimates to Complete). 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.

## RECOMMENDATION AND CONCLUSION

31. The Third Report has been prepared to provide this Honourable Court with information on relief sought as part of the September Application, which is supported by the Receiver for the reasons set out in the Second Report and herein.

All of which is respectfully submitted this 30<sup>th</sup> day of August 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;

(III) **“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:  
  
D5826C43D080474...

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:

<b>Milestones</b>	<b>Estimated deadlines</b>
<b>SISP Approval Order granted/ commencement of SISP</b>	October 20, 2022
<b>Distribution of SISP Notice and Teaser</b>	October 21, 2022
<b>Publication of Notice</b>	October 26, 2022
<b>Bid Deadline</b>	November 23, 2022
<b>Auction (if required)</b>	By November 30, 2022
<b>Sale Approval Hearing</b>	By December 14, 2022
<b>Closing Date</b>	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 5<sup>th</sup> Avenue SW

Calgary, AB T2P 3G4

Attention: Vanessa Allen

Email: [vanessa.allen@mnp.ca](mailto: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](mailto:joliver@cassels.com) / [dmarechal@cassels.com](mailto: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 28<sup>th</sup> day of August 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(dd) of the APA is hereby deleted in its entirety.
  - (b) 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.
  - (c) 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.

- (d) Section 1.1(q) of the APA is hereby deleted in its entirety and replaced by the following:
- "Closing Date"** means September 20, 2023, or such other date as the Parties may agree, acting reasonably;
- (e) 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;
- (f) Section 1.1(sss) of the APA is hereby deleted in its entirety.
- (g) Section 1.1 of the APA is hereby amended by inserting the following new definition in the appropriate alphabetical order:
- "Excluded Equipment"** means all equipment, including without limitation the equipment held at the premises of Rotating Right (2016) Inc. located at 101, 3903 75 Avenue in Leduc, Alberta and the Vivakor Equipment.
- (h) 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 Five Hundred Thousand dollars (\$500,000.00) to be paid by way of set off against (as a non-cash credit reduction of) the Indebtedness (the **"Credit Bid Component"**).
- (i) Section 3.2(b) of the APA is hereby deleted in its entirety and replaced by the following:
- (b) If the Closing does not occur for any reason, 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. 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 any default.
- (j) Section 3.2(c) of the APA is hereby deleted in its entirety.
- (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 Five Hundred Thousand dollars (\$500,000.00) 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 pronounced on or before September 6, 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 6.3(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 Five Hundred Thousand dollars (\$500,000) in consideration of the balance of the Purchase Price; and
- (n) 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 Five Hundred Thousand dollars (\$500,000) in consideration of the balance of the Purchase Price.
- (o) Item (a) of Schedule 1.1(xx) of the APA is hereby deleted in its entirety.
- (p) Item (f) of Schedule 1.1(xx) of the APA is hereby deleted in its entirety and replaced by the following:
- (f) all tangible assets of the Debtor, other than the Excluded Equipment, including all 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. Effectiveness

This amendment is subject of the following conditions precedent prior to its effectiveness:

- (a) Court approval; and
- (b) Court approval of an executed settlement agreement between the Receiver, Export Development Canada, Arnaki and Rotating Right (2016) Inc. dated August 28, 2023 (collectively, the "**Conditions**").

Upon satisfaction of the Conditions, this Amendment will be deemed effective as of August 28, 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:  \_\_\_\_\_  
Scott Reeves (Apr 30, 2023 10:09 MDT)  
Name: Scott Reeves  
Title: Director

# SCHEDULE 3

## SETTLEMENT AGREEMENT

This Settlement Agreement, dated August 28, 2023 (the "**Settlement Agreement**"), is between MNP Ltd., in its capacity as receiver and manager of the assets, undertakings and properties of SolvAQUA Inc. ("**SolvAQUA**") and not in its personal or corporate capacity (in such capacity, the "**Receiver**"), Arnaki Ltd. ("**Arnaki**"), Rotating Right (2016) Inc. ("**Rotating Right**") and Export Development Canada ("**EDC**" and together with the Receiver, Arnaki, and Rotating Rights, the "**Parties**", and each, a "**Party**").

**WHEREAS** pursuant to an order of the Court of King's Bench of Alberta (the "**Court**") granted on August 19, 2022 in Action No. 2201-09319 (the "**Receivership Proceedings**"), MNP Ltd. was appointed as receiver and manager of the assets, undertakings and properties of SolvAQUA Inc.

**AND WHEREAS** a dispute arose between SolvAQUA, Arnaki, Rotating Rights and EDC relating to the right, title and interest of those Parties in and to two units, both with serial number J-888011-A (the "**Vivakor Equipment**") that were manufactured in order to satisfy a contract between SolvAQUA and Vivaventures, Inc., a wholly owned subsidiary of Vivakor Inc., or the proceeds thereof (the "**Dispute**"). Details of the Dispute and the claims of the applicable Parties in and to the Vivakor Equipment are described in more detail in Second Report of the Receiver dated June 20, 2023 (the "**Second Report**") a copy of which was filed in the Receivership Proceedings.

**AND WHEREAS** an application to hear the Dispute was originally set down for July 13, 2023, but was ultimately adjourned *sine die* pending discussions between the Parties in an attempt to resolve the Dispute without a hearing.

**AND WHEREAS** the Parties have agreed to resolve the Dispute on terms agreed upon below and to release each other from any liability for any existing or potential claims related to the Dispute (the "**Released Claims**").

**AND WHEREAS** the Parties intend to bind themselves to the terms of the settlement as well as any parent, subsidiary, affiliate, assignee, transferee, representative, principal, agent, shareholder, officer, director, predecessor or successor in interest, employee, and all persons acting by, through, under, or in concert with them (the "**Related Parties**").

**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. **Effectiveness of Settlement Agreement.** The obligations of the Parties hereunder and the effectiveness of this Settlement Agreement are subject to the fulfillment of each of the following conditions (the "**Conditions Precedent**") on or before [●], 2023 (or such other date as the Parties may agree to), unless waived by all Parties in writing:

- (a) the execution of this Settlement Agreement by all Parties; and
- (b) the granting by the Court of an order (in form and substance satisfactory to the Receiver acting in its sole discretion) approving this Settlement Agreement and authorizing Rotating Right to sell the Vivakor Equipment subject to the terms of this Settlement Agreement, including the distribution of the Sale Proceeds (defined below) as described herein (the "**Settlement Order**").

2. **Marketing Plan.** Within 10 days of the satisfaction of the Conditions Precedent, Rotating Right shall provide the Parties with a marketing plan for the sale of the Vivakor Equipment (the "**Marketing Plan**"). Additionally, Rotating Right shall: (i) provide the parties with written updates on the marketing plan and the status of the sale of the Vivakor Equipment on a monthly basis following the granting of the Settlement Order until such time as the sale of the Vivakor Equipment has been completed; and (ii) present all offers received for the Vivakor Equipment to the Parties for their consideration and approval.

3. **Sale of Vivakor Equipment.** Rotating Right shall market the Vivakor Equipment for sale, subject to the terms and conditions of this Settlement Agreement and the Settlement Order.
4. **Sale Price.** Rotating Right shall not be entitled to accept an offer for the sale of the Vivakor Equipment or otherwise sell the Vivakor Equipment without the prior written consent of all Parties (acting reasonably) to the purchase price payable for the Vivakor Equipment under such offer or sale.
5. **Distribution of Sale Proceeds.** The sale proceeds from the sale of the Vivakor Equipment (the "**Gross Sale Proceeds**"), less applicable sales taxes and any third-party expenses that may be agreed to by all Parties (the "**Net Sale Proceeds**") shall be distributed by Rotating Right as follows, and in accordance with the Settlement Order, within 5 days of the closing of the sale of the Vivakor Equipment ("**Closing**"):
  - (a) The Net Sale Proceeds shall first be applied to the payment of Rotating Right's monthly storage fees of \$3,200 from March 1, 2021 up to the date that the Settlement Order is granted (the "**Storage Fees**"), which Storage Fees are estimated to be \$93,333 plus GST if the Settlement Order is granted on September 6, 2023.
  - (b) Any remaining Net Sale Proceeds after the payment of the Storage Fees (the "**Residual Sale Proceeds**") shall be distributed equally between Rotating Right, EDC and the Receiver; provided however that the distribution to the Receiver of its share of the Residual Sale Proceeds (the "**Receiver's Distribution**") shall not exceed the amount of the fees and disbursement of the Receiver and its legal counsel incurred throughout the course of the Receivership Proceedings (the "**Cap Amount**"). In the event that the Receiver's Distribution exceeds the Cap Amount, any amount of the Receiver's Distribution in excess of the Cap Amount shall be redistributed equally between Rotating Right and EDC. The Receiver's Distribution shall be applied by the Receiver to satisfy any unpaid fees and disbursement of the Receiver and its legal counsel incurred throughout the course of the Receivership Proceedings (the "**Professional Fees**"). In the event that the Professional Fees have been otherwise satisfied or that the Receiver's Distribution exceeds the amount of the Professional Fees, then the Receiver shall provide a direction to pay any residual amount of the Receiver's Distribution to Arnaki.
6. **Accounting of Sale Price.** Within 5 days of Closing, Rotating Right shall provide the Parties with a detailed accounting of the Gross Sale Proceeds.
7. **Payment.** Payment of the Residual Sale Proceeds to each of Rotating Right, EDC and the Receiver in accordance with Section 5(b) (the "**Settlement Sum**") shall be in full and final satisfaction of all Released Claims. For greater clarity, the Released Claims shall not include the SolvAQUA Claims (as defined in the Stalking Horse Agreement).
8. **Method of Payment.** Payment of the Settlement Sum shall be made within 5 days of Closing by way of wire transfer in immediately available funds as directed by the applicable Party, or by such other method as the applicable Party may agree to.
9. **Representation.** Rotating Right represents and warrants to the Parties that:
  - (a) it has advised North River Limited Partnership ("**North River**"), the landlord of Rotating Right's leased premises at 101, 3903-75 Avenue, Leduc, Alberta, of the terms of this Settlement Agreement;
  - (b) that North River is supportive of this Settlement Agreement; and
  - (c) that North River will not oppose the sale of the Vivakor Equipment in accordance with this Settlement Agreement notwithstanding the Seizure Notice (as defined in the Second Report).

10. **Release.** The Parties acknowledge that the payment of the Settlement Sum is in full and final settlement of, and each Party hereby releases and forever discharges, the Released Claims, which for greater certainty includes all or any actions, causes of action, damages, suits, debts, dues, sums of money, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the Parties or to the law, and whether in law or equity, that it, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other Party or any of its Related Parties arising out of or connection with the Dispute; provided however that the Released Claims shall not include the SolvAQUA Claims (as defined in the Stalking Horse Agreement).

11. **No Related Claims or Assigned Claims.** The Parties undertake and agree not to make any claim or take any proceedings against each other, the Related Parties, or against any person, partnership, corporation, or other such entity that might be entitled to claim contribution, indemnity, or other relief over against any other Party under the provisions of any statute or otherwise with respect to any of the matters to which this Settlement Agreement applies. The Parties further confirm that they have not assigned to any person, firm, agency, partnership, corporation or any other entity any of the Released Claims.

12. **Independent Legal Advice.** The Parties acknowledge and agree that prior to signing this Settlement Agreement, they have

(a) read and considered and understand the terms thereof and are executing it freely, voluntarily and without duress; and

(b) either obtained legal advice with respect to this Settlement Agreement or have had the opportunity to seek such legal advice and has chosen not to do so.

13. **Indemnification.** Each Party hereby indemnifies, and shall keep indemnified, the other Party against all costs and damages (including the entire legal expenses of the Parties) incurred in all future actions, claims and proceedings in respect of any of the Released Claims that it or its Related Parties or any of them may bring against the other Party or its Related Parties or any of them.

14. **No Admission of Liability.** The Parties understand and agree that the settlement herein is a compromise of the Dispute. Nothing in this Settlement Agreement will be construed as an admission of fact or liability by any of the Parties or as evidence of any of the Parties' involvement in the Dispute.

15. **Governing Law.** All matters arising out of or relating to this Settlement Agreement are governed by, and construed in accordance with, the laws of the Province of Alberta, and the federal laws of Canada applicable therein.

16. **Choice of Forum.** Any action or proceeding arising out of this Settlement Agreement will 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.

17. **Counterparts.** This Settlement Agreement 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.

18. **Severability.** If any clause of this Settlement Agreement is found to be void or unenforceable, that clause shall be deemed to be deleted from this Settlement Agreement and the remaining clauses shall continue in full force and effect.

19. **Entire Agreement.** This Settlement Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter of this Settlement Agreement 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 Settlement Agreement may be amended, modified, waived or changed unless made in writing and signed by the Parties.

20. **Authorized Individuals**. The Parties confirm that the individuals that have signed below have authority to execute this Settlement Agreement on behalf of the respective Parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the date first above written.

**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

**ARNAKI LTD.**

By \_\_\_\_\_


By \_\_\_\_\_

Name:  
Title:

Name:  
Title:

**ROTATING RIGHT (2016) INC.**

**EXPORT DEVELOPMENT CANADA**

By  \_\_\_\_\_

By \_\_\_\_\_

Name: Len Kerekanich  
Title: President

Name:  
Title:





IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the date first above written.

**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:

**ROTATING RIGHT (2016) INC.**

By \_\_\_\_\_

Name:  
Title:

**ARNAKI LTD.**

By Ariel Belilo \_\_\_\_\_

Name: Ariel Belilo


Title: Director

**EXPORT DEVELOPMENT CANADA**

By \_\_\_\_\_

Name:

Title:

**Signature:**   
Ariel Belilo (Aug 29, 2023 15:29 GMT+2)  
**Email:** ariel@nobicapital.com

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the date first above written.

**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:

**ROTATING RIGHT (2016) INC.**

By \_\_\_\_\_

Name:  
Title:

**ARNAKI LTD.**

By \_\_\_\_\_

Name:  
Title:

**EXPORT DEVELOPMENT CANADA**

By  \_\_\_\_\_

Name: Dan Barona  
Title: Sr. Debt Services Manager

**EXPORT DEVELOPMENT CANADA**

By Steve Rubayika

Name: Steve Rubayika  
Title: Debt Services manager

# SCHEDULE 4

**SolvAQUA Inc.**  
**Interim Statement of Receipts and Disbursements**  
**For the Period from August 19, 2022 to August 29, 2023**

		<b>Notes</b>
<b>Receipts:</b>		
Receiver's borrowings	\$ 130,000	1
Cash held in financial institutions	183	
Interest	9	
<b>Total receipts:</b>	130,192	
<b>Disbursements:</b>		
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	
<b>Total disbursements:</b>	129,699	
<b>Net available cash:</b>	<b>\$ 493</b>	

**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. Additional insurance costs were paid directly by the Receiver.

# SCHEDULE 5

**SolvAQUA Inc.**  
**Summary of Professional Fees and Disbursements**

**MNP Ltd.**

<b>Invoice date</b>	<b>Invoice number</b>	<b>Description</b>	<b>Professional fees</b>	<b>Disbursements</b>	<b>Subtotal</b>	<b>GST</b>	<b>Total</b>
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 June 15, 2023	2,518	-	2,518	126	2,644
August 3, 2023	11171093	For the period ended July 31, 2023	9,503	3	9,506	475	9,981
<b>Subtotal</b>			<b>90,185</b>	<b>18,467</b>	<b>108,652</b>	<b>5,433</b>	<b>114,085</b>
Estimate to complete			12,500	-	12,500	625	13,125
			<b>\$ 102,685</b>	<b>\$ 18,467</b>	<b>\$ 121,152</b>	<b>\$ 6,058</b>	<b>\$ 127,210</b>

**Cassels, Brock & Blackwell LLP**

<b>Invoice date</b>	<b>Invoice number</b>	<b>Description</b>	<b>Professional fees</b>	<b>Disbursements</b>	<b>Subtotal</b>	<b>GST</b>	<b>Total</b>
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
July 19, 2023	2206007	For the period ended June 30,2023	4,865	161	5,026	247	5,272
August 2, 2023	2208178	For the period ended July 31, 2023	8,000	64	8,064	403	8,467
<b>Subtotal</b>			<b>133,144</b>	<b>1,513</b>	<b>134,656</b>	<b>6,717</b>	<b>141,374</b>
Estimate to complete			30,000	-	30,000	1,500	31,500
			<b>\$ 163,144</b>	<b>\$ 1,513</b>	<b>\$ 164,656</b>	<b>\$ 8,217</b>	<b>\$ 172,874</b>
<b>Total Professional Fees and Disbursements</b>			<b>\$ 265,829</b>	<b>\$ 19,980</b>	<b>\$ 285,808</b>	<b>\$ 14,275</b>	<b>\$ 300,083</b>