

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 55
OF THE QUEEN'S BENCH ACT, C.C.S.M. c. C280

BETWEEN:

HSBC BANK CANADA,

Plaintiff,

-and-

**THE WINNING COMBINATION, INC., THE WINNING COMBINATION
U.S.A. INC., AND SHAZAD BUKHARI also known as SYED SHAHZAD
BUKHARI,**

Defendants.

NOTICE OF MOTION
HEARING DATE: THURSDAY, MARCH 17, 2022 AT 9:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE MARTIN

FASKEN MARTINEAU DUMOULIN LLP

Barristers and Solicitors
First Canadian Centre
350 7th Avenue SW, Suite 3400,
Calgary, Alberta T2P 3N9

TRAVIS LYSAK / MIHAI TOMOS

Ph: (403) 261- 5501 / (403) 261-7386
Email: tlysak@fasken.com /
mtomos@fasken.com
File No . 245056.00298

MLT AIKINS LLP

Barristers and Solicitors
3000 - 360 Main Street
Winnipeg, Manitoba R3C 4G1

J.J. BURNELL / ANJALI SANDHU

Ph: (204) 957-4663 / (204) 957-4760
Email: jburnell@mltaikins.com /
asandhu@mltaikins.com
File No. 0095886.00002

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 55
OF THE QUEEN'S BENCH ACT, C.C.S.M. c. C280

BETWEEN:

HSBC BANK CANADA,

Plaintiff,

-and-

**THE WINNING COMBINATION, INC., THE WINNING COMBINATION
U.S.A. INC., AND SHAZAD BUKHARI also known as SYED SHAHZAD
BUKHARI,**

Defendants.

NOTICE OF MOTION

The Plaintiff, HSBC Bank Canada will make a motion before the Honourable Mr. Justice Martin on Thursday, the 17th day of March, 2022 at 9 o'clock in the forenoon, or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba to be heard by video-conference.

THE MOTION IS FOR:

1. An Order abridging the time for service and filing of this notice of motion and the evidence in support thereof or, in the alternative, dispensing with and/or validating service of same;

2. An Order that pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c.B-3 as amended (the "**BIA**") and section 55 of *The Court of Queen's Bench Act*, C.C.S.M. c.C280 as amended (the "**Queen's Bench Act**"), Ernst & Young Inc. ("**EY**") be appointed Receiver and Manager, without security, of all the assets, undertakings and properties of the Defendant, The Winning Combination, Inc. with the authority to act as more particularly set out in the draft form of order attached to this notice of motion as **Schedule "A"**;
3. An Order that Exhibit "N" to the Affidavit of Cameron Bailey sworn March 3, 2022 be filed under seal, kept confidential and not form part of the public record, and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge, and shall only be made accessible or form part of the public record upon further Order of this Honourable Court (the "**Sealing Order**"); and
4. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiff is a Canadian chartered bank;
2. The Defendant, The Winning Combination, Inc. (the "**Borrower**") is a corporation incorporated pursuant to the laws of Manitoba with its registered office address located in The City of Winnipeg;
3. At the request of the Borrower and for valuable consideration, the Plaintiff extended loans (the "**Loans**") to the Borrower guaranteed by the Defendants, The

Winning Combination U.S.A. Inc. and Shazad Bukhari a.k.a. Syed Shahzad Bukhari, secured by, *inter alia*, the following security:

- a. a General Security Agreement dated September 3, 2004 executed by the Borrower in favour of the Lender;
 - b. a Security Over Cash, Credit Balances and Deposit Instruments by Third Party dated November 24, 2011, executed by the Borrower in favour of the Lender; and
 - c. a General Assignment of Book Debts dated September 3, 2004, executed by the Borrower in favour of the Lender,

(together, the “**Borrower Security**”);
4. The terms of the Borrower Security included, *inter alia*, the following:
 - a. a security interest granted to the Borrower in the undertaking of the Borrower and in all Goods, Instruments, Intangibles and Securities owned or thereafter owned or acquired by or on behalf of the Borrower and substitutions therefore (collectively, the “**Collateral**”); and
 - b. upon default by the Borrower under the security, the Plaintiff may appoint a receiver and/or receiver and manager over the Collateral;
5. The Borrower is in default of its obligations under the Loans and the Borrower Security;
6. As at February 22, 2022, the total indebtedness of the Borrower to the Plaintiff was CAD \$10,511,576.76 plus USD \$145,364.60, plus all further accruing interest

payable in accordance with the Loans plus all costs incurred with respect to the collection thereof, including legal fees on a solicitor and own client, full indemnity basis;

7. On February 22, 2022, the Plaintiff demanded from the Borrower payment of the Indebtedness;
8. A Notice of Intention to Enforce Security under subsection 244(1) of the BIA was served concurrently with the Demand on February 22, 2022, the ten day prescribed notice period has expired and the Plaintiff is entitled to enforce its security;
9. The Plaintiff wishes to appoint EY as receiver and manager of the Borrower and EY has consented to act in that capacity;
10. The appointment of a receiver and manager is just and convenient;
11. The security held by the Plaintiff pursuant to the Borrower Security is or may be at risk;
12. Court appointment is necessary to enable the receiver and manager to carry out its duties more efficiently;
13. The Plaintiff has lost confidence in the Borrower and its ability to make satisfactory arrangements to address the Indebtedness;
14. The appointment of a receiver and manager is necessary to adequately protect the interests of the Plaintiff and other stakeholders;

15. The appointment of a receiver and manager will increase the likelihood of maximizing the return for the benefit of all stakeholders;
16. A balancing of the interests of the Borrower and the Plaintiff favours the Plaintiff and the appointment of a receiver and manager;
17. This is an urgent matter;
18. EY has prepared a draft report with respect to the Defendants' cash flow and the Lender's security position dated February 17, 2022 (the "**Liquidator's Report**");
19. The Liquidator's Report is attached as Exhibit "N" to the Affidavit of Cameron Bailey sworn March 3, 2022 (the "Confidential Exhibit "N")");
20. Confidential Exhibit "N" contains information of a commercially sensitive and confidential nature and its disclosure to the public would be prejudicial to the interests of the Lender and other stakeholders;
21. The public disclosure of Confidential Exhibit "N" poses a serious risk to the commercial interests of the Lender and other stakeholders, which constitutes an important public interest (the "**Important Identified Public Interest**");
22. The requested Sealing Order is necessary to prevent the risk to the Important Identified Public Interest and there are no reasonable alternative measures available to prevent this risk;

23. The benefits of the requested Sealing Order outweighs any negative effects of the Sealing Order;
24. Sections 243(1) and 243(6) of the BIA and section 55 of the Queen's Bench Act;
25. Sections 2.03, 3.02, 16, 27 and 55 of the *Court of Queen's Bench Rules* M.R. 553/88, ss. 2.03, 3.02, 16 and 37;
26. *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, Rule 3;
27. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Cameron Bailey sworn March 3, 2022;
2. The Consent of Ernst & Young Inc. dated March 10, 2022; and
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

March 11, 2022

FASKEN MARTINEAU DUMOULIN LLP
Barristers and Solicitors
First Canadian Centre
350 7th Avenue SW, Suite 3400,
Calgary, Alberta T2P 3N9

TRAVIS LYSAK / MIHAI TOMOS
Ph: (403) 261- 5501 / (403) 261-7386
Email: tlysak@fasken.com /
mtomos@fasken.com
File No . 245056.00298

MLT AIKINS LLP
Barristers and Solicitors
3000 - 360 Main Street
Winnipeg, Manitoba R3C 4G1

J.J. BURNELL / JOHN MARTENS
Ph: (204) 957-4663 / (204) 957-4856
Email: jburnell@mltaikins.com /
jmartens@mltaikins.com
File No. 0095886.00002

To: The Attached Service List

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE BANKRUPTCY AND
INSOLVENCY ACT R.S.C. 1985, c. B-3 AS AMENDED
AND SECTION 55 OF THE QUEEN'S BENCH ACT,
C.C.S.M. c. C280

BETWEEN:

HSBC BANK CANADA,

Plaintiff,

-and-

**THE WINNING COMBINATION, INC., THE WINNING
COMBINATION U.S.A. INC., AND SHAZAD BUKHARI also
known as SYED SHAHZAD BUKHARI**

Defendants.

**SERVICE LIST
AS AT MARCH 11, 2022**

**FASKEN MARTINEAU DUMOULIN
LLP**

Barristers and Solicitors
First Canadian Centre
350 7th Avenue SW, Suite 3400,
Calgary, Alberta T2P 3N9

MLT AIKINS LLP

Barristers and Solicitors
3000 - 360 Main Street
Winnipeg, Manitoba R3C 4G1

TRAVIS LYSAK / MIHAI TOMOS

Ph: (403) 261- 5501 / (403) 261-7386

Email: tlysak@fasken.com /
mtomos@fasken.com

File No . 245056.00298

J.J. BURNELL / ANJALI SANDHU

Ph: (204) 957-4663 / (204) 957-4760

Email: jburnell@mltaikins.com /
asandhu@mltaikins.com

File No. 0095886.00002

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE BANKRUPTCY AND
INSOLVENCY ACT R.S.C. 1985, c. B-3 AS AMENDED
AND SECTION 55 OF THE QUEEN'S BENCH ACT,
C.C.S.M. c. C280

BETWEEN:

HSBC BANK CANADA,

Plaintiff,

-and-

**THE WINNING COMBINATION, INC., THE WINNING
COMBINATION U.S.A. INC., AND SHAZAD BUKHARI also
known as SYED SHAHZAD BUKHARI**

Defendants.

SERVICE LIST

Party/Counsel	Telephone	Facsimile	Party Represented
THE WINNING COMBINATION, INC. BN. 88125 2324 22 Aldershot Boulevard Winnipeg, MB R3P 0C8 Aftab Bukhari Shazad Bukhari Email: shazad@winningcombination.com			Defendant
THE WINNING COMBINATION U.S.A. INC. 22 Aldershot Boulevard Winnipeg, MB R3P 0C8 Shazad Bukhari Email: shazad@winningcombination.com			Defendant

Party/Counsel	Telephone	Facsimile	Party Represented
SHAZAD BUKHARI a.k.a. SYED SHAHZAD BUKHARI 22 Aldershot Boulevard Winnipeg, MB R3P 0C8 Email: shazad@winningcombination.com			Defendant
McCARTHY TETRAULT LLP Suite 4000 421 - 7th Avenue SW Calgary AB T2P 4K9 Walker MacLeod Email: wmacleod@mccarthy.ca	Tel: 403-260-3710		Co-Counsel for the Defendants
PITBLADO LAW 2500-360 Main Street Winnipeg, MB R3C 4H6 Canada Catherine Howden Email: howden@pitblado.com	Tel: 204-956-3532		Co-Counsel for the Defendants
HSBC BANK CANADA 407 8 Avenue SW 10 Floor Calgary AB T2P 1E5 Cameron Bailey Email: cameron.bailey@hsbc.ca			Plaintiff
FASKEN MARTINEAU DUMOULIN LLP First Canadian Centre 350 7th Avenue SW, Suite 3400 Calgary, AB T2P 3N9 Travis Lysak Email: tlysak@fasken.com Mihai Tomos Email: mtomos@fasken.com	Tel: 403-261-5501 Tel: 403-261-7386		Co-Counsel for the Plaintiff
MLT AIKINS LLP 360 Main Street, Suite 3000 Winnipeg, MB R3C 4G1 J.J. Burnell Email: jburnell@mltaikins.com Anjali Sandhu Email: asandhu@mltaikins.com	Tel: 204-957-4663 Tel: 204-957-4760		Co-Counsel for the Plaintiff

Party/Counsel	Telephone	Facsimile	Party Represented
ERNST & YOUNG INC. 360 Main Street, Suite 2700 Winnipeg, MB R3C 4G9 Joe Healey Email: joe.a.healey@parthenon.ey.com	Tel: 204-954-5568		Receiver
THOMPSON DORFMAN SWEATMAN LLP 1700-242 Hargrave Street Winnipeg, MB R3C 0V1 Ross McFadyen Email: ram@tdslaw.com	Tel: (204)-934-2378		Counsel for the Receiver
SURREY NATIONAL VERIFICATION AND COLLECTION CENTRE CANADA REVENUE AGENCY 9755 King George Boulevard Surrey BC V3T 5E1 Email: mbcolls@justice.gc.ca	Tel: 1-866-891-7403	Fax (toll free): 1-866-219-0311	
DEPARTMENT OF JUSTICE (CANADA) 601-400 St. Mary Avenue Winnipeg, MB R3C 4K5 Penny L. Piper Email: penny.piper@justice.gc.ca Tim Doyle Email: timothy.doyle@justice.gc.ca	Tel: 431-489-8686 Tel: 431-489-8662		Counsel for Her Majesty the Queen
MANITOBA JUSTICE – LEGAL SERVICES BRANCH 730-405 Broadway Winnipeg, MB R3C 3L6 Shelley L. Haner Email: shelley.haner@gov.mb.ca	Tel: 204-945-0243		Counsel for the Province of Manitoba
BDC CAPITAL INC. 110, 444 - 7th Avenue S.W. Calgary, Alberta Canada T2P 0X8 Imran Malik Email: Imran.MALIK@bdc.ca			

Schedule "A"

File No. CI 22-01-_____

**THE QUEEN'S BENCH
Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 55
OF THE QUEEN'S BENCH ACT, C.C.S.M. c. C280

BETWEEN:

HSBC BANK CANADA,

Plaintiff,

-and-

**THE WINNING COMBINATION, INC., THE WINNING COMBINATION U.S.A. INC.,
AND SHAZAD BUKHARI also known as SYED SHAHZAD BUKHARI,**

Defendants.

ORDER
(Appointing Receiver)

FASKEN MARTINEAU DUMOULIN LLP

Barristers and Solicitors
First Canadian Centre
350 7th Avenue SW, Suite 3400,
Calgary, Alberta T2P 3N9

TRAVIS LYSAK / MIHAI TOMOS

Ph: (403) 261- 5501 / (403) 261-7386

Email: tllysak@fasken.com /
mtomos@fasken.com

File No . 245056.00298

MLT AIKINS LLP

Barristers and Solicitors
3000 - 360 Main Street
Winnipeg, Manitoba R3C 4G1

J.J. BURNELL / ANJALI SANDHU

Ph: (204) 957-4663 / (204) 957-4760

Email: jburnell@mltaikins.com /
asandhu@mltaikins.com

File No. 0095886.00002

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 55
OF THE QUEEN'S BENCH ACT, C.C.S.M. c. C280

THE HONOURABLE MR.)	THURSDAY, THE 17 TH
)	
JUSTICE MARTIN)	DAY OF MARCH, 2022

BETWEEN:

HSBC BANK CANADA,

Plaintiff,

-and-

**THE WINNING COMBINATION, INC., THE WINNING COMBINATION U.S.A. INC.,
AND SHAZAD BUKHARI also known as SYED SHAHZAD BUKHARI,**

Defendants.

ORDER
(appointing Receiver)

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Ernst & Young Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of The Winning Combination, Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the affidavit of Cameron Bailey sworn March ***, 2022 and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME] although

duly served as appears from the affidavit of service of Anjali Sandhu sworn March ***, 2022 and on reading the consent of Ernst & Young Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA, Ernst & Young Inc. is hereby appointed Receiver, without security, 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 (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workplace safety and health assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter

instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 59(10) of *The Personal Property Security Act* (Manitoba), shall not be required.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters

relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's

possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court provided; however, that nothing in this Order shall affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body of the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the

written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The

purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, *The Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Sites Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba), and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program*

Act. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property up to \$250,000.00, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, including all claims of Her Majesty in right of Canada, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. However, subject to further order of this Honourable Court, the Receiver's Charge shall not rank ahead of any secured creditors who were not provided with notice of this motion.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Honourable Court.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it

may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person including, all claims of Her Majesty in right of Canada, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. However, subject to further order of this Honourable Court, the Receiver's Charge shall not rank ahead of any secured creditors who were not provided with notice of this motion.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the Plaintiff and the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or electronic transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

26. THIS COURT ORDERS that counsel for the Receiver shall prepare and keep current a service list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or email address) for service to: the Plaintiff; the Receiver; and each creditor or other interested Person who has sent a request, in writing, to counsel for the Receiver to be added to the Service List. The Service List shall indicate whether each Person on the Service List has elected to be served by email or facsimile, and failing such election the Service List shall indicate service by email. The Service List shall be posted on the website of the Receiver at the address indicated in paragraph 27 herein. **For greater certainty, creditors and other interested Persons who have received notice of this Order and who do not send a request, in writing, to counsel for the Receiver to be added to the Service List, shall not be required to be further served in these proceedings.**

27. THIS COURT ORDERS that the Plaintiff, the Receiver, and any party on the Service List may serve any court materials in these proceedings by facsimile or by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at www.ey.com.ca/twc Service shall be deemed valid and sufficient if sent in this manner.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a solicitor-client basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

March 17, 2022

I, J.J. BURNELL OF THE FIRM OF MLT AIKINS LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: **INSERT** AS DIRECTED BY THE HONOURABLE MR. JUSTICE MARTIN.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$_____

1. THIS IS TO CERTIFY that Ernst & Young Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties The Winning Combination, Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of The Queen's Bench, Winnipeg Centre (the "**Court**") dated the 17th day of March, 2022 (the "**Order**") made in an action having Court file number [REDACTED], has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ***, ***.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the ____ day of _____, 20__.

Ernst & Young Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title: