

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE MCEWEN)

TUESDAY, THE 7TH
DAY OF FEBRUARY, 2023

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant and supported by BDO Canada Limited ("**BDO**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Kivuto Solutions Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the "**Purchasers**") dated January 17, 2023 and appended to the Report of BDO in its capacity as Proposed Receiver of the Debtor, dated January 27, 2023 (the "**Report**") and appended without redaction to the Confidential Supplementary Report of BDO

dated January 27, 2023 (the “**Confidential Report**”), and vesting in the Purchasers the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.

ON READING the Notice of Application, the Affidavit of Andrea Jamnisek, the Report and the Confidential Report and on hearing the submissions of counsel for the Applicant, the Purchasers, the Debtor and the Receiver, and such other counsel who were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Rosanna Cavaliere, sworn January 30, 2023, filed:

SERVICE

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

CAPITALIZED TERMS

2. THIS COURT ORDERS that capitalized terms not defined herein shall have the meanings set out in the Sale Agreement.

SALE APPROVAL

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor, which was assigned to and adopted by the Receiver, is hereby authorized and approved, with such minor amendments as the Debtor or Receiver may deem necessary. The Debtor and Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointment Order of the Honourable Justice McEwen dated February 7, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule B) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees contemplated as the "Offered Employees" at section 8.1 the Sale Agreement. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

SEALING ORDER

9. THIS COURT ORDERS that the Confidential Report and its confidential appendices therein and the exhibits therein, including the unredacted Sale Agreement referred to in the Report of the Receiver, shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and the sealed envelope shall not be opened until no earlier one day after successful closing as evidenced by the filing of the Receiver's Certificate as referred to above or further order of this Honourable Court.

10. THIS COURT ORDERS that the Confidential Schedule to the Confidential Report shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and the sealed envelope shall not be opened until further order of this Honourable Court.

AID AND RECOGNITION

11. 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.

12. THIS COURT ORDERS that this Order is effective from the date it is made and is enforceable without any need for entry or filing.

A handwritten signature in blue ink, appearing to read "M. J. T.", is written above a solid horizontal line.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-23-00693569-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated February 7, 2023, BDO Canada Limited was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Kivuto Solutions Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated February 7, 2023, the Court approved the agreement of purchase and sale made as of January 17, 2023 (the “**Sale Agreement**”) between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the “**Purchasers**”) and provided for the vesting in the Purchasers of the Debtor’s

right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**BDO Canada Limited, in its capacity as
Receiver of the undertaking, property and
assets of Kivuto Solutions Inc., and not in its
personal or corporate capacity**

Per: _____

Name:

Title:

Schedule B – Permitted Encumbrances, Easements and Restrictive Covenants

(unaffected by the Vesting Order)

NIL

THE TORONTO-DOMINION BANK
Applicant

-and-

KIVUTO SOLUTIONS INC.
Respondent

Court File No. CV-23-00693569-00CL

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PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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