

COURT FILE NUMBER	1201-13772	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF(S)	INTERENTAINMENT MEDIA INC.	
DEFENDANT(S)	POYNT CORPORATION	
DOCUMENT	<b>APPLICATION BY HARDIE &amp; KELLY INC. IN ITS CAPACITY AS RECEIVER OF POYNT CORPORATION (SALE APPROVAL AND VESTING ORDER)</b>	

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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400 3rd Avenue SW, Suite 3700  
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Attention: Howard A. Gorman

File No. 01135476-0008

**NOTICE TO RESPONDENT(S):**

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

You have the right to state your side of this matter before the master/judge.

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

<b>Date:</b>	<b>Friday, January 11, 2013</b>
<b>Time:</b>	<b>11:00 a.m.</b>
<b>Where:</b>	<b>Calgary Courts Centre, 601 - 5th Street SW, Calgary, Alberta</b>
<b>Before:</b>	<b>The Honourable Mr. Justice S. J. LoVecchio</b>

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

**Remedy claimed or sought:**

1. Abridging, if necessary, the time for service of this Application and supporting materials, and declaring service of same to be good and sufficient;

2. Granting an Order substantially in the form attached hereto as Schedule "A" approving the Intertainment APSA and vesting the Assets in the Purchaser (as those terms are defined in the attached form of Order);
3. Granting a Sealing Order substantially in the form attached hereto as Schedule "B" directing that the Receiver's Supplemental Confidential Report dated January 4, 2013, shall be treated as confidential, sealed and not form part of the public record, and shall be inserted in a sealed envelope which shall be clearly marked "SEALED PURSUANT TO COURT ORDER - NOT TO BE OPENED WITHOUT PRIOR AUTHORITY FROM THE HONOURABLE MR. JUSTICE R. G. STEVENS".
4. Such further and other relief as this Honourable Court deems appropriate in the circumstances.

**Grounds for making this application:**

5. On July 5, 2012 Poynt Corporation ("Poynt") filed a Notice of Intention to Make a Proposal pursuant to the Bankruptcy & Insolvency Act, and Hardie & Kelly Inc. was appointed to act as the Trustee in the Proposal proceedings, being Court File Number BK 25-1642764 (the "Proposal Proceedings");
6. Poynt applied for and obtained several extensions of the Stay of Proceedings in the Proposal Proceedings;
7. On October 15, 2012 the Court of Queen's Bench of Alberta granted an Order in the Proposal Proceedings granting a further extension to the Stay of Proceedings and approving a \$1 million interim financing facility to be provided by O2O Corporation;
8. On October 25, 2012 Hardie & Kelly Inc. filed a Material Adverse Change Report in the Proposal Proceedings advising that the \$1 million interim financing had not been advanced and that O2O Corporation had elected not to advance the interim financing;
9. As a result, on October 31, 2012 Intertainment Media Inc. ("IMI") commenced the within Action, and this Court granted a Receivership Order appointing Hardie & Kelly Inc. (the "Receiver") Receiver of all of Poynt's property ("Property");
10. The Receivership Order approved a Sales Process Procedure and authorized the Receiver to market Poynt's Property for sale;
11. IMI has provided the Receiver with an offer to purchase Poynt's Property, which has been selected by the Receiver as the best bid to have been received by the applicable deadline, and has been accepted by the Receiver subject to approval by this Honourable Court;

12. The Receiver's Supplemental Confidential Report contains information about the IMI offer and other offers which were received by the Receiver which, if made public, would make it difficult for the Receiver to re-market the Property in the event IMI offer does not close, and Poynt's creditors would therefore be prejudiced;
13. Such further and other grounds as counsel may advise and this Court may permit.

**Material or evidence to be relied on:**

14. The First Report of the Receiver and the Receiver's Supplemental Confidential Report;
15. The pleadings and proceedings in this action and in the Proposal Proceedings.

**How the application is proposed to be heard or considered:**

16. In person.

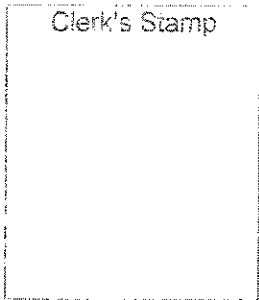
**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A"**

COURT FILE NUMBER 1201-13772  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF(S) ENTERTAINMENT MEDIA INC.  
DEFENDANT(S) POYNT CORPORATION  
DOCUMENT **ORDER  
(SALE APPROVAL AND VESTING ORDER)**



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Attention: Howard A. Gorman

File No. 01135476-0008

DATE OF WHICH ORDER WAS PRONOUNCED: January 11, 2013

LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: MR. JUSTICE S. J. LOVECCHIO

**UPON THE APPLICATION** of Hardie & Kelly Inc. (the "Receiver"), in its capacity as Receiver of Poynt Corporation ("Poynt"); **AND UPON HAVING READ** the pleadings, proceedings, orders and other materials filed in this action and in Action Number BK 25-1642764 (the "Proposal Proceedings"), including the First Report of the Receiver (the "First Report"), filed, and the Receiver's Confidential Supplemental Report (the "Confidential Report") of the Receiver; **AND UPON HEARING** counsel for the Plaintiff, counsel to the Receiver, and from any other interested persons who may be present; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this application; **AND WHEREAS** all capitalized terms not defined herein shall take the meaning ascribed to them in the October 31, 2012 Receivership Order in the within Action; **AND UPON IT APPEARING** that the sale of the Assets (as that term is defined in the Intertainment APSA, as that term is defined below) as proposed is just, fair and appropriate in all the circumstances;

**THE COURT HEREBY ORDERS AND DECLARES THAT:**

## **SERVICE**

1. Service of the notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

## **APPROVAL OF TRANSACTION**

2. The Asset Purchase and Sale Agreement (the "Intertainment APSA") between Intertainment Media Inc. and Avenza Holdings Inc. or their Nominee (collectively, the "Purchaser", the name of the Purchaser being chosen by the Plaintiff and the Receiver being advised of same in advance of the closing of the Transaction, as that term is defined below) and the Receiver, and which is attached as Appendix "A" to the Confidential Report, including the sale of the Assets (as that term is defined in the Intertainment APSA and as set out in Schedule "A" to the Intertainment APSA) is hereby approved and ratified, and it is hereby declared that the terms of the Intertainment APSA are commercially reasonable.
3. The Receiver is authorized and directed to conclude the transaction contemplated by the Intertainment APSA (the "Transaction") and to take all such steps and execute all such deeds, documents and instruments as may reasonably be necessary to consummate the Transaction contemplated therein substantially in accordance with the terms of the Intertainment APSA, subject to such amendments as the parties thereto may approve which do not materially and adversely alter the Transaction.

## **VESTING OF PROPERTY**

4. Upon the closing of the Transaction:
  - (a) the Assets shall be vested in the name of the Purchaser free of all estate, right, title, interest, royalty, rental, and equity of redemption of Poynt and all persons who claim by, through or under Poynt in respect of the Assets;
  - (b) Poynt and all persons who claim by, through or under Poynt in respect of the Assets shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Assets and, to the extent that any such person remains in possession or control of any of the Assets, they shall forthwith deliver possession of same to the Purchaser or its nominee;

- (c) the Purchaser shall be entitled to enter into and upon, hold and enjoy the Assets for its own use and benefit without any interference of or by Poynt, or any person claiming by or through or under Poynt.
5. Upon closing of the Transaction, all of Poynt's interests in the Assets shall vest in the Purchaser free and clear from all security interests, claims, estate, security, right, title, interest, and liens, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances or other rights, limitations or restrictions of any nature whatsoever, against Poynt including without limitation any rights or interests of any of the stakeholders or creditors of Poynt, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as the "Claims"), whether such Claims against Poynt came into existence prior to, subsequent to or as a result of any previous Order of this Court, by or of all persons or entities of a kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or agents, trustees, executives, administrators or other legal representatives (collectively, the "Claimants"), including for greater certainty and without limiting the generality of the foregoing: (i) any Claims held by or in favour of the individuals and entities served (either directly or through their solicitors) with this application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order in these proceedings, are extinguished, released and forever discharged.
6. For greater certainty, the Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever to any Claimants to the Assets or against Poynt.
7. Notwithstanding the provisions of paragraphs 4, 5 and 5 of this Order, nothing in this Order shall in any way reduce, interfere with, or in any way affect:
- (a) the Claim (if any) which may be advanced by the law firm Sunstein Kann Murphy & Timbers LLP of Boston Massachusetts against the Assets, or any of them, and
- (b) the agreement between Poynt and Gladios IP Inc. (the "Gladios Agreement"), provided that all of Poynt's rights and obligations under the Gladios Agreement are unconditionally assigned to the Purchaser concurrent with the Transaction and that Poynt shall, upon closing of the Transaction, stand absolutely released and discharged from all rights and

obligations under the Gladios Agreement and Gladios IP Inc. shall thereafter have no Claim against Poynt.

8. The net proceeds from the sale of the Assets shall stand in the place and stead of the Assets and from and after the closing of the Transaction all claims and encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale as if the Assets had not been sold and remained in the possession or control of the person who had possession or control immediately prior to the sale.
9. The Receiver is hereby authorized and directed to pay, from the proceeds of sale of the Assets, all priority claims which rank in priority to the Plaintiff's security over the Assets, including but not limited to:
  - (a) all amounts owing under the Administration Charge granted by this Court in the Proposal Proceedings;
  - (b) any deemed trust claim by the Canada Revenue Agency;
  - (c) all amounts owing determined to be owing under the Second DIP Lender's Charge granted by this Court in the Proposal Proceedings;
  - (d) all amounts owing under the Receiver's Charge and the Receiver's Borrowing Charge granted by this Court in the within action;
  - (e) all statutory priority amounts owing by Poynt to employees of Poynt;
  - (f) any and all other priority amounts owing by Poynt under any statute or for applicable taxes or levies.
10. The Transaction shall not be void or voidable at the instance of Claimants and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or any other applicable federal or provincial legislation, and the Transaction, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy.
11. Upon the filing of a certified copy of this Order, together with any applicable registration fees, the appropriate government authorities are hereby requested and directed to register such transfers, discharges, discharge statements or conveyances, as may be required to register title to the Assets to the Purchaser or the Purchaser's nominee.

12. This Honourable Court hereby requests the aid and recognition of any court or administrative body in any province of Canada, the Federal Court of Canada, any administrative tribunal or other court constituted pursuant to the Parliament of Canada or any of its provinces or territories and any federal or state court or administrative body or any other foreign courts to act in aid of and to be complimentary to this Court in carrying out the terms of this Order.
13. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier and, if served by facsimile or courier, service is deemed to be effected the next business day following the transmission or delivery of such documents.
14. Service of this Order on any party not attending this application is hereby dispensed with.
15. The Receiver and the Purchaser are at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

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J.C.Q.B.A.



**SCHEDULE "B"**

COURT FILE NUMBER 1201-13772  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF(S) ENTERTAINMENT MEDIA INC.  
DEFENDANT(S) POYNT CORPORATION  
DOCUMENT **ORDER  
(SEALING ORDER)**

Clerk's Stamp

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Attention: Howard A. Gorman

File No. 01135476-0008

DATE OF WHICH ORDER WAS PRONOUNCED: January 11, 2013

LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: MR. JUSTICE S. J. LOVECCHIO

**UPON THE APPLICATION** of Hardie & Kelly Inc. (the "Receiver"), in its capacity as Receiver of Poynt Corporation ("Poynt"); **AND UPON HAVING READ** the pleadings, proceedings, orders and other materials filed in this action and in Action Number BK 25-1642764 (the "Proposal Proceedings"), including the First Report of the Receiver (the "First Report"), filed, and the Receiver's Confidential Supplemental Report of the Receiver; **AND UPON HEARING** counsel for the Plaintiff, counsel to the Receiver, and from any other interested persons who may be present; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this application; **AND WHEREAS** all capitalized terms not defined herein shall take the meaning ascribed to them in the October 31, 2012 Receivership Order in the within Action;

**THE COURT HEREBY ORDERS AND DECLARES THAT:**

1. Service of the notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. The Receiver's Confidential Supplemental Report dated January 4, 2013 shall be treated as confidential, sealed and not form part of the public record, and shall be inserted in a sealed envelope which shall be clearly marked: "SEALED PURSUANT TO COURT ORDER - NOT TO BE OPENED WITHOUT PRIOR AUTHORITY FROM THE HONOURABLE MR. JUSTICE S. J. LOVECCHIO".
3. The Receiver shall be at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

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J.C.Q.B.A.