

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF ORIGINAL TRADERS ENERGY
LTD. AND 2496750 ONTARIO INC.**

**MOTION RECORD
(Returnable September 9, 2024)**

September 4, 2024

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c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL
TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

Applicants

**SERVICE LIST
(September 4, 2024)**

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Tab 1

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**NOTICE OF MOTION
(Returnable September 9, 2024)**

KPMG Inc. (“**KPMG**”), in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the “**OTE Group**”) in these proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and these proceedings, the “**CCAA Proceedings**”) will make a motion to be heard by a judge of the Ontario Superior Court (Commercial List) (the “**Court**”) at 10:00 a.m. (EST) on September 9th, 2024.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ in writing under subrule 37.12.1 (1);
- ☐ in writing as an opposed motion under subrule 37.12.1 (4);
- ☐ in person at 330 University Avenue, Toronto, Ontario;
- ☐ by telephone conference;
- ☒ by video conference.

THIS MOTION IS FOR:

1. An Order substantially in the form appended to the Motion Record of the Monitor (the “**Lease Termination Approval Order**”), among other things:
 - (a) approving the Tyendinaga Lease Termination Agreement (as defined below);
 - (b) approving the Whitefish Lease Termination Agreement (as defined below);
 - (c) vesting the OTE Group’s interests in the Blending Equipment (as defined below) in the respective landlords; and
 - (d) sealing the Confidential Appendices to the Monitor’s Tenth Report dated September 4, 2024 (the “**Tenth Report**”).
2. Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

3. The OTE Group functioned as a wholesale fuel supplier which serviced mainly First Nations’ petroleum stations and First Nations’ communities across Ontario.
4. The OTE Group was granted protection under the CCAA on January 30, 2023 pursuant to the initial order issued by this Court (the “**Initial Order**”). Among other things, the Initial Order granted a ten-day stay of proceedings in favour of the OTE Group and appointed KPMG as the Monitor with certain investigatory powers. The stay of proceedings was extended pursuant to the Amended and Restated Initial Order issued on February 9, 2023, and has been extended from time

to time throughout these proceedings. In its capacity as Monitor, KPMG has participated in these proceedings in accordance with its duties under the Orders granted and the CCAA, and has filed various Reports with the Court.

5. On March 15, 2023, the Court granted a Mareva injunction as part of an Order (the “**Injunctive Order**”) which restrained Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**”, and collectively, the “**Mareva Respondents**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can” (the “**Italian Yacht**”), more particularly described in Schedule “A” of the Injunctive Order. On March 21, 2023 and March 28, 2023, this Court issued certain endorsements related to the Injunctive Order.

6. On July 17, 2023, this Court granted the Yacht Sale and AirSprint Proceeds Order, among other things, (i) authorizing and directing the Monitor to conduct a sale process for the Italian Yacht (the “**Yacht Sale Process**”); and (ii) directing AirSprint to remit to the Monitor the US\$5,482,779.85 and any accrued interest thereon (the “**AirSprint Proceeds**”) that was then held in trust by AirSprint on account of net proceeds and receipts from the sale of property including aircraft interests that were purchased or financed from funds sent to AirSprint by any OTE Group entity or affiliate thereof. The Yacht Sale and AirSprint Proceeds Order also directed that the AirSprint Proceeds be held in trust pending judicial determination of the claims and entitlements to such proceeds as between the OTE Group entities and the Mareva Respondents or any of them.

7. On October 12, 2023, following the adjournment of several motions that were previously brought before the Court, this Court issued the following Orders (which were ultimately unopposed or consented to by the relevant stakeholders):

- (a) an Order (the “**Monitor’s Enhanced Powers and Amended Bid Process Approval Order**”), among other things, providing the Monitor with enhanced powers in connection with the business and property of the OTE Group, and approving an amended bid process for the sale of the assets of the OTE Group to be carried out by the Monitor (the “**Bid Process**”); and
- (b) an Order, among other things, extending the stay of proceedings first granted pursuant to the Initial Order (as extended from time-to-time) to April 26, 2024 (the “**Stay Period**”), approving certain amendments to the claims procedure previously approved by this Court on April 27, 2023, and approving the activities of the Monitor.

8. Following the Bid Process, the Court granted an Order approving a sale of vehicles (the “**Vehicle Transaction**”) by the Monitor on behalf of the OTE Group to Allstar Auctions Inc. on January 30, 2024. The Vehicle Transaction has since closed, and a distribution to various capital lessors and secured parties was approved by this Court pursuant to an Order granted on March 27, 2024.

9. On April 22, 2024, this Court issued an Order (among other things) approving an extension of the Stay Period to October 25, 2024, declaring that the *Wage Earner Protection Program Act* (Canada) applied to the OTE Group and their collective former employees, authorizing the Monitor to invest certain funds into a guaranteed investment certificate and to execute certain security documents in favour of the Royal Bank of Canada in connection therewith, and approving various Reports, as well as an Order authorizing a distribution of the AirSprint Proceeds to

AirSprint and approving a related release (which relief was adjourned by this Court at a prior motion brought by the Monitor).

10. Separate from its efforts to monetize the assets of the OTE Group and to assist in the wind-up of its business, the Monitor has conducted an investigation into wrongdoing by the principals of the OTE Group. As discussed in greater detail in prior Reports, the Monitor ultimately obtained a broad Mareva injunction against Page and 265 pursuant to a decision issued by this Court on January 16, 2024. The Monitor has conducted follow-up examinations of Page, and its investigation remains ongoing.

Leases and Blending Equipment

11. The OTE Group leases three blending locations (the “**Fuel Blending Locations**”) located in Tyendinaga, Whitefish and Six Nations on First Nations reserve lands. The Bid Process did not include the immovable fuel blending equipment located thereon (the “**Blending Equipment**”), or the related leases, as property for sale, but did not preclude interested parties from expressing an interest in the leasehold interests or Blending Equipment. The Bid Process ultimately resulted in four expressions of interest in the Blending Equipment being received by the Monitor. The Monitor did not progress these discussions until a motion for a CCAA plan brought by OTE USA LLC was withdrawn in March 2024.

12. Following the withdrawal of that motion, the Monitor reached out to the landlords in respect of the Fuel Blending Locations (the “**Blending Location Landlords**”) to discuss the expressions of interest. Neither the Tyendinaga Landlord nor the Whitefish Landlord were agreeable to leasing their respective premises (the “**Tyendinaga Premises**” and the “**Whitefish Premises**”, respectively) on the terms proffered by the parties who expressed an interest in either

of the Blending Locations. As such, the discussions did not lead to any executable agreements. While the Monitor continued to work to find a commercial solution, the OTE Group continued to pay monthly rent.

13. An assignment of the leases in respect of the Tyendinaga Premises or the Whitefish Premises or sale of the Blending Equipment would be subject to consent by the applicable landlords, and in the case of the Whitefish Premises, also the relevant band council. As discussed in greater detail in the Ninth Report, fuel blending operations at the Tyendinaga Premises and Whitefish Premises were discontinued in August and September 2023, respectively, and the fuel and gas licenses in respect of both premises expired on December 31, 2023. Given that operations have ceased (and are no longer licensed), a “going concern” sale of either premises is not possible.

14. As a result of the above considerations and issues, the Monitor determined that it was in the best interests of the OTE Group and its stakeholders to pursue a cost-effective termination of lease agreements in respect of the Fuel Blending Locations and to settle all disputes with the Blending Location Landlords regarding the lease agreements and the Blending Equipment.

Lease Termination Approval

15. The Monitor, on behalf of the OTE Group, has entered into agreements with the landlord of the Tyendinaga Premises (the “**Tyendinaga Landlord**”, and that agreement, the “**Tyendinaga Lease Termination Agreement**”) and the landlord of the Whitefish Premises (the “**Whitefish Landlord**”, and that agreement, the “**Whitefish Lease Termination Agreement**”), respectively.

16. The key terms of the Tyendinaga Lease Termination Agreement provide:

- (a) the lease and related or ancillary agreements shall be terminated, and neither the OTE Group nor the Tyendinaga Landlord shall have any further rights, liabilities or obligations to the other in respect thereof;
 - (b) the OTE Group shall surrender the Tyendinaga Premises to the Tyendinaga Landlord and the Tyendinaga Landlord shall accept the surrender of the Tyendinaga Blending Location in full and final satisfaction of all claims of the Tyendinaga Landlord and acknowledged and agreed that it is not entitled to any further payment of rent, additional rent, damages or other amounts from the OTE Group or the Monitor;
 - (c) the Tyendinaga Landlord, in consideration for the purchase of the OTE Group's interests in the Blending Equipment and full and final settlement of the disputes between the Landlord and the OTE Group, agreed to pay the Monitor, on behalf of the OTE Group, an amount that the Monitor is seeking to seal; and
 - (d) the Monitor shall seek an Order approving the Tyendinaga Lease Termination Agreement. Should that Order not be issued, the Monitor, the OTE Group, and the Tyendinaga Landlord shall be released from all obligations in connection therewith.
17. The key terms of the Whitefish Lease Termination Agreement provide:
- (a) the Whitefish Landlord, in exchange for the mutual releases set out in the Whitefish Lease Termination Agreement and in consideration for the purchase of the OTE Group's interests in the Blending Equipment and full and final settlement of the disputes between the Whitefish Landlord and the OTE Group regarding the

ownership of the Blending Equipment, agrees to pay the Monitor, on behalf of the OTE Group, a confidential amount and to reimburse the payment of any rent paid to the Whitefish Landlord by the Monitor, on behalf of the OTE Group, for and after the month of July 2024;

- (b) the Monitor is not aware of any remaining warranties on the Blending Equipment and the Whitefish blending location. However, to the extent any warranties exist for the Blending Equipment at the Whitefish blending location, the Whitefish Landlord's purchase of the Blending Equipment from the Monitor on behalf of the OTE Group shall include the purchase of any remaining warranties for the Blending Equipment at the Whitefish blending location;
- (c) the Whitefish Landlord shall assume responsibility of the Whitefish Premises effective September 1, 2024; and
- (d) the Monitor shall seek an Order approving the Tyendinaga Lease Termination Agreement. Should that Order not be issued, the Monitor, the OTE Group, and the Tyendinaga Landlord shall be released from all obligations in connection therewith.

18. The Lease Termination Approval Order would approve both the Lease Termination Agreements and vest the OTE Group's interest in the Blending Equipment in the respective landlords.

19. The Monitor is of the view that the relief sought is appropriate in the circumstances. Despite soliciting expressions of interest in respect of the Blending Equipment and engaging in discussions with the landlords and potential purchasers in respect of same, no agreement was ultimately

reached with a third party for the purchase of such equipment (given, among other things, the parties' differing positions as to the ownership of such equipment). The settlement agreements allow the OTE Group to achieve a fair and reasonable value for the Blending Equipment, ensure that rent is no longer paid in respect of non-operational premises, and provide finality by ensuring that the landlords cannot pursue any claims in respect of the leases or such equipment. The Monitor does not believe any stakeholders are prejudiced by the Lease Termination Agreements or the vesting of the OTE Group's interest in the Blending Equipment in the relevant landlords, and believes that both agreements are in the best interests of the OTE Group and their stakeholders.

Sealing

20. The Monitor seeks to temporarily seal the amounts paid pursuant to the Lease Termination Agreements in Confidential Appendices 1 and 2. The redacted Lease Termination Agreements have been filed publicly with the Tenth Report, in each case with the only redaction applied being the amounts paid by the respective landlords. The information to be sealed is limited, and will be made public following the closing of the respective sales of the Blending Equipment. The Monitor is of the view that there is no reasonable alternative to sealing, and that the request is necessary and proportionate in the circumstances.

OTHER GROUNDS FOR THE MOTION ARE:

21. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court.

22. The Orders granted by the Court in these CCAA Proceedings, including without limitation the Monitor's Enhanced Powers and Bid Process Approval Order dated October 12, 2023.

23. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

24. 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:

25. The Tenth Report of the Monitor dated September 4, 2024.

26. Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 4, 2024

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Lawyers for the Monitor

TO: THE SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND
2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced in Toronto

Notice of Motion
(Returnable September 9, 2024)

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Tab 2

ORIGINAL TRADERS ENERGY LTD. ET AL.

**TENTH REPORT OF KPMG INC.,
IN ITS CAPACITY AS MONITOR**

September 4, 2024

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APPENDICES

Appendix “A” – Tyendinaga Lease Termination Agreement (payment amount redacted)

Appendix “B” – Whitefish Lease Termination Agreement (payment amount redacted)

CONFIDENTIAL APPENDICES

Confidential Appendix “1” – Unredacted Tyendinaga Lease Termination Agreement

Confidential Appendix “2” – Unredacted Whitefish Lease Termination Agreement

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C.1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

TENTH REPORT OF KPMG INC.
In its capacity as Monitor of the OTE Group

September 4, 2024

I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), Original Traders Energy Ltd. and 2496750 Ontario Inc. (together, the “**Applicants**”) were granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order (as amended and restated on February 9, 2023, the “**Amended and Restated Initial Order**”) included a stay of proceedings in favour of the Applicants; the appointment of KPMG Inc. (“**KPMG**”) as the monitor in these proceedings (in such capacity, the “**Monitor**”); and other related relief. These proceedings under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP and Original Traders Energy LP (together, the “**Limited Partnerships**”) are not Applicants in this proceeding. However, the Initial Order and the Amended and Restated Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry on operations that are integral to the business of the Applicants. The term “**OTE Group**” throughout this report refers to the Applicants and Limited Partnerships collectively.
3. KPMG has filed various reports with the Court in these proceedings. Copies of materials filed with the Court and other materials pertaining to the CCAA Proceedings, including all reports issued by the Monitor in these proceedings, are available on the Monitor’s website: <http://home.kpmg/ca/OTEGroup> (the “**Monitor’s Website**”).

II. PURPOSE OF REPORT

4. The purpose of this Tenth Report of the Monitor (the “**Tenth Report**”) is to provide information pertaining to:
 - (i) certain discussions between the Monitor and the landlords of two of the leased fuel blending locations that have resulted in settlement (subject to Court approval) of the disputes between the OTE Group and the Tyendinaga Landlord and the Whitefish Landlord in relation to the leased premises and the Blending Equipment thereon (as such terms are defined below);
 - (ii) an update on the Monitor’s activities since its most recent report to this Court;
 - (iii) an update in respect of the Monitor’s ongoing investigation;
 - (iv) an update in respect of the Yacht Sales Process (as defined herein); and

- (v) the Monitor’s basis for bringing a motion seeking an order (the “**Lease Termination Approval Order**”), among other things:
 - (a) approving the Tyendinaga Lease Termination Agreement (as defined below);
 - (b) approving the Whitefish Lease Termination Agreement (as defined below);
 - (c) vesting the Blending Equipment (as defined below) in the respective landlords; and
 - (d) sealing the Confidential Appendices to this Tenth Report pending further Order of this Court.

III. TERMS OF REFERENCE

- 5. In preparing the Tenth Report, the Monitor has relied on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations, in addition to information and documents obtained from third parties that responded to the Monitor’s requests for information and other information obtained by the Monitor (collectively, the “**Information Received**”). In accordance with industry practice, except as otherwise described in the Second Report of the Monitor dated March 13, 2023 (the “**Second Report**”), KPMG has reviewed the Information Received for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information Received in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information Received.
- 6. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND

- 7. Detailed information with respect to the OTE Group’s business, operations, products and causes of insolvency is provided in the Monitor’s pre-filing report dated January 30, 2023. Since the OTE Group’s filing, this Court has granted several Orders, and various materials have been filed in connection therewith. The information below only provides the background on these proceedings relevant for this Tenth Report. All Orders granted and materials filed in these proceedings can be accessed on the Monitor’s Website.

8. On March 15, 2023, the Court granted a Mareva injunction as part of an Order (the “**Injunctive Order**”) which restrained Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**”, and collectively, the “**Mareva Respondents**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can” (the “**Italian Yacht**”), more particularly described in Schedule “A” of the Injunctive Order. On March 21, 2023 and March 28, 2023, this Court issued certain endorsements related to the Injunctive Order.
9. On July 17, 2023, this Court granted the Yacht Sale and AirSprint Proceeds Order, among other things, (i) authorizing and directing the Monitor to conduct a sale process for the Italian Yacht (the “**Yacht Sale Process**”); and (ii) directing AirSprint to remit to the Monitor the US\$5,482,779.85 and any accrued interest thereon (the “**AirSprint Proceeds**”) that was then held in trust by AirSprint on account of net proceeds and receipts from the sale of property including aircraft interests that were purchased or financed from funds sent to AirSprint by any OTE Group entity or affiliate thereof. The Yacht Sale and AirSprint Proceeds Order also directed that the AirSprint Proceeds be held in trust pending judicial determination of the claims and entitlements to such proceeds as between the OTE Group entities and the Mareva Respondents or any of them.
10. On October 12, 2023, the Court issued the following:
 - (i) an Order (the “**Monitor’s Enhanced Powers and Bid Process Approval Order**”), among other things, providing the Monitor with enhanced powers in connection with the business and property of the OTE Group, and approving an amended bid process for the sale of the assets of the OTE Group to be carried out by the Monitor (the “**Bid Process**”); and
 - (ii) an Order, among other things, extending the stay period to April 26, 2024, approving certain amendments to the claims procedure of the OTE Group, and approving the activities of the Monitor.
11. After uncovering evidence that substantial payments were improperly and fraudulently made, and assets including cash improperly and fraudulently transferred, by the OTE Group to or for the benefit of Page, Cox, 265, and others, the Monitor filed its sixth report dated November 8, 2023 (the “**Sixth Report**”) in support of a motion (the “**Mareva Motion**”) for an Order (the “**Mareva Order**”) among other things:

- (i) extending the provisions of the Injunctive Order to apply to all of the assets of the Mareva Respondents, wheresoever located;
 - (ii) expanding the Injunctive Order to restrain the Mareva Respondents and anyone else acting on their behalf or in conjunction with any of them directly or indirectly, and all other persons to whom notice of such an Order may be given, from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of the Mareva Respondents' assets, including without limitation real property, bank accounts, insurance policies, annuities and other assets held by them or by any other person or entity on their behalf, wherever so located, without leave of this Court; and
 - (iii) expanding the Injunctive Order to require the Mareva Respondents to each prepare and provide to the Monitor a sworn affidavit within ten days describing the nature, value and location of their assets wheresoever located, whether in their own name or not and whether solely or jointly owned or whether held in trust for any other party.
12. The Monitor subsequently filed the supplement to the Sixth Report dated December 4, 2023 (the **"Supplement to the Sixth Report"**) providing further details supporting its request for the Mareva Order.
13. Following a hearing on December 21, 2023, the Court ordered a broad Mareva injunction on January 16, 2024 against Page and 265 in respect of all of their worldwide assets and declined to order the broader Mareva injunction against Cox but instead ordered that Cox provide a statement of her worldwide assets (the **"Mareva Decision"**). Substantially all other terms of the proposed Mareva Order sought by the Monitor were approved by the Court except for certain modifications required, including in respect of a cost arrangement between the Monitor, Page and Cox. In accordance with the Mareva Decision, the Monitor examined Page on February 28, 2024 and March 13, 2024. The Order in respect of the Mareva Decision was subsequently issued on February 28, 2024.
14. On December 22, 2023, counsel for the Monitor, counsel for the Mareva Respondents, and counsel for OTE USA LLC (**"OTE USA"**) attended a scheduling case conference before Justice Kimmel. OTE USA requested this Court schedule a motion (the **"OTE USA Motion"**) authorizing it to, among other things, (i) engage in discussions with the creditors of the OTE Group to discuss a proposed CCAA plan of arrangement (the **"Proposed Restructuring Plan"**), the terms of which

were set out in a term sheet and (ii) engage with licensing authorities to reinstate the licenses of the OTE Group and/or negotiate new licenses in support of the Proposed Restructuring Plan.

15. Following discussions facilitated by the Monitor with the Ministry of Finance for Ontario and the Canada Revenue Agency, which discussions ultimately led to both entities confirming that they would not support the Proposed Restructuring Plan, OTE USA withdrew the OTE USA Motion on February 27, 2024.

16. On January 30, 2024, the Court issued the following Orders:

- (i) an approval and vesting Order, among other things, approving the sale transaction of the OTE Group's vehicles contemplated by an agreement of purchase and sale between the Monitor, on behalf of the OTE Group, and Allstar Auctions Inc. dated January 11, 2024 (the "**Vehicle Transaction**"); and
- (ii) an Order, among other things, approving certain key employee retention plan payments and sealing certain confidential appendices to the Monitor's seventh report dated January 22, 2024.

17. The Monitor issued its eighth report dated March 18, 2024 (the "**Eighth Report**"). As set out in detail in the Eighth Report, the Monitor sought two Orders: an Order approving a distribution from the proceeds of the Vehicle Transaction (the "**Distribution Order**") and an Order approving a settlement between the Monitor, on behalf of the OTE Group, and AirSprint, and granting certain related releases (the "**AirSprint Funds Order**"). The Distribution Order was granted by the Court, but the relief sought in the AirSprint Funds Order was adjourned to a later date.

18. On April 22, 2024, the Court issued an Order (the "**Stay Extension, WEPPA, and Activity Approval Order**"), among other things:

- (i) approving the extension of Stay Period (as defined therein) to October 25, 2024, inclusive;
- (ii) declaring that pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("**WEPPA**"), the OTE Group and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order;

- (iii) authorizing the Monitor to invest \$10 million of OTE Group funds into a one year redeemable Guaranteed Investment Certificate (“GIC”) and authorizing the Monitor to execute the documentation necessary to ensure that the security of the Royal Bank of Canada (“RBC”) applied to those funds; and
- (iv) approving the Sixth Report; the Supplement to the Sixth Report; the Seventh Report; the Eighth Report; and the Monitor’s ninth report dated April 16, 2024 (filed in connection with that motion), and the activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings as set out therein.

19. The Court also issued a revised form of AirSprint Funds Order on the same date that had certain revisions to the language of the release in favour of AirSprint.

V. ACTIVITIES OF THE MONITOR

20. Since the issuance of the Stay Extension, WEPPA, and Activity Approval Order, the Monitor has engaged in various activities for the benefit of the OTE Group and its stakeholders, including:

- (i) maintaining the Monitor’s Website where all court materials and other relevant documents pertaining to the CCAA Proceedings are available in electronic form;
- (ii) working with the OTE Group to implement procedures to monitor cash flows and making payments in accordance with the Amended and Restated Initial Order;
- (iii) investing OTE Group funds (\$8.0 million) in a GIC with RBC in order to accrue interest and maintain a segregated balance in favour of RBC, in its capacity as the sole secured lender to the OTE Group;
- (iv) investing settlement funds received from Lenczner Slaght LLP (~\$900,000) in a GIC in order to accrue interest on the amount received;
- (v) administering WEPPA and corresponding with Service Canada;
- (vi) responding to enquiries and engaging in discussions with creditors, former employees, governmental authorities, including the CRA and the MOF, and other stakeholders in connection with the CCAA Proceedings;
- (vii) progressing the sale process for the Italian Yacht (as discussed in further detail below);

- (viii) progressing discussions with the landlords in respect of the fuel blending locations (as discussed in further detail below);
- (ix) progressing discussions with U.S. counsel and other advisors on the outstanding U.S. tax refunds;
- (x) progressing the investigation in respect of the improper and fraudulent payments made by Page, Cox, 265, and others;
- (xi) corresponding with the OTE Group, its legal counsel, and the Monitor's legal counsel on various matters pertaining to the CCAA Proceedings; and
- (xii) reviewing materials filed with the Court in respect of the CCAA Proceedings; and dealing with various day-to-day issues impacting the OTE Group in the course of these proceedings.

21. The Monitor's activities were carried out prudently and diligently in accordance with its duties under the CCAA and as prescribed by the Orders granted by this Court in these CCAA Proceedings, and were undertaken in the best interests of the OTE Group and its stakeholders.

VI. ACTIVITIES OF THE OTE GROUP

22. The OTE Group's activities since the Ninth Report have included:

- (i) managing relationships with key stakeholders, including RBC, the employees of the OTE Group, and former employees of the OTE Group, in coordination with the Monitor;
- (ii) collecting outstanding customer receivables;
- (iii) working with the Monitor to implement procedures to monitor cash flows and corresponding with the Monitor related to its review of payments;
- (iv) managing cash flows and making payments in accordance with the Amended and Restated Initial Order;
- (v) filing monthly tax returns for compliance purposes;
- (vi) completing the administrative wind-down of the OTE Group, as required;

- (vii) responding to information requests from the Monitor in connection with the Monitor's ongoing investigation to assist with the tracing, investigation and review of missing books and records of the OTE Group; and
- (viii) corresponding with the Monitor and the OTE Group's legal counsel on various matters pertaining to the CCAA Proceedings.

VII. BLENDING EQUIPMENT AND TYENDINEGA AND WHITEFISH LEASES

23. The OTE Group used immovable fuel blending equipment (the "**Blending Equipment**") in its operations. The Blending Equipment is located underground, beneath three leased blending locations on First Nations reserve lands in Tyendinaga, Whitefish, and Six Nations (the "**Fuel Blending Locations**"). In discussions with the Monitor, the landlords of the Fuel Blending Locations asserted that the Blending Equipment constitute fixtures on the land, and is not the property of the OTE Group. Because it is immovable and underground, the Blending Equipment could not practically be sold separately without finding a party willing to assume the leases in the respective Fuel Blending Locations.
24. The Bid Process, which listed the chattels of the OTE Group for sale, therefore did not include the Blending Equipment for sale, nor did it list those leasehold interests in the Fuel Blending Locations. However, the Bid Process did not preclude any person from expressing an interest in the leasehold interests or the blending equipment, and provided that the Monitor would use its best reasonable efforts to arrange for discussions between interested parties and applicable landlords to the extent such expressions of interest were received. The Bid Process also provided that the Monitor could make no assurances as to the assignability of any interests in the OTE Group to leased premises or fixtures claimed by any landlord, lessor or licensor.
25. As discussed in the Seventh Report, in accordance with the Bid Process, four (4) expressions of interest (the "**Blending Equipment Expressions of Interest**") were received for the Blending Equipment, all from third parties unrelated to the OTE Group. The completion of any transaction in respect of any of the Blending Equipment, among other things, was conditional on the negotiation of acceptable lease agreements with the landlords of the leased premises in respect of the Fuel Blending Locations (the "**Blending Location Landlords**"). The Monitor was also informed that any new lease in respect of the Whitefish blending location would require band council approval.

26. Prior to the withdrawal of the OTE USA Motion, the Monitor did not progress any negotiations with the Blending Location Landlords or otherwise further the Blending Equipment Expressions of Interest pending the hearing of the OTE USA Motion.
27. Following the withdrawal of the OTE USA Motion, the Monitor reached out to the Blending Location Landlords to discuss the Blending Equipment Expressions of Interest. However, neither the Tyendinaga Landlord nor the Whitefish Landlord were agreeable to leasing their respective premises (the “**Tyendinaga Premises**” and the “**Whitefish Premises**”, respectively) on the terms proffered. Discussions with the parties who expressed an interest in the Fuel Blending Locations and/or the Blending Equipment did not lead to any executable agreements. During this time, the OTE Group continued to pay monthly rent.
28. As discussed in greater detail in the Ninth Report, fuel blending operations at the Tyendinaga Premises and Whitefish Premises were discontinued in August and September 2023, respectively, and the fuel and gas licenses in respect of both premises expired on December 31, 2023. Given that operations have ceased (and are no longer licensed), a “going concern” sale through which operations would be resumed at either premises is not possible.
29. As a result of the above considerations and issues, the Monitor determined that it was in the best interests of the OTE Group and its stakeholders to pursue a cost-effective termination of the lease agreements in respect of the Fuel Blending Locations and to settle all disputes with the Blending Location Landlords regarding the lease agreements and the Blending Equipment.

Tyendinaga Blending Location

30. On July 19th, 2024, the Monitor, on behalf of the OTE Group, and the landlord of the Tyendinaga blending location (the “**Tyendinaga Landlord**”) entered into an agreement terminating the lease of the Tyendinaga blending location (the “**Tyendinaga Lease Termination Agreement**”). A redacted copy of the Tyendinaga Lease Termination Agreement is attached hereto as **Appendix “A”**, and an unredacted copy of the Tyendinaga Lease Termination Agreement is attached hereto as **Confidential Appendix “1”**.
31. The key terms of the Tyendinaga Lease Termination Agreement are as follows:
- (i) The OTE Group and the Tyendinaga Landlord agreed that the Tyendinaga lease agreement and any related or ancillary agreements (collectively, the “**Leases**”) shall be terminated and

neither the Tyendinaga Landlord nor the OTE Group shall have any further rights, liabilities or obligations to the other in respect of the Leases;

- (ii) Effective August 1, 2024, the OTE Group would surrender the Tyendinaga Premises to the Tyendinaga Landlord and the Tyendinaga Landlord would accept the surrender of the Tyendinaga Premises in full and final satisfaction of all claims of the Tyendinaga Landlord and acknowledged and agreed that it is not entitled to any further payment of rent, additional rent, damages or other amounts from the OTE Group or the Monitor;
- (iii) The Tyendinaga Landlord, in consideration for the purchase of the OTE Group's interests in the Blending Equipment and full and final settlement of the disputes between the Landlord and the OTE Group, agreed to pay the Monitor, on behalf of the OTE Group, an amount (the "**Tyendinaga Payment**") that the Monitor is seeking to seal. The Tyendinaga Payment has been received and is being held in trust by the Monitor pending this Court's approval of the Tyendinaga Lease Termination Agreement; and
- (iv) The Monitor shall seek an order approving the Tyendinaga Lease Termination Agreement. Once the order is issued, the Tyendinaga Lease Termination Agreement shall become effective and the Monitor will remit the Tyendinaga Payment to the OTE Group. Should this Court decline to issue the Lease Termination Approval Order, the Tyendinaga Landlord, the Monitor and the OTE Group will be released from any or all obligations under the Tyendinaga Lease Termination Agreement, and the Monitor shall return the Tyendinaga Payment to the Tyendinaga Landlord.

32. Subject to the issuance of the Lease Termination Approval Order, the Tyendinaga Landlord has assumed responsibility of the Tyendinaga blending location effective August 1, 2024, and has taken possession on that date for such purpose.

Whitefish Blending Location

33. On August 29, 2024, the Monitor, on behalf of the OTE Group, and the landlord of the Whitefish blending location (the "**Whitefish Landlord**") entered into an agreement terminating the lease of the Whitefish blending location (the "**Whitefish Lease Termination Agreement**"). A redacted copy of the Whitefish Lease Termination Agreement is attached hereto in **Appendix "B"** and an unredacted copy of the Whitefish Lease Termination Agreement is attached hereto as **Confidential Appendix "2"**.

34. The terms of the Whitefish Lease Termination Agreement are as follows:

- (i) The Whitefish Landlord, in exchange for the mutual releases set out in the Whitefish Lease Termination Agreement and in consideration for the purchase of the OTE Group's interests in the Blending Equipment and full and final settlement of the disputes between the Whitefish Landlord and the OTE Group regarding the ownership of the Blending Equipment, agrees to pay the Monitor, on behalf of the OTE Group, a confidential amount and to reimburse the payment of any rent paid to the Whitefish Landlord by the Monitor, on behalf of the OTE Group, for and after the month of July 2024 (collectively, the **"Whitefish Payment"**). The Monitor expects to receive the Whitefish Payment in trust shortly. The Monitor is seeking to seal the amount of the Whitefish Payment. The Whitefish Payment shall be held in trust by the Monitor pending this Court's approval and the Monitor's execution of the Whitefish Lease Termination Agreement in accordance with its terms;
- (ii) The Monitor is not aware of any remaining warranties on the Blending Equipment and the Whitefish blending location. However, to the extent any warranties exist for the Blending Equipment at the Whitefish blending location, the Whitefish Landlord's purchase of the Blending Equipment from the Monitor on behalf of the OTE Group shall include the purchase of any remaining warranties for the Blending Equipment at the Whitefish blending location; and
- (iii) The Monitor shall seek an order approving the Whitefish Lease Termination Agreement and transferring the OTE Group's interests in the Blending Equipment at the Whitefish Premises to the Whitefish Landlord, free and clear of any encumbrances. Once the Order is issued, the Whitefish Lease Termination Agreement shall become effective, and the Monitor will remit the Whitefish Payment to the OTE Group. Should this Court decline to issue the order, the Whitefish Landlord, the Monitor and the OTE Group will be released from any or all obligations under the Whitefish Lease Termination Agreement, and the Monitor shall return the Whitefish Payment to the Whitefish Landlord.

35. Subject to the issuance of the Lease Termination Approval Order, the Whitefish Landlord assumed responsibility of the Whitefish blending location effective September 1, 2024, and took possession on that date for such purpose.

Conclusions Regarding Lease Termination Agreements

36. The Monitor is of the view that both the Tyendinaga Lease Termination Agreement and the Whitefish Lease Termination Agreement are appropriate in the circumstances. As noted above, despite soliciting expressions of interest in respect of the Blending Equipment and related leases and engaging in discussions with the landlords and potential purchasers in respect of same, no agreement was ultimately reached with a third party for the purchase of such equipment or the assumption of the leases (given, among other things, the uncertainty as to the ownership of such equipment). The settlement agreements represent the only opportunity for the OTE Group to achieve a fair and reasonable value for the Blending Equipment, ensure that rent is no longer paid in respect of non-operational premises, and provide finality by ensuring that the landlords cannot pursue any claims against the OTE Group in respect of the leases or such equipment. The Monitor does not believe any stakeholders are prejudiced by the approval of the Lease Termination Agreements, or the vesting of the OTE Group's interests in the Blending Equipment in the respective landlords free and clear of claims or encumbrances – the only remaining secured lender of the OTE Group, RBC, has security over the funds invested in the GIC, which are sufficient to satisfy the amounts owing thereto. The Monitor therefore believes that agreements are in the best interests of the OTE Group and their stakeholders.

VIII. SEALING

37. The Monitor seeks to temporarily seal the amounts paid pursuant to the Lease Termination Agreements in Confidential Appendices 1 and 2 (together, the “**Confidential Appendices**”). As noted above, the redacted Lease Termination Agreements have been filed publicly with this Report, in each case with the only redaction applied being the amounts paid by the respective landlords.
38. The disclosure of this information could prejudice the Monitor's ability to maximize value for stakeholders by hindering its ability to pursue alternate transactions in the event that the requested order is not issued by the Court or in the event that the transactions contemplated by the Tyendinaga Lease Termination Agreement and the Whitefish Lease Termination Agreement do not close. The information to be sealed is limited to the amount paid, and the information will only be kept from the public record for a limited time (until the closing of the sales of the Blending Equipment, which should occur shortly after the issuance of the Lease Termination Approval Order). In the circumstances, there is no reasonable alternative to sealing, and the benefits of sealing outweigh the deleterious effects. The Monitor therefore believes that the sealing request is necessary and proportionate in the circumstances.

IX. MONITOR'S CONTINUED INVESTIGATION

39. As detailed in the Sixth Report and the Supplement to the Sixth Report, the Monitor is continuing its review of suspicious transaction and payments, including reviewing further information and documents in connection therewith. The Monitor will provide a further update to the Court in the future as to additional steps and recommendations in connection therewith.

X. ITALIAN YACHT UPDATE

40. As detailed in the Second Report, the Monitor understands that 265 purchased the Italian Yacht from Pride Marine substantially using funds wired directly from the OTE Group's bank accounts, and that 265 caused OTE Logistics to guarantee a chattel mortgage held by Essex Lease Financial Corporation ("**Essex**"), secured on the Italian Yacht.
41. In the course of its investigations, the Monitor received information from Pride Marine indicating that approximately USD \$3,218,500 in funds had been transferred from the OTE Group (including Gen7 Fuel Management and OTE) bank accounts to fund the purchase of the Italian Yacht by 265 from Pride Marine.
42. As previously discussed in the Sixth Report, the Monitor commenced the Yacht Sale Process after the issuance of the Yacht Sale and AirSprint Proceeds Order. As noted therein, the Monitor had not formally engaged a boat dealer or broker (a "**Boat Broker**") in respect of the Italian Yacht upon becoming aware of certain legal issues with respect to unpaid duties surrounding the Italian Yacht that would prohibit its sale in the United States to U.S. residents. The Monitor retained U.S. marine counsel to investigate the unpaid duties and was advised by same that the payment of these duties will expedite the Italian Yacht Sale Process. The Monitor's Sixth Report also noted that the Monitor had obtained new insurance in respect of the Italian Yacht.
43. As at the date of this report, the Monitor has obtained a Boat Broker acceptable to the Mareva Respondents, as well as arranged the payment by the OTE Group of the customs duty and applicable fees in connection with the Yacht Sale Process, which will be reimbursed to the OTE Group out of the proceeds of sale after payment of the Boat Broker's commission.
44. The Italian Yacht was also required to undergo a marine survey in order to progress the Italian Yacht Sale Process. During this process, several deficiencies were identified that were required to be rectified. The Monitor, through U.S. marine counsel, has contracted for the completion of the necessary repairs. The Italian Yacht is currently undergoing these repairs as well as the necessary

cleaning in order to prepare the Italian Yacht for marketing during fall 2024. The Monitor has been advised by U.S. marine counsel that the fall and winter seasons are typically optimal for yacht sales in Florida.

XI. MONITOR'S RECOMMENDATIONS

45. For the reasons set out in this Tenth Report, the Monitor is of the view that the relief sought in Lease Termination Approval Order is necessary and appropriate in the circumstances. As such, the Monitor respectfully requests that this Court issue the Lease Termination Approval Order in the form appended to the Monitor's Motion Record.

All of which is respectfully submitted this 4th day of September 2024.

KPMG Inc.
In its capacity as Monitor of
Original Traders Energy Group
And not in its personal or corporate capacity

Per:



Paul van Eyk
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
President



Duncan Lau
CPA, CMA, CIRP
Senior Vice President

Appendix “A”

LEASE TERMINATION AND SETTLEMENT AGREEMENT

THIS AGREEMENT dated the 19th day of July, 2024.

BETWEEN:

TOM MARACLE
(hereinafter called the “**Landlord**”)

- and -

ORIGINAL TRADERS ENERGY LP
(hereinafter called the “**Tenant**”)

WHEREAS

- (a) The Landlord and the Tenant are parties to a Lease dated February 18, 2020 (the “**First Lease**”) pursuant to which the Landlord leased to the Tenant the premises set out on Schedule “1” thereto (the “**Premises**”) for a term of twenty (20) years commencing on the Commencement Date (as defined in the Lease);
- (b) The Landlord and Tenant entered into a leasing arrangement in respect of the administrative and service building as evidenced by a draft lease (the “**Second Lease**”);
- (c) there is certain blending equipment and other equipment and assets located on the premises that were purchased by the Tenant for use in its business (collectively, the “**Blending Equipment**”);
- (d) on January 30, 2023, the Tenant, Original Traders Energy Ltd., 2496750 Ontario Inc., and OTE Logistics LP (collectively, the “**OTE Group**”) were granted protection under the *Companies’ Creditors Arrangements Act*, RSC 1985, c C-36 pursuant to an order (as amended and restated, the “**Initial Order**”) made by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”);
- (e) pursuant to the Initial Order, KPMG Inc. was appointed by the Court as the monitor of the OTE Group (in such capacity, the “**Monitor**”);
- (f) pursuant to an order dated October 12, 2023 (the “**Enhanced Powers and Bid Process Approval Order**”), the Monitor was granted enhanced powers in respect of the OTE Group, including the power to take any and all actions and steps to manage, operate and carry on the business of the OTE Group (including the power to enter into agreements);
- (g) the Enhanced Powers and Bid Process Approval Order also approved a bid process in respect of the chattels of the OTE Group (the “**Bid Process**”);
- (h) the Bid Process provided that if a bidder wished to negotiate the potential use of leased premises or fixtures as part of its bid, the Monitor would use its best reasonable efforts to arrange for discussions between the bidders and applicable landlords, but the Monitor could

make no assurances as to the assignability of any interests in the OTE Group to leased premises or fixtures claimed by any landlord, lessor or licensor;

- (i) during and after the Bid Process, the Monitor and the Landlord have engaged in discussions regarding a potential sale of the Blending Equipment and an assumption of the Lease with certain parties, but no agreements were reached in respect thereof, and neither the Monitor nor the Landlord expect any agreement to be reached in the near term with any third party;
- (j) the Landlord and the Monitor dispute various matters related to the legality, enforceability and assignability of the First Lease and the Second Lease (collectively the “**Leases**”) and the ownership of the Blending Equipment; and
- (k) the Landlord and the Monitor, on behalf of the Tenant, desire to terminate the Leases and to settle all disputes between them regarding the Leases, the Premises and the Blending Equipment, subject to the terms and conditions provided herein.

NOW THEREFORE in consideration of their respective covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by both parties hereto) the parties hereby covenant and agree as follows:

1. TERMINATION OF LEASES

The parties agree that effective as of the date hereof, the Leases and any related or ancillary agreements, including any related lease for office space at the Premises shall be terminated and of no further force and effect, and neither the Landlord nor the Tenant shall have any further rights, liabilities or obligations to the other in respect of the Leases. The Tenant hereby surrenders the Premises to the Landlord and the Landlord hereby accepts the said surrender of the Premises in full and final satisfaction of all claims of the Landlord and acknowledges and agrees that it is not entitled to any further payment of rent, additional rent, damages or other amounts from the Tenant or the Monitor.

2. PAYMENT AND PURCHASE BY LANDLORD OF BLENDING EQUIPMENT

Subject to the terms of this Agreement and in exchange for the mutual releases set out below, the Landlord, in consideration for the purchase of the Tenant’s interests in the Blending Equipment and full and final settlement of the disputes between the Landlord and the Tenant, agrees to pay the Monitor, on behalf of the Tenant, [REDACTED] (the “**Payment**”). The Payment shall be made as of the date this Agreement is executed by the Landlord and held in trust by the Monitor pending this Court’s approval and the Monitor’s execution of this Agreement in accordance with its terms. Subject to the terms of this Agreement (including, for greater certainty, section 4.0 below), the Monitor, on behalf of the Tenant, agrees to accept the Payment as consideration for the purchase of the Tenant’s interests in the Blending Equipment and in full and final settlement of the disputes between the Landlord and the Tenant.

3. MUTUAL RELEASES

- 3.1** Subject to the terms of this Agreement, the Landlord hereby releases and forever discharges the Tenant and the Monitor and their respective associates and affiliates together with the

directors, officers, partners, employees, agents, advisors and consultants (collectively, the “**Representatives**”) of each of them from all actions, causes of action, suits, debts, obligations, liability, covenants, agreements, claims, damages, costs and demands whatsoever each of them ever had, now has, or may hereafter have arising from, out of or in connection with the Leases (including the termination thereof) and any related or ancillary agreements, the Blending Equipment, and the Premises, including the occupancy and conduct of the business of the Tenant, or the Monitor on behalf of the Tenant.

- 3.2 Subject to the terms of this Agreement, the Tenant and the Monitor hereby release and forever discharge the Landlord and his Representatives from all actions, causes of action, suits, debts, obligations, liability, covenants, agreements, claims, damages, costs and demands whatsoever each of them ever had, now has, or may hereafter have arising from, out of or in connection with the Leases (including the termination thereof) and any related or ancillary agreements, the Blending Equipment, and the Premises, except for any liability arising from gross negligence or wilful misconduct on the part of the Landlord.

4. COURT APPROVAL

The Monitor shall seek an order (the “**Approval Order**”) approving this Agreement after its execution by the Landlord. For greater certainty, this Agreement shall be binding upon the Landlord immediately following the Landlord’s execution, but the Monitor shall not be required to execute this Agreement on behalf of the Tenant unless and until the Court issues the Approval Order, at which time this Agreement shall become effective and the Monitor shall remit the Payment it is holding in trust to the Tenant. In the event that the Court declines to issue the Approval Order, the Landlord, the Tenant and the Monitor shall be released from any and all obligations under this Agreement, and the Monitor shall return the Payment to the Landlord.

The Landlord shall assume responsibility for the Premises, including providing security and paying for the expenses of the facility (including utilities, taxes and repairs and maintenance) effective August 1, 2024 and shall take possession for such purpose. In the event the Court declines to issue the Approval Order the Landlord shall on a without prejudice basis return possession of the Premises to the Tenant.

5. GENERAL

- 5.1 This Agreement supersedes all other agreements, documents, writings and verbal undertakings between the parties relating to the subject matter hereof.
- 5.2 No amendment or variation of the terms of this Agreement shall be binding upon any party hereto unless evidenced in writing executed by that party.
- 5.3 This Agreement shall be governed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 5.4 Each of the parties hereto shall from time to time and at all times do such further acts and execute and deliver all such further deeds and documents as may be reasonably necessary in order to fully perform the terms of this Agreement.

- 5.5** All references to currency in this Agreement shall be in Canadian dollars.
- 5.6** This Agreement may be executed in any number of counterparts, and may be delivered originally, by facsimile, or by Portable Document Format (“**PDF**”) and each such original, facsimile copy, or PDF copy, when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 5.7** The execution of this Agreement by the Monitor is pursuant to the powers granted to the Monitor pursuant to the Initial Order, the Enhanced Powers and Bid Process Approval Order and the Approval Order. Nothing in this agreement shall vary, diminish or otherwise affect any powers or protections given to the Monitor pursuant to the aforementioned Orders or any other Orders of the Court.

[Signature Pages Follow]

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

TOM MARACLE

Original Traders Energy LP

Per: _____

Per: _____

Name: Duncan Lau
Title: Senior Vice-President

**By KPMG INC., solely in its
capacity as the Court-appointed
Monitor of the OTE Group, and
not in its personal or corporate
capacity**

Witness

Per: _____
Name:

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

TOM MARACLE

Original Traders Energy LP

Per:



Per:

Name:
Title:

**By KPMG INC., solely in its
capacity as the Court-appointed
Monitor of the OTE Group, and
not in its personal or corporate
capacity**

Witness

Per:


Name: Lisa Maracle

Appendix “B”

LEASE TERMINATION AND SETTLEMENT AGREEMENT

THIS AGREEMENT dated the 21th day of August, 2024.

BETWEEN:

ATIKAMEKSHENG ANISHNAWBEK
(hereinafter called the "Lessor")

- and -

CHI-ZHIINGWAAK BUSINESS PARK INC.
(hereinafter called the "Lessee")

- and -

ORIGINAL TRADERS ENERGY LP
(hereinafter called the "Tenant")

WHEREAS:

- (a) The Lessor and the Lessee are parties to a lease dated March 8, 2021 (the "**Head Lease**") pursuant to which the Lessor leased to the Lessee the premises known municipally as Lots 13, 14 and 15, Business Park Road, Chi-Zhiingwaak Business Park, Naughton, Ontario P0M 2M0 (the "**Premises**") for a term running until March 7, 2046;
- (b) the Lessee (as landlord) and the Tenant are parties to a lease dated August 24, 2021 (the "**Commercial Lease**") pursuant to which the Lessee leased to the Tenant the Premises in accordance with the Head Lease for a term running until August 31, 2056;
- (c) there is certain blending equipment and other equipment and assets located on the Premises that were purchased by the Tenant for use in its business (collectively, the "**Blending Equipment**");
- (d) on January 30, 2023, the Tenant, Original Traders Energy Ltd., 2496750 Ontario Inc., and OTE Logistics LP (collectively, the "**OTE Group**") were granted protection under the *Companies' Creditors Arrangements Act*, RSC 1985, c C-36 pursuant to an order (as amended and restated, the "**Initial Order**") made by the Ontario Superior Court of Justice (Commercial List) (the "**Court**");
- (e) pursuant to the Initial Order, KPMG Inc. was appointed by the Court as the monitor of the OTE Group (in such capacity, the "**Monitor**");
- (f) pursuant to an order dated October 12, 2023 (the "**Enhanced Powers and Bid Process Approval Order**"), the Monitor was granted enhanced powers in respect of the OTE Group, including the power to take any and all actions and steps to manage, operate and carry on the business of the OTE Group (including the power to enter into agreements);

- (g) the Enhanced Powers and Bid Process Approval Order also approved a bid process in respect of the chattels of the OTE Group (the “**Bid Process**”);
- (h) the Bid Process provided that if a bidder wished to negotiate the potential use of leased premises or fixtures as part of its bid, the Monitor would use its best reasonable efforts to arrange for discussions between the bidders and applicable landlords, but the Monitor could make no assurances as to the assignability of any interests in the OTE Group to leased premises or fixtures claimed by any landlord, lessor or licensor;
- (i) during and after the Bid Process, the Monitor, the Lessee and the Lessor have engaged in discussions regarding a potential sale of the Blending Equipment and an assumption of the Commercial Lease with certain parties, but no agreements were reached in respect thereof, and none of the Monitor, the Lessee or the Lessor expect any agreement to be reached in the near term with any third party;
- (j) the Lessee and the Lessor and the Monitor dispute various matters related to the assignability of the Commercial Lease and the ownership of the Blending Equipment;
- (k) the Lessee and the Monitor, on behalf of the Tenant, desire to terminate the Commercial Lease, and the Lessor, the Lessee, and the Monitor, on behalf of the Tenant, desire to settle all disputes between them regarding the Commercial Lease, the Premises and the Blending Equipment, subject to the terms and conditions provided herein; and
- (l) the Atikameksheng Anishnawbek Band Council has passed a Band Council Resolution authorizing the Lessor and the Lessee to execute this Agreement.

NOW THEREFORE in consideration of their respective covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by both parties hereto) the parties hereby covenant and agree as follows:

1. TERMINATION OF LEASE

The parties agree that effective as of the date hereof, the Commercial Lease and any related or ancillary agreements shall be terminated and of no further force and effect, and neither the Lessee nor the Tenant shall have any further rights, liabilities or obligations to the other in respect of the Commercial Lease. The Tenant hereby surrenders the Premises to the Lessee and the Lessee hereby accepts the said surrender of the Premises in full and final satisfaction of all claims of the Lessee and acknowledges and agrees that it is not entitled to any further payment of rent, additional rent, damages or other amounts from the Tenant or the Monitor.

2. PAYMENT AND PURCHASE BY LANDLORD OF BLENDING EQUIPMENT

- 2.1** Subject to the terms of this Agreement and in exchange for the mutual releases set out below, the Lessee, in consideration for the purchase of the Tenant’s interests in the Blending Equipment and full and final settlement of the disputes between the Lessee and the Lessor and the Tenant regarding the ownership of the Blending Equipment, agrees to pay the Monitor, on behalf of the Tenant, the sum of [REDACTED] and to reimburse the payment of any rent paid to the Lessee by the Monitor, on behalf of the Tenant, for and

after the month of July 2024 (collectively, the “**Payment**”). The Payment shall be made as of the date this Agreement is executed by the Lessee and the Lessor and held in trust by the Monitor pending this Court’s approval and the Monitor’s execution of this Agreement in accordance with its terms. Subject to the terms of this Agreement (including, for greater certainty, section 4.0 below), the Monitor, on behalf of the Tenant, agrees to accept the Payment as consideration for the purchase of the Tenant’s interests in the Blending Equipment and in full and final settlement of the disputes between the Lessor and the Lessee and the Tenant.

- 2.2 The Monitor is not aware of any remaining warranties for the Blending Equipment. For avoidance of doubt, to the extent any such warranties exist, the Lessee’s purchase of the Blending Equipment from the Monitor on behalf of the Tenant shall include the purchase of any remaining warranties for the Blending Equipment, provided that it shall be the sole obligation of the Lessor to submit or otherwise deal with any such warranty claims.

3. **MUTUAL RELEASES**

- 3.1 Subject to the terms of this Agreement, the Lessor and the Lessee hereby release and forever discharge the Tenant and the Monitor and their respective associates and affiliates together with the directors, officers, partners, employees, agents, advisors and consultants (collectively, the “**Representatives**”) of each of them from all actions, causes of action, suits, debts, obligations, liability, covenants, agreements, claims, damages, costs and demands whatsoever each of them ever had, now has, or may hereafter have arising from, out of or in connection with the Commercial Lease (including the termination thereof) and any related or ancillary agreements, the Blending Equipment, and the Premises, including the occupancy and conduct of the business of the Tenant, or the Monitor on behalf of the Tenant.
- 3.2 Subject to the terms of this Agreement, the Tenant and the Monitor hereby release and forever discharge the Lessor and the Lessee and their Representatives from all actions, causes of action, suits, debts, obligations, liability, covenants, agreements, claims, damages, costs and demands whatsoever each of them ever had, now has, or may hereafter have arising from, out of or in connection with the Commercial Lease (including the termination thereof) and any related or ancillary agreements, the Blending Equipment, and the Premises, except for any liability arising from gross negligence or wilful misconduct on the part of the Lessor or the Lessee.

4. **COURT APPROVAL**

The Monitor shall seek an approval and vesting order (the “**Approval Order**”), among other things approving this Agreement after its execution by the Lessor and the Lessee, and transferring the Blending Equipment to the Lessee free and clear of any encumbrances. For greater certainty, this Agreement shall be binding upon the Lessee and the Lessor immediately following their respective execution, but the Monitor shall not be required to execute this Agreement on behalf of the Tenant unless and until the Court issues the Approval Order, at which time this Agreement shall become effective and the Monitor shall remit the Payment it is holding in trust to the Lessee. In the event that the Court declines to issue the Approval Order, the Lessee, the Lessor, the Tenant and the

Monitor shall be released from any and all obligations under this Agreement, and the Monitor shall return the Payment to the Lessee.

The Lessee shall assume responsibility for the Premises, including providing security and paying for the expenses of the facility (including utilities, taxes and repairs and maintenance) effective September 1, 2024 and shall take possession on that date for such purpose. In the event the Court declines to issue the Approval Order, the Lessee shall on a without prejudice basis return possession of the premises to the Tenant.


5. GENERAL

- 5.1** This Agreement supersedes all other agreements, documents, writings and verbal undertakings between the parties relating to the subject matter hereof.
- 5.2** No amendment or variation of the terms of this Agreement shall be binding upon any party hereto unless evidenced in writing executed by that party.
- 5.3** This Agreement shall be governed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 5.4** Each of the parties hereto shall from time to time and at all times do such further acts and execute and deliver all such further deeds and documents as may be reasonably necessary in order to fully perform the terms of this Agreement.
- 5.5** All references to currency in this Agreement shall be in Canadian dollars.
- 5.6** This Agreement may be executed in any number of counterparts, and may be delivered originally, by facsimile, or by Portable Document Format (“**PDF**”) and each such original, facsimile copy, or PDF copy, when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 5.7** The execution of this Agreement by the Monitor is pursuant to the powers granted to the Monitor pursuant to the Initial Order, the Enhanced Powers and Bid Process Approval Order and the Approval Order. Nothing in this agreement shall vary, diminish or otherwise affect any powers or protections given to the Monitor pursuant to the aforementioned Orders or any other Orders of the Court.

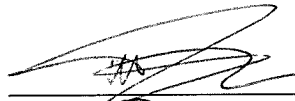
[Signature Pages Follow]

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

Atikameksheng Anishnawbek

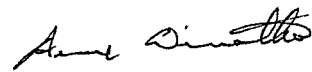
Per: 
Name: Craig Nootchtai
Title: Chief

Original Traders Energy LP

Per: 
Name: Duncan Lau
Title: Senior Vice-President

**By KPMG INC., solely in its
capacity as the Court-appointed
Monitor of the OTE Group, and
not in its personal or corporate
capacity**

Chi-Zhiingwaak Business Park Inc.

Per: 
Name: Aime Dimatteo
Title: Chairman of the Board of Directors

Confidential Appendix “1”

[Intentionally omitted]

Confidential Appendix “2”

[Intentionally omitted]

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO INC.
Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

Tenth Report of the Monitor

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Lawyers for the Monitor

Tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 9 TH
)	
JUSTICE KIMMEL)	DAY OF SEPTEMBER, 2024

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF ORIGINAL TRADERS ENERGY
LTD. AND 2496750 ONTARIO INC. (each, an "Applicant"
and collectively, the "Applicants")**

**ORDER
(Lease Termination Approval Order)**

THIS MOTION, made by KPMG Inc., in its capacity as the monitor (in such capacity, the "**Monitor**") of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") for an order, among other things, approving the Tyendinaga Agreement and the Whitefish Agreement (each as defined in the Tenth Report of the Monitor dated September 4, 2024 (the "**Tenth Report**")) was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Tenth Report, and on hearing the submissions of counsel for the Monitor and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service, filed.

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used within this Order and not expressly defined herein shall have the meanings set forth in the Tenth Report.

APPROVAL OF TYENDINAGA LEASE TERMINATION AGREEMENT

3. **THIS COURT ORDERS** that the Tyendinaga Lease Termination Agreement is hereby approved, *nunc pro tunc*.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to take such steps as may be necessary or desirable to give effect to the Tyendinaga Lease Termination Agreement.

5. **THIS COURT ORDERS AND DECLARES** that immediately following the granting of this Order and the Monitor's receipt of the Tyendinaga Payment, all of the OTE Group's right, title and interest in and to the Blending Equipment referenced in the Tyendinaga Lease Termination Agreement (the "**Tyendinaga Blending Equipment**") shall vest absolutely in the Tyendinaga Landlord, 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 "**Tyendinaga Blending Equipment Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated January 30, 2023 (as amended and restated) or any other Order made in these CCAA Proceedings; 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 (all of which are collectively referred to as the "**Tyendinaga Blending Equipment Encumbrances**"), and, for greater certainty, this Court orders that all of the Tyendinaga Blending Equipment Encumbrances affecting or relating to the

Tyendinaga Blending Equipment are hereby expunged and discharged as against the Tyendinaga Landlord.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Tyendinaga Blending Equipment Claims, the net proceeds from the sale of the Tyendinaga Blending Equipment shall stand in the place and stead of the Tyendinaga Blending Equipment, and that from and after the Monitor's receipt of the Tyendinaga Payment from the Tyendinaga Landlord, all Tyendinaga Blending Equipment Claims and Tyendinaga Blending Equipment Encumbrances shall attach to the net proceeds from the sale of the Tyendinaga Blending Equipment with the same priority as they had with respect to the Tyendinaga Blending Equipment immediately prior to the sale, as if the Tyendinaga Blending Equipment had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale, provided that such net proceeds shall not be distributed pending further order of this Court.

7. **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 OTE Group and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the OTE Group; and
- (d) the provision of any federal or provincial statute;

the vesting of the Tyendinaga Blending Equipment in the Tyendinaga Landlord pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the OTE Group and shall not be void or voidable by creditors of the OTE Group, 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.

APPROVAL OF WHITEFISH LEASE TERMINATION AGREEMENT

8. **THIS COURT ORDERS** that the Whitefish Lease Termination Agreement is hereby approved, *nunc pro tunc*.

9. **THIS COURT ORDERS** that the Monitor is authorized and directed to take such steps as may be necessary or desirable to give effect to the Whitefish Lease Termination Agreement.

10. **THIS COURT ORDERS AND DECLARES** that immediately following the granting of this Order and the Monitor's receipt of the Whitefish Payment, all of the OTE Group's right, title and interest in and to the Blending Equipment referenced in the Whitefish Lease Termination Agreement (the "**Whitefish Blending Equipment**") shall vest absolutely in the Whitefish Landlord, 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 "**Whitefish Blending Equipment Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated January 30, 2023 (as amended and restated) or any other Order made in these CCAA Proceedings; 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 (all of which are collectively referred to as the "**Whitefish Blending Equipment Encumbrances**"), and, for greater certainty, this Court orders that all of the Whitefish Blending Equipment Encumbrances affecting or relating to the Whitefish Blending Equipment are hereby expunged and discharged as against the Whitefish Landlord.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Whitefish Blending Equipment Claims, the net proceeds from the sale of the Whitefish Blending Equipment shall stand in the place and stead of the Whitefish Blending Equipment, and that from and after the Monitor's receipt of the Whitefish Payment from the Whitefish Landlord, all Whitefish Blending Equipment Claims and Whitefish Blending Equipment Encumbrances shall attach to the net proceeds from the sale of the Whitefish Blending Equipment with the same priority as they had with respect to the Whitefish Blending Equipment immediately prior to the

sale, as if the Whitefish Blending Equipment had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale, provided that such net proceeds shall not be distributed pending further order of this Court.

12. **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 OTE Group and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the OTE Group; and
- (d) the provision of any federal or provincial statute;

the vesting of the Whitefish Blending Equipment in the Whitefish Landlord pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the OTE Group and shall not be void or voidable by creditors of the OTE Group, 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

13. **THIS COURT ORDERS** that Confidential Appendix 1 and Confidential Appendix 2 are hereby sealed and shall not form part of the public record pending further Order of this Court.

14. **THIS COURT ORDERS** that upon the closing of the sale of the Tyendinaga Blending Equipment, the Monitor shall publish a revised Tenth Report containing Confidential Appendix 1 on its website, and shall file that revised version of its Report with the Court.

15. **THIS COURT ORDERS** that upon the closing of the sale of the Whitefish Blending Equipment, the Monitor shall publish a revised Tenth Report containing Confidential Appendix 2 on its website, and shall file that revised version of its Report with the Court.

GENERAL

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Monitor 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that this Order is effective as of 12:01am EST on the date of this Order without the need for entry or filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND
2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**ORDER
(Lease Termination Approval Order)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750
ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced in Toronto

MOTION RECORD
(Returnable September 9, 2024)

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