

<b>Original Traders Energy</b>	
<b>Third Extended Cash Flow Forecast</b>	
<b>For the 32-week period from September 18, 2023 - April 28, 2024</b>	
<b>In C\$; unaudited</b>	<b>Total</b>
<b>Receipts</b>	
Customer collections	63,000,000
Tax refunds	-
<b>Total receipts</b>	<b>63,000,000</b>
<b>Operating disbursements</b>	
Purchases	44,000,000
Pre-filing payments/deposits	-
Operating expense	6,000,000
Rent and royalties	200,000
Payroll	795,000
Professional fees	2,205,000
Tax remittances	14,000,000
Bank payments	938,715
<b>Total operating disbursements</b>	<b>68,138,715</b>
<b>Net cash flow</b>	<b>(5,138,715)</b>
<b>Opening cash</b>	<b>13,866,533</b>
Net cash flow	(5,138,715)
<b>Ending cash</b>	<b>8,727,818</b>

51. The Third Extended Cash Flow Forecast indicates that the OTE Group will have sufficient liquidity to fund both operating costs and the costs of the CCAA Proceedings during the extension of the Stay Period, if granted.
52. The Monitor is of the view that the extension of the Stay Period is appropriate in the circumstances. The Monitor supports the OTE Group's request for an extension of the Stay Period to April 26, 2024, for the following reasons:
- (i) the OTE Group has, to the knowledge of the Monitor, acted and continues to act in good faith and with due diligence;
  - (ii) the extension will provide the time necessary for the OTE Group to: (a) assess the claims that are submitted or may be submitted as part of the Claims Procedure Order; (b) advance the Reduced Operations Plan with the assistance of the Monitor; and (c) progress the Bid Process; and

- (iii) the extension should not materially prejudice any creditor, as the OTE Group is projected to have sufficient funds through its continuing operations to pay post-filing services and supplies, as contemplated in the Third Extended Cash Flow Forecast.

### **XIII. ITALIAN YACHT UPDATE**

- 53. Pursuant to the Yacht Sale and AirSprint Proceeds Order, the Monitor commenced the Yacht Sale Process. As discussed in the Fourth Report, the Monitor was to select one or more boat dealers or brokers (the “**Boat Broker**”) in Florida to market the Italian Yacht for sale.
- 54. On August 21, 2023, the Monitor provided the Mareva Respondents with a summary of four proposed Boat Brokers with a recommendation for one of the four Boat Brokers (the “**Recommended Boat Broker**”) headquartered in Florida, USA, for reasons of, among others, relatively lower storage and operating costs quoted. The Monitor has not yet formally engaged the Recommended Boat Broker because upon commencement of the search for same, the Monitor was made aware of certain legal issues, particularly with respect to unpaid duties, surrounding the Italian Yacht that would prohibit the sale of same in Florida, USA.
- 55. The Monitor’s investigation regarding the legal issues surrounding the planned sale of the Italian Yacht remains ongoing at the time of this report.
- 56. The Monitor’s selection of the Boat Broker was also dependent on the arrangement of insurance for the Italian Yacht. Shortly before the date of this Fifth Report, the Monitor successfully placed alternate insurance coverage for the Italian Yacht. In the Monitor’s view, the insurance previously in place was not satisfactory in providing adequate coverage that protects the OTE Group against potential loss or damage to the Italian Yacht.

### **XIV. AIRSPRINT LETTER**

- 57. As discussed in the Fourth Report, on April 28, 2023, the Court issued the Information Order authorizing and directing AirSprint to provide to the Monitor or its counsel any requested information relating to the OTE Group, the OTE Group Affiliates (as defined in the Information Order) or any third party owned, controlled by, or otherwise related to the OTE Group Affiliates.
- 58. Pursuant to the Information Order and in cooperation with the Monitor, AirSprint provided certain information to the Monitor. This information included flight manifests identifying the individuals

who travelled with the OTE Claimed Airsprint Property (the "**Flight Manifest**") between April 20, 2021 to February 23, 2023 (the "**Review Period**").

59. The Monitor reviewed the Flight Manifest and identified persons who traveled on OTE Claimed AirSprint Property during the Review Period. On or about September 15, 2023, the Monitor sent letters (the "**AirSprint Letters**") to certain persons to allow the Monitor to obtain further information relating to the use of the OTE Claimed AirSprint Property, particularly with respect to the nature of each trip taken whether personal or business related. The Monitor will seek reimbursement for any travel determined to be in relation to personal matters.
60. The recipients of the AirSprint Letters have been provided a deadline of fourteen (14) days from the date of the letter to provide a response. Should a response not be received from an individual by this date, the Monitor will assume that all travel associated with that individual was personal in nature and will seek reimbursement.

## **XV. HISTORICAL TRANSACTIONS REVIEW**

61. As described in the second report of the Monitor (the "**Second Report**"), in connection with its investigatory powers, the Monitor sent letters (the "**Information Request Letters**") to certain parties (collectively, the "**Requested Parties**") who may have been in possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**").
62. The Monitor, with the assistance of the OTE Group, is currently in the process of reviewing the limited Requested Information received from Requested Parties, along with the historical bank statements of OTE Group, to identify any further gaps in the books and records of the OTE Group for the purposes of establishing a more complete set of same (the "**Historical Transactions Review**").
63. As at the date of this report, the Historical Transactions Review is ongoing. The Monitor intends to attend this Court at a later date to report more fully on the status of the Monitor's Historical Transactions Review.

## **XVI. MONITOR'S RECOMMENDATIONS**

64. For the reasons set out in this Fifth Report, the Monitor is of the view that the Bid Process is reasonable in the circumstances, balances the search for a prospective purchaser with the costs associated with

administering a sales process of this nature, and should provide Interested Parties with sufficient time to value the company and to make an offer in respect of the business and/or its assets.

65. Based on the foregoing, the Monitor respectfully recommends that this Court approve the relief sought in the Third Stay Extension Order.

All of which is respectfully submitted this 28th day of September 2023.

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

Per:



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



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**Duncan Lau**  
**CPA, CMA, CIRP**  
Senior Vice President

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**Appendix "B"**

## AMENDED BID PROCESS

On January 30, 2023, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**Initial Order**") providing certain relief pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**"), including a stay of proceedings against Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP, and Original Traders Energy LP (collectively, the "**OTE Group**"). The Initial Order also appointed KPMG Inc. as monitor of the OTE Group (in such capacity, the "**Monitor**"). On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the "**ARIO**"). These CCAA Proceedings are ongoing.

Pursuant to an order dated October 12, 2023, the Court approved, among other things, the sale process described herein (the "**Bid Process**"). The Monitor, with the assistance of the OTE Group and in consultation with the Royal Bank of Canada ("**RBC**") as the secured creditor of the OTE Group, shall conduct the Bid Process, as provided below.

Capitalized terms used in this Bid Process and not otherwise defined herein have the meanings given to them in the fifth report of the Monitor (the "**Fifth Report**").

Nothing herein shall prevent the OTE Group or a creditor from seeking to file a plan providing for the refinancing of the OTE Group and the compromise or arrangement of claims, and/or from structuring or implementing their bid for the assets of the OTE Group as a plan for consideration by creditors, provided that RBC shall be an unaffected creditor for the purposes of any such plan, as provided for in the Initial Order and the ARIO.

For the avoidance of doubt, all exercise of discretion herein by the Monitor or the OTE Group is subject to review by the court in these CCAA Proceedings, and may be raised with the court by way of a chambers appointment and adjudicated on a summary basis.

### **Opportunity**

1. The Bid Process is intended to solicit interest in and opportunities for the property, assets and undertakings of the OTE Group, as set out at Schedule 1 hereto, which for greater certainty excludes the assets identified at Schedule "A" to the injunctive order dated March 15, 2023 (collectively, the "**Property**").
2. Any sale of the Property will be on an "as is, where is" basis, without surviving representations or warranties of any kind, nature, or description by the Monitor, the OTE Group, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the OTE Group in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.
3. The Property being sold at this time consists of any right, title and interests of the OTE Group in the chattels identified as Schedule 1 to this Bid Process. Bidders should note that the interests to such chattels may be subject to lease and/or financing agreements, as indicated in Schedule 1. This Bid Process is not intended to solicit offers for any leasehold interests or any property or assets belonging to or claimed by landlords or other third parties. If a bidder wishes to negotiate the potential use of leased premises or fixtures as part of its bid, the Monitor will use its best reasonable efforts to arrange for discussions between Qualified Bidders (as defined below) and applicable landlords, but the Monitor can 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. Any disputes

as to the ownership, interests and rights of the OTE Group in any premises or fixtures may be brought before the Court for determination after the conclusion of the Bid Process if resolution of such disputes are necessary for the consummation of the Successful Bid or is otherwise determined to be in the interests of creditors of the OTE Group.

### **Key Dates**

4. The following are the key dates of the Bid Process:

<b>Milestone</b>	<b>Date</b>
Commence solicitation of interest from parties	No later than October 16, 2023.
Binding Offer Deadline	November 16, 2023, at 5:00 p.m. EST.
Deadline to notify Qualified Bidders of Successful Bid	November 23, 2023, at 5:00 p.m. EST.

### **Solicitation of Interest: Notice of Bid Process**

5. As soon as reasonably practical, but no later than October 16, 2023:
- (a) the Monitor, with the assistance of the OTE Group, will prepare a list of parties that have expressed interest in the Opportunity, or that the Monitor believes may have an interest in the Opportunity (the "**Interested Parties**");
  - (b) the Monitor, with the assistance of the OTE Group, will prepare a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the Bid Process and inviting recipients of the Teaser Letter to express their interest pursuant in the Bid Process;
  - (c) the OTE Group, with the assistance of the Monitor, will prepare a non-disclosure agreement in form and substance satisfactory the OTE Group and the Monitor (an "**NDA**");
6. The Monitor will cause a notice of the Bid Process (and such other relevant information which the Monitor, in consultation with the OTE Group, considers appropriate) (the "**Notice**") to be published in *The Globe and Mail* (National Edition).
7. The Monitor will send the Teaser Letter and NDA to all Known Potential Bidders by no later than October 16, 2023 and to any other party who requests a copy of the Teaser Letter and NDA.

### **Due Diligence**

8. Any party that wishes to participate in the Bid Process (a "**Potential Bidder**") must provide to the Monitor at the addresses specified in Schedule 2 hereto (including by email transmission), with an NDA executed by it, acceptable to the Monitor or as ordered by the court, and written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
9. A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a "**Qualified Bidder**" if the Monitor, in consultation with the OTE Group, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the Bid Process. All Qualified Bidders will be

granted access to a virtual data room (the "**Data Room**"). The Data Room will be populated with documents in the OTE Group's possession that the Monitor deems to be relevant to the Bid Process. The Monitor shall not have any liability for any missing or incorrect information or documents in the Data Room.

10. At any time during the Bid Process, the Monitor may, in its reasonable business judgement, eliminate a Qualified Bidder from the Bid Process.
11. Potential Bidders must rely solely on their own independent review, diligence, investigation and/or inspection of all information and of the Property in connection with their participation in the Bid Process and any transaction they enter into with one or more of the OTE Group entities.
12. The Monitor shall, subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property as the Monitor, in consultation with the OTE Group, may deem appropriate. The Monitor may also, in consultation with the OTE Group, limit the access of any Qualified Bidder to any confidential information in the Data Room if the Monitor, in consultation with the OTE Group, reasonably determines that such access could negatively impact the Bid Process, the ability to maintain the confidentiality of the information, the Property or its value.
13. Qualified Bidders that wish to view and inspect the OTE Group's assets in person must schedule an appointment with the Monitor.

#### **Binding Offers**

14. Qualified Bidders that wish to make a formal offer to purchase or make an investment in the OTE Group or its Property or any part thereof shall submit a binding offer (a "**Binding Offer**") that complies with all of the following requirements to the Monitor at the addresses specified in Schedule "A" hereto (including by email), so as to be received by them no later 5 p.m. EST on November 16, 2023 (the "**Binding Offer Deadline**"). For greater certainty, Binding Offers must:
  - (a) be submitted on or before the Binding Offer Deadline by a Qualified Bidder;
  - (b) be made by way of binding, definitive transaction document(s) that is/are executed by the Qualified Bidder;
  - (c) include an acknowledgement by the Qualified Bidder:
    - (i) that it has had an opportunity to conduct any and all due diligence prior to making the Binding Offer;
    - (ii) that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Binding Offer; and
    - (iii) that it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer;

- (d) not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (e) contain a clear indication of whether the Qualified Bidder is offering to: (i) acquire all, substantially all or a portion of the Property; or (ii) make an investment in, restructure, reorganize or refinance the Property on terms and conditions reasonably acceptable to the Monitor and to RBC;
- (f) provide proof of funds acceptable to the Monitor in consultation with RBC;
- (g) provide for a deposit of 10% of the total purchase price of the Property to be purchased, including in the case of any proposed plan, 10% of the funds to be distributed to affected creditors under the plan; and
- (h) include such other information as reasonably requested or identified as being necessary or required by the Monitor, in consultation with RBC.

### **Selection of Successful Bid**

- 15. Binding Offers will be valued based upon numerous factors, including, without limitation, items such as the purchase price and the net value provided by such offer, the claims likely to be created by such offer in relation to other offers, the identity, circumstances and ability of the bidder to successfully complete such transactions, the proposed transaction documents, the effects of the bid on the creditors of the OTE Group, factors affecting the speed, certainty and value of the transactions, the assets included or excluded from the offer, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Monitor, in consultation with RBC.
- 16. The Monitor may aggregate separate Binding Offers together to create one "**Binding Offer**" package for the whole sale of the Property of the OTE Group, upon consultation with RBC.
- 17. The Monitor will: (i) review and evaluate each Binding Offer, provided that each Binding Offer may be re-negotiated with the Monitor and the applicable Qualified Bidder, upon consultation with RBC, and may be amended, modified or varied to improve such Binding Offer as a result of such negotiations; and (ii) identify the highest or otherwise best Binding Offer(s) (the "**Successful Bid(s)**"), and a Qualified Bidder making such Successful Bid, a "**Successful Bidder**") for any particular Property of the OTE Group in whole or part.
- 18. The Monitor, in consultation with RBC, may provide a recommendation to the Court to approve one or more Successful Bids. The Monitor shall have no obligation to enter into a Successful Bid, and the Monitor may reject any or all Binding Offers and/or recommend to the Court that the Bid Process be terminated without the selection of a Successful Bid.
- 19. Notwithstanding the process and deadlines outlined above with respect to the Bid Process, the Monitor, at its reasonable discretion and upon consultation with RBC may, at any time:
  - (a) pause, terminate, amend or modify the Bid Process in accordance with the terms set out herein;
  - (b) remove any portion of the Property from the Bid Process; and/or

- (c) establish further or other procedures for the Bid Process.

**Confidentiality, Stakeholder/Bidder Communication and Access to Information**

20. All discussions regarding the Bid Process should be directed through the Monitor. Under no circumstances should the management of the OTE Group or any stakeholder of the OTE Group be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the Bid Process. For greater certainty, nothing herein shall preclude a stakeholder from participating in or formulating a bid or from contacting potential bidders with the agreement of the Monitor to advise that the OTE Group have commenced a Bid Process and that they should contact the Monitor if they are interested in participating in the Bid Process.
21. If it is determined by the Monitor that it would be worthwhile to facilitate a discussion between one or more Qualified Bidders and a stakeholder or other third party as a consequence of a condition to closing or potential closing condition identified by such Qualified Bidder, the Monitor may provide such Qualified Bidder with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such bidder to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by the Monitor. The Monitor must be provided with the opportunity to be present at all such communications or meetings.

**Supervision of the Bid Process**

22. This Bid Process does not and will not be interpreted to create any contractual or other legal relationship between the OTE Group and any Qualified Bidder or any other party, other than as specifically set forth in an NDA or any definitive agreement executed.
23. Participants in the Bid Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Binding Offer, due diligence activities, and any other negotiations or other actions, whether or not they lead to the consummation of a transaction.
24. The Monitor shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, or any other creditor or stakeholder, or any Applicant, as a result of implementation or otherwise in connection with this Bid Process, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Monitor, as determined by the Court, and all such persons or entities shall have no claim against the Monitor in respect of the Bid Process for any reason whatsoever.

## SCHEDULE 1

## CAPITAL LEASES SCHEDULE

Unit #	Make	Model	Year	Status	Lease End
21-01	MACK	600	2021	Leased	14-Sep-24
ST-06	WSTR	CNV	2022	Leased	4-Apr-27
4A-2	TREM	TRA	2020	Leased	15-Feb-25
6A-1	TREM	TRA	2020	Leased	31-Dec-24
6A-2	TREM	TRA	2020	Leased	31-Dec-25
6A-3	TREM	TRA	2021	Leased	31-Dec-25
6A-4	TREM	TRA	2021	Leased	1-Nov-25
6A-5	TREM	TRA	2022	Leased	1-Oct-26
6A-6	TREM	TRA	2021	Leased	15-Dec-26
6A-7	TREM	TRA	2022	Leased	15-Feb-27
6A-8	TREM	TRA	2022	Leased	15-May-27
23-01	VOLVO	VNR	2023	Leased	21-Jun-27
23-02	VOLVO	VNR	2023	Leased	21-Jun-27
23-03	VOLVO	VNR	2023	Leased	21-Jun-27
20-07	VOLV	ARO	2020	Leased	15-Jun-24
20-08	INTL	LT6	2020	Leased	1-Jan-25
21-02	VOLV	ARO	2021	Leased	18-Nov-24
ST-04	WSTR	CNV	2022	Leased	1-Aug-26
SB003	TREC	TRA	2020	Leased	1-Apr-25
PUP	TREC	TRA	2020	Leased	1-Apr-25
SB004	TREC	REM	2020	Leased	1-Jun-25
PUP	TREC	TRA	2020	Leased	1-Jun-25
SB005	TREM	TRA	2021	Leased	1-Aug-25
PUP	TREM	TRA	2020	Leased	1-Aug-25
4A-6	TREM	TRA	2021	Leased	1-Oct-25
20-05	INTL	PRO	2020	Leased	1-Oct-25
20-06	VOLV	ARO	2020	Leased	24-Apr-24
20-09	INTL	LT6	2020	Leased	25-Oct-25
ST-05	WSTR	CNV	2021	Leased	1-Jun-26
4A-3	TREM	TRA	2021	Leased	15-Aug-25
4A-4	TREM	TRA	2021	Leased	15-Jul-25
4A-5	TREM	TRA	2021	Leased	1-Oct-25
SB006	TREC	TRA	2021	Leased	1-May-26
PUP	TREC	TRA	2021	Leased	1-May-26

**OWNED EQUIPMENT****Trucks and Trailers**

Unit #	Make	Model	Year	Status
20-01	INTL	PRO	2020	Owned
20-02	INTL	PRO	2020	Owned
20-03	INTL	PRO	2020	Owned
20-04	VOLV	ARO	2020	Owned
ST-01	WSTR	CNV	2011	Owned
SB001	HUTC	TRI	2014	Owned
PUP	HUTC	TAN	2014	Owned

**IT Equipment**

Device Type	Manufacturer	Operating System	Warranty Expiry
Laptop	LENOVO	Microsoft Windows 10 Pro 10.0.19044	3/18/2022
Desktop	System manufacturer	Microsoft Windows 10 Pro 10.0.18363	
Desktop	HP	Microsoft Windows 10 Pro 10.0.19045	10/25/2025
Desktop	HP	Microsoft Windows 10 Pro 10.0.19045	10/25/2025
Desktop	HP	Microsoft Windows 10 Pro 10.0.19045	10/25/2025
Laptop	LENOVO	Microsoft Windows 10 Pro 10.0.19043	6/14/2023
Laptop	HP	Microsoft Windows 10 Pro 10.0.19045	7/8/2021
Laptop	LENOVO	Microsoft Windows 10 Pro 10.0.19045	5/9/2022
Desktop	System manufacturer	Microsoft Windows 10 Pro 10.0.19045	
Server	Dell Inc.	Microsoft Windows Server 2016 Standard 10.0.14393	8/20/2021
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19044	
Desktop	System manufacturer	Microsoft Windows 10 Pro 10.0.19044	
Laptop	LENOVO	Microsoft Windows 10 Pro 10.0.19045	9/11/2020
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19044	
Laptop	LENOVO	Microsoft Windows 10 Pro 10.0.19044	11/18/2022
Laptop	HP	Microsoft Windows 10 Pro 10.0.19045	8/31/2023
Laptop	LENOVO	Microsoft Windows 10 Pro 10.0.19043	5/4/2022
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19045	
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19045	
Desktop	System manufacturer	Microsoft Windows 10 Pro 10.0.19045	
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19044	
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19045	
Desktop	System manufacturer	Microsoft Windows 10 Pro 10.0.19045	
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19045	
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19045	
Desktop	Micro-Star International Co., Ltd.	Microsoft Windows 10 Pro 10.0.19045	
Laptop	ASUSTeK COMPUTER INC.	Microsoft Windows 11 Pro 10.0.22621	07/12/2023
Laptop	LENOVO	Microsoft Windows 10 Pro 10.0.19045	07/11/2023

**SCHEDULE 2**

**The Monitor:**

**KPMG Inc.**

333 Bay Street, Suite 4600  
Bay Adelaide Centre  
Toronto, ON M5H 2S5

Attention: Paul van Eyk, Duncan Lau and Tahreem Fatima

Email: [pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca) / [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca) / [tahreemfatima@kpmg.ca](mailto:tahreemfatima@kpmg.ca)

with copies to:

**Bennett Jones LLP**

100 King Street West, Suite 3400  
Toronto, ON M5X 1A5

Attention: Raj Sahni and Thomas Gray

Email: [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com) / [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

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**Appendix "C"**

## AMENDED BID PROCESS

On January 30, 2023, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an order (the "Initial Order") providing certain relief pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"), and these proceedings, the "CCAA Proceedings"), including a stay of proceedings against Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP, and Original Traders Energy LP (collectively, the "OTE Group"). The Initial Order also appointed KPMG Inc. as monitor of the OTE Group (in such capacity, the "Monitor"). On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the "ARIO"). These CCAA Proceedings are ongoing.

Pursuant to an order dated October 4<sup>12</sup>, 2023 (~~the "Bid Process Order"~~), the Court approved, among other things, the sale process described herein (the "Bid Process"). The Monitor, with the assistance of the OTE Group and in consultation with the Royal Bank of Canada ("RBC") as the secured creditor of the OTE Group, shall conduct the Bid Process, as provided below.

Capitalized terms used in this Bid Process and not otherwise defined herein have the meanings given to them in the fifth report of the Monitor (the "Fifth Report").

Nothing herein shall prevent the OTE Group or a creditor from seeking to file a plan providing for the refinancing of the OTE Group and the compromise or arrangement of claims, and/or from structuring or implementing their bid for the assets of the OTE Group as a plan for consideration by creditors, provided that RBC shall be an unaffected creditor for the purposes of any such plan, as provided for in the Initial Order and the ARIO.

For the avoidance of doubt, all exercise of discretion herein by the Monitor or the OTE Group is subject to review by the court in these CCAA Proceedings, and may be raised with the court by way of a chambers appointment and adjudicated on a summary basis.

### Opportunity

1. The Bid Process is intended to solicit interest in and opportunities for the property, assets and undertakings of the OTE Group, ~~excluding as set out at Schedule 1 hereto, which for greater certainty excludes~~ the assets identified at Schedule "A" to the injunctive order dated March 15, 2023 (collectively, the "Property").
2. Any sale of the Property will be on an "as is, where is" basis, without surviving representations or warranties of any kind, nature, or description by the Monitor, the OTE Group, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the OTE Group in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.
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part of its bid, the Monitor will use its best reasonable efforts to arrange for discussions between Qualified Bidders (as defined below) and applicable landlords, but the Monitor can 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. Any disputes as to the ownership, interests and rights of the OTE Group in any premises or fixtures may be brought before the Court for determination after the conclusion of the Bid Process if resolution of such disputes are necessary for the consummation of the Successful Bid or is otherwise determined to be in the interests of creditors of the OTE Group.

### Key Dates

4. ~~3.~~ The following are the key dates of the Bid Process:

<b>Milestone</b>	<b>Date</b>
Commence solicitation of interest from parties	No later than October <del>5</del> <u>16</u> , 2023.
Binding Offer Deadline	November <del>10</del> <u>16</u> , 2023, at 5:00 p.m. EST.
Deadline to notify Qualified Bidders of Successful Bid	November <del>16</del> <u>23</u> , 2023, at 5:00 p.m. EST.

### Solicitation of Interest: Notice of Bid Process

5. ~~4.~~ As soon as reasonably practical, but no later than October ~~5~~16, 2023:

(a) ~~a.~~ the Monitor, with the assistance of the OTE Group, will prepare a list of parties that have expressed interest in the Opportunity, or that the Monitor believes may have an interest in the Opportunity (the "Interested Parties");

(b) ~~b.~~ the Monitor, with the assistance of the OTE Group, will prepare a process summary (the "Teaser Letter") describing the Opportunity, outlining the Bid Process and inviting recipients of the Teaser Letter to express their interest pursuant in the Bid Process;

(c) ~~c.~~ the OTE Group, with the assistance of the Monitor, will prepare a non-disclosure agreement in form and substance satisfactory the OTE Group and the Monitor (an "NDA");

6. ~~d. the~~The Monitor will cause a notice of the Bid Process (and such other relevant information which the Monitor, in consultation with the OTE Group, considers appropriate) (the "Notice") to be published in *The Globe and Mail* (National Edition).

7. ~~5.~~ The Monitor will send the Teaser Letter and NDA to all Known Potential Bidders by no later than October ~~5~~16, 2023 and to any other party who requests a copy of the Teaser Letter and NDA.

### Due Diligence

8. ~~6.~~ Any party that wishes to participate in the Bid Process (a "Potential Bidder") must provide to the Monitor at the addresses specified in Schedule "A"~~2~~ hereto (including by email transmission), with an NDA executed by it, acceptable to the Monitor, ~~in consultation with or~~ as ordered by the ~~OTE Group~~court, and written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
9. ~~7.~~ A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a "Qualified Bidder" if the Monitor, in consultation with the OTE Group, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the Bid Process. All Qualified Bidders will be granted access to a virtual data room (the "Data Room"). The Data Room will be populated with documents in the OTE Group's possession that the Monitor deems to be relevant to the Bid Process. The Monitor shall not have any liability for any missing or incorrect information or documents in the Data Room.
10. ~~8.~~ At any time during the Bid Process, the Monitor may, in its reasonable business judgement, eliminate a Qualified Bidder from the Bid Process.
11. ~~9.~~ Potential Bidders must rely solely on their own independent review, diligence, investigation and/or inspection of all information and of the Property in connection with their participation in the Bid Process and any transaction they enter into with one or more of the OTE Group entities.
12. ~~10.~~ The Monitor, ~~in consultation with the OTE Group~~, shall, subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property as the Monitor, in consultation with the OTE Group, may deem appropriate. The Monitor may also, in consultation with the OTE Group, limit the access of any Qualified Bidder to any confidential information in the Data Room if the Monitor, in consultation with the OTE Group, reasonably determines that such access could negatively impact the Bid Process, the ability to maintain the confidentiality of the information, the Property or its value.
13. ~~11.~~ Qualified Bidders that wish to view and inspect the OTE Group's~~2~~ assets in person must schedule an appointment with the Monitor.

### Binding Offers

14. ~~12.~~ Qualified Bidders that wish to make a formal offer to purchase or make an investment in the OTE Group or ~~theirs~~ Property or any part thereof shall submit a binding offer (a "Binding Offer") that complies with all of the following requirements to the Monitor at the addresses specified in Schedule "A" hereto (including by email), so as to be received by them no later 5 p.m. EST on November ~~10~~16, 2023 (the "BidBinding Offer Deadline"). For greater certainty, Binding Offers must:
- (a) be submitted on or before the BidBinding Offer Deadline by a Qualified Bidder;

- (b) be made by way of binding, definitive transaction document(s) that is/are executed by the Qualified Bidder;
- (c) includes an acknowledgement by the Qualified Bidder: ~~(i)~~
  - (i) that it has had an opportunity to conduct any and all due diligence prior to making the Binding Offer; ~~(ii)~~
  - (ii) that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Binding Offer; and ~~(iii)~~
  - (iii) that it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer;
- (d) ~~does~~ not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (e) contain a clear indication of whether the Qualified Bidder is offering to: (i) acquire all, substantially all or a portion of the Property ~~(a "Binding Sale Offer")~~; or (ii) make an investment in, restructure, reorganize or refinance the Property ~~and/or one or more of the OTE Group (a "Binding Investment Offer")~~, on terms and conditions reasonably acceptable to the Monitor and to ~~the OTE Group~~ RBC;
- (f) provide proof of funds acceptable to the Monitor, in consultation with ~~the OTE Group~~ RBC;
- (g) provide for a deposit of 10% of the total purchase price of the Property to be purchased, including in the case of any proposed plan, 10% of the funds to be distributed to affected creditors under the plan; and
- (h) include such other information as reasonably requested or identified as being necessary or required by the Monitor, in consultation with ~~the OTE Group~~ RBC.

### Selection of Successful Bid

15. ~~13.~~ Binding Offers will be valued based upon numerous factors, including, without limitation, items such as the purchase price and the net value provided by such offer, the claims likely to be created by such offer in relation to other offers, the identity, circumstances and ability of the bidder to successfully complete such transactions, the proposed transaction documents, the effects of the bid on the ~~stakeholders~~ creditors of the OTE Group, factors affecting the speed, certainty and value of the transactions, ~~the assets~~ included or excluded from the offer, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Monitor, in consultation with ~~the OTE Group~~ RBC.

16. ~~14.~~ The Monitor may aggregate separate Binding Offers together to create one "Binding Offer" package for the whole sale of the Property of the OTE Group, upon consultation with ~~the OTE Group~~ RBC.
17. ~~15.~~ The Monitor will: (i) review and evaluate each Binding Offer, provided that each Binding Offer may be re-negotiated with the Monitor and the applicable Qualified Bidder, upon consultation with ~~the OTE Group~~ RBC, and may be amended, modified or varied to improve such Binding Offer as a result of such negotiations; and (ii) identify the highest or otherwise best Binding Offer(s) (the "**Successful Bid(s)**", and a Qualified Bidder making such Successful Bid, a "**Successful Bidder**") for any particular Property of the OTE Group in whole or part.
18. ~~16.~~ The Monitor, in consultation with ~~the OTE Group~~ RBC, may provide a recommendation to the Court to approve one or more Successful Bids. The Monitor shall have no obligation to enter into a Successful Bid ~~to, and the Monitor may~~ reject any or all Binding Offers and/or ~~to~~ recommend to the Court that the Bid Process be terminated without the selection of a Successful Bid.
19. ~~17.~~ Notwithstanding the process and deadlines outlined above with respect to the Bid Process, the Monitor, at its reasonable discretion and upon consultation with ~~the OTE Group~~ RBC may, at any time:
- (a) ~~a.~~ pause, terminate, amend or modify the Bid Process in accordance with the terms set out herein;
  - (b) ~~b.~~ remove any portion of the Property from the Bid Process; and/or
  - (c) ~~e.~~ establish further or other procedures for the Bid Process.

#### Confidentiality, Stakeholder/Bidder Communication and Access to Information

20. ~~18.~~ All discussions regarding the Bid Process should be directed through the Monitor. Under no circumstances should the management of the OTE Group or any stakeholder of the OTE Group be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the Bid Process. For greater certainty, nothing herein shall preclude a stakeholder from participating in or formulating a bid or from contacting potential bidders with the agreement of the Monitor to advise that the OTE Group have commenced a Bid Process and that they should contact the Monitor if they are interested in participating in the Bid Process.
21. ~~19.~~ If it is determined by the Monitor, ~~in consultation with the OTE Group,~~ that it would be worthwhile to facilitate a discussion between one or more Qualified Bidders and a stakeholder or other third party as a consequence of a condition to closing or potential closing condition identified by such Qualified Bidder, the Monitor may provide such Qualified Bidder with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such bidder to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by the Monitor, ~~in consultation with the OTE Group.~~ The Monitor must be provided with the opportunity to be present at all such communications or meetings.

**Supervision of the Bid Process**

22. ~~20.~~ This Bid Process does not and will not be interpreted to create any contractual or other legal relationship between the OTE Group and any Qualified Bidder or any other party, other than as specifically set forth in an NDA or any definitive agreement executed.
23. ~~21.~~ Participants in the Bid Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Binding Offer, due diligence activities, and any other negotiations or other actions, whether or not they lead to the consummation of a transaction.
24. ~~22.~~ The Monitor shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, or any other creditor or stakeholder, or any Applicant, as a result of implementation or otherwise in connection with this Bid Process, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Monitor, as determined by the Court, and all such persons or entities shall have no claim against the Monitor in respect of the Bid Process for any reason whatsoever.

## SCHEDULE "A"1

## CAPITAL LEASES SCHEDULE

<u>Unit #</u>	<u>Make</u>	<u>Model</u>	<u>Year</u>	<u>Status</u>	<u>Lease End</u>
<u>21-01</u>	<u>MACK</u>	<u>600</u>	<u>2021</u>	<u>Leased</u>	<u>14-Sep-24</u>
<u>ST-06</u>	<u>WSTR</u>	<u>CNV</u>	<u>2022</u>	<u>Leased</u>	<u>4-Apr-27</u>
<u>4A-2</u>	<u>TREM</u>	<u>TRA</u>	<u>2020</u>	<u>Leased</u>	<u>15-Feb-25</u>
<u>6A-1</u>	<u>TREM</u>	<u>TRA</u>	<u>2020</u>	<u>Leased</u>	<u>31-Dec-24</u>
<u>6A-2</u>	<u>TREM</u>	<u>TRA</u>	<u>2020</u>	<u>Leased</u>	<u>31-Dec-25</u>
<u>6A-3</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>31-Dec-25</u>
<u>6A-4</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>1-Nov-25</u>
<u>6A-5</u>	<u>TREM</u>	<u>TRA</u>	<u>2022</u>	<u>Leased</u>	<u>1-Oct-26</u>
<u>6A-6</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>15-Dec-26</u>
<u>6A-7</u>	<u>TREM</u>	<u>TRA</u>	<u>2022</u>	<u>Leased</u>	<u>15-Feb-27</u>
<u>6A-8</u>	<u>TREM</u>	<u>TRA</u>	<u>2022</u>	<u>Leased</u>	<u>15-May-27</u>
<u>23-01</u>	<u>VOLVO</u>	<u>VNR</u>	<u>2023</u>	<u>Leased</u>	<u>21-Jun-27</u>
<u>23-02</u>	<u>VOLVO</u>	<u>VNR</u>	<u>2023</u>	<u>Leased</u>	<u>21-Jun-27</u>
<u>23-03</u>	<u>VOLVO</u>	<u>VNR</u>	<u>2023</u>	<u>Leased</u>	<u>21-Jun-27</u>
<u>20-07</u>	<u>VOLV</u>	<u>ARO</u>	<u>2020</u>	<u>Leased</u>	<u>15-Jun-24</u>
<u>20-08</u>	<u>INTL</u>	<u>LT6</u>	<u>2020</u>	<u>Leased</u>	<u>1-Jan-25</u>
<u>21-02</u>	<u>VOLV</u>	<u>ARO</u>	<u>2021</u>	<u>Leased</u>	<u>18-Nov-24</u>
<u>ST-04</u>	<u>WSTR</u>	<u>CNV</u>	<u>2022</u>	<u>Leased</u>	<u>1-Aug-26</u>
<u>SB003</u>	<u>TREC</u>	<u>TRA</u>	<u>2020</u>	<u>Leased</u>	<u>1-Apr-25</u>
<u>PUP</u>	<u>TREC</u>	<u>TRA</u>	<u>2020</u>	<u>Leased</u>	<u>1-Apr-25</u>
<u>SB004</u>	<u>TREC</u>	<u>REM</u>	<u>2020</u>	<u>Leased</u>	<u>1-Jun-25</u>
<u>PUP</u>	<u>TREC</u>	<u>TRA</u>	<u>2020</u>	<u>Leased</u>	<u>1-Jun-25</u>
<u>SB005</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>1-Aug-25</u>
<u>PUP</u>	<u>TREM</u>	<u>TRA</u>	<u>2020</u>	<u>Leased</u>	<u>1-Aug-25</u>
<u>4A-6</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>1-Oct-25</u>
<u>20-05</u>	<u>INTL</u>	<u>PRO</u>	<u>2020</u>	<u>Leased</u>	<u>1-Oct-25</u>
<u>20-06</u>	<u>VOLV</u>	<u>ARO</u>	<u>2020</u>	<u>Leased</u>	<u>24-Apr-24</u>
<u>20-09</u>	<u>INTL</u>	<u>LT6</u>	<u>2020</u>	<u>Leased</u>	<u>25-Oct-25</u>
<u>ST-05</u>	<u>WSTR</u>	<u>CNV</u>	<u>2021</u>	<u>Leased</u>	<u>1-Jun-26</u>
<u>4A-3</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>15-Aug-25</u>
<u>4A-4</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>15-Jul-25</u>
<u>4A-5</u>	<u>TREM</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>1-Oct-25</u>
<u>SB006</u>	<u>TREC</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>1-May-26</u>
<u>PUP</u>	<u>TREC</u>	<u>TRA</u>	<u>2021</u>	<u>Leased</u>	<u>1-May-26</u>

OWNED EQUIPMENTTrucks and Trailers

<u>Unit #</u>	<u>Make</u>	<u>Model</u>	<u>Year</u>	<u>Status</u>
<u>20-01</u>	<u>INTL</u>	<u>PRO</u>	<u>2020</u>	<u>Owned</u>
<u>20-02</u>	<u>INTL</u>	<u>PRO</u>	<u>2020</u>	<u>Owned</u>
<u>20-03</u>	<u>INTL</u>	<u>PRO</u>	<u>2020</u>	<u>Owned</u>
<u>20-04</u>	<u>VOLV</u>	<u>ARO</u>	<u>2020</u>	<u>Owned</u>
<u>ST-01</u>	<u>WSTR</u>	<u>CNV</u>	<u>2011</u>	<u>Owned</u>
<u>SB001</u>	<u>HUTC</u>	<u>TRI</u>	<u>2014</u>	<u>Owned</u>
<u>PUP</u>	<u>HUTC</u>	<u>TAN</u>	<u>2014</u>	<u>Owned</u>

IT Equipment

<u>Device Type</u>	<u>Manufacturer</u>	<u>Operating System</u>	<u>Warranty Expiry</u>
<u>Laptop</u>	<u>LENOVO</u>	<u>Microsoft Windows 10 Pro 10.0.19044</u>	<u>3/18/2022</u>
<u>Desktop</u>	<u>System manufacturer</u>	<u>Microsoft Windows 10 Pro 10.0.18363</u>	
<u>Desktop</u>	<u>HP</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>10/25/2025</u>
<u>Desktop</u>	<u>HP</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>10/25/2025</u>
<u>Desktop</u>	<u>HP</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>10/25/2025</u>
<u>Laptop</u>	<u>LENOVO</u>	<u>Microsoft Windows 10 Pro 10.0.19043</u>	<u>6/14/2023</u>
<u>Laptop</u>	<u>HP</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>7/8/2021</u>
<u>Laptop</u>	<u>LENOVO</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>5/9/2022</u>
<u>Desktop</u>	<u>System manufacturer</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Server</u>	<u>Dell Inc.</u>	<u>Microsoft Windows Server 2016 Standard 10.0.14393</u>	<u>8/20/2021</u>
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19044</u>	
<u>Desktop</u>	<u>System manufacturer</u>	<u>Microsoft Windows 10 Pro 10.0.19044</u>	
<u>Laptop</u>	<u>LENOVO</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>9/11/2020</u>
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19044</u>	
<u>Laptop</u>	<u>LENOVO</u>	<u>Microsoft Windows 10 Pro 10.0.19044</u>	<u>11/18/2022</u>
<u>Laptop</u>	<u>HP</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>8/31/2023</u>
<u>Laptop</u>	<u>LENOVO</u>	<u>Microsoft Windows 10 Pro 10.0.19043</u>	<u>5/4/2022</u>

<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Desktop</u>	<u>System manufacturer</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19044</u>	
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Desktop</u>	<u>System manufacturer</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Desktop</u>	<u>Micro-Star International Co., Ltd.</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	
<u>Laptop</u>	<u>ASUSTeK COMPUTER INC.</u>	<u>Microsoft Windows 11 Pro 10.0.22621</u>	<u>07/12/2023</u>
<u>Laptop</u>	<u>LENOVO</u>	<u>Microsoft Windows 10 Pro 10.0.19045</u>	<u>07/11/2023</u>

SCHEDULE 2**The Monitor:**

**KPMG** **Inc.**  
 333 Bay Street, Suite 4600  
 Bay Adelaide Centre  
 Toronto, ON M5H 2S5

Attention: Paul van Eyk, Duncan Lau and Tahreem Fatima  
 Email: ~~[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)~~ / ~~[duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca)~~ / ~~[tahreemfatima@kpmg.ca](mailto:tahreemfatima@kpmg.ca)~~  
[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca) / [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca) / [tahreemfatima@kpmg.ca](mailto:tahreemfatima@kpmg.ca)

with copies to:

**Bennett** **Jones** **LLP**  
 100 King Street West, Suite 3400  
 Toronto, ON M5X 1A5

Attention: Raj Sahni and Thomas Gray  
 Email: ~~[sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)~~ / ~~[grayt@bennettjones.com](mailto:grayt@bennettjones.com)~~ [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com) / [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

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**Appendix "D"**

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# Paliare Roland

Massimo (Max) Starnino  
Paliare Roland Rosenberg Rothstein LLP  
155 Wellington St. West, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

max.starnino@paliareroland.com  
T. 416.646.7431 / F. 416.646.4301

File # 101295

October 1, 2023

**VIA EMAIL**

## **BENNETT JONES LLP**

3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON  
M5X 1A4

Attention: Raj. S. Sahni

## **Counsel for the Monitor**

Dear Counsel:

## **Re: Original Traders Energy Ltd et al.; Court File No. CV-23-00693758-00CL**

We are writing with respect to the Monitor's Fifth Report in respect of the referenced proceedings (the "**Fifth Report**"), served yesterday. Some of the information contained in the Fifth Report is concerning to us and we have the following questions in connection therewith, which we would like answered as soon as possible. We may have further or other questions in future, including but not limited to questions arising from answers provided by the Monitor.

1. Referring to para. 24 of the 5th Report:
  - a. With reference to the list of customers included as Exhibit A to the First Hill Affidavit, which of these customers remain customers of the OTE Group currently?
  - b. In respect of each of the now-former customers listed on Exhibit A, advise when that customer ceased being a customer of OTE LP, and, for the avoidance of doubt, please identify the key customers referenced in para. 24 of the 5th Report, the date on which those customers departed, and the date when the Monitor become aware of their departure?
  - c. Are any of the key customers referenced in para. 24 of the 5th Report directly or indirectly related to or controlled by Miles Hill and Scott Hill, and if so, which ones
  - d. Were there any efforts made to replace the lost sales volumes, and if so please

# Paliare Roland

describe those efforts?

- e. On what date did the Monitor first begin to work on the Reduced Operations Plan?

## 2. Referring to para. 25 of the 5th Report?

- a. On what date were the operations at the Tyendinaga Blending Location first discontinued?
- b. On what date did the Monitor become aware that operations at the Tyendinaga Blending Location had first been (or would be) discontinued?
- c. On what date were the operations at the Whitefish Blending Location first discontinued?
- d. On what date did the Monitor become aware that operations at the Whitefish Blending Location had first been (or would be) discontinued?
- e. On what date(s) were notices of termination of employment given to the employees at the Discontinued Locations and when was their last day of work?
- f. On what date did the Monitor become aware that notices of termination of employment had been (or would be) given to the employees at the Discontinued Locations
- g. With respect to the decision to shut down operations at the Tyendinaga and Whitefish blending locations and concentrate operations at the Six Nations blending location:
  - i. What were the reasons given to the Monitor for the OTE Group's decision to continue operations at the Six Nations blending location as opposed to the Tyendinaga and Whitefish blending locations?
  - ii. Was the Monitor involved in the decision as to which blending location would continue operations? If so, does the Monitor agree with the reasons of the OTE Group for the selection of the Six Nations blending location for continuing operations rather than the Tyendinaga or Whitefish blending locations?
- h. What inquiries, if any, have been made by the Monitor regarding, and what is the Monitor's understanding of, the nature, validity and enforceability of the interests held by the OTE Group in the Six Nations Blending Location, the Tyendinaga Blending Location and the Whitefish Blending Location, having regard to the oral and/or written agreements or instruments that are in place in respect of each of these blending

# Paliare Roland

locations, and having regard to the statutory regimes that apply under the Indian Act or the First Nations Land Management Act to the lands where these blending locations are situated.

- i. Having regard to the statutory regimes that apply under the *Indian Act* or the *First Nations Land Management Act* to the lands where these blending locations are situated, and having regard to the oral and/or written agreements or instruments that are in place in respect of each blending location, does the Monitor agree that it would be preferable, from the perspective of creditors seeking to realize on the value of assets, for the Applicants' ongoing operations to be concentrated at the site of either the Tyendinaga Blending Location or Whitefish Blending Location? If not, why not?

### 3. Referring to para. 37 and para. 38 of the 5th Report:

- a. When formulating its recommendation in respect of the Bid Process, was the Monitor aware that while the other limited partners of OTE LP contributed cash in exchange for their unit interests, Scott Hill's contribution was the premises on which the Head Office and Six Nations Blending Location is located, for which Scott Hill holds a Certificate of Possession (the "**Hill Property**")?
- b. What, if any, assurances have been (or will be) provided by Scott Hill, in his capacity as holder of the Certificate of Possession in respect of the Hill Property, in relation to the interest in the Head Office and Six Nations Blending Location that will be offered for sale within the Bid Process? How, if at all, was this issue considered by the Monitor in the formulation of its recommendation in respect of the Bid Process, including, in particular, in respect of the recommended "as is, where is" basis for the sale and the recommended role of the OTE Group in the selection of an acceptable binding offer?
- c. In light of the "informal, oral lease agreements" in place for the Head Office and Six Nations Blending Location (see First Hill Affidavit, paragraph 43), and given the "as is, where is" formulation of the Monitor's recommendation in respect of the Bid Process, what is the nature of the interest (if any) in respect of the Head Office and Six Nations Blending Location that the Monitor expects might be offered for sale to third parties that are arms-length of Scott Hill, within the Bid Process?

4. At para. 38(viii) of the 5<sup>th</sup> Report, the Monitor indicates that only "Binding Offers that are acceptable to **both** the Monitor and the OTE Group" [emphasis added] will be presented to the Court for approval. The grant of a veto to the OTE Group appears to be a discretionary decision by the Monitor because the proposed Bid Process does not, on its face, appear to require approval of the OTE Group. Please clarify/confirm.

# Paliare Roland

5. Please provide the listing of equipment that is being offered for sale as part of the Bid Process. We are asking for this information as we are particularly interested in verifying that:
- a. all of the necessary information is ready to be made available to interested bidders;
  - b. all material equipment is being made available to bidders; and,
  - c. that equipment is appropriately characterized and classified (in particular, that equipment relating to blending operations (other than the tanks in the ground), which we understand was commissioned and purchased with the express intention that it be moveable between blending sites, is properly characterized and made available for sale as a chattel and is not being characterized and treated as a fixture tied to the premises.

We also take this opportunity to attach our current comments in respect of the proposed Bid Process. We may have further or other comments in respect of the Bid Process as well. As you will see, and as you may intuit from the questions above, we are particularly concerned by the role contemplated for Miles and Scott Hill in respect of the CCAA proceedings going forward, and we anticipate a motion to appoint a Chief Restructuring Officer to provide appropriate governance going forward.

Yours very truly,

**Paliare Roland Rosenberg Rothstein LLP**



Massimo (Max) Starnino

MS:JB

- c. J. Berger  
M. Jilesen and J. Chen  
J. Orkin and N. Shelsen  
S. Graff  
client

0981

**Appendix "E"**

September 29, 2023

Monique Jilesen  
Direct line: 416-865-2926  
Email: [mjilesen@litigate.com](mailto:mjilesen@litigate.com)

**Via Email**

Duncan Lau  
KPMG Inc.  
National Service Line Leader  
Restructuring & Turnaround  
333 Bay Street, Suite 4600  
Bay Adelaide Centre  
Toronto, ON M5H 2S5

Raj S. Sahni  
Bennett Jones LLP  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Dear Mr. Lau and Mr. Sahni:

**RE: AirSprint Aircraft Usage**  
**Our File No.: 101134**

I am writing on behalf of 2658658 Ontario Inc (“GPMC Holdings”), 10000267493 Ontario Inc. and Mr. Page in relation to the above-noted matter. As you know, 10000267493 Ontario Inc. is currently the fractional owner of various private airplanes through the fractional ownership program of AirSprint Private Aviation (“AirSprint”), and prior to their transfer to 10000267493 Ontario Inc. in 2022, these fractional ownership interests were owned by GPMC Holdings.

It has come to my clients' attention that KPMG in its capacity as Monitor has sent letters (“AirSprint Letters”) to certain individuals – including Kellie Hodgins, Mathew McLeod, David Blois and Matthew Page – inquiring about certain flights on AirSprint airplanes that occurred between April 20, 2021 and February 23, 2023 and on which they are identified as passengers on AirSprint’s flight manifest records.

As set out below, my clients have a number of concerns and objections to the manner in which the Monitor has framed its inquiries to these individuals in the AirSprint Letters, and the unfounded assumptions that appear to underpin those inquiries.

First, my clients take issue with the assumption that the Monitor is authorized to demand production of information regarding any and all AirSprint flights that were arranged on my clients’ AirSprint account and that were identified in the records produced by AirSprint in response to the Court’s April 28, 2023 order. As you know, the Monitor’s powers to compel production of information, as set out in the Amended and Restated Initial Order dated February 9, 2023 (“ARIO”), relates solely to “Requested Information”, defined as “any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, *relating to the OTE Group*” [emphasis added].

The unfounded assumption underpinning the AirSprint Letters is that the Monitor has a basis to assert that information about a particular flight that was arranged on my clients' AirSprint account and that was identified in the records produced by AirSprint constitutes "Requested Information". Information about a particular flight that was arranged on my clients' AirSprint account only constitutes "Requested Information" if it is first established that the flight or the payment for the flight related to the OTE Group.

It is the position of my clients that in the absence of specific information demonstrating that a particular flight or the funds used to pay for a particular flight related to the OTE Group, the Monitor has no authority to demand production of information about that flight. We do not agree that the allegations regarding payments to AirSprint that have been made by the OTE Group to date suffice to establish the Monitor's authority in this regard.

Second, without limiting the above, it is my clients' position that the Monitor has no basis to demand production of any information relating to flights that occurred after July 28, 2022. We are aware of no basis for the Monitor to assert that the usage by 10000267493 Ontario Inc. of its AirSprint fractional ownership interests *after July 28, 2022* could constitute information relating to the OTE Group.

As you know, Mr. Page ceased to be President of OTE LP's general partner in or around July 14, 2022. On or around July 28, 2022, the OTE Group revoked the access privileges of Mr. Page, Ms. Cox and the employees of GPMC Management Services to all platforms that had previously been used by GPMC Management Services to provide management services to the OTE Group. We are aware of no allegation (or evidence) by the OTE Group or the Monitor that funds originating from the OTE Group were used for the purposes of payment to AirSprint after July 28, 2022.

As such, it is my clients' position that the Monitor has no authority to demand production, by way of the AirSprint Letters, of any information relating to flights that took place after July 28, 2022.

In the event that the Monitor is in possession of information that supports the assertion that information regarding AirSprint flights that occurred after July 29, 2022 constitute "Requested Information" within the meaning of the ARIO, we ask that you share this information with us.

Third, my clients take issue with the assertion in the AirSprint Letters that if the individuals to whom the letters are addressed do not provide responses within 14 days, "the Monitor will assume that all travel listed on Schedule "A" is personal and not related to the business of the OTE Group, *and will request reimbursement therefor on behalf of the OTE Group*" [emphasis added]. It is unclear whether this is intended by the Monitor as a warning that reimbursement will be sought by the Monitor directly from the individuals who were the recipient of the AirSprint Letters, although this is certainly how the AirSprint Letter has been interpreted as such a threat by at least some of those recipients.

There is no basis for the Monitor to assert, as has occurred in the AirSprint Letters, that because a certain flight was arranged on the AirSprint account of our clients and that the travel in question was personal and/or not related to the business of the OTE Group, that the OTE Group is entitled to reimbursement in respect of that flight. My clients were entitled to and did use their AirSprint fractional ownership interests for their own personal and business purposes, unrelated to the OTE Group.

There is also no legal basis for the Monitor to assert that it will seek reimbursement on behalf of the OTE Group for certain AirSprint flights merely on the basis of non-response by the recipient of an AirSprint Letter.

Finally, the Court's July 17, 2023 order requiring the AirSprint Proceeds to be paid to the Monitor was on the basis that such funds would be "held by the Monitor in trust pending judicial determination of the claims and entitlements to such proceeds as between the OTE Group entities and the Mareva Respondents" (paragraph 4 of July 17, 2023 Order). Furthermore, paragraph 7 of the July 17, 2023 order provides that a case conference will be held "to seek directions regarding subsequent steps relating to the determination of the rights, interests, encumbrances, liens and entitlements of any of the OTE Group entities, the Monitor, and any of the Mareva Respondents or the Related Companies, in and to... the OTE Claimed AirSprint Property". No such case conference has yet been held and no such directions have been sought by the Monitor. The OTE Group has not established any interest over any portion of the AirSprint Proceeds.

Our clients do not agree that the process devised unilaterally by the Monitor is an appropriate, fair or efficient way to proceed with the inquiries necessary for the Court to make determinations regarding the rights, interests and entitlements of any of the OTE Group entities and any of the Mareva Respondents or the Related Companies, regarding the OTE Claimed AirSprint Property.

Yours truly,



Per: Monique Jilesen

MJ/ap  
c. Jonathan Chen, Lenczner Slaght



Jessica R. Orkin  
 Direct Line: 416.979.4381  
 Fax: 416.591.7333  
 jorkin@goldblattpartners.com  
 Our File No. 23-254

September 29, 2023

**Via E-mail**

<p>Duncan Lau          KPMG Inc.          National Service Line Leader, Restructuring &amp;          Turnaround          333 Bay Street, Suite 4600          Bay Adelaide Centre          Toronto ON M5H 2S5</p>	<p>Raj S. Sahni          Bennett Jones LLP          3400 One First Canadian Place          P.O. Box 130          Toronto, ON M5X 1A4</p>
--	--

Dear Mr. Lau and Mr. Sahni,

**Re: AirSprint Aircraft Usage**

We represent Kellie Hodgins, Mathew McLeod and David Blois in relation to the above-noted matter. Our clients have received Mr. Lau's letters dated September 15, 2023 (the "AirSprint Letters") requesting information from each of them regarding various AirSprint flights set out in Schedule A to their respective letters.

We are also in receipt of Ms. Jilesen's letter of today's date on behalf of 2658658 Ontario Inc., 10000267493 Ontario Inc. and Mr. Page regarding the Airsprint Letters.

I am writing to advise that in light of the position set out in Ms. Jilesen's letter, our clients will not be providing the information requested in the Airsprint Letters. Our clients do not agree that the information demanded by the Monitor in the Airsprint Letters constitutes "Requested Information" within the meaning of the Amended and Restated Initial Order dated February 9, 2023.

If the Monitor has further information to share that substantiates its authority to demand information regarding any of the flights set out in Schedule A to the Airsprint Letters, our clients would be pleased to receive that information, and if appropriate to reconsider their position.

Sincerely,

A handwritten signature in black ink, appearing to read 'JRO'.

Jessica R. Orkin  
 JRO:es/cope 343

0986

**Appendix "F"**

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

THE HONOURABLE	)	THURSDAY, THE 27TH
	)	
JUSTICE OSBORNE	)	DAY OF APRIL, 2023

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**

**THIS MOTION**, made by the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") for an order authorizing and directing AirSprint Inc. ("**AirSprint**") to provide certain information to KPMG Inc., in its capacity as the monitor (in such capacity, the "**Monitor**") 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**") and counsel to the Monitor, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Motion Record of the OTE Group, the third report of the Monitor (the "**Third Report**"), and on hearing the submissions of counsel for the OTE Group, 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 of Samantha Hans dated April 20, 2023,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the OTE Group and the Third Report 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 Third Report.

**PRODUCTION OF INFORMATION**

3. **THIS COURT ORDERS** that AirSprint is hereby authorized and directed to provide the Monitor and its counsel with the information requested by the Monitor or its counsel in connection with the amended and restated initial order issued by this Court on February 9, 2023 (the "**Amended and Restated Initial Order**") and any other Order of this Court, related to: (a) the OTE Group, (b) any of the OTE Group's directors or officers (together with the OTE Group, the "**OTE Group Affiliates**"), or (c) any third party owned, controlled by, or otherwise related to the OTE Group Affiliates, including for avoidance of doubt the information requested by the Monitor by letter to AirSprint on February 23, 2023 (the "**Information**"), but excluding information subject to legal privilege, including solicitor-client privilege and litigation privilege.

4. **THIS COURT ORDERS** that AirSprint is authorized to provide the Monitor and its counsel with the Information notwithstanding that the Information may include "personal information" as defined in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended (the "**Personal Information Protection Act**") and that in accordance with section 7(3) of the Personal Information Protection Act and any similar legislation in any other applicable jurisdictions, this Order shall be sufficient to authorize the provision of the Information by AirSprint to the Monitor and its counsel.

5. **THIS COURT ORDERS** that AirSprint shall not disclose what Information has been provided to the Monitor and its counsel to any other person, in each case unless such disclosure is required by law or otherwise ordered by the Court.

6. **THIS COURT ORDERS** that the Monitor and its counsel shall maintain and protect the privacy and confidentiality of the Information, and shall only use the Information in connection with the performance of the Monitor's roles and duties pursuant to the to the CCAA, the Amended and Restated Initial Order, and any other Order of this Court.

7. **THIS COURT ORDERS** that the Monitor and its counsel are authorized to share the Information with the OTE Group and its counsel, as well as Glenn Page, 2658658 Ontario Inc., Mandy Cox, Kellie Hodgins and their respective counsel (together, the "**Additional Recipients**") notwithstanding that the Information may include "personal information" as defined in the Personal Information Protection Act and that in accordance with section 7(3) of the Personal Information Protection Act and any similar legislation in any other applicable jurisdictions, this Order shall be sufficient to authorize the provision of the Information by the Monitor and its counsel to the Additional Recipients, provided however that (i) the Monitor and the Additional Recipients shall comply with applicable privacy laws with respect to personal information received hereunder, and (ii) in the event that the Information provided to the Monitor is identified by AirSprint as being commercially sensitive and confidential in relation to AirSprint, the Information shall not be shared with the Additional Recipients or any other person unless otherwise ordered by the Court.

8. **THIS COURT ORDERS** that the Additional Recipients to whom Information is disclosed shall maintain and protect the privacy and confidentiality of the Information and shall not use such Information for any purpose unrelated to the CCAA Proceedings.

9. **THIS COURT ORDERS** that, without limiting any powers of the Monitor pursuant to the CCAA, the Amended and Restated Initial Order or any other order of this Court the Monitor and the Additional Recipients shall be permitted to use the Information obtained pursuant to this Order for the purpose of investigating the business and affairs of the OTE Group and pursuing legal proceedings to recover any Property (as defined in the Amended and Restated Initial Order) or seek recourse in respect of any reviewable transactions, payments or preferences, for the general benefit of the OTE Group and its creditors. Both the OTE Group and the Monitor shall be permitted to apply to this Court for such further relief as may be appropriate including, without limitation, such further orders that are required to trace, freeze, and recover any Property of the OTE Group or any Property purchased with funds of the OTE Group.

10. **THIS COURT ORDERS** that, in connection with its duties, the Monitor and its counsel and the Additional Recipients may provide the Information to the Court provided that any

Information deemed to be confidential by the Monitor or the Additional Recipients shall be provided to the Court confidentially with a request for a sealing order.

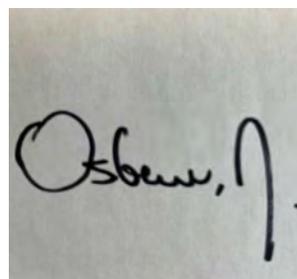
11. **THIS COURT ORDERS** that the Monitor, the OTE Group, and AirSprint shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of carrying out the provisions of this Order, except to the extent such losses, claims, damages or liability results from the gross negligence or wilful misconduct of the Monitor and/or the OTE Group and/or AirSprint, as applicable, and as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Monitor under the Amended and Restated Initial Order.

12. **THIS COURT ORDERS** that nothing in this Order shall prejudice the ability of the Monitor to continue to compel the production of Requested Information (as defined in the Amended and Restated Initial Order) from any party, or to continue to request any information necessary to carry out the Monitor's duties pursuant to the CCAA, the Amended and Restated Initial Order, or any other Order of this Court.

#### GENERAL

13. **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.

14. **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.



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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 at Toronto**

**INFORMATION ORDER**

0991

**AIRD & BERLIS LLP**

Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
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*Lawyers for the OTE Group*

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**Appendix "G"**



**Raj S. Sahni**  
Partner  
Direct Line: 416.777.4804  
e-mail: sahnir@bennettjones.com

October 3, 2023

**Via Email**

Lenczner Slaght  
130 Adelaide St. W.  
Suite 2600  
Toronto, Ontario M5H 3P5

Goldblatt Partners LLP  
20 Dundas St. W., Suite 1039  
Toronto, Ontario M5G 2C2

**Attention: Monique Jilesen**

**Attention: Jessica Orkin**

Dear Ms Jilesen and Ms Orkin:

**Re: AirSprint Aircraft Usage**

On behalf of KPMG Inc. as court-appointed monitor (the "**Monitor**") of the OTE Group in their proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**"), we are writing in response to each of your letters dated September 29, 2023.

The Monitor disagrees with the positions set out in your letters. The powers given to the Monitor under the Amended and Restated Initial Order and any other orders of the Court are in addition to any powers of the Monitor pursuant to the CCAA and otherwise at law. As an officer of the Court, the Monitor's role includes reviewing past transactions involving the OTE Group and seeking to recover any funds or property for which OTE Group did not receive adequate consideration. The Monitor is empowered to review and investigate such transactions, including without limitation, pursuant to section 36.1 of the CCAA and section 96 of the *Bankruptcy and Insolvency Act* ("**BIA**").

As the Monitor noted in paragraph 27 of its Second Report dated March 13, 2023, and paragraph 59 of its Third Report dated April 25, 2023 (the "**Third Report**"), approximately USD \$6,864,425 and approximately CAD \$1,057,681 was wired by OTE Group entities to AirSprint Inc. ("**AirSprint**"). As further noted by the Monitor in paragraph 63 of the Third Report, "The Monitor is of the view that the Information (including the AirSprint Information) is crucial to the Monitor's ongoing investigation into the alleged misappropriation of OTE Group funds and property, and does not believe that the Information Order will prejudice any stakeholder." Accordingly, the Monitor expressly informed the Court that the information being sought from AirSprint (the "**AirSprint Information**") would be used in the Monitor's investigation into the alleged misappropriation of OTE Group funds and property.

Moreover, while the Monitor is already empowered to conduct its investigations pursuant to the CCAA and the BIA without any further court order, paragraph 9 of the April 27, 2023 Order made in respect

October 3, 2023

Page 2

of the AirSprint Information gave the Monitor express authority to use the AirSprint Information "for the purpose of investigating the business and affairs of the OTE Group and pursuing legal proceedings to recover any Property (as defined in the Amended and Restated Initial Order) or seek recourse in respect of any reviewable transactions, payments or preferences, for the general benefit of the OTE Group and its creditors."

The Monitor has acted and continues to act in accordance with its duties and powers in sending information requests as to usage of aircraft paid for by funds from the OTE Group to determine whether that usage of aircraft was for legitimate purposes in relation to the OTE Group's business or for purposes that would entitle the OTE Group to compensation or recovery of funds as a transaction at undervalue pursuant to section 96 of the BIA or otherwise. Accordingly, we see no legitimate basis on which your respective clients can object to the investigations being conducted by the Monitor, which are intended to seek additional recoveries for the OTE Group's creditors. While paragraph 7 of the July 17, 2023 Order provides for a mechanism to seek directions for a hearing to determine entitlements against the proceeds of the Italian Yacht and the OTE Claimed AirSprint Property, it certainly does not purport to limit the Monitor's ongoing investigations or provide your clients any basis to interfere therewith.

The Monitor has received some responses to its information requests in relation to the AirSprint flights and will follow-up with any persons who have not yet responded. If your respective clients require additional time to respond, please let the Monitor know. If your respective clients or others refuse to provide the Monitor with the requested information, the Monitor may seek further directions from the Court to compel production of that information; however, we would hope that your respective clients will cooperate so that is not necessary.

Yours truly,



Raj S. Sahni

RSS:mv

C: Paul van Eyk and Duncan Lau, KPMG Inc.

WSLEGAL\078556\00002\35810756v1

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

**Supplement to the Fifth Report of the Monitor  
(October 6, 2023)**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Raj S. Sahni (LSO# 42942U)**  
Tel No: 416-777-4808  
Email: [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)

**Thomas Gray (LSO# 82473H)**  
Tel No: 416-777-7924  
Email: [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

*Lawyers for the Monitor*

This is Exhibit "X" referred to in the Affidavit of Keely Kinley sworn by Keely Kinley of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 10, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**BONNIE GREENAWAY**



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KPMG Inc.  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON, M5H 2S5

Telephone: (416) 777 8500  
Fax: (416) 777 3364  
www.kpmg.ca

September 15, 2023

118 Main Street North  
P O Box 1063  
Hamilton ON L0R 2H0

Dear Glenn Page

**Re: AirSprint Aircraft Usage**

As you may know, on January 30, 2023, Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP and Original Traders Energy LP (collectively, the "**OTE Group**") were granted protection by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**"). In connection therewith, KPMG Inc. was appointed by the Court as the Monitor of the OTE Group (in such capacity, the "**Monitor**"), and was provided with expanded investigatory powers. The protection granted to the OTE Group and the powers of the Monitor in these CCAA Proceedings are set out in the Initial Order granted by the Court on January 30, 2023 and the Amended and Restated Initial Order granted by the Court on February 9, 2023. These Orders, as well as Reports filed by the Monitor and other relevant materials from the CCAA Proceedings, can be found on the Monitor's website: <http://home.kpmg.ca/OTEGroup>.

During the course its investigation, the Monitor became aware that the OTE Group transferred significant funds to AirSprint Inc. ("**AirSprint**") in connection with the purchase of fractional ownership interests for certain aircrafts (the "**OTE Claimed Aircrafts**"). In cooperation with the Monitor and pursuant to an Order of the Court dated April 27, 2023, AirSprint provided certain information to the Monitor. This information included flight manifests identifying the individuals who travelled with the OTE Claimed Aircraft (the "**Flight Manifest**") between 4/20/2021 to 2/23/2023 (the "**Review Period**").

This letter is being sent to persons who, based on the Flight Manifest, traveled on OTE Claimed Aircrafts during the Review Period, in order for the Monitor to investigate and obtain more information relating to the use of the OTE Claimed Aircrafts.

According to the Flight Manifest provided by AirSprint, you and/or your family members travelled using the aircraft, on **138** trips, as set out in more detail at Schedule "A" hereto. Please review Schedule "A" and provide us with information regarding these trips, including: (i) the nature of each trip (business or personal); (ii) if a business trip, the nature of the business conducted; (iii) who you were meeting and for what purpose; (iv) information as to any other persons that travelled that are not listed at Schedule "A"; and (v) any other information relevant to the trip(s).

Please provide us your response within **14 days** of the date of this letter. The Monitor expressly reserves its right to seek additional information from you in respect of this travel. If you do not provide responses within **14 days**, the Monitor will assume that all travel listed on Schedule "A" is personal and not related to the business of the OTE Group, and will request reimbursement therefor on behalf of the OTE Group.



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**KPMG Inc.**  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON, M5H 2S5

Telephone: (416) 777 8500  
Fax: (416) 777 3364  
[www.kpmg.ca](http://www.kpmg.ca)

If you have any questions in respect of this letter, we will make ourselves available for a discussion.

Yours truly,

Duncan Lau

A handwritten signature in black ink, appearing to read 'Duncan Lau', with a stylized flourish at the end.

**KPMG INC.**

**In its capacity as Court-Appointed  
Monitor of Original Traders Energy Group  
And not in its personal or corporate capacity**

Toll Free #: 1 (833) 665-0666

Local # : (416) 468-7000

[OTEGroup@kpmg.ca](mailto:OTEGroup@kpmg.ca)

<http://home.kpmg/ca/OTEGroup>

Copy to:

Paul van Eyk

Tahreem Fatima

Broderick Lomax

Raj Sahni

Thomas Gray

**\*Note: OTE Business refers to business directly performed for Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP and Original Traders Energy LP (collectively, the "OTE Group").**

Schedule A Passenger	Date	Origin			Destination			Passengers	(i) the nature of trip (OTE business*, other business, or personal)	(ii) if a business trip, the nature of the business conducted	(iii) if a business trip, who you were meeting and for what purpose	(iv) information as to any other persons that travelled that are included in passenger list	(v) information as to any other persons that travelled that are not listed at Schedule "A"	(vi) any other information relevant to the trip(s)
PAGE, GLENN	4/29/2021	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON 6	PAGE, GLENN;COX, MANDY;DENOBRIGA, BRIAN;PAGE, GLENN;COX, MANDY;MCLEOD, MATT						
PAGE, GLENN	4/29/2021	CYB	NORTH BAY	ON	CYAM	SAULT STE MARIE	ON 3	PAGE, GLENN;COX, MANDY;MCLEOD, MATT						
PAGE, GLENN	4/29/2021	CYAM	SAULT STE MARIE	ON	CYB	NORTH BAY	ON 6	PAGE, GLENN;COX, MANDY;DENOBRIGA, BRIAN;PAGE, GLENN;COX, MANDY;MCLEOD, MATT						
PAGE, GLENN	4/29/2021	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON 3	PAGE, GLENN;COX, MANDY;DENOBRIGA, BRIAN						
PAGE, GLENN	5/5/2021	CYYZ	TORONTO	ON	KCLE	CLEVELAND	OH 4	PAGE, GLENN;COX, MANDY;CAMPBELL, GARY;CAMPBELL, KIMBERL						
PAGE, GLENN	5/5/2021	KCLE	CLEVELAND	OH	KFDY	FINDLAY	OH 4	PAGE, GLENN;COX, MANDY;CAMPBELL, GARY;CAMPBELL, KIMBERL						
PAGE, GLENN	5/6/2021	KFDY	FINDLAY	OH	TLPC	CASTRIES (ST LUCIA)	SL 4	PAGE, GLENN;COX, MANDY;CAMPBELL, KIMBERL;CAMPBELL, GARY						
PAGE, GLENN	5/22/2021	TLPC	CASTRIES (ST LUCIA)	SL	CYYZ	TORONTO	ON 4	PAGE, GLENN;COX, MANDY;CAMPBELL, KIMBERL;CAMPBELL, GARY						
PAGE, GLENN	6/8/2021	CYHM	HAMILTON	ON	CYAM	SAULT STE MARIE	ON 3	PAGE, GLENN;PAGE, BRIAN;DENOBRIGA, BRIAN						
PAGE, GLENN	6/8/2021	CYAM	SAULT STE MARIE	ON	CYSB	SUDBURY	ON 3	PAGE, GLENN;PAGE, BRIAN;DENOBRIGA, BRIAN						

PAGE, GLENN	6/8/2021	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	3	PAGE, GLENN;PAGE, BRIAN;DENOBRIGA, BRIAN					
PAGE, GLENN	7/27/2021	CYHM	HAMILTON	ON	CYAM	SAULT STE MARIE	ON	2	PAGE, GLENN;DE NOBRIGA, BRIAN					
PAGE, GLENN	7/27/2021	CYAM	SAULT STE MARIE	ON	CYB	NORTH BAY	ON	2	PAGE, GLENN;DE NOBRIGA, BRIAN					
PAGE, GLENN	7/27/2021	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	2	PAGE, GLENN;DE NOBRIGA, BRIAN					
PAGE, GLENN	8/17/2021	CYHM	HAMILTON	ON	CYAM	SAULT STE MARIE	ON	3	PAGE, GLENN;COX, MANDY;DE NOBRIGA, BRIAN					
PAGE, GLENN	8/17/2021	CYAM	SAULT STE MARIE	ON	CYSB	SUDBURY	ON	3	PAGE, GLENN;COX, MANDY;DE NOBRIGA, BRIAN					
PAGE, GLENN	8/17/2021	CYSB	SUDBURY	ON	CYB	NORTH BAY	ON	3	PAGE, GLENN;COX, MANDY;DE NOBRIGA, BRIAN					
PAGE, GLENN	8/17/2021	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	3	PAGE, GLENN;COX, MANDY;DE NOBRIGA, BRIAN					
PAGE, GLENN	8/24/2021	CYHM	HAMILTON	ON	CYMX	MONTREAL	QC	4	PAGE, GLENN;FERLAND, ANDY;DE NOBRIGA, BRIAN;BLOIS, DAVID					
PAGE, GLENN	8/24/2021	CYMX	MONTREAL	QC	CYHM	HAMILTON	ON	4	PAGE, GLENN;FERLAND, ANDY;DE NOBRIGA, BRIAN;BLOIS, DAVID					
PAGE, GLENN	9/2/2021	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	9	PAGE, GLENN;COX, MANDY;DE NOBRIGA, BRIAN;PAGE, BRIAN;BLOIS, DAVID;PAGE, GLENN;PAGE,					

PAGE, GLENN	9/2/2021	CYB	NORTH BAY	ON	CYSB	SUDBURY	ON	4	PAGE, GLENN;PAGE, BRIAN;BLOIS, DAVID;DE NOBRIGA, BRIAN					
PAGE, GLENN	9/2/2021	CYSB	SUDBURY	ON	CYB	NORTH BAY	ON	9	PAGE, GLENN;COX, MANDY;DE NOBRIGA, BRIAN;PAGE, BRIAN;BLOIS, DAVID;PAGE, GLENN;PAGE, BRIAN;BLOIS, DAVID;DE NOBRIGA, BRIAN					
PAGE, GLENN	9/2/2021	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	5	PAGE, GLENN;COX, MANDY;DE NOBRIGA, BRIAN;PAGE, BRIAN;BLOIS, DAVID					
PAGE, GLENN	9/8/2021	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	8	PAGE, GLENN;COX, MANDY;BLOIS, DAVID;NAGY, JOHN;DE NOBRIGA, BRIAN;PAGE, GLENN;BLOIS, DAVID;DE NOBRIGA, BRIAN					
PAGE, GLENN	9/8/2021	CYB	NORTH BAY	ON	CYAM	SAULT STE MARIE	ON	3	PAGE, GLENN;BLOIS, DAVID;DE NOBRIGA, BRIAN					
PAGE, GLENN	9/8/2021	CYAM	SAULT STE MARIE	ON	CYB	NORTH BAY	ON	8	PAGE, GLENN;COX, MANDY;BLOIS, DAVID;NAGY, JOHN;DE NOBRIGA, BRIAN;PAGE, GLENN;BLOIS, DAVID;DE NOBRIGA, BRIAN					
PAGE, GLENN	9/8/2021	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	5	PAGE, GLENN;BLOIS, DAVID;COX, MANDY;NAGY, JOHN;DE NOBRIGA, BRIAN					
PAGE, GLENN	9/12/2021	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	2	COX, MANDY;PAGE, GLENN					
PAGE, GLENN	9/15/2021	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	9/27/2021	KTEB	TETERBORO	NJ	KLAN	LANSING	MI	2	COX, MANDY;PAGE, GLENN					
PAGE, GLENN	9/28/2021	KLAN	LANSING	MI	CYZ	TORONTO	ON	2	COX, MANDY;PAGE, GLENN					

PAGE, GLENN	9/28/2021	CYZ	TORONTO	ON	CYHM	HAMILTON	ON	2	COX, MANDY;PAGE, GLENN					
PAGE, GLENN	9/29/2021	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;PAGE, GLENN;DE NOBRIGA, BRIAN;MCLEOD, MATHEW					
PAGE, GLENN	9/29/2021	CYB	NORTH BAY	ON	CYAG	FORT FRANCES	ON	3	PAGE, GLENN;DE NOBRIGA, BRIAN;MCLEOD, MATHEW					
PAGE, GLENN	9/29/2021	CYAG	FORT FRANCES	ON	CYB	NORTH BAY	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;PAGE, GLENN;DE NOBRIGA, BRIAN;MCLEOD, MATHEW					
PAGE, GLENN	9/29/2021	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	2	PAGE, GLENN;DE NOBRIGA, BRIAN					
PAGE, GLENN	10/6/2021	CYHM	HAMILTON	ON	CYAM	SAULT STE MARIE	ON	2	PAGE, GLENN;PAGE, BRIAN					
PAGE, GLENN	10/6/2021	CYAM	SAULT STE MARIE	ON	CYSB	SUDBURY	ON	2	PAGE, GLENN;PAGE, BRIAN					
PAGE, GLENN	10/6/2021	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	2	PAGE, GLENN;PAGE, BRIAN					
PAGE, GLENN	10/6/2021	CYHM	HAMILTON	ON	KTEB	TETERBORO	NJ	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	10/20/2021	CYHM	HAMILTON	ON	KCHS	CHARLESTON	SC	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	10/30/2021	KFLL	FORT LAUDERDALE	FL	CYZ	TORONTO	ON	2	PAGE, GLENN;COX, MANDY					

PAGE, GLENN	10/30/2021	CYYZ	TORONTO	ON	CYHM	HAMILTON	ON	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	11/4/2021	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	4	PAGE, GLENN;COX, MANDY;MARTIN, HOPE;DE NOBRIGA, BRIAN					
PAGE, GLENN	11/4/2021	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	4	PAGE, GLENN;COX, MANDY;MARTIN, HOPE;DE NOBRIGA, BRIAN					
PAGE, GLENN	11/11/2021	CYHM	HAMILTON	ON	KSDL	SCOTTSDALE	AZ	4	PAGE, GLENN;PAGE, MATTHEW;COOPER, JEFF;COOPER, SCOTT					
PAGE, GLENN	11/14/2021	KSDL	SCOTTSDALE	AZ	CYYZ	TORONTO	ON	4	PAGE, GLENN;PAGE, MATTHEW;COOPER, SCOTT;COOPER, JEFF					
PAGE, GLENN	11/14/2021	CYYZ	TORONTO	ON	CYHM	HAMILTON	ON	3	PAGE, GLENN;PAGE, MATTHEW;COOPER, SCOTT					
PAGE, GLENN	11/23/2021	CYHM	HAMILTON	ON	CYSB	SUDBURY	ON	6	PAGE, GLENN;HILL, SCOTT;LOFT, GARY;COX, MANDY;WATSON, ALEXANDRA;SMITH, AMY					
PAGE, GLENN	11/23/2021	CYSB	SUDBURY	ON	CYPQ	PETERBOROUGH	ON	6	PAGE, GLENN;HILL, SCOTT;LOFT, GARY;COX, MANDY;WATSON, ALEXANDRA;SMITH, AMY					
PAGE, GLENN	11/23/2021	CYPQ	PETERBOROUGH	ON	CYHM	HAMILTON	ON	5	PAGE, GLENN;HILL, SCOTT;LOFT, GARY;COX, MANDY;WATSON, ALEXANDRA					
PAGE, GLENN	11/24/2021	CYHM	HAMILTON	ON	KEYW	KEY WEST	FL	2	COX, MANDY;PAGE, GLENN					
PAGE, GLENN	11/29/2021	KEYW	KEY WEST	FL	CYYZ	TORONTO	ON	2	COX, MANDY;PAGE, GLENN					

PAGE, GLENN	11/29/2021	CYYZ	TORONTO	ON	CYHM	HAMILTON	ON	2	COX, MANDY;PAGE, GLENN					
PAGE, GLENN	12/5/2021	CYHM	HAMILTON	ON	CYAM	SAULT STE MARIE	ON	1	PAGE, GLENN					
PAGE, GLENN	12/5/2021	CYAM	SAULT STE MARIE	ON	CYHM	HAMILTON	ON	1	PAGE, GLENN					
PAGE, GLENN	12/8/2021	CYHM	HAMILTON	ON	TLPC	CASTRIES (ST LUCIA)	SL	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	12/15/2021	TLPC	CASTRIES (ST LUCIA)	SL	CYHM	HAMILTON	ON	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	12/26/2021	CYHM	HAMILTON	ON	KILM	WILMINGTON	NC	5	PAGE, GLENN;COX, MANDY;SMITH, GRAYSON;SMITH, ADDISYN;COX, BRENDA					
PAGE, GLENN	12/26/2021	KILM	WILMINGTON	NC	TLPL	VIEUX FORT (ST LUCIA)	SL	5	PAGE, GLENN;COX, MANDY;SMITH, GRAYSON;SMITH, ADDISYN;COX, BRENDA					
PAGE, GLENN	1/9/2022	TLPC	CASTRIES (ST LUCIA)	SL	CYHM	HAMILTON	ON	4	PAGE, GLENN;COX, MANDY;COX, BRENDA;SMITH, ADDISYN					
PAGE, GLENN	3/2/2022	CYHM	HAMILTON	ON	CYSB	SUDBURY	ON	3	PAGE, GLENN;PAGE, BRIAN;BLOIS, DAVID					
PAGE, GLENN	3/2/2022	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	3	PAGE, GLENN;PAGE, BRIAN;BLOIS, DAVID					
PAGE, GLENN	3/3/2022	CYHM	HAMILTON	ON	KFLL	FORT LAUDERDALE	FL	2	PAGE, GLENN;COX, MANDY					

PAGE, GLENN	3/3/2022	KFLL	FORT LAUDERDALE	FL	TLPC	CASTRIES (ST LUCIA)	SL	2	PAGE, GLENN;COX, MANDY						
PAGE, GLENN	3/25/2022	TLPL	VIEUX FORT (ST LUCIA)	SL	CYHM	HAMILTON	ON	1	PAGE, GLENN						
PAGE, GLENN	4/4/2022	CYHM	HAMILTON	ON	CYAG	FORT FRANCES	ON	4	PAGE, GLENN;HARVIE, GHISLAIN;DE NOBRIGA, BRIAN;CARTER, DARRYL						
PAGE, GLENN	4/4/2022	CYAG	FORT FRANCES	ON	CYHM	HAMILTON	ON	4	PAGE, GLENN;HARVIE, GHISLAIN;DE NOBRIGA, BRIAN;CARTER, DARRYL						
PAGE, GLENN	4/5/2022	CYHM	HAMILTON	ON	CYSB	SUDBURY	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;HARVIE, GHISLAIN;PAGE, GLENN;MCLEOD, MATHEW						
PAGE, GLENN	4/5/2022	CYSB	SUDBURY	ON	CYAM	SAULT STE MARIE	ON	2	PAGE, GLENN;MCLEOD, MATHEW						
PAGE, GLENN	4/5/2022	CYAM	SAULT STE MARIE	ON	CYSB	SUDBURY	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;HARVIE, GHISLAIN;PAGE, GLENN;MCLEOD, MATHEW						
PAGE, GLENN	4/5/2022	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	3	PAGE, GLENN;DE NOBRIGA, BRIAN;HARVIE, GHISLAIN						
PAGE, GLENN	4/17/2022	CYHM	HAMILTON	ON	KTPA	TAMPA	FL	3	PAGE, GLENN;SMITH, GRAYSON;LANGTON, JESSICA						
PAGE, GLENN	4/17/2022	KTPA	TAMPA	FL	TLPC	CASTRIES (ST LUCIA)	SL	5	PAGE, GLENN;PAGE, GLENN;SMITH, GRAYSON;LANGTON, JESSICA						
PAGE, GLENN	5/1/2022	TLPC	CASTRIES (ST LUCIA)	SL	KPBI	WEST PALM BEACH	FL	2	PAGE, GLENN;COX, MANDY						

PAGE, GLENN	5/1/2022	KPBI	WEST PALM BEACH	FL	CYHM	HAMILTON	ON	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	5/6/2022	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	1	PAGE, GLENN					
PAGE, GLENN	5/6/2022	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	1	PAGE, GLENN					
PAGE, GLENN	5/10/2022	CYHM	HAMILTON	ON	KBWI	BALTIMORE	MD	1	PAGE, GLENN					
PAGE, GLENN	5/14/2022	KBWI	BALTIMORE	MD	CYHM	HAMILTON	ON	3	PAGE, GLENN;COX, MANDY;SMITH, ADDISYN					
PAGE, GLENN	5/25/2022	CYHM	HAMILTON	ON	CYAG	FORT FRANCES	ON	3	PAGE, GLENN;HILL, SCOTT;SMITH, GRAYSON					
PAGE, GLENN	5/25/2022	CYAG	FORT FRANCES	ON	CYHM	HAMILTON	ON	3	PAGE, GLENN;HILL, SCOTT;SMITH, GRAYSON					
PAGE, GLENN	5/27/2022	CYHM	HAMILTON	ON	CYAM	SAULT STE MARIE	ON	4	PAGE, GLENN;COX, MANDY;RANKIN, BRUCE;SPENCER, JULIENNE					
PAGE, GLENN	5/27/2022	CYAM	SAULT STE MARIE	ON	CYSB	SUDBURY	ON	4	PAGE, GLENN;COX, MANDY;RANKIN, BRUCE;SPENCER, JULIENNE					
PAGE, GLENN	5/27/2022	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	4	PAGE, GLENN;COX, MANDY;RANKIN, BRUCE;ROBINSON, MARK					
PAGE, GLENN	5/30/2022	CYHM	HAMILTON	ON	CYZH	SLAVE LAKE	AB	2	PAGE, GLENN;HILL, SCOTT					

PAGE, GLENN	5/31/2022	CYZH	SLAVE LAKE	AB	CYHM	HAMILTON	ON	2	PAGE, GLENN;HILL, SCOTT					
PAGE, GLENN	6/2/2022	CYHM	HAMILTON	ON	TLPC	CASTRIES (ST LUCIA)	SL	5	PAGE, GLENN;COX, MANDY;HODGINS, KELLIE;SMITH, GRAYSON;PENNEY, JODY					
PAGE, GLENN	6/3/2022	TLPC	CASTRIES (ST LUCIA)	SL	CYHM	HAMILTON	ON	5	PAGE, GLENN;COX, MANDY;HODGINS, KELLIE;SMITH, GRAYSON;PENNEY, JODY					
PAGE, GLENN	7/3/2022	LEPA	PALMA (SPAIN)	SP	LFBD	BORDEAUX (FRANCE)	FR	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	7/10/2022	LFPB	LE BOURGET (FRANCE)	FR	CYTT	ST JOHN'S	NL	7	PAGE, GLENN;COX, MANDY;BLOIS, DAVID;BLOIS, TRACY;PAGE, MATTHEW;PAGE, JESSICA;PAGE, JACK					
PAGE, GLENN	7/10/2022	CYTT	ST JOHN'S	NL	CYHM	HAMILTON	ON	7	PAGE, GLENN;COX, MANDY;BLOIS, DAVID;BLOIS, TRACY;PAGE, MATTHEW;PAGE, JESSICA;PAGE, JACK					
PAGE, GLENN	7/19/2022	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	1	PAGE, GLENN					
PAGE, GLENN	7/19/2022	CYB	NORTH BAY	ON	CYWG	WINNIPEG	MB	3	PAGE, GLENN;MCLEOD, MATHEW;HARRIS, ADAM					
PAGE, GLENN	7/20/2022	CYWG	WINNIPEG	MB	CYB	NORTH BAY	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;MCLEOD, MATHEW;HARRIS, ADAM;FERLAND, ANDY					
PAGE, GLENN	7/28/2022	CYHM	HAMILTON	ON	KBWI	BALTIMORE	MD	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	8/3/2022	KSGJ	ST. JOHNS COUNTY	FL	CYHM	HAMILTON	ON	3	PAGE, GLENN;COX, MANDY;HARVIE, GHISLAIN					

PAGE, GLENN	8/7/2022	CYHM	HAMILTON	ON	TLPC	CASTRIES (ST LUCIA)	SL	5	PAGE, GLENN;COX, MANDY;LANGTON, JESSICA;HODGINS, KELLIE;HODGINS, GREGORY					
PAGE, GLENN	8/10/2022	TLPC	CASTRIES (ST LUCIA)	SL	CYHM	HAMILTON	ON	5	PAGE, GLENN;COX, MANDY;LANGTON, JESSICA;HODGINS, KELLIE;HODGINS, GREGORY					
PAGE, GLENN	8/23/2022	CYHM	HAMILTON	ON	CYMX	MONTREAL	QC	4	PAGE, GLENN;DE NOBRIGA, BRIAN;BLOIS, DAVID;MCLEOD, MATHEW					
PAGE, GLENN	8/23/2022	CYMX	MONTREAL	QC	CYHM	HAMILTON	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;BLOIS, DAVID;MCLEOD, MATHEW;BLOIS, ERIC					
PAGE, GLENN	8/26/2022	CYHM	HAMILTON	ON				2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	8/28/2022				CYHM	HAMILTON	ON	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	9/12/2022	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	2	PAGE, GLENN;PAGE, BRIAN					
PAGE, GLENN	9/12/2022	CYB	NORTH BAY	ON	CYOW	OTTAWA	ON	3	PAGE, GLENN;MCLEOD, MATHEW;PAGE, BRIAN					
PAGE, GLENN	9/12/2022	CYOW	OTTAWA	ON	CYHM	HAMILTON	ON	3	PAGE, GLENN;MCLEOD, MATHEW;PAGE, BRIAN					
PAGE, GLENN	9/13/2022	CYHM	HAMILTON	ON	CYAG	FORT FRANCES	ON	3	PAGE, GLENN;COX, MANDY;MCLEOD, MATHEW					
PAGE, GLENN	9/13/2022	CYAG	FORT FRANCES	ON	CYB	NORTH BAY	ON	3	PAGE, GLENN;COX, MANDY;MCLEOD, MATHEW					

PAGE, GLENN	9/13/2022	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	9/18/2022	CYQA	QUEBEC CITY	QC	TLPC	CASTRIES (ST LUCIA)	SL	3	PAGE, GLENN;COX, MANDY;HODGINS, KELLIE					
PAGE, GLENN	9/20/2022	TLPC	CASTRIES (ST LUCIA)	SL	CYHM	HAMILTON	ON	3	PAGE, GLENN;COX, MANDY;HODGINS, KELLIE					
PAGE, GLENN	9/23/2022	CYHM	HAMILTON	ON	CYSB	SUDBURY	ON	1	PAGE, GLENN					
PAGE, GLENN	9/23/2022	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	1	PAGE, GLENN					
PAGE, GLENN	9/27/2022	CYHM	HAMILTON	ON	CYAM	SAULT STE MARIE	ON	2	PAGE, GLENN;LYNCH, DEREK					
PAGE, GLENN	9/27/2022	CYAM	SAULT STE MARIE	ON	CYSB	SUDBURY	ON	2	PAGE, GLENN;LYNCH, DEREK					
PAGE, GLENN	9/27/2022	CYSB	SUDBURY	ON	CYHM	HAMILTON	ON	8	PAGE, BRIAN;POIRIER, MARIE;SMOOK, MELISSA-ASHLEY;SMOOK, CHRISTOPHER;SMOOK, NASH;SMOOK, BRIGGS;PAGE, GLENN;LYNCH, DEREK					
PAGE, GLENN	10/18/2022	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;PAGE, GLENN;DE NOBRIGA, BRIAN;MCLEOD, MATHEW					
PAGE, GLENN	10/18/2022	CYB	NORTH BAY	ON	CYAM	SAULT STE MARIE	ON	3	PAGE, GLENN;DE NOBRIGA, BRIAN;MCLEOD, MATHEW					

PAGE, GLENN	10/18/2022	CYAM	SAULT STE MARIE	ON	CYB	NORTH BAY	ON	5	PAGE, GLENN;DE NOBRIGA, BRIAN;PAGE, GLENN;DE NOBRIGA, BRIAN;MCLEOD, MATHEW					
PAGE, GLENN	10/18/2022	CYB	NORTH BAY	ON	CYHM	HAMILTON	ON	2	PAGE, GLENN;DE NOBRIGA, BRIAN					
PAGE, GLENN	10/24/2022	CYHM	HAMILTON	ON	KEYW	KEY WEST	FL	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	10/30/2022	KEYW	KEY WEST	FL	CYHM	HAMILTON	ON	2	PAGE, GLENN;PAGE, GLENN					
PAGE, GLENN	12/5/2022	CYHM	HAMILTON	ON	CYB	NORTH BAY	ON	2	PAGE, GLENN;COX, MANDY					
PAGE, GLENN	12/5/2022	CYB	NORTH BAY	ON	CYWG	WINNIPEG	MB	5	PAGE, GLENN;COX, MANDY;MCLEOD, MATHEW;MCLEOD, ABBYGAIL;RATUDRADRA, WILLIAM					
PAGE, GLENN	12/7/2022	CYWG	WINNIPEG	MB	CYHM	HAMILTON	ON	6	PAGE, GLENN;COX, MANDY;PAGE, DAVID;PAGE, BARBARA;PAGE, BRIAN;POIRIER, MARIE					
PAGE, GLENN	12/7/2022	CYHM	HAMILTON	ON	KFLL	FORT LAUDERDAL	FL	1	PAGE, GLENN					
PAGE, GLENN	12/8/2022	KFLL	FORT LAUDERDALE	FL	CYHM	HAMILTON	ON	1	PAGE, GLENN					
PAGE, GLENN	1/17/2023	CYHM	HAMILTON	ON	SLU	ST. LUCIA	SL	1	PAGE, GLENN					
PAGE, GLENN	2/1/2023	CYLW	KELOWNA	BC	YWG	WINNIPEG	MB	3	PAGE, GLENN;PAGE, BRIAN;MCLEOD, MATHEW					

PAGE, GLENN	2/1/2023	CYWG	WINNIPEG	MB	YYB	NORTH BAY	ON	2	PAGE, GLENN;MCLEOD, MATHEW					
PAGE, GLENN	2/2/2023	CYYB	NORTH BAY	ON	YPQ	PETERBORO UGH	ON	1	PAGE, GLENN					
PAGE, GLENN	2/16/2023	CYHM	HAMILTON	ON	FLL	FORT LAUDERDALE	FL	4	PAGE, GLENN;COX, MANDY;HODGINS, GREGORY;HODGINS, KELLIE					
PAGE, GLENN	2/20/2023	07FA	NORTH KEY LARGO	FL	YHM	HAMILTON	ON	4	PAGE, GLENN;COX, MANDY;HODGINS, GREGORY;HODGINS, KELLIE					
PAGE, GLENN	2/23/2023	CYHM	HAMILTON	ON	YYB	NORTH BAY	ON	1	PAGE, GLENN					
PAGE, MATTHEW	2/1/2022	PHOG	KAHULUI	HI	KOAK	OAKLAND	CA	3	PAGE, MATTHEW;PAGE, JESSICA;PAGE, JACK					
PAGE, MATTHEW	2/1/2022	KOAK	OAKLAND	CA	CYHM	HAMILTON	ON	3	PAGE, MATTHEW;PAGE, JESSICA;PAGE, JACK					
PAGE, MATTHEW	6/17/2022	CYUL	DORVAL	QC	KBOS	BOSTON	MA	3	PAGE, MATTHEW;KLEVEN, KIMBERLEY;KLEVEN, JEFFREY					

This is Exhibit "Y" referred to in the Affidavit of Keely Kinley sworn by Keely Kinley of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 10, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**BONNIE GREENAWAY**

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

THE HONOURABLE	)	THURSDAY THE 12 <sup>TH</sup>
	)	
MADAM JUSTICE KIMMEL	)	DAY OF OCTOBER, 2023

**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  
(Monitor's Enhanced Powers and Amended Bid Process Approval)**

**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**") for an order expanding the Monitor's powers pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") and approving a bid process for the sale of assets of the OTE Group, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Motion Record of the Monitor, including the supplement to the Fifth Report of the Monitor (the "**Supplemental Fifth Report**"), and on hearing the submissions of counsel for the OTE Group, counsel for the Monitor, counsel for Royal Bank of Canada ("**RBC**") and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of Thomas Gray dated October 6, 2023.

**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 amended and restated initial order granted by this Court in the CCAA Proceedings on February 9, 2023 (the "**Amended and Restated Initial Order**").

**MONITOR'S ENHANCED POWERS**

3. **THIS COURT ORDERS** that without in any way limiting the powers of the Monitor pursuant to the CCAA, or other applicable law, or as set out in the Amended and Restated Initial Order, or any other Order granted in the CCAA Proceedings, the Monitor is hereby empowered and authorized, but not obligated, to do any of the following in the name of and on behalf of the OTE Group, where the Monitor considers it necessary or desirable:

- (a) take any and all actions and steps to manage, operate and carry on the Business, including, without in any way limiting the generality of the forgoing:
  - (i) any actions or steps the Monitor considers necessary or desirable to proceed with an orderly restructuring or liquidation of the Business, including any actions necessary to carry out the Amended Bid Process (as defined in the Supplemental Fifth Report);
  - (ii) any and all steps of the OTE Group authorized by any Order made in the CCAA Proceedings, including making distributions or payments and conducting the Claims Procedure approved by this Court on April 27, 2023 and as may be amended from time to time;
  - (iii) entering into any agreements;

- (iv) permanently or temporarily ceasing, downsizing or shutting down any of the OTE Group's operations;
- (v) terminating the employment of or temporarily laying off employees of the OTE Group;
- (vi) settling, extending or compromising any indebtedness owing to or by the OTE Group;
- (vii) engaging consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including those conferred by this Order;
- (viii) purchasing or leasing machinery, equipment, inventories, supplies, premises or other assets to continue the Business, or any part or parts thereof;
- (ix) initiating, prosecuting and continuing the prosecution of any and all proceedings and defending all proceedings now pending or hereafter instituted with respect to the OTE Group, the Business, the Property or the Monitor and to settle or compromise any such proceeding;
- (x) engaging with any regulatory bodies or law enforcement on behalf of the OTE Group;
- (xi) applying for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and in the name of the OTE Group;
- (xii) claiming any and all insurance refunds or tax refunds to which the OTE Group is entitled on behalf of the OTE Group;
- (xiii) paying all taxes, fees, legal costs and other expenses of the OTE Group;

- (xiv) disclaiming any contracts and agreements on behalf of the OTE Group;
  - (xv) taking any and all corporate governance actions for the OTE Group; and
  - (xvi) providing instruction and direction to the advisors of the OTE Group;
- (b) preserve and protect the Property, or any parts thereof, provided that the Monitor shall not be deemed to be in possession or control of the Property;
  - (c) report to, meet with and discuss with such affected persons as the Monitor deems appropriate on all matters relating to the Business and the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;
  - (d) oversee and direct the preparation and dissemination of financial and other information of the OTE Group in the CCAA Proceedings, including cash flow statements;
  - (e) apply to the Court for advice and direction or for any further orders in the CCAA Proceedings, including, without in any way limiting the generality of the foregoing, sale approval and vesting orders and orders extending or terminating the stay of proceedings; and
  - (f) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations.

4. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered, but not obligated, at such time as the Monitor may determine, if at all, to file an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") for and on behalf of the OTE Group or any of the OTE Group entities and to take any steps incidental thereto.

5. **THIS COURT ORDERS** that KPMG Inc. is hereby authorized and empowered, but not obligated, to act as trustee in bankruptcy in respect of any OTE Group entity that makes an assignment into bankruptcy.

6. **THE COURT ORDERS** that the Monitor is solely authorized and empowered to exercise the powers set out in this order to the exclusion of all other persons, including the OTE Group, and without interference from any other person.

7. **THIS COURT ORDERS** that the OTE Group and its respective advisors and its current and former officers, directors, employees, agents and representatives shall continue to cooperate with the Monitor and to provide full and complete access to the Property, including in connection with the exercise of any of the Monitor's enhanced powers described above, and shall provide the Monitor with such assistance as the Monitor may request from time to time to enable to Monitor to carry out and discharge its powers as set out in this Order or any other Order of this Court in this proceeding.

#### **LIMITATION ON THE MONITOR'S LIABILITY**

8. **THIS COURT ORDERS** that the Monitor is not and shall not, for any purposes, be deemed to be a director, officer, employee, receiver, receiver-manager, or liquidator of the OTE Group.

9. **THIS COURT ORDERS** that the Monitor is not and shall not for the purposes of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) be deemed to be a legal representative or person to whom s. 150(3) of that Act applies.

10. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part and no action may be brought against the Monitor or any of its directors, officers, partners, employees, advisors or agents without leave of this Court.

11. **THIS COURT ORDERS** that the rights, protections, indemnities, charges, priorities and other provisions in favour of the Monitor set out in the CCAA or any other applicable legislation, the Amended and Restated Initial Order, and any other Order granted in the CCAA Proceedings, all shall apply and extend to the Monitor in connection with the Monitor carrying out and

exercising its enhanced powers in connection this Order, amended as necessary to give effect to the terms of this Order.

#### **APPROVAL OF AMENDED BID PROCESS**

12. **THIS COURT ORDERS** that the Amended Bid Process (as defined and described in the Supplemental Fifth Report) be and is hereby approved. The Monitor is hereby authorized to carry out the Amended Bid Process, in consultation with RBC, and to take such steps as it considers necessary or desirable in carrying out its obligations thereunder, including entering into relevant realtor and/or property listing agreements, subject to prior approval of this Court being obtained before completion of any sale transaction under the Amended Bid Process.

13. **THIS COURT ORDERS** that the Monitor and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages, or liabilities of any nature or kind to any person in connection with or as a result of the Monitor performing its duties under the Amended Bid Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or wilful misconduct of the Monitor, as determined by this Court in a final order that is not subject to appeal or other review.

14. **THIS COURT ORDERS** that the Monitor may redact information deemed to be commercially sensitive by the OTE Group in the course of the Amended Bid Process. The Monitor may provide such commercially sensitive information to a successful bidder following the selection of a successful bid for the purposes of confirmatory due diligence.

15. **THIS COURT ORDERS** that the Monitor may amend any timelines and make any minor amendments it deems necessary or advisable to the Amended Bid Process to help ensure the fairness, integrity and efficacy of the Amended Bid Process.

16. **THIS COURT ORDERS** that, pursuant to clause 7(30(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions the Monitor is hereby authorized and permitted to disclose and provide to its agents and any potential purchasers in the Amended Bid Process personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a

transaction pursuant to the Amended Bid Process (a “**Transaction**”). Each person to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Monitor or, in the alternative, destroy all such information and provide confirmation of its destruction to the Monitor. Any purchaser under a Transaction shall maintain and protect the privacy of such information and, upon closing of a Transaction, shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the OTE Group, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction to the Monitor.

#### **GENERAL**

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

18. **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.

19. **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.

 Digitally signed  
by Jessica Kimmel  
Date: 2023.10.12  
22:33:11 -04'00'

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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 at Toronto**

**ORDER**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Raj S. Sahni (LSO# 42942U)**  
Tel No: 416-777-4808  
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**Thomas Gray (LSO# 82473H)**  
Tel No: 416-777-7924  
Email: [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

*Lawyers for the Monitor*

This is Exhibit "Z" referred to in the Affidavit of Keely Kinley sworn by Keely Kinley of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 10, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read "Bonnie Greenaway", written in a cursive style.

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*Commissioner for Taking Affidavits (or as may be)*

**BONNIE GREENAWAY**



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00693758-00CL HEARING DATE: October 12, 2023

NO. ON LIST: \_\_\_\_\_

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

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION : **SEE PARTICIPANT SHEET ATTACHED**

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

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**ENDORSEMENT OF JUSTICE KIMMEL:****The Motions**

1. The OTE Group (which includes the Applicants and two related and operationally integral non-applicant limited partnerships, OTE Logistics and Original Traders Energy LP, who have had relief extended to them through these CCAA proceedings) seeks an Order (the "Extended Stay and Amended Claims Procedure Order"):
  - a. Extending the Stay Period, as defined in the Initial Order, to April 26, 2024;
  - b. Amending the claims procedure approved pursuant to the Claims Procedure Order dated April 27, 2023 (the "Claims Procedure Order") pursuant to which the OTE Group, with the assistance of the Monitor, will seek to identify, quantify and resolve certain claims by former employees; and
  - c. Approving the Fifth Report of the Monitor dated September 28, 2023 (the "Fifth Report"), the Supplement to the Fifth Report of the Monitor dated October 6, 2023 (the "Supplemental Report"), and the activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings as described in these reports.
2. The Monitor is seeking an Order (the "Monitor's Enhanced Powers and Amended Bid Process Approval Order"), among other things:
  - a. providing the Monitor with enhanced powers in connection with the business and property of Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP, and Original Traders Energy LP (together, the "OTE Group"); and
  - b. approving an amended bid process (the "Amended Bid Process") for the sale of the assets of the OTE Group to be carried out by the Monitor.
3. These motions, together with a motion brought by Glenn Page ("Page") and 2658658 Ontario Inc. ("265") for, among other things, the appointment of a Chief Restructuring Officer (a "CRO Appointment Motion"), were originally returnable last week and were adjourned to allow the OTE Group, the Monitor and the stakeholders time to come to a consensual resolution, which they have now done. The court was advised today that the CRO Appointment Motion is being withdrawn, without prejudice. No one is opposing either the Monitor's Enhanced Powers and Amended Bid Process Approval Order or the Extended Stay and Amended Claims Procedure Order.
4. The court was advised that all known stakeholders were served with the original motions returnable last week and that the Monitor has engaged with any who have raised any concerns regarding the orders now sought. No one appearing at the hearing raised any concerns or objections to the orders sought.
5. The employees and former employees have not been formally consulted or given notice of the proposed Amended Claims Procedure, but it has been designed to favour them and they retain all of their rights in respect of their claims.

**Recent Developments**

6. Following the date of the Initial Order made on January 30, 2023, the OTE Group has continued to work with the Monitor in managing the business of the OTE Group. Subsequent to the Fourth Report, the OTE Group became aware of the departure of certain key customers. As a result, the OTE Group does not anticipate being able to replace the lost sales volumes attributable to these customers in the current circumstances of its restructuring. As a result, operations at certain locations have been discontinued and some employees have been terminated. It is expected that there will be further employee terminations.

7. With the assistance of the Monitor, the OTE Group has prepared a plan to reduce the operations of the OTE Group (the "Reduced Operations Plan") to limit operating costs and conserve cash due to the circumstances stated above.

#### Amended Claims Procedure

8. The Monitor was previously authorized to carry out a Claims Procedure which had a claims bar date of June 27, 2023. The OTE Group and the Monitor propose to amend the Claims Procedure to include claims of terminated employees and to streamline and simplify the Claims Procedure for any employees terminated during the CCAA process (the "Terminated Employees"). This Amended Claims Procedure is targeted to Terminated Employee's claims and is designed to foster a user-friendly process for the Terminated Employees to have their claims recognized and resolved quickly and cost-effectively. The Employee Restructuring Claim mechanism provided for functions as a simplified "negative notice" employee claims process.
9. This approach to employee termination claims, including a negative notice claims process, has been adopted in other CCAA proceedings. See for example, *Just Energy Group Inc.*, (September 15, 2021) CV-21-00658423-00CL (Order), at para. 22; and *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037, at paras. 12, 60 and 68.
10. Under this amended Claims Procedure, the OTE Group will prepare, in consultation with the Monitor and based on the OTE Group's books and records, a notice of Employee Restructuring Claim for each Terminated Employee terminated during the CCAA Proceedings that sets out accrued and unpaid vacation pay, termination and/or severance pay among other amounts. From that point forward, the negative notice process built into this amendment mirrors the claims procedures in *Just Energy Group Inc.* and *Payless Shoesource Canada GP Inc.*, (April 24, 2019) CV-19-00614629- 00CL (Order), where Terminated Employees will be provided with their determined claim amount, after which a dispute process can be run if necessary.
11. The court's authority to amend the Claims Procedure is found in ss. 11 and 12 of the CCAA. The court requested a change to paragraph 3 to the proposed form of order, which was made, to make it clear that the court has not endorsed or approved the basis on which the Employee Restructuring Claims will be calculated at first instance and that the employees' rights with respect to the determination of their claims are preserved.
12. With that change, and for the above and the other reasons outlined, *inter alia*, in paragraph 35 of the OTE Group's factum on this motion, it is appropriate to exercise the court's discretion to approve the Amended Claims Procedure.

#### Enhancement of Monitor's Powers and Amended Bid Process

13. The expanded powers of the Monitor are consistent with what is typically provided for when the Monitor takes over for the board of directors, in a situation such as this where the last remaining director has agreed to resign. These expanded powers address governance and conflict issues that have been raised while allowing the Monitor to continue to manage the business and conduct the Amended Bid Process, among other things.
14. The Monitor believes the relief sought in the Monitor's Enhanced Powers and Amended Bid Process Approval Order is fair and reasonable and is in the best interests of the OTE Group's creditors and will not prejudice any stakeholders.
15. Pursuant to ss. 11 and 23(1)(k) of the CCAA, this Court has the authority to expand the powers of the Monitor. Section 11 of the CCAA provides the Court with a broad discretion that should be exercised in furtherance of the remedial objectives of the CCAA, and where it has been demonstrated that (a) the

order sought is appropriate in the circumstances, (b) the applicant has been acting in good faith and with due diligence. See *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, at paras. 47-49.

16. Section 23(1)(k) of the CCAA specifically provides that the monitor shall carry out any other functions in relation to the debtor company that the court may direct.
17. It has become accepted that a monitor's powers may be enhanced to allow it to function as a "super monitor" under the CCAA, including to provide super monitor powers to allow a monitor to exercise the powers of the board of directors of an entity after its board and management have resigned. See *Re Nortel Networks Corporation et al*, 2014 ONSC 6973, at para. 31. The Monitor's counsel advises that the proposed enhanced powers in this case are consistent with those that have been approved in previous cases.
18. The Monitor's enhanced powers requested at this motion would also ensure that the Monitor's investigation is not impeded and will provide the required independent oversight and governance to allow the Monitor to continue its investigations for the benefit of the stakeholders of the OTE Group and address the governance concerns that have been raised by Page and 265.
19. Among the enhanced powers would be the authority to run the Amended Bid Process. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale process in relation to a CCAA debtor's business and assets, prior to or in the absence of a plan of compromise and arrangement. See *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at para. 48.
20. The Monitor's Fifth Report described a detailed proposed bid process that has been revised based upon input and consultation with stakeholders. The Amended Bid Process narrows the assets for sale to the right, title and interests of the OTE Group in the chattels identified at Schedule 1 to the Amended Bid Process due to uncertainty surrounding the ownership of fuel blending equipment, including claims that have been or may be asserted by landlords in respect thereof. The Amended Bid Process also provides for consultation rights to the Royal Bank of Canada ("RBC"), in its capacity as the secured lender to the OTE Group.
21. The Amended Bid Process has been timed to conclude before the end of the year when certain licences are expiring.
22. The Monitor's factum outlines at paragraphs 25-27 the factors to be considered and the justification for approving the Amended Bid Process in this case. The Monitor is of the view that the Amended Bid Process provides an appropriate framework that will fairly canvass the market to obtain the best offer for the assets of the OTE Group which will maximize value for the stakeholders.
23. The court approves the enhancement of the Monitor's powers and the Amended Bid Process for all of these reasons.

#### The Stay Extension

24. The court's authority to grant the requested stay extension to April 26, 2024 is found in s. 11.01(2) and (3) of the CCAA. I am satisfied that the stay extension is appropriate in the circumstances to, among other things, allow the Monitor to advance the Reduced Operations Plan and Amended Bid Process and to continue to work with the OTE Group, as it has done, in good faith and with due diligence to operate the remaining business as a going concern pending the completion of a potential transaction. It will also allow the Monitor to continue its investigation and tracing of OTE Group funds alleged to have been misappropriated.
25. Further, the Fifth Report also states that, based on the Third Extended Cash Flow Forecast, as defined therein, the Monitor believes the OTE Group will have sufficient liquidity to fund both operating costs and the costs of the CCAA Proceedings through to April 28, 2024, if granted.
26. The Monitor is of the view that the extension of the Stay Period is fair and reasonable in the circumstances.

Approval of the Monitor's Activities and Reports

27. The requested approval of the Monitor's Fifth Report and Supplemental Report contains the standard restrictive language regarding reliance and is consistent with the approach adopted in *Target Canada Co. (Re)*, 2015 ONSC 7574, at para. 2 that endorses approval of the Monitor's activities and reports at regular intervals. The requested approval of the Monitor's Fifth and Supplemental Reports and activities described therein is granted.

Orders

28. The Extended Stay and Amended Claims Procedure Order and the Monitor's Enhanced Powers and Amended Bid Process Approval Order are both granted and shall issue in the forms as signed by me today, with immediate effect and without the necessity of formal issuance and entry.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.


**ONTARIO SUPERIOR COURT OF JUSTICE**
**[1] Participant Information Form**

This form is to be used:

- in place of previous ‘counsel slips’, and
- for all hearings using the CaseLines document sharing platform. For these hearings, parties of their representatives are to complete the form and upload it into the CaseLines event folder/bundle.

Where possible, the moving party for the event should coordinate with other parties to complete one form for the hearing. In criminal matters, each party may prepare their own form.

This form must be saved using the court’s document name convention (e.g. Participant Information – All Parties – 01-JUN-2021 or Participant Information – Defendant Smith – 01-JUN-2021).

**CASE AND EVENT INFORMATION**

<b>Court File Number</b>	CV-23-00693758-00CL
<b>Court Location (e.g. Hamilton)</b>	Toronto
<b>Case Name</b>	In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.
<b>Type of Hearing</b>	Motion for certain relief under the CCAA
<b>Date of Hearing</b>	October 12, 2023

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

<b>Name of Person Appearing</b>  (and how they wish to be address, e.g. pronouns and/or prefix; also, if the wish, the phonetic pronunciation of their name)	<b>Name of Party</b>	<b>Phone Number<sup>1</sup></b>	<b>Email Address</b>
Martin Henderson Samantha Hans	Applicants	416-865-7725	<a href="mailto:mhenderson@airdberlis.com">mhenderson@airdberlis.com</a> <a href="mailto:shans@airdberlis.com">shans@airdberlis.com</a>

<sup>1</sup> Please provide a phone number where you can be reached during the virtual/hybrid hearing, if necessary.

Raj S. Sahni Thomas Gray	Monitor (KPMG Inc.)	416-777-4804	<a href="mailto:sahnir@bennettjones.com">sahnir@bennettjones.com</a> <a href="mailto:grayt@bennettjones.com">grayt@bennettjones.com</a>
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A5317  
A5318

**For Defendant, Respondent, Responding Party, Defence:**

<b>Name of Person Appearing</b>  (and how they wish to be address, e.g. pronouns and/or prefix; also, if the wish, the phonetic pronunciation of their name)	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Monique J. Jilesen Bonnie Greenaway	Glenn Page and 2658658 Ontario Inc.	416-865-2926	<a href="mailto:mjilesen@litigate.com">mjilesen@litigate.com</a> <a href="mailto:bgreenaway@litigate.com">bgreenaway@litigate.com</a>
Jessica Orkin Natai Shelsen	Mandy Cox, Kellie Hodgins, the Gen7 station LPs, GPMC Management	416-979-4381	<a href="mailto:jorkin@goldblattpartners.com">jorkin@goldblattpartners.com</a> <a href="mailto:nshelsen@goldblattpartners.com">nshelsen@goldblattpartners.com</a>

**For Other:**

<b>Name of Person Appearing</b>  (and how they wish to be address, e.g. pronouns and/or prefix; also, if the wish, the phonetic pronunciation of their name)	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Steven Groeneveld Laura Brazil Adam Mortimer	HMKO/Minister of Finance	905-431-8380	<a href="mailto:Steven.Groeneveld@ontario.ca">Steven.Groeneveld@ontario.ca</a> <a href="mailto:Laura.Brazil@ontario.ca">Laura.Brazil@ontario.ca</a> <a href="mailto:Adam.Mortimer@ontario.ca">Adam.Mortimer@ontario.ca</a>
Steven Kelly	Chi-Zhiingwaak Business Park Inc. & Atikamesheng Anishnawbek First Nation	416-593-3904	<a href="mailto:SKelly@blaney.com">SKelly@blaney.com</a>

Christopher Keliher	AirSprint Inc.	403-260-9760	<a href="mailto:christopher.keliher@blakes.com">christopher.keliher@blakes.com</a>
Roger Jaipargas	Royal Bank of Canada	416-367-6266	<a href="mailto:RJaipargas@blg.com">RJaipargas@blg.com</a>
Jana Smith	Brian Page and 11222074 Canada Limited.	416-597-3399	<a href="mailto:jsmith@gsnh.com">jsmith@gsnh.com</a>
Max Starnino Joseph Berger	OTE USA LLC	416-646-7431	<a href="mailto:Max.Starnino@paliareroland.com">Max.Starnino@paliareroland.com</a> <a href="mailto:joseph.berger@paliareroland.com">joseph.berger@paliareroland.com</a>

This is Exhibit "AA" referred to in the Affidavit of Keely Kinley sworn by Keely Kinley of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, in the City of Toronto, in the Province of Ontario, on November 10, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**BONNIE GREENAWAY**

**From:** [Jonathan Chen](#)  
**To:** [Raj Sahni](#); [Martin Henderson](#); [Steve Graff](#)  
**Cc:** [Monique Jilesen](#); [Keely Kinley](#)  
**Subject:** In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00  
**Date:** August 16, 2023 10:06:23 PM  
**Attachments:** [image001.png](#)

---

Counsel,

As you know, we represent Mr. Glenn Page and 2658658 Ontario Inc. As you will have seen in previous filings, our clients have referred to the lack of disclosure and production of relevant financial information related to the OTE Group and in particular, OTE LP and OTE Logistics LP. Our clients are entitled to relevant financial information, among other categories of documents, in the possession of the Monitor and the OTE Group.

To that end, we write to request production of the financial information listed below for fiscal years 2019-2021 for OTE LP and OTE Logistics LP:

1. Detailed general ledgers by year in excel format;
2. Trial balances with grouping schedules;
3. Year end adjusting entries;
4. Corporate income tax returns; and
5. Copies of bank statements with cancelled cheques.

Please note that further requests for additional documents may be made.

We are happy to discuss our request but do look forward to receipt of the above documents as soon as possible.

Thanks,

Jonathan



**Jonathan Chen\***

T 416-865-3553  
M 647-390-3968  
F 416-865-2843  
[jchen@litigate.com](mailto:jchen@litigate.com)

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[www.litigate.com](http://www.litigate.com)

This is Exhibit "BB" referred to in the Affidavit of Keely Kinley sworn by Keely Kinley of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 10, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**BONNIE GREENAWAY**

**Lauren Nixon**

---

**From:** Raj Sahni <SahniR@bennettjones.com>  
**Sent:** August 30, 2023 12:14 PM  
**To:** Jonathan Chen; Monique Jilesen; Keely Kinley  
**Cc:** Steve Graff; Martin Henderson; Paul van Eyk (pvaneyk@kpmg.ca); Lau, Duncan  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00

**EXTERNAL MESSAGE**

Jonathan, sorry for the delay in responding as I was away.

As you know, the OTE Group entities are private corporations and limited partnerships under a Court-supervised proceeding pursuant to the *Companies' Creditors Arrangement Act*, which includes a court-ordered stay of proceedings, rights and remedies pursuant to the Initial Order dated January 30, 2023 and the Amended and Restated Initial Order dated February 9, 2023 (collectively, the "**Initial CCAA Order**"). The Monitor is a court-appointed officer that takes its directions from and reports to the Court. The Monitor is conducting its information requests and investigations pursuant to the powers granted to it under the Initial CCAA Order and the CCAA and it is not required nor prepared to disclose any confidential information it has received, including the information you have requested below.

The OTE Group has informed the Monitor that it views the information requested by you as confidential. Such information is therefore not permitted to be disclosed by the Monitor pursuant to paragraph 32 of the Amended & Restated Initial Order. I am copying counsel for OTE and leave it to them to respond on behalf of OTE.

Thank you



**Raj Sahni**  
*Partner\**, Bennett Jones LLP  
\*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. [416 777 4804](tel:4167774804) | F. [416 863 1716](tel:4168631716) | M. [416 618 4804](tel:4166184804)  
E. [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)  
[BennettJones.com](http://BennettJones.com)

---

**From:** Jonathan Chen <jchen@litigate.com>  
**Sent:** Wednesday, August 30, 2023 10:01 AM  
**To:** Raj Sahni <SahniR@bennettjones.com>; Martin Henderson <mhenderson@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>  
**Cc:** Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00

Counsel,

We are following up on our request below.

Can you please advise whether you intend to provide us with the below information, and if so, the timing?

Thanks,

Jon

---

**From:** Jonathan Chen

**Sent:** Wednesday, August 16, 2023 10:06 PM

**To:** Raj Sahni <[SahniR@bennettjones.com](mailto:SahniR@bennettjones.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>

**Cc:** Monique Jilesen <[mjilesen@litigate.com](mailto:mjilesen@litigate.com)>; Keely Kinley <[KKinley@litigate.com](mailto:KKinley@litigate.com)>

**Subject:** In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00

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Thanks,

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Jonathan Chen\*

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This is Exhibit "CC" referred to in the Affidavit of Keely Kinley sworn by Keely Kinley of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 10, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**BONNIE GREENAWAY**

**Lauren Nixon**

---

**From:** Jonathan Chen  
**Sent:** September 6, 2023 9:31 AM  
**To:** Raj Sahni; Martin Henderson; Steve Graff  
**Cc:** Keely Kinley; Monique Jilesen; Paul van Eyk (pvaneyk@kpmg.ca); Lau, Duncan  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00

Counsel,

Thank you for your response. We have not yet heard from the OTE Group with respect to our document request.

To clarify, our client, in its capacity as a Limited Partner of OTE LP and OTE Logistics LP, is making the request to the General Partners of OTE LP and OTE Logistics LP. We refer you to Section 6.1 of both the OTE LP and OTE Logistics LP Limited Partnership Agreements which set out the "Covenants of the General Partner", including that the General Partner agrees to provide to the limited partners a quarterly update, including customary operational and financial reporting, and all information and/or documentation that the limited partner may request, acting reasonably. Our client, as a limited partner, is therefore entitled to the requested information.

We ask that you reconsider your position.

Thanks,

Jonathan



**Jonathan Chen\***

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---

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**Sent:** Wednesday, August 30, 2023 12:14 PM  
**To:** Jonathan Chen <jchen@litigate.com>; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>  
**Cc:** Steve Graff <sgraff@airdberlis.com>; Martin Henderson <mhenderson@airdberlis.com>; Paul van Eyk (pvaneyk@kpmg.ca) <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>  
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Thank you



**Raj Sahni**

*Partner\**, Bennett Jones LLP

\*Denotes Professional Corporation

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**Cc:** Monique Jilesen <[mjilesen@litigate.com](mailto:mjilesen@litigate.com)>; Keely Kinley <[kkinley@litigate.com](mailto:kkinley@litigate.com)>

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00

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Jonathan



Jonathan Chen\*

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This is Exhibit "DD" referred to in the Affidavit of Keely Kinley sworn by Keely Kinley of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 10, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**BONNIE GREENAWAY**

**GEN7 FUEL MANAGEMENT SERVICES LP  
LIMITED PARTNERSHIP AGREEMENT**

Between

**2496750 Ontario INC.**

as General Partner

and

**MILES HILL**

as a Limited Partner

and

**SCOTT HILL**

as a Limited Partner

and

**GLENN PAGE**

as a Limited Partner

and

**EACH OTHER PERSON ADMITTED TO THE PARTNERSHIP AS A LIMITED PARTNER**

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**LIMITED PARTNERSHIP AGREEMENT**

THIS AGREEMENT is made as of the \_\_\_\_ day of March, 2018

BETWEEN:

**2496750 Ontario INC.**, a corporation incorporated under the laws of the Province of Ontario, as the general partner of the Partnership (the "**General Partner**")

- and -

**MILES HILL**, an individual resident in the Province of Ontario and a status Indian for purposes of the Indian Act (Canada) and as recognized by the Federal Department of Indian and Northern Affairs, as a limited partner of the Partnership (a "**Limited Partner**")

- and -

**SCOTT HILL**, an individual resident in the Province of Ontario and a status Indian for purposes of the Indian Act (Canada) and as recognized by the Federal Department of Indian and Northern Affairs, (a "**Limited Partner**")

- and -

**GLENN PAGE**, an individual resident in the Province of Ontario(a "**Limited Partner**")

- and -

Each person who, from time to time, becomes a Limited Partner in accordance with the terms of this Agreement

**RECITALS:**

- A. The General Partner and the Limited Partners wish to enter into an agreement to form a limited partnership under the *Limited Partnerships Act* (Ontario), as amended under the name GEN7 Fuel Management Services LP (the "**Partnership**");

**NOW THEREFORE** this Agreement witnesses that in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree each with the other as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement the following words have the following meanings:

"Act" means the *Limited Partnerships Act* (Ontario), as amended from time to time.

"Affiliate" means, with respect to any corporation, any of:

- (a) a person who is an affiliate or associate (as those terms are defined in the *Securities Act* (Ontario)) of the corporation; or
- (b) a director or an officer of the corporation or of any person referred to in (a);

"Affected Partner" has the meaning set forth in Section 2.16(b);

"Affected Units" has the meaning set forth in Section 2.16(b);

"Agreement" means this limited partnership agreement, including any and all schedules and exhibits, as it may be amended, confirmed, supplemented or restated by written agreement from time to time;

"Applicable Law" means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (whether or not having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any Governmental Authority having authority over that Person, property, transaction or event;

"Arm's Length" has the meaning ascribed to such term in the Tax Act;

"Associate" means:

- (a) a person or company which beneficially owns or controls, directly or indirectly, voting securities entitling the person or company to more than 10% of the voting rights attached to outstanding securities of the issuer;
- (b) any partner of the person or company referred to in (a);
- (c) any trust or estate in which the person or company referred to in (a) has a substantial beneficial interest or in respect of which the person or company referred to in (a) serves as trustee or in a similar capacity; or
- (d) in the case of a person, a relative of that person, including:
  - (i) the spouse or adult interdependent partner of that person, or
  - (ii) a relative of the person's spouse or adult interdependent partner if the relative has the same home as that person;

"Auditor" means a member in good standing of the Chartered Professional Accountants who is appointed by the General Partner as Auditor of the Partnership;

"Business" is defined in Section 2.3;

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in Ontario;

"Capital Contribution" of a Partner means the total amount of money or property contributed as capital to the Partnership by that Partner or a predecessor of that Partner;

**"Certificate"** means the certificate of limited partnership for the Partnership to be filed under the Act and all amendments thereto and renewals, replacements or restatements thereof;

**"Current Account"** has the meaning specified in Section 4.8;

**"Deadline"** has the meaning specified in Section 2.16(b);

**"Discretion"** means the sole, absolute and unfettered discretion without any requirement to be reasonable or to maintain an even hand, to be exercised as, when and however (including retroactively) deemed fit by the General Partner;

**"Distributable Cash"** means with respect to a particular period, the amount by which the Partnership's cash on hand or to be received in respect of that period (excluding any proceeds from any financing) exceeds:

- (a) unpaid administration expenses of the Partnership;
- (b) amounts required for the business and operations of the Partnership, including operating expenses and capital expenditures;
- (c) amounts required in order to meet all debts, liabilities and obligations in respect of any financing, including reserves to ensure compliance with agreements to which the Partnership is subject;
- (d) any amounts which the General Partner in its Discretion determines is necessary to satisfy the Partnership's current and anticipated debts, liabilities and obligations and to comply with applicable laws; and
- (e) any amounts required to pay Canada Revenue Agency obligations;

**"EBITDA"** means earnings before interest, taxes, depreciation and amortization;

**"Encumbrance"** means any security interest, mortgage, charge, pledge, hypothec, lien, restriction, option, adverse claim, title defect, right of others or other encumbrance of any kind;

**"Extraordinary Resolution"** means a resolution, passed at a meeting of Limited Partner, or any adjournment thereof, called to consider the resolution, by not less than 66⅔% of the votes cast by Limited Partner present in person or by proxy at the meeting, or any adjournment thereof, who are entitled to vote with respect to such resolution, or a resolution in writing signed in one or more counterparts by Limited Partner holding not less than 66⅔% of the entitled votes with respect to such resolution;

**"Fiscal Year"** has the meaning specified in Section 2.6;

**"GAAP"** means, at any time, accounting principles generally accepted in Canada, including those set out in the Chartered Professional Accountants for private enterprises under Part II of the CPA Canada Handbook.

**"General Partner"** means the initial general partner, 2496750 Ontario INC., and any permitted corporate successor thereto, and any other person who becomes the general partner of the Partnership pursuant to Sections 7.13 or 7.14 of this Agreement;

**"Governmental Authority"** means:

- (a) any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and
- (b) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them

**"Investment Canada Act"** means the *Investment Canada Act* (Canada), as amended from time to time;

**"Limited Partners"** means the Limited Partners listed herein, and any other person who, from time to time, becomes a limited partner of the Partnership in accordance with the terms of this Agreement;

**"Net Income"** or **"Net Loss"** means the net income or loss of the Partnership for a Fiscal Year determined in accordance with GAAP;

**"Ordinary Resolution"** means:

- (a) a resolution approved by more than 50% of the votes cast by those Partners holding Units who are entitled to vote, in person or by proxy at a duly constituted meeting of Partners or at any adjournment thereof, called in accordance with this Agreement; or
- (b) a written resolution in one or more counterparts signed by Partners holding in the aggregate more than 50% of the Units held by those Partners who are entitled to vote on that resolution at a meeting;

**"Offering"** means an offering of Units under this Agreement;

**"Partners"** means the General Partner and the Limited Partners and **"Partner"** means any one of them;

**"Partnership"** is defined in the recitals above;

**"Person"** means an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization or any trustee, executor, administrator or other legal representative;

**"Power of Attorney and Declaration"** means a power of attorney and declaration in a form approved by the General Partner;

**"Proportionate Interest"** means at any time with reference to a Partner, in respect of Units held by such Partner, the proportion which the number of Units owned by such Partner at such time, as recorded in the Register, is of the total number of Units owned by such Partner at such time, as recorded in the Register;

**"Register"** means the register of Limited Partners maintained by the General Partner in accordance with this Agreement and the Act;

**"Requisitioning Partners"** has the meaning specified in Section 9.1;

**"Sell Notice"** has the meaning specified in Section 2.16(b);

**"Subscription Form"** means a subscription agreement in a form approved by the General Partner, together with a Power of Attorney and Declaration;

**"Tax Act"** means the *Income Tax Act* (Canada) R.S.C. 1985 (5<sup>th</sup> Supp.), as amended;

**"Taxable Income"** or **"Tax Loss"** means the amount of income or loss of the Partnership for a Fiscal Year determined by the General Partner pursuant to the provisions of the Tax Act;

**"Unit Ratio"** means, subject to any adjustments made in accordance with this Agreement, with respect to any Limited Partner, the number of Units held by such Limited Partner at that time expressed as a percentage of the total number of voting Units issued and outstanding at that time; provided, however, that the total of all Unit Ratios shall always equal one hundred (100%) percent; and

**"Units"** means limited partnership units of the Partnership.

## 1.2 Headings

In this Agreement, the headings are for convenience of reference only and do not form a part of this Agreement and are not to be considered in the interpretation of this Agreement.

## 1.3 Interpretation

In this Agreement,

- (a) words importing the masculine gender include the feminine and neuter genders, corporations, partnerships and other persons, and words in the singular include the plural, and vice versa, wherever the context requires;
- (b) all references to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement;
- (c) all accounting terms not otherwise defined will have the meanings assigned to them by, and all computations to be made will be made in accordance with, generally accepted accounting principles in Canada from time to time;
- (d) any reference to a statute will include and will be deemed to be a reference to the regulations and rules made pursuant to it, and to all amendments made to the statute, the regulations and the rules in force from time to time, and to any statute, regulations or rules that may be passed which has the effect of supplementing or suspending the statute referred to or the relevant regulation;
- (e) any reference to a person will include and will be deemed to be a reference to any person that is a successor to that person; and
- (f) "hereof", "hereto", "herein", and "hereunder" mean and refer to this Agreement and not to any particular Article, Section or other subdivision.

## 1.4 Currency

All references to currency in this Agreement are references to Canadian currency.

## **ARTICLE 2 RELATIONSHIP BETWEEN PARTNERS**

### **2.1 Formation of Partnership**

The Partners hereby form the Partnership named "GEN7 Fuel Management Services LP" under the laws of the Province of Ontario. The Partnership is effective as a limited partnership from the date on which the Certificate is registered in accordance with the Act. The General Partner has the right to change the name of the Partnership and to file an amendment to the Certificate recording the change of name of the Partnership.

### **2.2 Maintaining Status of Partnership**

The General Partner shall be the general partner of the Partnership, and shall do all things and shall cause to be executed and filed all such certificates, declarations, instruments and documents as may be required under the laws of the Province of Ontario and any other province having jurisdiction to effect the constitution of the Partnership. The General Partner and, if requested by the General Partner, the Limited Partners shall execute and deliver as promptly as possible any documents that may be necessary or desirable to accomplish the purposes of this Agreement or to give effect to the formation and operation of the Partnership under any and all applicable laws. The General Partner shall take all necessary actions on the basis of information available to it in order to maintain the status of the Partnership as a limited partnership under the Act during the term of the Partnership.

### **2.3 Business of the Partnership**

The business of the Partnership will consist of business related to fuel station management, ancillary matters related thereto and such other business as the Partners may determine by Extraordinary Resolution from time to time (the "Business").

### **2.4 Business in Other Jurisdictions**

The Partnership will not carry on business in any jurisdiction unless the General Partner has taken all steps which may be required by the laws of that jurisdiction for the Limited Partners to benefit from limited liability to substantially the same extent that the Limited Partners enjoy limited liability under the Act. The Partnership will not carry on business in any jurisdiction in which the laws do not recognize the liability of the Limited Partners to be limited unless, in the opinion of the General Partner, the risks associated with the possible absence of limited liability in that jurisdiction are not significant considering the relevant circumstances. The Partnership will carry on business in a manner so as to ensure, to the greatest extent possible, the limited liability of the Limited Partners, and the General Partner will register the Partnership in other jurisdictions where the General Partner considers it appropriate to do so.

### **2.5 Office of the Partnership**

The principal office of the Partnership will be located at 7331 Indian Line Road, Wilsonville, ON N0E 1Z0. The General Partner may change the location of the principal office provided that the General Partner gives notice as outlined in that Section 12.1.

## **2.6 Fiscal Year**

The first fiscal period of the Partnership will end on December 31 of each year or on the date of dissolution or other termination of the Partnership. Each fiscal period is referred to in this Agreement as a "Fiscal Year".

## **2.7 Status of the General Partner**

The General Partner represents, warrants, covenants and agrees with each Limited Partner that the General Partner:

- (a) is a corporation incorporated and validly subsisting under the laws of the Province of Ontario;
- (b) has the capacity and corporate authority to act as a General Partner and to perform its obligations under this Agreement, and such obligations do not conflict with nor do they result in a breach of any of its constating documents, by-laws or any agreement by which it is bound;
- (c) as long as it is General Partner, it will not carry on any other business
- (d) will act in good faith and in the best interests of the Partnership in carrying out its obligations under this Agreement;
- (e) will exercise the degree of care, diligence and skill that a reasonably prudent and qualified manager would exercise in the management of the business and affairs of the Partnership; and
- (f) holds and will maintain the registrations necessary for the conduct of its business and has and will continue to have all licenses and permits necessary to carry on its business as the General Partner in all jurisdictions where the activities of the Partnership require that licensing or other form of registration of the General Partner.

## **2.8 Status of the Limited Partners**

Each Limited Partner severally represents, warrants and covenants to each other Limited Partner and to the General Partner that:

- (a) such Limited Partner, if a corporation, is a valid and subsisting corporation, has the necessary corporate capacity and authority to execute and deliver this Agreement and to observe and perform its covenants and obligations hereunder, and has taken all necessary corporate action in respect thereof and that it has purchased its Units as principal for its own account, or, if a partnership, syndicate or other form of unincorporated organization, has the necessary legal capacity and authority to execute and deliver this Agreement and to observe and perform its covenants and obligations hereunder and has obtained all necessary approvals in respect thereof, and that it has purchased its Units as principal for its own account;
- (b) such Limited Partner, if an individual, is of the full age of majority and has the legal capacity and competence to execute this Agreement and take all action pursuant hereto, and that it has purchased its Units as principal for its own account;

- (c) is "resident in Canada" for the purposes of the Tax Act and, if the Limited Partner is a partnership or limited partnership, each of the partners in that partnership or limited partnership is also "resident in Canada" within the meaning of that section and will maintain such status during any time in which Units are held by the such Limited Partner;
- (d) such Limited Partner has not financed and will not finance the acquisition of Units with financing for which recourse is or is deemed to be limited for the purposes of the Tax Act;
- (e) such Limited Partner (i) is not a financial institution and (ii) deals at arm's length with the General Partner and each Affiliate of the General Partner unless, in all cases, such Limited Partner has provided written notice to the contrary prior to the date of acceptance of the Limited Partner;
- (f) the Limited Partner is not a "non-Canadian" within the meaning of the Investment Canada Act;
- (g) the Limited Partner understands that the rights of Limited Partners to transfer Units is restricted, and has been independently advised as to restrictions with respect to trading in the Units imposed by this Agreement and by applicable securities legislation in the jurisdiction in which the Limited Partner resides, confirms that no representation has been made to the Limited Partner by or on behalf of the Partnership with respect thereto, acknowledges that the Limited Partner is aware of the characteristics of the Units, the risks relating to an investment therein and of the fact that the Limited Partner may not be able to resell the Units, except in accordance with limited exemptions under applicable securities legislation and regulatory policy;
- (h) this Agreement has been duly and validly authorized by, and constitutes a legal, valid, binding and enforceable obligation of, the Limited Partner;
- (i) the Limited Partner has had the opportunity to consult his, her or its own independent professional advisors with respect to the income tax consequences of purchasing the Units;
- (j) the Limited Partner has such knowledge in financial and business affairs as to be capable of evaluating the merits and risks of an investment in Units and he, she or it is able to bear the economic risk of loss of his, her or its investment; and
- (k) will, at the request of the General Partner, provide such evidence of its status as the General Partner may reasonably require.

## **2.9 Survival of Representations**

- (a) The representations contained in this Article will survive the execution of this Agreement and each party is obligated, as long as it is a General Partner or Limited Partner, as the case may be, to ensure the continuing accuracy of each representation made.
- (b) If at any time any Limited Partner becomes aware that the Limited Partner will be unable to represent and warrant the matters in Section 2.8, such Limited Partner covenants, agrees and undertakes that it will: (i) immediately notify the General Partner of that fact

(prior to becoming unable to so represent) and (ii) comply with the provisions of Section 2.16.

## **2.10 Limitation on Authority of Limited Partners**

Unless a Limited Partner is also the General Partner, no Limited Partner will:

- (a) take part in the administration, control, management or operation of the business of the Partnership or exercise any power in connection therewith or transact business on behalf of the Partnership;
- (b) execute any document which binds or purports to bind any other Limited Partner or the Partnership;
- (c) hold that Limited Partner out as having the power or authority to bind any other Limited Partner or the Partnership;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other Partner or the Partnership;
- (e) bring any action for partition or sale or otherwise in connection with the Partnership, or any interest in any property of the Partnership, whether real or personal, tangible or intangible, or file or register or permit to be filed, registered or remain undischarged any lien or charge in respect of any property of the Partnership; or
- (f) compel or seek a partition, judicial or otherwise, of any of the assets of the Partnership distributed or to be distributed to the Partners in kind in accordance with this Agreement.

## **2.11 Promise to Execute and Record**

Each Limited Partner hereby agrees to execute and record or file as and where required:

- (a) this Agreement, any amendment to this Agreement authorized under Article 11 and any other instruments or documents required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property in order to maintain the limited liability of the Partnership and to comply with the applicable laws of that jurisdiction (including any amendments to the Certificate or the Register as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of any Units as contemplated by this Agreement);
- (b) all instruments and any amendments to the Certificate necessary to reflect any amendment to this Agreement;
- (c) any instrument required in connection with the dissolution and termination of the Partnership in accordance with the provisions of this Agreement, including any elections under the Tax Act and under any similar legislation;
- (d) the documents necessary to be filed with the appropriate governmental body or authority in connection with the business, property, assets and undertaking of the Partnership;

- (e) the documents necessary to give effect to the business of the Partnership;
- (f) the documents necessary to give effect to the assignment of a Unit or the admission of a subscriber for or assignee of Units to the Partnership; and
- (g) all other instruments and documents on the Limited Partner's behalf and in the Limited Partner's name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully this Agreement in accordance with its terms.

## **2.12 Unlimited Liability of the General Partner**

The General Partner has unlimited liability for the debts, liabilities and obligations of the Partnership, subject to the Act and this Agreement.

## **2.13 Limited Liability of Limited Partners**

Subject to the provisions of the Act, the liability of each Limited Partner for the debts, liabilities and obligations of the Partnership will be limited to its Capital Contribution of that Limited Partner plus such Limited Partner's share of undistributed income of the Partnership. A Limited Partner will not be liable for any further claims or assessments or be required to make further contributions to the Partnership, except as specifically provided for herein.

## **2.14 Indemnity of Limited Partner and the Partnership**

The General Partner will indemnify and hold harmless each Limited Partner (including any former Limited Partner) for all costs, expenses, damages or liabilities suffered or incurred by: (i) the Limited Partner if the limited liability of that Limited Partner is lost for or by reason of the negligence of the General Partner in performing its duties and obligations under this Agreement; or (ii) the Partnership as a result of any breach by the General Partner of this Agreement or its standard of care set forth herein, including any legal expenses incurred by the Partnership in defending an action based in whole or in part upon an allegation that the General Partner has been guilty of such breach, if the defence of such action is substantially unsuccessful with respect to such allegations. If any such action is settled by the General Partner, the action will be deemed, for the purposes of this Section, to have been unsuccessfully defended unless the settlement is approved either by an order of a court of competent jurisdiction or by an Ordinary Resolution.

## **2.15 Compliance with Laws**

Each Limited Partner will, on the request of the General Partner, immediately execute any documents considered by the General Partner, acting reasonably, to be necessary to comply with any applicable law or regulation of any jurisdiction in Canada, for the continuation, operation or good standing of the Partnership.

## **2.16 Evidence of Status and Sale of Affected Units**

- (a) Each Limited Partner covenants and agrees that it will, upon request, promptly provide evidence to the General Partner that the representations and warranties set out in Section 2.8 are true and correct. If:
  - (i) a Limited Partner fails to comply with that request;

- (ii) reasonably satisfactory evidence is not provided; or
  - (iii) the General Partner otherwise determines that a person is in contravention of Section 2.8,
- (b) the General Partner, by written notice (a "Sell Notice") to that Limited Partner (the "Affected Partner"), may require the Affected Partner to comply with Section 2.8, or sell the Units owned by the Affected Partner (the "Affected Units"), within 60 days from the date of the Sell Notice (the "Deadline").
- (c) If the Affected Partner has not complied with Section 2.8 or the Affected Units have not been sold by the Affected Partner on or prior to the Deadline, the General Partner may sell the Affected Units on behalf of the Affected Partner without further notice on and subject to the terms contained in this Agreement. The General Partner may sell Affected Units in such manner as the General Partner determines in its sole discretion. For all purposes of a sale, the General Partner is deemed to be the agent and lawful attorney of the Affected Partner. The net proceeds of any sale of Affected Units will be the net proceeds after deduction of any commissions, taxes or other costs of sale.
- (d) If the Affected Units are sold by the General Partner, the Affected Partner will have the right only to receive the net proceeds of that sale. The Partnership will deposit an amount equal to those net proceeds in an account of the Partnership. The amount of that deposit will be payable to the Affected Partner upon presentation of the Affected Partner's acceptance and confirmation of the sale on terms acceptable to the General Partner. Any interest earned on any amount so deposited, net of any applicable taxes, will accrue to the benefit of the Affected Partner.
- (e) From and after the date of that deposit, the Affected Partner will not be entitled to any of the rights under this Agreement in respect of the Affected Units, other than the right to receive the funds so deposited as provided in this Agreement and the Affected Partner will not be entitled to any interest in the Affected Units.
- (f) Notwithstanding anything contained in this Agreement, if the General Partner determines that a Limited Partner has become an Affected Partner, the Affected Partner will be deemed to have ceased to be a Limited Partner effective immediately prior to the date of contravention and will not be entitled to any distributions relating to the Affected Units or to exercise the voting rights attached to the Affected Units, and the Affected Units will be deemed not to be outstanding until acquired by a new holder or owner for the purposes of the Tax Act or until the Affected Partner brings itself into compliance with Section 2.8, provided that holders of other Units will not be entitled to any portion of the Cash Available for Distribution paid in respect of Units that have been deemed not to be outstanding.
- (g) Notwithstanding anything contained herein, the General Partner may waive the application of this Section.

**ARTICLE 3  
THE UNITS**

**3.1 Authorized Units**

The interests of Limited Partners in the Partnership will be divided into and represented by Units. The Partnership is authorized to issue an unlimited number Units.

**3.2 Attributes of Units**

- (a) Each Unit will be identical to all other Units in all respects and, accordingly, will entitle the holder to the same rights and obligations as a holder of any other Unit. No Limited Partner will, in respect of any Unit held by that Limited Partner, be entitled in any circumstance to any preference, priority or right over any other Limited Partner in respect of any Unit held by the other Limited Partner.
- (b) Each Limited Partner's interest will represent the proportion of the total interest of all Limited Partners in the Partnership equal to the number of Units held by it divided by the total number of Units outstanding at any time.
- (c) At all meetings of Partners each Limited Partner will be entitled to one vote for each Unit held.
- (d) Except as provided in this Agreement, each Unit is entitled to participate equally with respect to all distributions made by the Partnership, including distributions of net income and net realized capital gains, if any.

**3.3 Units Fully-Paid and Non-Assessable.**

The Partnership will issue Units only as fully-paid and non-assessable.

**3.4 No Fractional Units**

The Partnership will not issue any fractional Units.

**3.5 Unit Certificates**

- (a) Units will be issued in registered form. All Units will be represented by a fully registered Unit Certificate. Each Limited Partner will be entitled to a Unit Certificate or other instrument from the Partnership evidencing the Limited Partner's ownership of Units.
- (b) Every Unit Certificate must be signed by at least one officer or director of the General Partner and that signature may be mechanically reproduced. The validity of a Unit Certificate will not be affected by the circumstance that a Person whose signature is so reproduced is deceased or no longer holds the office which he or she held when the reproduction of his or her signature in that office was authorized.
- (c) Unit Certificates must be returned to the General Partner prior to the processing of transfer or redemption requests.

### **3.6 Changes in Membership of Partnership**

- (a) No name or address of a Limited Partner will be changed and no transfer of a Unit or substitution or addition of a Limited Partner in the Partnership will be recorded on the record and register except pursuant to a notice in writing received by the General Partner.
- (b) No change of name or address of a Limited Partner, no transfer of a Unit and no admission of a substituted Limited Partner in the Partnership will be effective under this Agreement until all reasonable requirements, as determined by the General Partner, have been met, including the requirements set out in this Section 3.6, and until that change, transfer or substitution is duly reflected in an amendment to the record and register as may be required by the Act or any other Applicable Law, and all filings required by any Applicable Law have been made.
- (c) The rights and obligations of a transferee of Units as a Limited Partner under this Agreement commence and are enforceable by and against a substituted Limited Partner on the date the Record and Register has been amended as required by Section 3.6(a).
- (d) If the transferee complies with the provisions of this Agreement and is entitled to become a Limited Partner the General Partner will be authorized to admit the transferee to the Partnership as a substituted Limited Partner and the Limited Partners consent to the admission of, and will admit, the transferee to the Partnership as a substituted Limited Partner, without further act of the Limited Partners, other than as may be required by Applicable Law.
- (e) No transfer of a fraction of a Unit may be made or will be recognized or entered into or recorded in the Record and Register.
- (f) The Record and Register, as it may be amended, will be conclusive for all purposes of the Partnership as to the names and addresses of the Limited Partners.

Each Limited Partner warrants, represents and agrees that such Limited Partner is, and will be so long as that Limited Partner continues to hold Units, the beneficial owner of all those Units which are from time to time registered in the name of that Limited Partner. No Limited Partner will transfer the legal or beneficial ownership of any Units, except in accordance with the provisions of this Agreement. The application of this Agreement to any such transfer may be waived by Extraordinary Resolution.

### **3.7 No Transfer Except in Compliance with this Agreement**

Each Limited Partner warrants, represents and agrees that such Limited Partner is, and will be so long as that Limited Partner continues to hold Units, the beneficial owner of all those Units which are from time to time registered in the name of that Limited Partner. No Limited Partner will transfer the legal or beneficial ownership of any Units, except in accordance with the provisions of this Agreement. The application of this Agreement to any such transfer may be waived by Extraordinary Resolution.

### **3.8 Permitted Transfers of Units**

A Limited Partner may not sell, assign or otherwise transfer, pledge or encumber any Unit or any other interest it has in the Partnership without the prior written consent of the General Partner, which consent the General Partner may grant or withhold in its sole discretion.

### 3.9 Transfers To an Affiliate

At any time during the term of this Agreement, a Limited Partner may transfer all or part of that Limited Partner's Units to an Affiliate without having to comply with the provisions of Section 3.8, provided that prior to the transfer:

- (a) the transferring Limited Partner delivers to the General Partner a sworn statutory declaration (or, in the case of a corporation, a statutory declaration of a senior officer) that the transferee is an Affiliate of the transferring Limited Partner;
- (b) the transferring Limited Partner and the Affiliate deliver to the General Partner an agreement addressed to the General Partner and all Limited Partners from time to time that:
  - (i) so long as the Affiliate is a Limited Partner, it will be an Affiliate of the transferring Limited Partner;
  - (ii) the Affiliate will be bound by this Agreement and the transferring Limited Partner will be jointly and severally liable with the Affiliate for the observance and performance of the agreements and obligations of the Affiliate under this Agreement;
  - (iii) the transferring Limited Partner will be entitled to represent the Affiliate in any dealings with the Partnership, the General Partner or any other Limited Partner concerning this Agreement (including, without limitation, any agreement, consent, approval or waiver under or in respect of this agreement), and any party to this Agreement may act in reliance thereon without any need to make any enquiries of the Affiliate; and
- (c) the transferring Limited Partner delivers notice to the General Partner of the number of Units transferred to the Affiliate.

The General Partner will notify the Limited Partners of the details of any Units transferred under this Section.

### 3.10 Transferee Bound

A transferee of a Unit will, upon becoming a Limited Partner, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement as a Limited Partner, including the representations and warranties contained in Section 2.8, as applicable, and will be conclusively deemed to have provided the General Partner with the power of attorney described in Section 7.11.

### 3.11 Documentation on Transfer

If a transferor of Units is a firm or a corporation, or purports to assign Units in any representative capacity, or if an assignment results from the death, mental incapacity or bankruptcy of a Limited Partner or is otherwise involuntary the transferor or the transferor's legal representative will furnish to the General Partner any documents, certificates, assurances, court orders or other instruments as the General Partner may reasonably require in order to verify that the transfer has been duly authorized.

### **3.12 General Partner May Hold Units**

The General Partner may purchase and hold Units. If the General Partner owns Units, the General Partner will continue to be the general partner of the Partnership but the General Partner will also, as the holder of such Units, have the rights and obligations of a Limited Partner in respect of those Units.

### **3.13 Registrar and Transfer Agent**

The General Partner will act as registrar and transfer agent of the Units and will maintain such books as are necessary to record the names and addresses of the Limited Partner, the number and type of units held by each Limited Partner, and the particulars of transfers of Units. The General Partner will perform all other duties usually performed by a registrar and transfer agent with certificates of shares in a corporation, except as the same may be modified by reason of the nature of the Units.

### **3.14 Inspection of Register**

A Limited Partner, or an agent of a Limited Partner duly authorized in writing, has the right to inspect and make extracts from the Register during normal business hours, and, upon payment of a reasonable fee to the registrar, to obtain a copy of the Register within a period of 10 days from the date of the filing of the written request therefor with the General Partner.

### **3.15 Assignment of Units**

Neither the Partnership nor the General Partner will charge a Limited Partner for any administrative or other expenses incurred with respect to a transfer or assignment of Units. Units must be transferred and assigned in writing substantially in the form of the Transfer Form (or any form acceptable to the General Partner) completed and executed in a manner acceptable to the General Partner. An assignment of Units will be signed by the transferor and transferee and will be accompanied by the certificate(s), if any, issued by the Partnership which represents the Units to be transferred and assigned. If a transferor of Units is a firm or a corporation, or purports to assign such units in any representative capacity, or if an assignment results from the death, mental incapacity or bankruptcy of a Limited Partner or is otherwise involuntary, the transferor or his legal representative will furnish to the General Partner such documents, certificates, assurances, court orders and other instruments as the General Partner may reasonably require to effect the transfer and assignment. Where the transferee complies with all applicable provisions of this Agreement and is entitled to become a Limited Partner, the General Partner is authorized to admit the transferee to the Partnership as a Limited Partner and the Limited Partner hereby consent to the admission of, and will admit, the transferee to the Partnership as a Limited Partner, without further act of the Limited Partner (other than as may be required by this Agreement or by law).

### **3.16 Non-Recognition of Trusts or Beneficial Interest**

Units may be held by nominees on behalf of the beneficial owners. Notwithstanding the foregoing, except as provided for in this Agreement, as required by law or as required by the General Partner in its sole discretion, no person will be recognized by the Partnership or any Partner as holding any Unit in trust, or on behalf of another person with the beneficial interest in that other person, and the Partnership and Partners will not be bound or compelled in any way to recognize (even when having actual notice) any equitable, contingent, future or partial interest in any Unit or in any fractional part of a Unit or any other rights in respect of any unit except an absolute right to the entirety of the Unit in the Limited Partner registered as holder of such Unit. The General Partner shall be entitled to rely upon the Register as final and conclusive proof of any Limited Partner's interest in the Partnership.

### **3.17 Lost Certificates**

Where a Limited Partner claims that a certificate representing Units has been defaced, lost, destroyed or wrongfully taken, the General Partner will cause to be issued a new certificate in substitution for the original certificate if the Limited Partner files with the General Partner a form of proof of loss acceptable to the General Partner, and, at the option of the General Partner, an indemnity bond in form and amount satisfactory to the General Partner to protect the General Partner and the Partnership from any loss, cost or damage that they may incur or suffer by complying with the request to issue a new Unit certificate, and if the Limited Partner satisfies such other reasonable requirements as are imposed by the General Partner.

## **ARTICLE 4 UNIT OFFERINGS CAPITAL CONTRIBUTIONS AND ACCOUNTS**

### **4.1 Unit Offerings**

The General Partner is authorized to raise capital for the Partnership by offering Units and admitting subscribers for Units as Limited Partners. The General Partner may, in its sole discretion solicit or cause to be solicited, subscriptions for the Units. Subject to the terms of this Agreement, the General Partner has the sole and complete discretion to determine the terms of subscriptions and the issuance of Units and may do all things that it deems necessary in connection therewith.

### **4.2 Subscription for Units**

In connection with an Offering, each subscriber (who may be an agent acting for and on behalf of a purchaser of Units pursuant to an Offering) will complete and execute the applicable Subscription Form (including the attached Power of Attorney and Declaration) setting out, among other things, the total subscription price for the Units subscribed for, and that subscription price will be the subscriber's agreed upon Capital Contribution.

### **4.3 Acceptance of Subscription Form by General Partner**

The General Partner will have the right, in its sole discretion, to refuse to accept any Subscription Form, and will reject Subscription Forms submitted by a subscriber who is, or who acts on behalf of a Person who will have a beneficial interest in the Units being subscribed for who does not satisfy the representations, warranties and covenants set out in Section 2.8. If, for any reason, a Subscription Form is not accepted, the General Partner will promptly redeliver to the subscriber the Subscription Form and any subscription monies or cheques representing subscription monies received from that subscriber for the purchase of Units, without interest or deduction.

### **4.4 Admittance as Limited Partner**

Upon acceptance by the General Partner of any Subscription Form, all Partners will be deemed to consent to the admission of the subscriber as a Limited Partner, the General Partner will issue the number of Units the subscriber has subscribed for, will execute this Agreement on behalf of the subscriber, will cause the Register to be amended, and will amend and file any other documents, as may be required by the Act or under any other Applicable Law. The rights and obligations of a subscriber for Units as a Limited Partner commence and are enforceable by and upon that subscriber on the date on which the Record and Register has been amended as required by this Section 4.4.

#### **4.5 Capital**

The capital of the Partnership consists of the aggregate of all Capital Contributions made and not returned to the Partners.

#### **4.6 Initial General Partner Contribution**

On the date hereof, the General Partner shall contribute \$1 per unit to the Partnership.

#### **4.7 Limited Partner Contributions**

On the date hereof the Limited Partners shall contribute capital and subscribe for Units as set out in Schedule "A" hereto and such capital contributions and Unit subscription amounts shall be credited to such Limited Partner's capital accounts. Additional Units may be issued to the Limited Partners at a price per Unit determined by the General Partner either in connection with an Offering or upon subscription for Units pursuant to Section 4.2 of this Agreement.

#### **4.8 Current Accounts**

The General Partner will establish and maintain on the books of the Partnership the following accounts for each Partner:

- (a) an individual capital account which shall be credited by the amount of any Capital Contribution made by such Partner and shall be debited by the amount of any capital distributed or returned to such Partner; and
- (b) an individual current account which shall be credited by the amount of Net Income and all other amounts allocated to such Partner and shall be debited by the amount of Net Loss and all other amounts allocated to such Partner (the "Current Account").

#### **4.9 No Right to Withdraw Amounts**

No Partner will have any right to withdraw any amount or receive any advance or distribution from the Partnership except as expressly provided for in this Agreement and no advance or distribution to any Partner will be deemed a return or withdrawal of amounts contributed to the capital of the Partnership except as expressly provided in this Agreement, but if any court of competent jurisdiction at any time determines that notwithstanding the provisions of this Agreement a Limited Partner is obligated to pay any amount distributed to such Limited Partner to or for the account of the Partnership or to any creditor of the Partnership such obligation will be the obligation of such Limited Partner.

#### **4.10 No Interest Payable on Capital or Current Accounts**

No Partner will have the right to receive interest on any capital or any credit balance in the capital account or Current Account of such Partner. No Partner will be liable to pay interest to the Partnership on any capital or Capital Contribution returned to such Partner or on any authorized negative balance in the capital account or Current Account of such Partner.

#### **4.11 Negative Balance in Capital or Current Accounts**

The interest of a Partner in the Partnership will not terminate by reason of the return of amounts contributed to the capital of the Partnership or a negative balance in the capital account or Current Account of such Partner.

#### **4.12 Determinations by General Partner**

All matters concerning the computation of capital, Current Accounts, the allocation of items of Partnership income, gain, loss, deduction and expense for all purposes of this Agreement and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the General Partner in its reasonable discretion. Such determinations shall be final and conclusive as to all Partners. Without in any way limiting the scope of the foregoing, if and to the extent that, for income tax purposes, any item of income, gain, loss, deduction or expense of any Partner or the Partnership is constructively attributed to, respectively, the Partnership or any Partner, or any contribution to or distribution by the Partnership or any payment by any Partner or the Partnership is re-characterized, the General Partner may, in its discretion and without limitation, specially allocate items of Partnership income, gain, loss, deduction and expense and/or make correlative adjustments to the Current Accounts in a manner so that the net amount of income, gain, loss, deduction and expense realized by each relevant party (after taking into account such special allocations) and the net capital account balances of the Partners (after taking into account such special allocations and adjustments) shall, as nearly as possible, be equal, respectively, to the amount of income, gain, loss, deduction and expense that would have been realized by each relevant party and the Current Account balances of the Partners that would have existed if such attribution and/or re-characterization and the application of this sentence of this Section had not occurred. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the General Partner shall determine, in its discretion, that it is prudent to modify the manner in which the Current Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Partners, the General Partner may make such modification

### **ARTICLE 5**

#### **ALLOCATIONS AND ADVANCES OR DISTRIBUTIONS**

##### **5.1 Distributions and Order of Priority**

- (a) The General Partner, in its sole discretion, may determine and effect the distribution of Partnership property to the Partners, provided that distributions amongst all Partners shall be based on allocations set forth in Section 5.5(b).
- (b) Any distributions paid by the Partnership which cause its adjusted cost base to be negative and which would trigger a deemed capital gain under subsection 40(3.1) of the Tax Act are deemed to be an advance to Limited Partners during the then current Fiscal Year with a subsequent distribution being declared and paid immediately following the completion of such Fiscal Year.
- (c) The General Partner shall be entitled to withhold tax from any distribution as required by applicable laws.