

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

**ORIGINAL TRADERS ENERGY LTD. ET AL.**

**SUPPLEMENT TO THE FIFTH REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR**

**October 6, 2023**

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	1
III.	PURPOSE OF THE REPORT.....	2
IV.	ENHANCED POWERS OF THE MONITOR.....	3
V.	AMENDMENTS TO THE BID PROCESS.....	5
VI.	ADDITIONAL RELIEF SOUGHT.....	6
VII.	STATUS OF BOOKS AND RECORDS.....	6
VIII.	REDUCED OPERATIONS PLAN.....	9
IX.	AIRSPRINT LETTERS.....	11
X.	MONITOR’S CONCLUSIONS.....	12

## APPENDICES

APPENDIX “A” – Fifth Report (without appendices)

APPENDIX “B” – Amended Bid Process

APPENDIX “C” – Redline to Bid Process

APPENDIX “D” – Letter from Paliare Roland, Counsel of OTE USA

APPENDIX “E” – Letters from Counsel of the Mareva Respondents

APPENDIX “F” – Information Order dated April 27, 2023

APPENDIX “G” – Monitor’s Response to Counsel of the Mareva Respondents

***ONTARIO***

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

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

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

**SUPPLEMENT TO THE FIFTH REPORT OF KPMG INC.  
In its capacity as Monitor of the OTE Group**

**October 6, 2023**

## **I. INTRODUCTION**

1. This supplementary report (the “**Supplemental Fifth Report**”) supplements the Fifth Report dated September 28, 2023 (the “**Fifth Report**”) of KPMG Inc. in its capacity as the Monitor of the OTE Group (in such capacity, the “**Monitor**”). This Supplemental Fifth Report should be read in conjunction with the Fifth Report as information contained in the Fifth Report, including a more detailed background on these proceedings, has not been repeated herein to avoid duplication. Capitalized terms not otherwise defined herein have the meanings set out in the Fifth Report. A copy of the Fifth Report, without appendices, is attached hereto as **Appendix “A”**.

## **II. BACKGROUND**

2. The Monitor’s Fifth Report was prepared in connection with a hearing scheduled before this Court on October 4, 2023. Prior to the service of the Fifth Report, two parties had served motion materials in connection with the October 4<sup>th</sup> Court time:
  - (i) On September 22, 2023, counsel to OTE USA LLC (“**OTE USA**”) served motion materials seeking an Order, among other things:
    - (a) directing the Monitor to establish a data-room accessible to OTE USA, and others if appropriate, subject to the implied undertaking rule, and on such additional terms as the relevant parties may agree or the Court may direct; and
    - (b) directing the Monitor, Original Traders Energy LP and Original Traders Energy Ltd. (“**OTE GP**”) as General Partner of Original Traders Energy LP, and other custodians of documents to be identified, to populate the data room with the documents responding to a document production protocol as agreed by the parties or ordered by this Court, for the purposes of, among other things, adducing evidence in respect of Scott Hill and Miles Hill or persons or entities affiliated with them, and accounting for the wrongful use or receipt of funds, payment or benefits to Scott Hill, Miles Hill or persons or entities affiliated with them, in respect of the Applicants.
  - (ii) On September 25, 2023, counsel to the OTE Group served motion materials seeking an Order (the “**Third Stay Extension Order**”), among other things:
    - (a) extending the Stay Period (as defined in the Initial Order) to April 26, 2024;

- (b) amending the claims procedure pursuant to the Claims Procedure Order granted by this Court dated April 27, 2023 (the “**Claims Procedure**”) pursuant to which amendment the OTE Group, with the assistance of the Monitor, will seek to identify, quantify and resolve certain claims by former employees;
  - (c) approving a sale process for the business and property of the OTE Group (the “**Bid Process**”), to be carried out by the Monitor, as detailed in the Fifth Report;
  - (d) approving the Fifth Report and the activities and conduct of the Monitor in relation to the OTE Group and these CCAA Proceedings.
- 3. The Monitor supported the relief sought by the OTE Group for the reasons set out in the Fifth Report.
- 4. On October 2, 2023, counsel to the Mareva Respondents served a motion returnable on October 4, 2023, seeking an Order (the “**CRO Order**”), among other things:
  - (i) appointing William Aziz of BlueTree Advisors as Chief Restructuring Office (“**CRO**”) of the OTE Group;
  - (ii) directing Scott Hill and Miles Hill to fully cooperate with the CRO;
  - (iii) directing that any sales process for the OTE Group’s assets include the Certificate of Possession currently held by Scott Hill for Lot 32-7 Concession 1 Township Tuscarora CLSR 65905, the parcel on Six Nations Reserve No. 40 where the OTE Head Office and the Six Nations Blending Location are located; and
  - (iv) the adjournment, if necessary, of the OTE Group’s motion for the Third Stay Extension Order.
- 5. The OTE Group, the Mareva Respondents, OTE USA, and the Monitor agreed to adjourn the above relief to a later date. In connection therewith, the Court scheduled a hearing for October 12, 2023, following the parties’ attendance on October 4<sup>th</sup>.

### **III. PURPOSE OF THE REPORT**

- 6. As discussed further below, the Monitor is seeking an Order (the “**Monitor’s Enhanced Powers and Amended Bid Process Approval Order**”), among other things:

- (i) providing the Monitor with enhanced powers in connection with the business and property of the OTE Group; and
  - (ii) approving an amended bid process for the sale of the assets of the OTE Group to be carried out by the Monitor (the “**Amended Bid Process**”).
7. The purpose of this Supplemental Fifth Report is to provide the Monitor’s views on the relief to be sought on October 12<sup>th</sup>, and to provide further information to the Court in response to certain queries from stakeholders following the Fifth Report.
8. The Supplemental Fifth Report provides the Court with:
- (i) the Monitor’s position that the appointment of a CRO is inappropriate and unnecessary, given (among other things) the significant time and costs that will need to be expended in connection therewith and the fact that the business operations of the OTE Group have been significantly reduced in light of the loss of customers as noted in the Fifth Report and the Supplemental Fifth Report;
  - (ii) the Monitor’s position that it is appropriate to enhance the Monitor’s powers to address concerns raised by OTE USA and the Mareva Respondents regarding transparent and independent governance of the OTE Group during the Amended Bid Process (as defined below) and on an ongoing basis;
  - (iii) the Monitor’s proposed amendments to the Bid Process to address concerns raised with the Monitor;
  - (iv) an update on the status of the Monitor’s review of the books and records of the OTE Group;
  - (v) additional details regarding the Reduced Operations Plan (as defined below); and
  - (vi) certain correspondence regarding the AirSprint Letters.

#### **IV. ENHANCED POWERS OF THE MONITOR**

9. The OTE Group opposes the appointment of a CRO. The Monitor understands that Scott Hill, the director and President of OTE GP, is prepared to resign on the condition that the CRO is not appointed and that, as an alternative, the Monitor is granted enhanced powers. Miles Hill has previously resigned from his positions and is no longer affiliated with the OTE Group entities.

10. The Monitor is of the view that, in the circumstances and regardless of whether or not Scott Hill resigns as a director and President, it would be appropriate for the Monitor to be granted expanded “super monitor” powers in connection with the OTE Group. Among other things, in the Monitor’s Enhanced Powers and Amended Bid Process Approval Order, the Monitor seeks the power to enable it to, as the Monitor deems necessary:
  - (i) manage the business of the OTE Group;
  - (i) protect and preserve the property of the OTE Group;
  - (ii) conduct the Amended Bid Process;
  - (iii) work with the various stakeholders;
  - (iv) oversee and direct the preparation and dissemination of financial and other information of the OTE Group; and
  - (v) file an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) on behalf of the OTE Group or any of the OTE Group entities.
11. The expansion of powers sought by the Monitor, which would allow the Monitor to function as a “super monitor”, are not uncommon in CCAA Proceedings, including where the directors of a debtor entity resign. This Court has already found that it was necessary and appropriate to grant the Monitor expanded powers at the outset of the CCAA Proceedings. The enhanced powers requested by the Monitor will 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. As an officer of the Court, the Monitor has, and will continue to, exercise its enhanced powers in a fair and impartial manner under the supervision of the Court.
12. An order enhancing the powers of the Monitor is a far better alternative than the appointment of a CRO because, among other things:
  - (i) the Monitor can quickly transition to its enhanced role given the necessary knowledge it has accumulated pertaining to the OTE Group through its role as the Monitor commencing January 2023 along with months of involvement previous to its appointment; and

- (ii) additional costs would need to be incurred should a CRO be appointed, as the CRO would need to, among other things, spend time obtaining appropriate background on the OTE Group and the CCAA Proceedings and retain additional legal counsel.
- 13. The Monitor is of the view that the enhanced powers sought are reasonable and appropriate in the circumstances. The Monitor understands that the relief sought is supported by the OTE Group and the Royal Bank of Canada (“**RBC**”) as the OTE Group’s secured lender. The Monitor’s enhanced powers will address concerns raised regarding governance of the OTE Group for the benefit of creditors and will not prejudice any stakeholders.

## V. AMENDMENTS TO THE BID PROCESS

- 14. Pursuant to the Monitor’s Enhanced Powers and Amended Bid Process Approval Order, the Monitor is also seeking certain amendments to the Bid Process originally appended to the Monitor’s Fifth Report. The Amended Bid Process is appended hereto at **Appendix “B”**, and a redline to the version appended to the Fifth Report is appended hereto at **Appendix “C”**.
- 15. As described in the Fifth Report, certain time limited gas licenses and fuel licenses (the “**Gas and Fuel Licenses**”) are expiring on December 31, 2023 and as a result, the Monitor is of the view that the sale process of the OTE Group’s assets and property should commence as soon as possible.
- 16. Based on discussions with the Mareva Respondents and the counsels representing the landlords of the three blending locations Tyendinaga, Whitefish and Six Nations (collectively the “**Fuel Blending Locations**”), the Monitor understands that there is uncertainty surrounding the ownership of the fuel blending equipment on the Fuel Blending Locations. In particular, the Monitor received a letter dated October 3, 2023, from the counsel to the landlord of the Whitefish blending location notifying the Monitor of their engagement to review the Whitefish lease and consider the rights of the Whitefish landlord to the fuel blending equipment on the premises. In light of the forgoing, the Monitor seeks to amend the Bid Process to make it clear that 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 the Amended Bid Process. However, 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 in the Amended Bid Process) 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.

17. If the consummation of a Successful Bid (as defined in the Amended Bid Process) requires the resolution of any disputes as to the ownership, interests, and rights of the OTE Group in any premises or fixtures, the Monitor intends to seek further direction of the Court regarding the determination by the Court of such disputes after the conclusion of the Amended Bid Process.
18. As described in the Fifth Report, per the review of the Monitor's independent counsel, Bennett Jones LLP, security granted by the Limited Partnerships to RBC is valid and enforceable. As a result, following discussions with RBC, RBC will be granted certain consultation rights relating to the Amended Bid Process in its capacity as a secured lender to the OTE Group.
19. The Amended Bid Process will allow the Monitor to effectively canvass the market for the assets of the OTE Group to ensure that value is maximized for stakeholders prior to the expiry of the Gas and Fuel Licenses. The Monitor is not aware of any opposition to the Amended Bid Process, and believes the relief sought is fair and reasonable.

#### **VI. ADDITIONAL RELIEF SOUGHT**

20. The Monitor understands that the OTE Group intends to serve an amended motion record seeking the approval of an Order approving substantially the same relief originally sought in the Third Stay Extension Order (except for the approval of the Bid Process, given that the Monitor is now seeking approval of the Amended Bid Process). For the reasons set out in the Fifth Report, the Monitor continues to support the other relief (including an extension of the stay of proceedings under the CCAA) sought by the OTE Group and believes it is fair and reasonable in the circumstances.

#### **VII. STATUS OF BOOKS AND RECORDS**

21. At the commencement of the CCAA Proceedings, as described in the Pre-filing Report and the Hill Affidavit, a significant amount of the business and financial records of the OTE Group were missing and/or allegedly withheld by Page. Per the Hill Affidavit, the completeness of the books and records were negatively impacted by the following:
  - (i) the business records of the OTE Group had not been maintained at the head office of OTE LP but were primarily in the possession of Page and others directed by him at an office they had set up in Burlington, Ontario. The OTE Group's personnel did not have access to that office or to many business records which were under the control of Page, including accounting, payroll, purchasing, logistics, IT services, document creation and retention, and email communications;

- (ii) OTE Group’s personnel were locked out of their business information systems, which continued to be controlled by Page and others directed by him after his departure on July 14, 2022, until early September of 2022. Although the OTE Group’s personnel had operational access to those systems prior to Page’s resignation, their user credentials and authorizations were ultimately in his control and were terminated by him. This continued despite his resignation. Page and others directed by him frustrated and delayed efforts by the OTE Group’s personnel to obtain user credentials and authorizations to control and maintain those systems; and
  - (iii) when the OTE Group’s personnel were able to obtain user credentials for and control over its business information systems, it was discovered that Page and others directed by him had deleted the contents of their e-mail inboxes for OTE LP and OTE Logistics.
22. As a result of the above, the financial information and records of the OTE Group for the period from January 1, 2021 to August 31, 2022 are unreliable and incomplete.
23. Shortly after the OTE Group filed for CCAA protection, in connection with its investigatory powers and in an effort to establish a more complete set of books and records, the Monitor sent 38 letters (the “**Information Request Letters**”) to 38 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**”).
24. As at the date of this report, the Monitor received 31 responses in connection with the Information Request Letters. In a number of cases, one respondent responded on behalf of multiple parties. The material information provided in the responses received to date consisted of the following:
- (i) a complete set of bank statements provided by RBC for the years 2018 to 2022;
  - (ii) a USB drive provided by Page on or about July 21, 2023, containing a Microsoft Outlook data file of the e-mail account used during Page’s employment with the OTE Group that the Monitor was advised by Page’s counsel was discovered by Page in a motor vehicle;
  - (iii) information from Pride Marine Group pertaining to the Italian Yacht, particularly wire transfer details, purchase details, and related agreements;

- (iv) information from AirSprint with respect to the OTE Claimed AirSprint Property and aircraft usage, which was disclosed pursuant to the order of the Court made on April 27, 2023;
  - (v) books and records relating to the 2017 to 2021 review engagements performed preceding the commencement of CCAA Proceedings by Pettinelli;
  - (vi) previous investigative documents as part of an investigation performed by AM Law;
  - (vii) physical books and records, provided by Page, containing an assortment of documentation, such as contracts/agreements, e-mails, invoices, and historical financial statements;
  - (viii) an assortment of books and records (finance and tax documentation, driver logistics, marketing, HR/administrative, contracts/agreements, e-mails, invoices/bills of lading/fuel price lists, etc.) provided by certain law firms representing Page, Brian Page, Mandy Cox and Kellie Hodgins; and
  - (ix) contracting summaries and consulting agreements from Claybar Contracting Inc. and CCD Investments Inc.
25. The Monitor is in the process of reviewing the limited Requested Information received from the Requested Parties. The Monitor is also working to recreate the historical business details of OTE based on a complete set of banking information provided to the Monitor by RBC (the “**Historical Transactions Review**”).
26. At the date of this report, the Historical Transactions Review is ongoing. In addition to trying to establish as complete a picture as possible of the books and records of the OTE Group, the purpose of the Monitor’s Historical Transactions Review includes seeking to understand the purpose of any payments and transfers of property made by or from the OTE Group to determine if such payments and transfers are for legitimate business purposes in connection with the OTE Group’s business or may constitute accounting errors, preferences, transactions at undervalue misappropriated funds or property or other reviewable transactions for which repayment should be sought from the recipients for the general benefit of the OTE Group’s creditors.
27. The ongoing Historical Transaction Review will assist the Monitor’s ongoing investigation for the benefit of the creditors of the OTE Group. The Monitor intends to report to the Court on its findings in due course and seek any further directions in respect thereof.

## VIII. REDUCED OPERATIONS PLAN

### Challenges Facing the Business

28. As noted in the Monitor's Fifth Report, the OTE Group has been forced to implement a Reduced Operations Plan due to the loss of key customers and other factors. Following the delivery of the Fifth Report, the Monitor's counsel received a letter dated October 1, 2023 from Paliare Roland, counsel for OTE USA, with certain questions on the information set out in the Fifth Report relating to the Reduced Operations Plan. A copy of that letter is attached as **Appendix "D"**. While the Monitor does not view all of the enquiries as relevant to the Amended Bid Process and many of the enquiries appear to be oriented toward litigation, which is stayed by virtue of the CCAA Proceeding, the Monitor believes it would be helpful to provide additional details relating to the Reduced Operations Plan for the benefit of the Court and all creditors.
29. Since the commencement of the CCAA Proceedings, the OTE Group has faced a variety of challenges, including but not limited to competitors pursuing OTE Group's customers with the promises of reduced pricing, and reduced vendor terms. Furthermore, the OTE Group, despite its best efforts, has had challenges retaining its customers given the uncertainty of the CCAA Proceedings. Customers have been concerned about the OTE Group's viability and its ability to emerge from the CCAA Proceedings. Collectively, these challenges have had an unfavourable impact on the sales volumes of the OTE Group.
30. To mitigate the financial impact of the above challenges, the OTE Group implemented several initiatives, including price increases, discontinuation of fuel blending activities and other cost reduction activities.
31. In late July 2023, the Monitor was made aware that two customer gas stations related to Miles Hill, a related party, made the decision to discontinue further purchases of fuel from the OTE Group. The loss of these gas stations resulted in a reduction of approximately 30% of the sales volumes. As described in the Fifth Report, the industry that the OTE Group operates in requires high sales volumes to be profitable, and the reduced sales volumes due to the departure of key customers has therefore had a significant adverse impact on the OTE Group's financial position.
32. In response, the OTE Group, with the assistance of the Monitor, reviewed additional mitigation strategies and scenarios to reduce the cash loss resulting from the lost sales volumes. Ultimately, a plan was prepared to reduce the scale of operations of the OTE Group (the "**Reduced Operations Plan**") in order to reduce the operating costs, overhead costs and conserve liquidity.

33. As mentioned above, there are three Fuel Blending Locations: Tyendinaga, Whitefish, and Six Nations. Based on the analysis completed by the OTE Group, with the assistance of the Monitor, it appears the vast majority (approximately 90%) of the customers of the OTE Group were serviced through the Six Nations blending location.
34. Consequently, operations at the Tyendinaga and Whitefish blending locations were discontinued on August 31, 2023 and September 8, 2023, respectively (collectively, the “**Discontinued Locations**”) and 15 personnel were terminated while one individual resigned. Furthermore, as part of the Reduced Operations Plan, two personnel were terminated and seven individuals have resigned at the Six Nations blending location, as at the date of this report.
35. Additional headcount reductions are currently under consideration at Six Nations as the OTE Group continues to streamline its operations to preserve cash.

#### **Status of the Assets**

36. Any assets, with the exception of fuel blending equipment and other immovable assets, have been transferred from the Discontinued Locations to the Six Nations blending location. This transfer of movable assets to one location was necessitated to ensure that landlords and other persons at the remote locations did not seek to improperly distraint or otherwise interfere with the removal of those assets in the event that disputes relating to the leased locations arose. The transfer of the movable assets was done under the supervision of the Monitor to ensure that the assets were secured and available for easy inspection by the Monitor and potential purchasers upon the launch of any sale process.
37. Security has also been arranged with respect to the Discontinued Locations in order to safeguard the fuel blending equipment as the Amended Bid Process is conducted.
38. To ensure the Amended Bid Process is conducted efficiently and effectively, the movable assets and vehicles were transferred and consolidated at the Six Nations blending location. In the event that an interested party wanted to inspect the assets and vehicles for sale as part of the Amended Bid Process, such inspections for Qualified Bidders will be arranged through the Monitor at the Six Nations blending location.
39. In advance of the Amended Bid Process, the Monitor’s representative has physically visited the Six Nations site to confirm that the chattels and vehicles to be sold under the Amended Bid Process

(the “**Assets for Sale**”) are at the Six Nations location. A listing of the Assets for Sale is attached as Schedule 1 to the Amended Bid Process.

## **IX. AIRSPRINT LETTERS**

40. As discussed in the Fifth Report, on September 15, 2023, the Monitor sent letters (the “**AirSprint Letters**”) to certain persons, including the Mareva Respondents, 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.
41. On or about September 29, 2023, the Monitor received letters from counsel to the Mareva Respondents asserting that the Monitor does not have the powers to compel the production of information within the AirSprint Letters because such information does not constitute “Requested Information” as set out in the Amended and Restated Initial Order. Copies of those letters are attached at **Appendix “E”**.
42. As the Monitor previously reported to the Court in in paragraph 27 of its Second Report dated March 13, 2023, and paragraph 59 of its Third Report dated April 25, 2023, approximately USD \$6,864,425 and approximately CAD \$1,057,681 was wired by OTE Group entities to AirSprint. As part of its Historical Transaction Review described above, the Monitor is investigating any funds used to purchase or lease aircraft interests paid for by OTE Group funds was used for legitimate purposes in connection with the OTE Group’s business or for leisure travel, for which the OTE Group and its creditors may be entitled to compensation or recovery. The Monitor’s enquiries as to the use of the aircraft was not limited to the Mareva Respondents; rather the Monitor’s enquiries were sent to all persons who used the aircraft according to the manifests provided by AirSprint pursuant to the Court's April 27, 2023 Order (the “**Information Order**”), a copy of which is attached as **Appendix “F”** hereto.
43. The Monitor’s counsel responded to the Mareva Respondents by letter dated October 3, 2023, a copy of which is attached as **Appendix “G”** hereto. In that letter, the Monitor’s counsel noted that the Monitor was conducting its investigation for the benefit of the OTE Group’s creditors in accordance with the powers given to the Monitor under the CCAA and the *Bankruptcy and Insolvency Act* and prior orders of the Court. The Monitor’s counsel noted in particular that:
  - (i) 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 BIA.

- (ii) the Information Order 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”.

- 44. 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.

## **X. MONITOR’S CONCLUSIONS**

- 45. For the reasons set out in this Supplemental Fifth Report, the Monitor is of the view that Monitor’s Enhanced Powers and Amended Bid Process Approval Order should be granted. The enhanced powers contemplated are reasonable and necessary in ensuring the OTE Group is able to continue operations in a stable manner. The Monitor does not believe that the Monitor’s enhanced powers will prejudice any stakeholders. Given that the Monitor is best positioned to be granted these enhanced powers, the Monitor believes the CRO should not be appointed, and the relief sought in the CRO Order should therefore not be granted.
- 46. The Monitor is also of the view that an Amended Bid Process will allow the Monitor to effectively conduct the Amended Bid Process to ensure the value is maximized for stakeholders prior to the expiry of the Gas and Fuel Licenses. Finally, the Monitor is of the view that the relief requested by the OTE Group is both appropriate and reasonable.

All of which is respectfully submitted this 6th day of October 2023.

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

Per:



---

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



---

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

## Appendix "A"

**ORIGINAL TRADERS ENERGY LTD. ET AL.**

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

**September 28, 2023**

**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 1**

**II. PURPOSE OF REPORT ..... 3**

**III. TERMS OF REFERENCE..... 4**

**IV. BACKGROUND..... 5**

**V. ACTIVITIES OF THE OTE GROUP..... 5**

**VI. ACTIVITIES OF THE MONITOR ..... 6**

**VII. SECURITY REVIEW..... 7**

**VIII. BUSINESS UPDATE ..... 8**

**IX. CASH RECEIPTS AND DISBURSEMENTS – JULY 3, 2023 TO SEPTEMBER 17, 2023 ..... 9**

**X. PROPOSED BID PROCESS..... 11**

**XI. EMPLOYEE CLAIMS ..... 13**

**XII. OTE GROUP’S REQUEST TO EXTEND STAY PERIOD TO APRIL 26, 2024..... 15**

**XIII. ITALIAN YACHT UPDATE ..... 17**

**XIV. AIRSPRINT LETTER..... 17**

**XV. HISTORICAL TRANSACTIONS REVIEW ..... 18**

**XVI. MONITOR’S RECOMMENDATIONS..... 18**

**APPENDICES**

**APPENDIX “A” – Bid Process Letter**

**APPENDIX “B” – Revised Cash Flow Forecast**

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

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

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

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

**September 28, 2023**

## I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), Original Traders Energy Ltd. and 2496750 Ontario Inc. (together, the “**Applicants**”) were granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants from January 30, 2023, until February 9, 2023 (the “**Initial Stay**”); the appointment of KPMG Inc. (“**KPMG**”) as the monitor in these proceedings (in such capacity, the “**Monitor**”); and other related relief. These proceedings under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**”) and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding. However, the Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry-on operations that are integral to the business of the Applicants. The term “**OTE Group**” throughout this report refers to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of materials filed with the Court and other materials pertaining to the CCAA Proceedings, including all reports issued by the Monitor in these proceedings, are available on the Monitor’s website (<http://home.kpmg/ca/OTEGroup>) (the “**Monitor’s Website**”).
4. On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the “**Amended and Restated Initial Order**”). The relief granted under the Amended and Restated Initial Order included, among other items:
  - (i) extending the Initial Stay, as defined in the Initial Order, to April 28, 2023;
  - (ii) amending the breadth of the Initial Stay to require regulatory agencies to provide no less than ten (10) days notice if seeking leave of the Court to vary the stay in relation to the possible revocation of licenses; and
  - (iii) increasing the Directors’ Charge to \$2,250,000.

5. The Amended and Restated Initial Order also extended all protections in favour of the Applicants to the Limited Partnerships. The Monitor filed a report with the Court dated February 9, 2023, in connection with the OTE Group’s application for the Amended and Restated Initial Order.
6. On March 15, 2023, the Court granted a Mareva injunction as part of an Order (the “**Injunctive Order**”) which restrained Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**”, and collectively, the “**Mareva Respondents**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can” (the “**Italian Yacht**”), more particularly described in Schedule “A” of the Injunctive Order. On March 21, 2023 and March 28, 2023, the Honourable Justice Osborne granted certain endorsements (collectively, the “**Injunctive Endorsements**”) related to the Injunctive Order. In the Injunctive Endorsements, the Honourable Justice Osborne also noted the Applicants’ intention to commence proceedings pursuant to Chapter 15 of the U.S. Bankruptcy Code in the United States to recognize and enforce orders made by the Ontario Court.
7. On April 28, 2023, the Court made the following Orders:
  - (i) an Order (the “**Information Order**”), among other things, authorizing and directing AirSprint Inc. (“**AirSprint**”) to provide the information requested by the Monitor or its counsel in connection with 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 (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;
  - (ii) an Order (the “**Stay Extension Order**”), among other things, extending the Stay Period (as defined in paragraph 16 of the Initial Order) to August 4, 2023; and
  - (iii) an Order (the “**Claims Procedure Order**”) approving and authorizing the Monitor to conduct a claims procedure (the “**Claims Procedure**”) to call for, assess and determine claims against the OTE Group, and authorizing, directing, and empowering the Monitor to administer the Claims Procedure in accordance with the terms of the Claims Procedure Order.
8. Proceedings under Chapter 15 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**US Bankruptcy Code**”) were also commenced by U.S. counsel to the Monitor. On May 15, 2023, the

United States Bankruptcy Court Southern District of Florida (Fort Lauderdale Division) granted a motion for provisional relief under s. 1519 and 1520 of the US Bankruptcy Code. In connection therewith, the U.S. Court entered an Order for provisional relief to protect assets of the OTE Group and to impose an automatic stay of proceedings in the United States in accordance with the ongoing Canadian proceedings.

9. On May 31, 2023, the United States Bankruptcy Court Southern District of Florida (West Palm Beach Division) granted an Order recognizing the Canadian proceedings as a “foreign main proceeding” within the meaning of 11 U.S.C. § 1502 of the U.S. Bankruptcy Code, and granted certain other relief, including recognizing the Initial Order, the Amended and Restated Initial Order, and the Injunctive Order. The aforementioned Orders are available on the Monitor’s Website.
10. On July 17, 2023, the Court made the following Orders:
  - (i) an Order (the “**Second Stay Extension Order**”), among other things, extending the Stay Period (as defined in paragraph 16 of the Initial Order) to November 3, 2023; and
  - (ii) an Order (the “**Yacht Sale and AirSprint Proceeds Order**”) authorizing and directing the Monitor to conduct a sales process for the Italian Yacht (“**Yacht Sale Process**”) and directing AirSprint to remit to the Monitor any funds, proceeds of sale or use of any aircraft or fractional ownership or other interests therein in which the OTE Group has claimed an interest (the “**OTE Claimed AirSprint Property**”).

## II. PURPOSE OF REPORT

11. The purpose of the Fifth Report of the Monitor (the “**Fifth Report**”) is to provide information and the Monitor’s conclusions and/or recommendations to the Court pertaining to:
  - (i) the activities of the OTE Group and the Monitor since the Monitor’s report dated July 12, 2023 (the “**Fourth Report**”);
  - (ii) the OTE Group’s reported receipts and disbursements for the period of July 3, 2023, to September 17, 2023, including a comparison of reported to forecasted results;
  - (iii) the OTE Group’s motion for an order (the “**Third Stay Extension Order**”), among other things:
    - (a) extending the Stay Period to April 26, 2024;

- (b) amending the claim procedure approved pursuant to the Claims Procedure Order (term as defined below, the “**Claims Procedure**”) to enable the OTE Group, with the assistance of the Monitor to identify, quantify and resolve certain claims by former employees terminated during the CCAA Proceedings;
  - (c) approving a sales process (the “**Bid Process**”) for the business and property of the OTE Group, to be carried out by the Monitor, as set out in Appendix “A” herein, excluding the assets identified at Schedule “A” to the Injunctive Order; and
  - (d) approving the Fifth Report and the activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings;
- (iv) the review of the security held by the Royal Bank of Canada (“**RBC**”), completed by the Monitor’s counsel at the request of the Monitor;
  - (v) the Reduced Operations Plan (as defined below), to significantly reduce operating costs and conserve cash, due to the unexpected loss of key customers and operational and financial difficulties faced by the OTE Group;
  - (vi) the Monitor’s asset tracing and recovery activities, including: (a) an update on the Yacht Sale Process; and (b) sending the AirSprint Letters (as defined herein) for the purposes of obtaining further details on use of the OTE Claimed AirSprint Property; and
  - (vii) the Monitor’s review of historical bank statements to establish a more complete set of books and records and in furtherance of its investigatory powers pursuant to the Initial Order.

### III. TERMS OF REFERENCE

12. In preparing the Fifth Report, the Monitor has relied solely on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations, in addition to information and documents from third parties that responded to the Monitor’s Information Request Letters, which are defined herein (collectively, the “**Information Received**”). In accordance with industry practice, except as otherwise described in the Second Report (as defined herein), KPMG has reviewed the Information Received for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information Received in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered*

*Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information Received.

13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### **IV. BACKGROUND**

14. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is provided in the Affidavit of Scott Hill sworn January 27, 2023 (the "**Hill Affidavit**") and the Pre-Filing Report.
15. As described in the Pre-Filing Report and the Hill Affidavit, at the time of the application for the Initial Order, the OTE Group was missing a significant amount of its business and financial records, and property and funds of the OTE Group are alleged to have been misappropriated. Accordingly, the Monitor was granted expanded investigatory powers in the Initial Order and the Amended and Restated Initial Order.

#### **V. ACTIVITIES OF THE OTE GROUP**

16. The OTE Group's activities since the Fourth Report have included:
  - (i) attending Court via videoconference for the hearing of its motion in respect of the Second Stay Extension Order and the Yacht Sale and AirSprint Proceeds Order;
  - (ii) corresponding with the Monitor and the OTE Group's legal counsel on changes impacting the OTE Group's business and the resulting financial challenges;
  - (iii) continuing to manage the business of the OTE Group in the ordinary course in accordance with the Amended and Restated Initial Order;
  - (iv) managing relationships with key stakeholders, including RBC, employees, customers, and suppliers in coordination with the Monitor;
  - (v) working with the Monitor to implement procedures to monitor cash flows and corresponding with the Monitor related to its review of payments;
  - (vi) managing cash flows and making payments in accordance with the Amended and Restated Initial Order;

- (vii) working with the Monitor to trace, investigate and review missing books and records of the OTE Group;
- (viii) developing cash flow forecast extensions, including the extended cash flow forecast for the period September 18, 2023 to April 26, 2024 (the “**Third Extended Cash Flow Forecast**”), in coordination with the Monitor;
- (ix) corresponding with the Monitor and the OTE Group’s legal counsel on lease disclaimers pursuant to paragraph 10 of the Amended and Restated Initial Order; and
- (x) corresponding with the Monitor and the OTE Group’s legal counsel on various matters pertaining to the CCAA Proceedings, including the Claims Procedure, the Reduced Operations Plan and the Bid Process.

## **VI. ACTIVITIES OF THE MONITOR**

17. The Monitor, with the support of its legal advisors, has been working with the OTE Group with respect to the following activities since the Fourth Report:
- (i) attending Court via videoconference for the hearing of the OTE Group’s motion in respect of the Second Stay Extension Order and the Yacht Sale and AirSprint Proceeds Order;
  - (ii) working with the OTE Group to assess the challenges facing the OTE Group’s business which resulted in the Reduced Operations Plan;
  - (iii) maintaining the Monitor’s Website where all court materials and other relevant documents pertaining to the CCAA Proceedings are available in electronic form;
  - (iv) supporting the OTE Group in managing relationships with key stakeholders, including employees and suppliers;
  - (v) working with the OTE Group to implement procedures to monitor cash flows and making payments in accordance with the Initial Order and the Amended and Restated Initial Order;
  - (vi) responding to enquiries from and engaging in calls with creditors, governmental authorities, including the Canada Revenue Agency and the Ministry of Finance for Ontario, and other stakeholders in connection with these CCAA Proceedings;

- (vii) assisting the OTE Group in developing cash flow forecast extensions, including the Third Extended Cash Flow Forecast;
- (viii) corresponding with the Monitor’s legal counsel with respect to its review of security granted to RBC by the Limited Partnerships;
- (ix) progressing the sale process for the Yacht Sale Process;
- (x) reviewing and approving lease disclaimers pursuant to paragraph 10 of the Amended and Restated Initial Order;
- (xi) preparing and sending the AirSprint Letters for the purposes of obtain additional information with respect to the use of OTE Claimed AirSprint Property;
- (xii) corresponding with the OTE Group, its legal counsel, and the Monitor’s legal counsel on various matters pertaining to the CCAA Proceedings, including the relief sought at this motion;
- (xiii) reviewing materials filed with the Court in respect of the CCAA Proceedings;
- (xiv) attending to matters in respect of the Claims Procedure, as discussed further below; and
- (xv) preparing this Fifth Report.

18. The Monitor believes that its activities were reasonable and conducted in the best interests of the OTE Group and its stakeholders, and therefore should be approved.

## **VII. SECURITY REVIEW**

19. The Monitor instructed its independent counsel, Bennett Jones LLP (“**Bennett Jones**”), to provide an opinion (the “**Security Opinion**”) on the validity and enforceability of security granted by the Limited Partnerships (referred to as the “**Debtors**” herein) to RBC as lender under various credit facilities agreements (the “**Loan Documents**”) and security documents (the “**Security Documents**”) executed at various points in 2021 and 2022.

20. Based on Bennett Jones’ review of the Loan Documents, the Security Documents and the results of certain public registration searches, and subject to the customary assumptions and qualifications which are set out in the Security Opinion, Bennett Jones has opined that:

- (i) the Security Documents constitute valid and binding obligations of the Debtors noted as parties to the Security Documents, enforceable against such Debtors in accordance with the terms thereof;
- (ii) Security Documents created in favour of RBC are valid security interests in the properties, assets, interests, and rights of the Debtors (the “**Charged Property**”) described in the Security Documents to which the *Personal Property Security Act* (Ontario) (the “**PPSA**”) applies; and
- (iii) as of the applicable dates of the PPSA searches, registration has been made in all public offices in Ontario provided for under applicable law where such registration is necessary to preserve, protect and perfect the security interests in the Charged Property of the OTE Group to which the PPSA applies, as created by the Security Documents.

## VIII. BUSINESS UPDATE

- 21. The OTE Group operates in a highly competitive industry that is based on high sales volume, low profit margins and a low-cost structure.
- 22. Since the commencement of the CCAA proceedings, the OTE Group has faced a variety of challenges, including, in particular, aggressive customer pricing from competitors and reduced vendor terms. These challenges have negatively impacted the OTE Group’s sales volumes and financial condition.
- 23. In response, the OTE Group implemented several initiatives in an effort to mitigate the financial impact of these challenges. Key initiatives have included price increases, discontinuing fuel blending activities and other cost reduction activities.
- 24. Subsequent to the Fourth Report, the OTE Group became aware of the departure of certain key customers. 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, the OTE Group, with the assistance of the Monitor, reviewed additional mitigation strategies and scenarios. Consequently, the OTE Group, with the assistance of the Monitor, has prepared a plan to significantly reduce the operations of the OTE Group (the “**Reduced Operations Plan**”) in order to reduce the operating costs and conserve cash, as a result of the challenges stated above.
- 25. At the commencement of the CCAA Proceedings, the OTE Group had three blending locations: Tyendinaga, Whitefish, and Six Nations. As at the date of the report, in order to save costs and streamline operations, the Reduced Operations Plan has commenced and operations at the Tyendinaga

blending location and Whitefish blending location (collectively, the “**Discontinued Locations**”) have been discontinued. In connection therewith, all employees employed at the Discontinued Locations have been terminated. Further, any assets, with the exception of any blending equipment and any assets that are not movable, have been transferred from the Discontinued Locations to the Six Nations blending location.

26. Operations at the Six Nations blending location will continue, and all remaining OTE Group customers will be serviced from the Six Nations location for the time being, subject to the Reduced Operations Plan. In connection with the Reduced Operations Plan, the OTE Group, with assistance of the Monitor, will undertake a Bid Process, as further discussed below.
27. As discussed in the Fourth Report, the Monitor was working with the OTE Group and the Ministry of Finance on an agreement that extended certain time limited gas licenses and fuel licences until December 31, 2023. Subsequently, an extension of the aforementioned licenses to December 31, 2023 was granted by the Ministry of Finance. In light of the Reduced Operations Plan and the proposed Bid Process, the OTE Group does not currently intend to seek further extensions of the gas licenses and fuel licenses beyond December 31, 2023.
28. In addition to carrying out the Bid Process to try and find one or more buyers for the business and/or assets of the OTE Group, the Monitor will continue with its investigative and asset recovery efforts pursuant to the powers granted to the Monitor by the Court and the CCAA, in order to try and achieve recoveries for the OTE Group's creditors.

## **IX. CASH RECEIPTS AND DISBURSEMENTS – JULY 3, 2023 TO SEPTEMBER 17, 2023**

29. As noted in the Fourth Report, the OTE Group, in consultation with the Monitor, prepared an extended cash flow forecast (the “**Extended Cash Flow Forecast**”) for the period from July 3, 2023, to November 5, 2023, in support of the requested stay extension, representing a forecast of the OTE Group’s projected receipts and disbursements during that time period. The OTE Group continues to co-operate with the Monitor and provide access to their books and records and disbursements on a weekly basis, and has prepared a forecast-to-actual variance analysis regarding the OTE Group’s receipts and disbursements.
30. A comparison of the Extended Cash Flow Forecast to actual results for the 10-week period from July 3, 2023, to September 17, 2023 (the “**Comparison Period**”) is summarized as follows:

<b>Original Traders Energy</b>			
<b>Summary of Actual Receipts and Disbursements</b>			
<i>For the 10-week period from July 3, 2023 - September 17, 2023</i>			
<b>In C\$; unaudited</b>			
	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b> Fav/(Unfav)
<b>Receipts</b>			
Customer collections	54,283,720	63,054,030	(8,770,310)
Tax refunds	10,111,946	2,759,577	7,352,369
<b>Total receipts</b>	<b>64,395,666</b>	<b>65,813,607</b>	<b>(1,417,941)</b>
<b>Operating disbursements</b>			
Purchases	42,399,552	49,944,365	7,544,813
Pre-filing payments/deposits	-	215,000	215,000
Operating expense	1,454,391	3,590,510	2,136,119
Rent and royalties	85,834	85,886	52
Payroll	833,711	949,389	115,678
Professional fees	445,497	750,000	304,503
Tax remittances	15,072,437	13,810,097	(1,262,340)
Bank payments	369,529	254,776	(114,753)
<b>Total operating disbursements</b>	<b>60,660,951</b>	<b>69,600,023</b>	<b>8,939,072</b>
Foreign Exchange	55,400	-	55,400
<b>Net cash flow</b>	<b>3,790,115</b>	<b>(3,786,416)</b>	<b>7,576,531</b>
<b>Opening cash</b>	<b>10,076,418</b>	<b>10,076,418</b>	-
Net cash flow	3,790,115	(3,786,416)	7,576,531
<b>Ending cash</b>	<b>13,866,533</b>	<b>6,290,002</b>	<b>7,576,531</b>

**Note:** "Fav/(unfav)" denotes favourable or unfavourable variances against forecast.

31. As shown in the above table, the OTE Group reported a net cash inflow of approximately \$3.8 million over the Comparison Period resulting in a favourable cash flow variance of approximately \$7.6 million as compared to the Extended Cash Flow Forecast for the same period.
32. The favourable cash flow variance of \$7.6 million is principally the result of the following:
- (i) *Timing Differences:* tax refunds during the Comparison Period were \$7.4 million higher than expected. This was offset by a \$1.3 million unfavourable cash flow variance related to the timing differences of tax remittances; and
  - (ii) *Lower Sales Volume:* sales volume for the OTE Group was lower than forecast which resulted in customer collections being lower by \$8.8 million. However, disbursements related to purchases, operating expenses, payroll and professional fees were collectively lower than forecast by \$10.1 million.

33. As a result of the net impact of the above two items, the ending cash balance is higher than forecasted, however, this is a temporary positive variance due to favourable timing of the tax refunds.

## **X. PROPOSED BID PROCESS**

34. The Monitor notes that, to date, no active marketing of the OTE Group and/or its assets has been undertaken during the CCAA Proceedings. In light of the loss of key customers and the shift to the Reduced Operations Plan, as noted above, the OTE Group, in consultation with the Monitor, has determined that a process to try and sell the business and assets of the OTE Group is the most prudent and reasonable course of action in the circumstances to try and maximize recoveries for the OTE Group's creditors. Accordingly, the Bid Process has been developed as a means of gauging interest in the OTE Group and/or its assets and determining whether a transaction that would result in greater than liquidation value is available for the property, assets and undertakings of the OTE Group (collectively, the “**Property**”).
35. The Property available under this process would also include the blending equipment located at the Discontinued Locations, as well as any assets that have been transferred to Six Nations as part of the Reduced Operations Plan.
36. The purpose of the Bid Process is to identify one or more purchasers for all or part of the Property of the OTE Group. In order to provide third parties with an opportunity to bid on the Property, the Monitor proposes to market the OTE Group and/or its assets to third parties for a period of approximately 35 days.
37. Any sale of the assets or the business of the OTE Group will be on an “as is, where is” basis, without surviving representations or warranties of any kind, nature, or description by the OTE Group, the Monitor 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.
38. The key aspects of the Bid Process are as follows:
- (i) On or about October 5, 2023, an initial offering summary (the “**Teaser Letter**”), a bid process letter (the “**Bid Process Letter**”) and form of non-disclosure letter (the “**NDA**”) prepared by counsel to the Monitor and counsel to the OTE Group will be sent to a list of potential interested

- parties (the “**Interested Parties**”) by the Monitor, which list has been developed by the Monitor and the OTE Group;
- (ii) 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);
  - (iii) Interested Parties will be required to sign the NDA prior to obtaining information to assist with their evaluation of the OTE Group’s assets;
  - (iv) The Monitor will establish an electronic data room (the “**Data Room**”) to provide Interested Parties with access to relevant information relating to the OTE Group;
  - (v) Interested Parties that wish to view and inspect the OTE Group’s assets will be required to schedule an appointment with the Monitor;
  - (vi) Interested Parties will be required to submit binding offers (the “**Binding Offers**”) to the Monitor by 5 pm Eastern Standard Time on November 10, 2023 (the “**Bid Deadline**”). Interested parties may submit a Binding Offer for all the OTE Group’s Property or a subset of same;
  - (vii) The acceptability of any Binding Offers received is to be determined by the Monitor, in consultation with the OTE Group, and subject to any confidentiality restrictions considered appropriate by the Monitor; and
  - (viii) If there are Binding Offers that are acceptable to both the Monitor and the OTE Group, they will be presented to this Court for final approval, with the closing of the sale to occur as soon as possible after all approvals are received.
39. The Monitor notes that the proposed Bid Process timeframe is condensed. However, the Monitor believes that the deadlines proposed in the Bid Process are reasonable and balance the search for a prospective purchaser with the costs associated with administering a sales process of this nature in light of the challenges facing the OTE Group. The Monitor will report back to this Court if facts or circumstances require the OTE Group or the Monitor to re-evaluate the time periods or the Bid Process based on facts or circumstances at that time.
40. Additional aspects of the Bid Process are as follows:

- (i) The Monitor may amend any timelines and make any minor amendments it deems necessary or advisable to the Bid Process to help ensure the fairness, integrity and efficacy of the Bid Process;
  - (ii) Any transaction will be subject to Court approval;
  - (iii) In order to facilitate due diligence or maximize participation by Interested Parties in the Bid Process, the Monitor will have the right to extend any of the timelines in the Bid Process, provided that the OTE Group does not object to any extension of timeline; and
  - (iv) The Monitor has the right to reject any and all Binding Offers, including the highest dollar value Binding Offer(s), acting commercially reasonably.
41. The Monitor recommends that this Court issue the Third Stay Extension Order, which includes relief approving this Bid Process, for the following reasons:
- (i) The Bid Process is a fair, open and transparent process intended to canvass the market broadly on an orderly basis;
  - (ii) There will be no delay in commencing the Bid Process, such that the process can be conducted in a timely nature for stakeholders;
  - (iii) The duration of the Bid Process is sufficient to allow Interested Parties to participate and to submit an offer on or before a reasonable timeline; and
  - (iv) The OTE Group has assisted the Monitor in designing the Bid Process' framework, to best maximize value for the OTE Group's creditors.

## **XI. EMPLOYEE CLAIMS**

42. As discussed previously, the Monitor was authorized by the Court to conduct a Claims Procedure to call for, assess and determine claims against the OTE Group. Accordingly, the Monitor, with the assistance of the OTE Group, carried out the Claims Procedure in accordance with the Claims Procedure Order. The claims bar date was June 27, 2023.
43. As a result of the Discontinued Locations, OTE terminated some employees and it is anticipated that further terminations of employees will be required as a result of the Reduced Operations Plan, unless a going-concern buyer who is willing to retain the employees can be found in the Bid Process. As the

termination of employees may result in Restructuring Claims for employees, the Monitor proposes an adjustment to the Claims Procedure to include any employees of OTE Group terminated during the CCAA Proceedings (the “**Terminated Employees**”) to enable Terminated Employees to assert claims resulting from their termination (e.g. for termination pay, severance pay, wages, vacation pay, commissions or other remuneration arising as a result of the termination of their respective employment).

44. In order to simplify the administration of the Claims Procedure, Terminated Employees will not be required to file proof of claim forms with respect to their claims (the “**Employee Restructuring Claims**”). Rather, 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, setting out the classification, nature and amount of each Employee Restructuring Claim. The Monitor will deliver such notice (the “**Notice of Employee Restructuring Claim**”), along with a claims package (the “**Claims Package**”), to each Terminated Employee as soon as reasonably practicable and not later than fifteen business days following the date of the Third Stay Extension Order in respect of each Terminated Employee who was terminated prior to the date of this Order or within fifteen business days following the date on which such Employee Restructuring Claim arises in respect of any Terminated Employee who is terminated following the date of the Third Stay Extension Order.
45. If a Terminated Employee disputes the classification, nature and/or amount of the Employee Restructuring Claim, as set out in their Notice of Employee Restructuring Claim, such Terminated Employee must complete a notice of dispute (the “**Notice of Dispute of Employee Restructuring Claim**”) and send it to the Monitor by no later than 5 pm Eastern Standard Time on the date that is fifteen business days after the date on which the Monitor sent a Claims Package, accompanied by a Notice of Employee Restructuring Claim, to such Terminated Employee having an Employee Restructuring Claim (the “**Employee Claims Bar Date**”).
46. Any Terminated Employee who does not deliver a Notice of Dispute of Employee Restructuring Claim such that it is received by the Monitor by the Employee Claims Bar Date shall be deemed to accept as final and binding the amount of its Claim as set out in the Notice of Employee Restructuring Claim and will be forever barred, estopped and enjoined from disputing the classification, nature and/or amount of the Employee Restructuring Claim set forth in the Notice of Employee Restructuring Claim, and any other claims that such Terminated Employee may have in respect of, arising from or related to such Terminated Employee’s employment or former employment with any of the OTE Group entities.

47. The Monitor is of the view that the Employee Restructuring Claim process and the prescribed timelines are reasonable in that they provide sufficient time for Terminated Employees to evaluate, accept or dispute any Employee Restructuring Claim that any Employee may have against the OTE Group or its Directors and Officers.
48. The Monitor recommends this amendment to the Claims Procedure Order, as it further understands from its counsel that the Employee Restructuring Claim mechanism designed above is structured to mirror “negative notice” employee Claims Procedure that are regularly granted by this Court in other CCAA filings.

## **XII. OTE GROUP’S REQUEST TO EXTEND STAY PERIOD TO APRIL 26, 2024**

49. The current Stay Period expires on November 3, 2023. The OTE Group is seeking an extension of the Stay Period to April 26, 2024, to, among other things, advance the Reduced Operations Plan as well as the Bid Process.
50. In support of the stay extension, the OTE Group, with the assistance of the Monitor, has prepared the Third Extended Cash Flow Forecast, a copy of which is attached hereto as Appendix “B” (along with reports of both management and the Monitor on the Third Extended Cash Flow Forecast). The Third Extended Cash Flow Forecast is summarized below:

<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:



---

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



---

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

## 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**

<b>Unit #</b>	<b>Make</b>	<b>Model</b>	<b>Year</b>	<b>Status</b>	<b>Lease End</b>
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 / duncanlau@kpmg.ca / 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 / grayt@bennettjones.com

## 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.
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. ~~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<sup>2</sup> 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 EQUIPMENT****Trucks 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)

## Appendix “D”

# 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

## 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 2S5Raj 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**

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**

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 be 'JRO'.

Jessica R. Orkin  
JRO:es/cope 343

## 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.

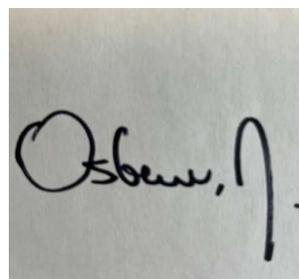
11. **THIS COURT ORDERS** that the Monitor, the OTE Group, and AirSprint shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of carrying out the provisions of this Order, except to the extent such losses, 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.



2023.04.2

8 07:19:34

-04'00'

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**

**AIRD & BERLIS LLP**

Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven Graff (LSO#: 31871V)**

Tel: 416.865.7726  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Tamie Dolny (LSO#: 77958U)**

Tel: 647.426.2306  
Email: [tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)

**Samantha Hans (LSO# 84737H)**

Tel: 437.880.6105  
Email: [shans@airdberlis.com](mailto:shans@airdberlis.com)

*Lawyers for the OTE Group*

## Appendix "G"



Bennett Jones

Bennett Jones LLP

3400 One First Canadian Place, PO Box 130

Toronto, Ontario, Canada M5X 1A4

Tel: 416.863.1200 Fax: 416.863.1716

**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*