Court File No. CV-23-00707394-00CL

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 TACORA RESOURCES INC.

COMPENDIUM OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.

(Comeback Motion of Tacora Resources Inc. for an Amended and Restated Initial Order, and Cross-Motion of the Ad Hoc Group of Noteholders, returnable October 24, 2023)

October 24, 2023

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick (LSO No. 35165K)
rchadwick@goodmans.ca

Caroline Descours (LSO No. 58251A)
cdescours@goodmans.ca

Peter Kolla (LSO No. 54608K)
pkolla@goodmans.ca

Carlie Fox (LSO No. 68414W)
cfox@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

INDEX

I N D E X

Tab No.	Description
1.	DIP Facility Term Sheet, being Exhibit K to the Affidavit of J. Broking sworn October 9, 2023, Application Record, Tab 2.K, p. 453
2.	Email from R. Chadwick to L. Nicholson dated September 10, 2023, being Exhibit C to the Davies Cross, Transcript Brief, Tab 1.C, p. 209
3.	Proposed Solicitation Order, Supplementary Application Record, Tab 4
4.	*Companies Creditors Arrangement Act*, RSC, 1985, c C-36, ss. 11.2(4)(g) and 11.9
5.	Pre-Filing Report of the Proposed Monitor dated October 9, 2023 at paras. 4(e)(i) and 10(b)
6.	First Report of the Monitor dated October 20, 2023 at paras. 9(a), 13-14, 18-20, 76-78, 88
7.	Cross-Examination of Leon Davies held October 18, 2023, p. 17, line 23 to p. 18, line 6, p. 20, lines 2-7, p. 50, line 23 – p. 51, line 12, p. 61, lines 7-8, p. 72, lines 2-24, p. 78, lines 2-3, p. 82, line 20 – p. 83, line 10, p. 88, lines 20-22, p. 112, lines 1-8, p. 114, lines 5-10, and p. 116, line 12 – p.119, line 19, Transcript Brief, Tab 1
8.	iMessages between J. Broking and L. Davies, being Exhibit 5 to the Davies Cross, Transcript Brief, Tab 1(E), p. 156
9.	Notice of Examination to Leon Davies dated October 16, 2023, being Exhibit 8 to the Davies Cross, Transcript Brief, Tab 1.H, p. 171
10.	Notice of Examination to Paulo Carrelo dated October 16, 2023, being Exhibit 1 to the Carrelo Cross, Transcript Brief, Tab 2.A, p. 458
11.	Affidavit of Joe Broking sworn October 9, 2023 at paras. 34, 38, 69-71, 81, 86, 125-126, 129, 134 Application Record, Tab 1, pp. 33-35, 42-43, 45, 47, 56-57 and 59

Tab No.	Description
12.	Amended and Restated Advance Payments Facility Agreement dated May 29, 2023, being Exhibit I to the First Broking Affidavit, Application Record, Tab 2.I, p. 409
13.	Tacora Corporate Profile Report, being Exhibit A to the First Broking Affidavit, Application Record, Tab 2.B, p. 73
14.	Cross-Examination of Joe Broking held October 19, 2023, p. 35, line 4 – p. 36, line 3, p. 45, line 13 – p. 46, line 17, p. 51, lines 5-21, p. 60, lines 9-23, p. 62, lines 13-21, p. 75, lines 14-22, and p. 87, line 6 – p. 89, line 9, Transcript Brief, Tab 4
15.	Undertaking Chart from Broking Cross re No. 4, Q. 234, p. 84
16.	Cross-Examination of Paul Carrelo held October 19, 2023, p. 20, lines 16-23, p. 32, line 18 to p. 33, line 7, p. 34, line 18-23, and p. 36, lines 15-19, p. 43, line 22-23, p. 55, line 14 – p. 56, line 20, p. 59, line 7 – p. 61, line 7, p. 64, line 8 to p. 66, line 23, p. 66, line 18 – p. 67, line 11, p. 72, lines 1-13, p. 81, lines 2-17, p. 87, line 6 – p. 88, line 9, and p. 90, line 10 – p. 92, line 10, Transcript Brief, Tab 3
17.	Cross-Examination of Chetan Bhandari held October 18, 2023 at p. 66, line 2 – p. 68, line 3, p. 71, lines 3-13, p. 72, line 14 – p. 73, line 1, p. 75, line 14 – p. 77, line 2, p. 91, line 16 – p. 92, line 4, p. 97, lines 9-16, and p. 109, lines 9-19 Transcript Brief, Tab 2
18.	Emails between J. Broking and L. Kirk dated October 5, 2023, being Exhibit 5 to the Cross-Examination of Chetan Bhandari, Transcript Brief, Tab 2.F, p. 360
19.	Affidavit of Chetan Bhandari sworn October 9, 2023 at paras. 19 and 21, Application Record, Tab 3, pp. 514-515
20.	Second Affidavit of Joe Broking sworn October 15, 2023 at para. 33, Supplementary Application Record dated October 15, 2023, Tab 1, p. 12
21.	*Magnotta Winery Corp. v. Ontario (Alcohol and Gaming Commission)*, 2016 ONSC 3174 (CanLII) at para. 21 (S.C.J.—Master)
22.	*Ed Miller Sales & Rentals Ltd. v. Caterpillar Tractor Co.*, 1990 CanLII 5609 (AB KB) at para. 6, 16 and 21
23.	*Elfe Juvenile Products Inc. v. Bern*, 1994 CarswellOnt 1065 (Ont. Gen. Div.) at paras. 26, 29-30, 40, Cargill BOA, Tab 1

Tab No.	Description
24.	*Payne v. Ontario (Human Rights Commission)*, 2000 CanLII 5731 (ONCA) at para. 166
25.	Exhibit 6 to Davies Cross being Exchange of text messages between Mr. Broking and Mr. Davies, Transcript Brief, Tab 1(F), PDF p. 164
26.	Exhibit 7 to Davies Cross being Exchange of Teams messages between Mr. Kirk and Mr. Davies, Transcript Brief, Tab 1(G), PDF p. 168

1

DIP FACILITY TERM SHEET

This term sheet dated as of October 9, 2023 (this "**Term Sheet**") sets out the terms on which Cargill, Incorporated ("**Cargill**") is prepared to provide debtor-in-possession financing to Tacora Resources Inc.

Background:

CITPL (as defined below) is party to various existing agreements with Tacora, including the Advance Payments Facility Agreement, the Offtake Agreement, the Onshore Agreement and the Wetcon PSA (collectively, the "**Existing Arrangements**") and, pursuant to certain of those Existing Arrangements, Cargill provides various forms of financing and credit, as well as margining, hedging, price protection and operational support, to Tacora.

Tacora has requested that Cargill provide the DIP Facility (as defined below) and continue the Existing Arrangements during the pendency of its proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to be commenced before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") and in accordance with the terms and conditions set out herein;

Cargill has agreed to cause CITPL to continue the Existing Arrangements and provide the DIP Facility pursuant to and in accordance with, among other terms, those terms set out below:

1.	**BORROWER:**	Tacora Resources Inc. ("**Borrower**").
2.	**DIP LENDER:**	(i) Cargill and (ii) subject to consent of the Borrower and the Monitor (including to the terms and conditions of any such participation), such other Persons (including any holder of the Company's existing indebtedness or Equity Securities) that wish to participate in the DIP Facility on the terms set out in this Term Sheet (collectively, the "**DIP Lender**"). Unless the Borrower and the Monitor provided their consent in connection with the participation of another DIP Lender, Cargill shall be liable for all obligations of the DIP Lender hereunder.
3.	**DEFINED TERMS:**	Unless otherwise defined herein, capitalized words and phrases used in this Term Sheet have the meanings given thereto in Schedule "**A**".
4.	**DIP FACILITY ADVANCES:**	A senior secured, superpriority, debtor-in-possession, interim, non-revolving credit facility (the "**DIP Facility**") up to a maximum principal amount of $75 million (as such amount may be reduced from time to time pursuant to the terms hereof, the "**Facility Amount**"), subject to the terms and conditions contained herein. The DIP Facility shall be made available to the Borrower by way of: (a) an initial advance (the "**Initial Advance**") in a principal amount of $15,500,000; and (b) subsequent advances (each a "**Subsequent Advance**") made every other week (or as otherwise agreed by the Borrower and DIP

Lender) with each Subsequent Advance amount being in an amount no less than $1,000,000 and the principal amount of the aggregate Subsequent Advances being no more than $59.5 million, such that the sum of the Initial Advance and the Subsequent Advances shall not exceed the Facility Amount. The timing for each Subsequent Advance shall be determined based on the funding needs of the Borrower as set forth in the DIP Budget.

The Initial Advance shall be deposited by the DIP Lender into the Operating Account within one (1) Business Day of the date on which the Initial Advance Conditions are satisfied and the Borrower delivers to the DIP Lender an Advance confirmation certificate in the form of Schedule "**B**" (an "**Advance Confirmation Certificate**").

Each Subsequent Advance shall be deposited by the DIP Lender into the Operating Account within two (2) Business Days of the date on which the Borrower delivers to the DIP Lender an Advance Confirmation Certificate in respect of such Subsequent Advance, provided that the Subsequent Advance Conditions are satisfied as of the date on which such Advance Confirmation Certificate is delivered.

The Advance Confirmation Certificate shall certify that (i) all representations and warranties of the Borrower contained in this Term Sheet remain true and correct in all material respects both before and after giving effect to the use of such proceeds, (ii) all of the covenants of the Borrower contained in this Term Sheet and all other terms and conditions contained in this Term Sheet to be complied with by the Borrower, not properly waived in writing by the DIP Lender, have been fully complied with, and (iii) no Default or Event of Default then exists and is continuing or would result therefrom.

Each Advance Confirmation Certificate shall be deemed to be acceptable and shall be honoured by the DIP Lender unless the DIP Lender has provided to the Borrower and the Monitor an objection thereto in writing, providing reasons for the objection, by no later than 4:00 p.m. Eastern Time on the Business Day following the delivery of such Advance Confirmation Certificate. A copy of each Advance Confirmation Certificate shall be concurrently provided to DIP Lender and the Monitor.

5. **EXISTING ARRANGEMENTS:** In addition to the DIP Facility, unless an Event of Default then exists, Cargill shall cause CITPL to continue to make the deemed Margin Advances (as defined under the Advance Payments Facility Agreement) under section 2.2 of the Advance Payments Facility Agreement to fund any Margin Amounts (as defined therein) required to be funded from and after the Filing Date and all such Margin Advances shall be secured by the DIP Lender Charge (the "**Post-Filing Margin Advances**").

In addition to the foregoing, unless an Event of Default then exists, Cargill shall cause CITPL to (a) continue to provide the Borrower with the services a full time operational consultant and two (2) part-time capital project consultants, in a manner consistent with past practice, to assist with the

business and operation of the Borrower (the "**Existing Services**"); and (b) provide other services (including consulting or advisory services or technical support) whether provided through third parties or by employees of Cargill that may be agreed by the Borrower and Cargill from time to time, with consent of the Monitor (the "**Additional Services**" and together with the Existing Services, collectively, the "**Services**").

The Existing Services shall continue to be provided at no cost, consistent with past practice, and the cost of the Additional Services shall be mutually agreed by Cargill (or CITPL) and the Borrower, with the consent of the Monitor. The Borrower shall reimburse CITPL for the cost of the Services on the Maturity Date and all such amounts to be reimbursed shall be secured by and have the benefit of the DIP Lender Charge with the same priority as the DIP Obligations (the "**Ancillary Post-Filing Credit Extensions**" and together with the Post-Filing Margin Advances, collectively, the "**Post-Filing Credit Extensions**").

Cargill also agrees, provided that no Event of Default has occurred, that it shall cause CITPL to:

(a) Extend the term of the Onshore Agreement to the Maturity Date, provided that following an Event of Default, CITPL may discontinue performance of the Onshore Agreement with leave of the Court in accordance with section 24 hereof;

(b) Continue to perform its obligations under the Offtake Agreement, provided that following an Event of Default, CITPL may discontinue such performance with leave of the Court in accordance with section 24 hereof; and

(c) Continue to honour and perform in respect of any existing side letters entered into between the Borrower and Cargill in respect of hedges for the sale and purchase of iron ore under the Offtake Agreement notwithstanding the commencement of the CCAA Proceedings, provided that following an Event of Default, CITPL may discontinue such performance with leave of the Court in accordance with section 24 hereof.

Neither the granting of the DIP Lender Charge, nor any provision in this Term Sheet is intended to, nor shall it be construed in a manner that would, affect or amend any transfer of title to CITPL pursuant to and in accordance with the Existing Arrangements. For greater certainty, in no event shall Cargill be required to made or provide any Post-Filing Credit Extensions which are not secured by or do not have the benefit of the DIP Lender Charge with the same priority as the DIP Obligations.

6. **PURPOSE AND PERMITTED PAYMENTS:** The Borrower shall use proceeds of the DIP Facility solely for the following purposes and in the following order, in each case in accordance with the DIP Budget:

(a) to pay the reasonable and documented professional and advisory

fees and expenses (including legal fees and expenses) of (i) the Borrower and (ii) the Monitor (collectively, the "**Borrower Restructuring Expenses**");

(b) to pay the reasonable and documented DIP Lender Expenses;

(c) to pay the interest, fees and other amounts owing to the DIP Lender under this Term Sheet; and

(d) to fund, in accordance with the DIP Budget, the Borrower's funding requirements during the CCAA Proceedings, including, without limitation, in respect of the pursuit of a Restructuring Transaction and the working capital and other general corporate funding requirements of the Borrower during such period.

For greater certainty, the Borrower may not use the proceeds of the DIP Facility to pay any category of obligations that are not included in the DIP Budget without the prior written consent of the DIP Lender and may not pay the professional or advisory fees or expenses of any other Person that are not provided for in the DIP Budget, except pursuant to the terms of a binding support agreement with such Person with respect to the Restructuring Transaction that is acceptable to the DIP Lender, or as may otherwise be agreed to by the DIP Lender and the Borrower (in consultation with the Monitor).

7. **INITIAL ADVANCE CONDITIONS:**

The DIP Lender's agreement to make the Facility Amount available to the Borrower and to advance the Initial Advance to the Borrower is subject to the satisfaction of the following conditions precedent (collectively, the "**Initial Advance Conditions**"), each of which is for the benefit of the DIP Lender and may be waived by the DIP Lender in its sole discretion:

(a) The Court shall have issued an initial order in respect of the Borrower (the "**Initial Order**") in substantially the form attached hereto as Schedule "**D**" and with such changes as are acceptable to the Borrower, the Monitor and the DIP Lender, each acting reasonably. The Initial Order shall, without limitation, (i) approve this Term Sheet and authorize the DIP Facility, and the borrowing of the Initial Advance to be secured by the DIP Lender Charge, (ii) authorize and approve any Post-Filing Credit Extensions in an aggregate principal amount of up to $20,000,000 to be secured by the DIP Lender Charge and (iii) grant the DIP Lender and CITPL (solely in respect of the Post-Filing Credit Extensions) a priority charge (the "**DIP Lender Charge**") on the Borrower's Collateral as security for the payment of (i) the Initial Advance and (ii) any Post-Filing Credit Extensions in an aggregate principal amount of up to $20,000,000, which DIP Lender Charge shall have priority over all Liens on the Borrower's Collateral other than (A) the Permitted Priority Liens and (B) Liens of any Person that did not receive notice of the application for the Initial Order, and such Initial Order shall not have been stayed, vacated or otherwise caused to be ineffective or amended, restated or modified (other

than in connection with the granting of the Amended Initial Order), without the written consent of the DIP Lender, acting reasonably.

(b) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance.

(c) The Borrower shall have executed and delivered this Term Sheet.

(d) The Borrower shall have delivered an Advance Confirmation Certificate in respect of such Advance.

8. **SUBSEQUENT ADVANCE CONDITIONS:** The DIP Lender's agreement to advance a Subsequent Advance to the Borrower is subject to the satisfaction of the following conditions precedent (collectively, the "**Subsequent Advance Conditions**"), each of which is for the benefit of the DIP Lender and may be waived by the DIP Lender in its sole discretion:

(a) At the comeback motion in respect of the Initial Order, the Court shall have issued an amended and restated Initial Order (the "**Amended Initial Order**") in substantially the form attached hereto as Schedule "**E**" and with such changes as are acceptable to the Borrower, the Monitor and the DIP Lender, each acting reasonably, including as necessary to (i) authorize the Borrower to borrow up to the Facility Amount, and (ii) provide that the DIP Lender Charge shall be increased to include the full Facility Amount together with any Post-Filing Credit Extensions, and shall have priority over all Liens in respect of the Borrower's Collateral other than the Permitted Priority Liens.

(b) The Amended Initial Order shall not have been stayed, vacated or otherwise amended, restated or modified without the consent of the DIP Lender, acting reasonably.

(c) There shall be no Liens ranking in priority to the DIP Lender Charge over the Borrower's Collateral other than the Permitted Priority Liens.

(d) All Initial Advance Conditions shall continue to be satisfied.

9.	**COSTS AND EXPENSES:**	The Borrower shall reimburse the DIP Lender for all reasonable and documented out-of-pocket legal and financial advisory fees and expenses incurred before or after the Filing Date (collectively, the "**DIP Lender Expenses**") in connection with the DIP Facility, the DIP Credit Documents, and the DIP Lender's participation in the CCAA Proceedings, provided that the legal fees and expenses of the DIP Lender incurred prior to the Filing Date in connection with the preparation of the DIP Facility and that form part of the DIP Lender Expenses, shall be capped at $125,000 plus applicable taxes. The DIP Lender Expenses shall form part of the DIP Obligations secured by the DIP Lender Charge. All accrued DIP Lender Expenses incurred prior to the Filing Date in connection with the DIP Facility and the preparation for and initiation of the CCAA Proceedings shall be paid in full through deduction from the Initial Advance.
10.	**DIP LENDER CHARGE:**	All DIP Obligations shall be secured by the DIP Lender Charge, in connection with which the DIP Lender may, in its reasonable discretion, require the execution, filing or recording of any security agreements, pledge agreements, financing statements or other documents or instruments, in order to obtain, or further evidence, a Lien on such Collateral. For greater certainty, the execution, filing or recording of any security agreements, pledge agreements, financing statements or other documents or instruments shall not be (a) an Initial Advance Condition or (b) a Subsequent Advance Condition except and unless the DIP Lender has provided the Borrower with seven (7) Business Days' notice that the execution, filing or recording of such security agreements, pledge agreements, financing statements or other documents or instruments is required.
11.	**PERMITTED LIENS: AND PRIORITY:**	All Collateral will be free and clear of all Liens, except for the Permitted Liens.
12.	**REPAYMENT:**	The DIP Facility and the DIP Obligations shall be due and repayable in full on the earlier of: (i) the occurrence of any Event of Default which is continuing and has not been cured; (ii) the completion of a Restructuring Transaction; (iii) the conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); (iv) the date on which the DIP Obligations are voluntarily prepaid in full and the DIP Facility is terminated and (v) the Outside Date (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrower (in consultation with the Monitor) and with the prior written consent of the DIP Lender for such period and on such terms and conditions as the DIP Lender may agree in its sole discretion. Without the consent of the DIP Lender, acting in its sole discretion, no Court Order sanctioning a Plan shall discharge or otherwise affect in any way the DIP Obligations, other than after the permanent and indefeasible payment in cash to the DIP Lender of all DIP Obligations on or before the

date such Plan is implemented.

13. **DIP BUDGET AND VARIANCE REPORTING:** Attached hereto as Schedule "**C**" is a copy of the agreed summary DIP Budget (excluding the supporting documentation provided to the DIP Lender in connection therewith) as in effect on the date hereof (the "**Initial DIP Budget**"), which the DIP Lender acknowledges and agrees has been reviewed and approved by it, and is in form and substance satisfactory to the DIP Lender. Such DIP Budget shall be the DIP Budget referenced in this Term Sheet unless and until such time as a revised DIP Budget has been approved by the DIP Lender in accordance with this Section 13.

The Borrower may update and propose a revised DIP Budget to the DIP Lender no more frequently than every two (2) weeks (unless otherwise consented to by the DIP Lender), in each case to be delivered to the Monitor and the DIP Lender and its legal counsel by no earlier than the Friday of the second week following the date of the delivery of the prior DIP Budget. Such proposed revised DIP Budget shall have been reviewed and approved by the Monitor. If the DIP Lender determines that the proposed revised DIP Budget is not acceptable, it shall, within three (3) Business Days of receipt thereof, provide written notice to the Borrower and the Monitor stating that the proposed revised DIP Budget is not acceptable and setting out the reasons why such revised DIP Budget is not acceptable, and until the Borrower has delivered a revised DIP Budget acceptable to the DIP Lender, the prior DIP Budget shall remain in effect. In the event that the DIP Lender does not deliver to the Borrower written notice within three (3) Business Days after receipt by the DIP Lender of a proposed revised DIP Budget that such proposed revised DIP Budget is not acceptable to it, such proposed revised DIP Budget shall automatically and without further action be deemed to have been accepted by the DIP Lender and become the DIP Budget for the purposes hereof.

At any time, the latest DIP Budget accepted by the DIP Lender shall be the DIP Budget for the purpose of this Term Sheet.

On the last Business Day of every second week, the Borrower shall deliver to the Monitor and the DIP Lender and its legal counsel a variance calculation (the "**Variance Report**") setting forth actual disbursements for the preceding two weeks ending on the preceding Friday (each a "**Testing Period**") and on a cumulative basis as against the then-current DIP Budget, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the DIP Budget; each such Variance Report is to be promptly discussed with the DIP Lender and its legal and financial advisors. Each Variance Report shall include reasonably detailed explanations for any material variances during the relevant Testing Period.

14. **EVIDENCE OF INDEBTEDNESS:** The DIP Lender's accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the DIP Lender pursuant to the DIP Facility and the Post-Filing Credit Extensions.

15. **PREPAYMENTS:** Provided the Monitor consents, the Borrower may prepay any DIP Obligations at any time prior to the Maturity Date without premium or penalty. Any amount repaid may not be reborrowed without the prior written consent of the DIP Lender, which may be withheld in its sole discretion.

The Borrower may, at any time, negotiate and enter into another interim financing facility that provides for the prepayment of the DIP Obligations and all Post-Filing Credit Extensions in full, and the concurrent (i) termination of the DIP Facility and this Term Sheet, including all obligations of the DIP Lender or Cargill to make further Post-Filing Margin Advances or other Post-Filing Credit Extensions and (ii) termination of the Onshore Agreement.

16. **INTEREST RATE:** Interest shall be payable on (a) the principal amount of Advances and (b) overdue interest, fees (including the Exit Fee) and DIP Lender Expenses outstanding from time to time at a rate equal to 10.0% *per annum*, payable monthly in arrears in cash on the last Business Day of each month.

All interest shall be computed daily on the basis of a calendar year of 365 or 366 days, as applicable, and, if not paid when due, shall compound monthly. Whenever any interest is calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act* (Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis for such determination.

17. **EXIT FEE:** Upon the earlier of (a) completion of a successful Restructuring Transaction and (b) the indefeasible repayment in full of the DIP Facility and all other DIP Obligations and/or cancellation of all remaining commitments in respect thereof, the Borrower shall pay an exit fee, in cash, in an amount equal to 3.00% of the aggregate committed amount of the DIP Facility, being equal to $2,250,000 (the "**Exit Fee**"), provided that the Exit Fee shall only be payable if the DIP Facility is approved pursuant to the Amended Initial Order.

18. **CURRENCY** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States and all payments made by the Borrower under this Term Sheet shall be in United States dollars. If any payment is received by the DIP Lender hereunder in a currency other than United States dollars, or, if for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties hereby agree, to the fullest extent permitted by Applicable Law, that the rate of exchange used shall be the rate at which the DIP Lender is able to purchase the Other Currency with the Original Currency after any costs of exchange on the Business Day preceding that on which such payment is made or final judgment is given.

19. **MANDATORY REPAYMENTS:** Unless otherwise consented to in writing by the DIP Lender, the net cash proceeds of any sale, realization or disposition of, or with respect to, any of the Collateral (including obsolete, excess or worn-out Collateral) out of the ordinary course of business, or any insurance proceeds paid to the Borrower in respect of such Collateral, shall be paid to the DIP Lender and applied to reduce the DIP Obligations and permanently reduce and cancel an equivalent portion of the Facility Amount in an amount equal to the net cash proceeds of such sale, realization, disposition or insurance (for greater certainty, net of transaction fees and applicable taxes in respect thereof). Any amount repaid may not be reborrowed.

20. **REPS AND WARRANTIES:** The Borrower represents and warrants to the DIP Lender, upon which the DIP Lender is relying in entering into this Term Sheet and the other DIP Credit Documents, that:

(a) The Borrower has been duly formed and is validly existing under the law of its jurisdiction of incorporation;

(b) The transactions contemplated by this Term Sheet and the other DIP Credit Documents, upon the granting of the Initial Order:

(i) are within the powers of the Borrower;

(ii) have been duly executed and delivered by or on behalf of the Borrower;

(iii) constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms;

(iv) do not require any material authorization from, the consent or approval of, registration or filing with, or any other action by, any governmental authority or any third party; and

(v) will not violate the charter documents, articles by-laws or other constating documents of the Borrower or any Applicable Law relating to the Borrower.

(c) The Borrower owns its assets with good and marketable title thereto, subject only to Permitted Liens;

(d) The business operations of the Borrower have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which the business has been or is carried out;

(e) The Borrower has obtained all material licences and permits required for the operation of its business, which licences and permits remain in full force and effect and no proceedings have been commenced or threatened to revoke or amend any of such licences or permits;

(f) The Borrower maintains adequate insurance coverage, as is customary with companies in the same or similar business (except with respect to directors' and officers' insurance in respect of which no representation is made regarding adequacy of coverage) of such type, in such amounts and against such risks as is prudent for a business of its nature with financially sound and reputable insurers and that contain reasonable coverage and scope;

(g) The Borrower has maintained and paid current its obligations for payroll, source deductions, harmonized, goods and services and retail sales tax, and is not in arrears of its statutory obligations to pay or remit any amount in respect of these obligations;

(h) Other than as stayed pursuant to the Initial Order or the Amended Initial Order (once granted), there is not now pending or, to the knowledge of any of the senior officers of the Borrower, threatened against the Borrower, nor has the Borrower received notice in respect of, any material claim, potential claim, litigation, action, suit, arbitration or other proceeding by or before any court, tribunal, governmental entity or regulatory body;

(i) Except for those defaults set out on Schedule 20(i) hereto which are stayed by the Initial Order or the Amended Initial Order, all Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms and the Borrower does not have any knowledge of any default that has occurred and is continuing thereunder (other than those defaults arising as a result of or relating to the insolvency of the Borrower or any of its affiliates or the commencement of the CCAA Proceedings);

(j) Except as disclosed to the DIP Lender in writing by the Borrower, there are no agreements of any kind between the Borrower and any other third party or any holder of debt or Equity Securities of the Borrower with respect to any Restructuring Transaction, which remain in force and effect as of the Filing Date;

(k) No Default or Event of Default has occurred and is continuing;

(l) All written information furnished by or on behalf of the Borrower to the DIP Lender or its advisors for the purposes of, or in connection with, this Term Sheet, the other DIP Credit Documents, the Existing Arrangements, or any other relevant document or any other transaction contemplated thereby, is true and accurate in all material respects on the date as of which such information is dated or certified, and not incomplete by omitting to state any material fact necessary to make such information not misleading at such time in light of then-current circumstances; and

(m) The report of the Borrower to the DIP Lender on the status of its sale and investment solicitation process to date is accurate and complete, and the Borrower has disclosed all material information

in respect of such process to the DIP Lender.

21. **AFFIRMATIVE COVENANTS:** The Borrower agrees to do, or cause to be done, the following until the DIP Obligations are permanently and indefeasibly repaid in full:

(a) (i) Allow representatives or advisors of the DIP Lender reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Borrower, and (ii) cause management, the financial advisor and/or legal counsel of the Borrower to cooperate with reasonable requests for information by the DIP Lender and its legal and financial advisors in connection with matters reasonably related to the DIP Facility, the CCAA Proceedings, or compliance of the Borrower with its obligations pursuant to this Term Sheet, in each case subject to applicable privacy laws, solicitor-client privilege, and any disclosure restrictions contained in any Court Order or that, in the opinion of the Borrower (in consultation with the Monitor), each acting reasonably, are necessary to protect the Borrower's restructuring process;

(b) Keep the DIP Lender apprised on a timely basis of all material developments with respect to the business and affairs of the Borrower and the CCAA Proceedings, including all matters relating to its pursuit of a Restructuring Transaction, in each case subject to any disclosure restrictions contained in any Court Order or that, in the opinion of the Borrower (in consultation with the Monitor), each acting reasonably, are necessary to protect the Borrower's restructuring process;

(c) Deliver to the DIP Lender the reporting and other information from time to time reasonably requested by the DIP Lender and as set out in this Term Sheet including, without limitation, the Variance Reports at the times set out herein;

(d) Use the proceeds of the DIP Facility only in accordance with the restrictions set out in this Term Sheet and pursuant to the DIP Budget and Court Orders, subject to Permitted Variances;

(e) Obtain the Amended Initial Order by October 20, 2023, in each case substantially in the form attached hereto and with such changes as are acceptable to the Borrower, the Monitor and the DIP Lender, each acting reasonably;

(f) Comply with the provisions of the Initial Order, the Amended Initial Order, and all other Court Orders;

(g) Preserve, renew and keep in full force its corporate existence;

(h) Promptly notify the DIP Lender of the occurrence of any Default or Event of Default;

(i) Comply with Applicable Law in all material respects, except to the extent not required to do so pursuant to any Court Order;

(j) Provide the DIP Lender and its counsel draft copies of and the opportunity to comment on all motions, applications, proposed Court Orders and other materials or documents that the Borrower intends to file in the CCAA Proceedings at least two (2) Business Days prior to any such filing or, where it is not practically possible to do so within such time, as soon as possible prior to the date on which such motion, application, proposed Court Order or other materials or document is served on the service list in respect of the CCAA Proceeding;

(k) Take all commercially reasonable actions necessary or available to defend the Court Orders from any appeal, reversal, modifications, amendment, stay or vacating not expressly consented to in writing in advance by the DIP Lender relating to the DIP Facility or the DIP Lender Charge;

(l) Promptly provide notice to the DIP Lender and its counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract, subject to any disclosure restrictions contained in any Court Order or that, in the opinion of the Borrower (in consultation with the Monitor), each acting reasonably, are necessary to protect the Borrower's restructuring process;

(m) Promptly provide notice to the DIP Lender and its counsel, and keep them otherwise apprised, of any material notices, orders, decisions, letters, or other documents, materials, information or correspondence received from any regulatory authority having jurisdiction over the Borrower;

(n) Provide the DIP Lender and its advisors from time to time, on a confidential basis, with such information regarding the progress of the Borrower's pursuit of a Restructuring Transaction as may be reasonably requested by the DIP Lender, subject to any disclosure restrictions contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), each acting reasonably, are necessary to protect the Borrower's restructuring process;

(o) Execute and deliver such loan and security documentation as may be reasonably requested by the DIP Lender from time to time;

(p) At all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the Borrower with financially sound and reputable insurers in coverage and scope acceptable to the DIP Lender, acting reasonably, and, if requested by the DIP Lender, cause the DIP Lender to be listed as the loss payee or additional insured (as

applicable) on such insurance policies. The DIP Budget shall permit funding sufficient to pay the premiums in respect of such insurance, including director and officer tail insurance at the discretion of and on terms acceptable to the Borrower;

(q) Promptly following receipt of summary invoices, pay all DIP Lender Expenses no less frequently than every two weeks, provided that the DIP Lender shall provide reasonable estimates of such expenses for purposes of the DIP Budget;

(r) Comply with the terms, and keep in full force and effect, each of (i) (i) the Offtake Agreement, (ii) the Onshore Agreement and (iii) the Wetcon PSA (other than any notice delivered under Section 4.4 thereof unless delivered following an Event of Default and with leave of the Court in accordance with Section 24 hereof);

(s) Promptly upon becoming aware thereof, provide details of any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against the Borrower by or before any court, tribunal, Governmental Authority or regulatory body, which would be reasonably likely to result, individually or in the aggregate, in a judgment in excess of $100,000;

(t) Comply with the DIP Budget subject to the Permitted Variance; and

(u) Act diligently and in good faith in the pursuit of the CCAA Proceedings.

22. **NEGATIVE COVENANTS:** The Borrower covenants and agrees not to do, or cause not to be done, the following, until the DIP Obligations are permanently and indefeasibly repaid in full, other than with the prior written consent of the DIP Lender or with the express consent required as outlined below:

(a) Transfer, lease or otherwise dispose of all or any material part of its property, assets or undertaking outside of the ordinary course of business, except for the disposition of obsolete, redundant or ancillary assets in accordance with the Amended Initial Order or another Court Order;

(b) Make any payment, including, without limitation, any payment of principal, interest or fees, in respect of any obligation of the Borrower arising or relating to the period prior to the Filing Date, other than in accordance with the Court Orders and the DIP Budget;

(c) Create or permit to exist any indebtedness other than (i) the indebtedness existing as of the Filing Date, (ii) the DIP Obligations, and (iii) any obligation expressly permitted to be incurred pursuant to any Court Order and (iv) post-filing trade payables or other unsecured obligations incurred in the ordinary course of business on or following the Filing Date in accordance with the DIP Budget

and the Initial Order or the Amended Initial Order;

(d) Make (i) any distribution, dividend, return of capital or other distribution in respect of Equity Securities (in cash, securities or other property or otherwise); or (ii) a retirement, redemption, purchase or repayment or other acquisition of Equity Securities or indebtedness (including any payment of principal, interest, fees or any other payments thereon);

(e) Issue any Equity Securities nor create any new class of Equity Securities or amend any terms of its existing Equity Securities, other than in connection with a Restructuring Transaction approved pursuant to a Court Order;

(f) Consent to or take any steps in furtherance of the exercise of any conversion right under any Equity Securities issued by it;

(g) Except as authorized by a Court Order, increase compensation or severance entitlements or other benefits payable to directors, senior officers or senior management, or pay any bonuses whatsoever, other than in accordance with the DIP Budget;

(h) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than in accordance with the DIP Budget;

(i) Create or permit to exist any Liens on any of its properties or assets other than the Permitted Liens;

(j) Make any payments (including payments to affiliates) or expenditures (including capital expenditures), other than in accordance with the DIP Budget, subject to the Permitted Variance and provided that the Borrower shall in no event pay any professional or advisory fees (including any legal fees or expenses) of any other Person (other than the Borrower, the DIP Lender and the Monitor) that are not provided for in the DIP Budget, except pursuant to the terms of a binding support agreement with such Person with respect to the Restructuring Transaction that is acceptable to the DIP Lender, or as may otherwise be agreed to by the DIP Lender and the Borrower (in consultation with the Monitor);

(k) [reserved]

(l) Amalgamate, consolidate with or merge into or sell all or substantially all of its assets to another entity, or change its corporate or capital structure (including its organizational documents) except as may be approved by Court Order or undertaken pursuant to a Court-approved Restructuring Transaction;

(m) Make any changes to composition (including addition, removal or replacement of directors) of the board of directors of the Borrower (other than a resignation by a director), other than pursuant to a Court Order;

(n) Seek, obtain, support, make or permit to be made any Court Order or any change, amendment or modification to any Court Order that would materially affect the rights or protections of the DIP Lender under or in connection with the DIP Facility or the DIP Lender Charge, except with the prior written consent of the DIP Lender, in its sole discretion;

(o) Enter into any settlement agreement or agree to any settlement arrangements with any Governmental Authority or regulatory authority or in connection with any litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against it;

(p) Without the approval of the Court, cease to carry on its business or activities or any material component thereof as currently being conducted or modify or alter in any material manner the nature and type of its operations or business;

(q) Seek, or consent to the appointment of, a receiver or trustee in bankruptcy or any similar official in any jurisdiction; or

(r) Seek or consent to the lifting of the stay of proceedings in the Initial Order or Amended Initial Order, as applicable, in favour of the Borrower.

23. **EVENTS OF DEFAULT:** The occurrence of any one or more of the following events shall constitute an event of default (each an "**Event of Default**") under this Term Sheet:

(a) Failure of the Borrower to pay: (i) principal, interest or other amounts when due pursuant to this Term Sheet or any other DIP Credit Documents; or (ii) the DIP Lender Expenses within ten (10) Business Days of being invoiced therefor, and such failure, in the case of items (i) and (ii) remains unremedied for more than three (3) Business Days;

(b) Failure of the Borrower to perform or comply with any term, condition, covenant or obligation pursuant to this Term Sheet, and such failure remains unremedied for more than three (3) Business Days, *provided that*, where another provision in this Section 23 expressly provides for a shorter or no cure period in respect of a particular Event of Default, such other provision shall apply;

(c) Any representation or warranty by the Borrower made or deemed to be made in this Term Sheet or any other DIP Credit Document is or

proves to be incorrect or misleading in any material respect as of the date made;

(d) The termination, suspension or disclaimer of the Existing Arrangements, or the taking of any steps to terminate, suspend or disclaim (if permitted under the CCAA) any of the Existing Arrangements (which, for greater certainty, shall not include (i) the commencement and prosecution of the SISP, including the solicitation of an Alternative Offtake or Service Agreement, or (ii) taking any step or related action pursuant to a binding agreement entered into in respect of a Restructuring Transaction at or after the Bid Deadline, including executing such agreement, seeking court approval of such binding agreement or taking any steps in connection with consummating the Restructuring Transaction pursuant to such binding agreement) in each case at or after the Bid Deadline, without prejudice to any rights that CITPL may have pursuant to section 32 (including subsection 32(9)(c)) of the CCAA or otherwise;

(e) A default (other than a default resulting from the insolvency of the Borrower or the commencement of the CCAA Proceedings by the Borrower including, for greater certainty, as result of failure to pay pre-filing amounts as result of the commencement of the CCAA Proceedings) under any Material Contract (other than failure to comply with any notice delivered under Section 4.4 of the Wetcon PSA unless delivered following an Event of Default and with leave of the Court in accordance with Section 24 hereof) or any material amendment of any Material Contract unless agreed to by the DIP Lender in writing;

(f) Issuance of any Court Order (i) dismissing the CCAA Proceedings or lifting the stay of proceedings therein to permit the enforcement of any security against the Borrower or their Collateral, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order or receiving order against or in respect of the Borrower, in each case which order is not stayed pending appeal thereof; (ii) granting any other Lien in respect of the Borrower's Collateral that is in priority to or *pari passu* with the DIP Lender Charge other than a Permitted Priority Lien, (iii) modifying this Term Sheet or any other DIP Credit Document without the prior written consent of the DIP Lender in its sole discretion; or (iv) staying, reversing, vacating or otherwise modifying any Court Order in respect of the DIP Facility or the DIP Lender Charge without the prior written consent of the DIP Lender in its sole discretion;

(g) Unless consented to in writing by the DIP Lender, the expiry without further extension of the stay of proceedings provided for in the Initial Order or the Amended Initial Order;

(h) (i) a Variance Report is not delivered within two (2) Business Days of the day on which such Variance Report is required to be delivered pursuant to this Term Sheet, or (ii) there shall exist a cumulative negative variance in excess of the Permitted Variance for the period from the Filing Date to the last day of such Testing Period, measured relative to the Initial DIP Budget or such revised DIP Budget as has been approved by the DIP Lender in accordance with Section 13;

(i) The denial or repudiation by the Borrower of the legality, validity, binding nature or enforceability of this Term Sheet or any other DIP Credit Documents or the DIP Obligations; or

(j) Except as stayed by order of the Court or any other court with jurisdiction over the matter, the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of $500,000 in the aggregate, against the Borrower or its Collateral that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy.

24. **REMEDIES:** Upon the occurrence of an Event of Default, and subject to the Court Orders, the DIP Lender may, in its sole discretion, elect to terminate the commitments hereunder and declare the DIP Obligations to be immediately due and payable and refuse to permit further Advances. In addition, upon the occurrence of an Event of Default, the DIP Lender may, with leave of the Court on four (4) Business Days' notice to the Borrower and the Monitor, and in accordance with the Court Orders:

(a) apply to the Court for the appointment of a receiver, interim receiver or receiver and manager over the Borrower or all or certain of its Collateral, or for the appointment of a trustee in bankruptcy in respect of the Borrower;

(b) set-off or combine any amounts then owing by the DIP Lender to the Borrower against the DIP Obligations and the Post-Filing Credit Extensions; and

(c) exercise against the Borrower the powers and rights of a secured party pursuant to the *Personal Property Security Act* (Ontario).

25. **INDEMNITY AND RELEASE:** The Borrower agrees to indemnify and hold harmless the DIP Lender and its affiliates and their respective directors, officers, employees, agents, counsel and advisors (all such persons and entities being referred to hereafter as "**Indemnified Persons**") from and against any and all actions, suits, proceedings, claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against any Indemnified Person (collectively, "**Claims**") as a result of or arising out of or in any way related to the DIP Facility or this Term Sheet or the Existing Arrangements and, upon demand, to pay and reimburse any Indemnified

Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim; provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability (x) to the extent it resulted from the gross negligence, wilful misconduct or bad faith of any Indemnified Person as finally determined by a court of competent jurisdiction, or (y) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Borrower. The Borrower shall not be responsible or liable to any Indemnified Person or any other person for consequential or punitive damages.

Notwithstanding anything to the contrary herein, the indemnities granted under this Term Sheet shall survive any termination of the DIP Facility.

26. **TERMINATION BY BORROWER:** The Borrower shall be entitled to terminate this Term Sheet upon notice to the DIP Lender: (i) in the event that the DIP Lender has failed to fund the Facility Amount when required to do so under this Term Sheet, or (ii) at any time following the indefeasible payment in full in immediately available funds of all of the outstanding DIP Obligations. Effective immediately upon such termination, all obligations of the Borrower and the DIP Lender under this Term Sheet shall cease, except for those obligations that explicitly survive termination, provided that nothing in this Section 27 shall relieve the Borrower from its obligations under the Existing Arrangements. For greater certainty, all outstanding DIP Obligations in respect of all Advances and all obligations under the Existing Arrangements funded prior to such termination shall become immediately due and payable concurrently with such termination and the DIP Lender shall not be required to make any further extensions of credit under this Term Sheet or the Existing Arrangements.

27. **HEDGING:** The parties agree that upon entry into this Term Sheet, the Borrower shall be authorized to enter into one or more hedging arrangements from time to time, as may be mutually agreed by the Borrower and Cargill (or any of its affiliates), and approved by the Monitor.

28. **TAXES:** All payments by the Borrower to the DIP Lender pursuant to this Term Sheet or otherwise on account of the DIP Obligations, including any payments required to be made from and after the exercise of any remedies available to the DIP Lender upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes are required by Applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to the DIP Lender under this Term Sheet or otherwise on account of the DIP Obligations, the amount so payable to the DIP Lender shall be increased to the extent necessary to yield to the DIP Lender

on a net basis after payment of all Withholding Taxes, the amount payable under this Term Sheet at the rate or in the amount specified herein and the Borrower shall provide evidence satisfactory to the DIP Lender that the Withholding Taxes have been so withheld and remitted.

If the Borrower pays an additional amount to the DIP Lender to account for any Withholding Taxes, the DIP Lender shall reasonably cooperate with the Borrower to obtain a refund of the amounts so withheld, including filing income tax returns in applicable jurisdictions, claiming a refund of such Withholding Tax and providing evidence of entitlement to the benefits of any applicable tax treaty. The amount of any refund so received, and interest paid by the tax authority with respect to any refund, shall be paid over by the DIP Lender to the Borrower promptly. If reasonably requested by the Borrower, the DIP Lender shall apply to the relevant taxing authority to obtain a waiver from such withholding requirement, and the DIP Lender shall cooperate with the Borrower and assist the Borrower to minimize the amount of Withholding Tax required, in each case at the Borrower's expense.

29. **STRATEGIC PROCESS:**

The Borrower and the DIP Lender agree that the Borrower (in consultation with the Monitor) shall pursue a sales and investment solicitation process (the "**SISP**") approved pursuant to a Court Order in respect of (a) potential Restructuring Transactions that may be available to the Borrower; and (b) offtake, service or other agreements in respect of the business of the Borrower ("**Alternative Offtake and Service Agreements**") that may be available to the Borrower, and the SISP shall include the following milestones:

(a) The deadline for the receipt of non-binding letters of intent: (i) for potential Restructuring Transactions; and/or (ii) any Alternative Offtake and Service Agreements, will be no later than December 1, 2023;

(b) The final deadline for the receipt of binding bids: (i) for potential Restructuring Transactions; and/or (ii) any Alternative Offtake and Service Agreements, will be no later than January 19, 2024 (the "**Bid Deadline**"); and

(c) Closing of transaction(s) will be no later than February 29, 2024,

provided that, the Borrower may extend each of the foregoing dates in accordance with the Court Order approving the SISP.

The DIP Lender (and/or its affiliates) shall be permitted to participate as a bidder in connection with any SISP in respect of potential Restructuring Transactions or Alternative Offtake and Service Agreements, and (ii) credit bid all or certain of the DIP Obligations and/or other obligations owing by the Borrower in connection with any Restructuring Transaction agreed to by the Borrower (in consultation with the Monitor) and the DIP Lender, in each case subject to any Court Order and such reasonable terms and conditions as may be required in the opinion of the Borrower (in

consultation with the Monitor), each acting reasonably, to protect the Borrower's restructuring process. The SISP shall be without prejudice to any rights that Cargill may have in respect of the Existing Arrangements, including pursuant to Section 32 (including subsection 32(9)(c)) of the CCAA, and all such rights are fully reserved.

30. **ASSIGNMENT:** The DIP Lender may assign its rights and obligations under the DIP Facility and the DIP Credit Documents, in whole or in part, to any Person acceptable to the DIP Lender with the prior written consent of (i) prior to an Event of Default, the Borrower, such consent not to be unreasonably withheld (it being understood that refusal by the Borrower to provide such consent if CITPL has not confirmed agreements related to the Existing Arrangements set out herein will continue following such assignment, shall not be deemed to be unreasonable); and (ii) the Monitor based solely on the Monitor being satisfied, in its reasonable discretion, that (A) the proposed assignee has the financial capacity to act as the DIP Lender and (B) the proposed assignment will not have an adverse impact on the SISP. Notwithstanding the foregoing, the DIP Lender shall be entitled to assign its rights and obligations hereunder to an affiliate without the consent of any other party.

Neither this Term Sheet nor any right and obligation hereunder or in respect of the DIP Facility may be assigned by the Borrower.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Term Sheet to be executed by their duly authorized representatives as of the date first written above.

TACORA RESOURCES INC., as Borrower

Per: DocuSigned by: Joe Broking 9EBB6BB7AB484D8...

Name: Joe Broking

Title: CEO

CARGILL, INCORPORATED, as DIP Lender

Per: _____

Name: Mark Conlon
Title: Financial Services & Metals
US Representative

Acknowledged and agreed solely in respect of the Existing Arrangements:

CARGILL INTERNATIONAL TRADING PTE LTD.

Per: Philip Mulvihill

Name:

Title:

SCHEDULE "A"
DEFINED TERMS

"**Additional Services**" has the meaning given thereto in Section 5.

"**Administration Charge**" means a Court-ordered priority charge over the Borrower's Collateral granted by the Court in an aggregate amount not to exceed $1,000,000 to secure the fees and expenses of (i) the Borrower and its legal counsel, (ii) the Monitor and its legal counsel and (iii) the monthly fee of Greenhill & Co. Canada Ltd.

"**Advance**" means an amount of the DIP Facility advanced to the Borrower pursuant to the terms hereof from time to time, and for greater certainty includes the Initial Advance and each Subsequent Advance.

"**Advance Confirmation Certificate**" has the meaning given thereto in Section 4.

"**Advance Payments Facility Agreement**" means the Amended and Restated Advance Payments Facility Agreement dated as of May 29, 2023, among the Borrower and CITPL, as amended from time to time, including, without limitation, pursuant to the Amendment No. 1 to the Amended and Restated Advance Payments Facility Agreement dated as of June 23, 2023, among the Borrower and CITPL.

"**Alternative Offtake and Service Agreements**" has the meaning given thereto in Section 28.

"**Amended Initial Order**" has the meaning given thereto in Section 8.

"**Ancillary Post-Filing Credit Extensions**" has the meaning given thereto in Section 5

"**Applicable Law**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations and all applicable official directives, orders, judgments and decrees of any Governmental Body having the force of law.

"**Bid Deadline**" has the meaning given thereto in Section 29.

"**Borrower**" has the meaning given thereto in Section 1.

"**Borrower Restructuring Expenses**" has the meaning given thereto in Section 6.

"**Business Day**" means each day other than a Saturday or Sunday or a statutory or civic holiday that banks are open for business in Canada, the United States of America and Singapore

"**Cargill**" has the meaning given thereto in the preamble.

"**CCAA**" has the meaning given thereto in the preamble.

"**CCAA Proceedings**" has the meaning given thereto in the preamble.

"**CITPL**" means Cargill International Trading PTE Ltd., and its successors and assigns.

"**Claims**" has the meaning given thereto in Section 25.

"**Collateral**" means, in respect of a Person, all current or future assets, businesses, undertakings and properties of such Person, including all proceeds thereof.

"**Court**" has the meaning given thereto in the Recitals.

"**Court Order**" means any order of the Court in the CCAA Proceedings.

"**Default**" means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

"**DIP Budget**" means the weekly financial projections prepared by the Borrower covering the period to and including February 25, 2024, on a weekly basis, which shall be in form and substance acceptable to the DIP Lender, acting reasonably (as to scope, detail and content), which financial projections may be amended from time to time in accordance with Section 13. For greater certainty, for purposes of this Term Sheet, the DIP Budget shall include all supporting documentation provided in respect thereof to the DIP Lender.

"**DIP Credit Documents**" means this Term Sheet and all other loan and security documents executed by the Borrower in connection with this Term Sheet from time to time.

"**DIP Facility**" has the meaning given thereto in Section 4.

"**DIP Obligations**" means (i) all Advances made under the DIP Facility, (ii) all other principal, interest, fees (including the Exit Fee) due hereunder and (iii) DIP Lender Expenses, in each case to the extent incurred or arising after the Filing Date.

"**DIP Lender Expenses**" has the meaning given thereto in Section 9.

"**DIP Lender**" has the meaning given thereto in Section 2.

"**DIP Lender Charge**" has the meaning given thereto in Section 7(a).

"**Directors' Charge**" means a Court-ordered priority charge over the Borrower's Collateral granted by the Court in an aggregate amount not to exceed $5,300,000 in favour of the directors and officers of the Borrower and their affiliates.

"**Equity Securities**" means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and nonvoting) of, such Person's capital, whether outstanding on the date hereof or issued after the date hereof, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

"**Event of Default**" has the meaning given thereto in Section 23.

"**Existing Arrangements**" has the meaning given thereto in the preamble.

"**Existing Services**" has the meaning given thereto in Section 5.

"**Exit Fee**" has the meaning given thereto in Section 17.

"**Facility Amount**" has the meaning given thereto in Section 4.

"**Filing Date**" means the date on which the Initial Order is granted by the Court in the CCAA Proceedings.

"**Governmental Authority**" means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

"**Indemnified Persons**" has the meaning given thereto in Section 25.

"**Initial Advance**" has the meaning given thereto in Section 4.

"**Initial Advance Conditions**" has the meaning given thereto in Section 7.

"**Initial DIP Budget**" has the meaning given thereto in Section 13.

"**Initial Order**" has the meaning given thereto in Section 7(a).

"**KERP**" means a key employee retention program providing payments to the Borrower's key employees in an amount not exceeding $3,035,000 during the CCAA Proceeding, in a form previously sent to the DIP Lender on October 6, 2023.

"**KERP Charge**" means a Court-ordered priority charge granted by the Court over a segregated account of the Monitor where an amount in respect of the KERP is paid, in an aggregate amount not to exceed $3,035,000 to secure the Borrower's obligations under the KERP.

"**Liens**" means all liens, hypothecs, charges, mortgages, trusts (including deemed, statutory and constructive trusts), encumbrances, security interests, and statutory preferences of every kind and nature whatsoever.

"**Material Contract**" means any contract, license or agreement: (i) to which the Borrower is a party or is bound; (ii) which is material to, or necessary in, the operation of the business of such Borrower; and (iii) which such Borrower cannot promptly replace by an alternative and comparable contract with comparable commercial terms, and, for certainty, includes the Offtake Agreement, the Onshore Agreement and the Wetcon PSA, but does not include the Advance Payments Facility Agreement.

"**Maturity Date**" has the meaning given thereto in Section 12.

"**Monitor**" means FTI Consulting Canada Inc.

"**Offtake Agreement**" means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended by the amendment dated March 2, 2020, emails dated June 10 through June 16, 2021 between representatives of the Buyer and the Seller, Offtake January Amendment, the Offtake May Side Letter, Section 2.2(a)(i) of this Agreement, and as further amended from time to time.

"**Offtake January Amendment**" means the amendment to the Offtake Agreement dated on or about the Initial Advance Date in form and substance satisfactory to the Buyer.

"**Offtake May Side Letter**" means the Fixed Price Side Letter 5 dated on or about the Effective Date in form and substance satisfactory to the Buyer.

"**Onshore Agreement"** means the Iron Ore Stockpile Purchase Agreement dated December 17, 2019 between the Borrower and CITPL, as amended from time to time.

"**Operating Account**" means a bank account of the Borrower designated by the Borrower to receive Advances.

"**Original Currency**" has the meaning given thereto in Section 18.

"**Other Currency**" has the meaning given thereto in Section 18.

"**Outside Date**" means October 10, 2024.

"**Permitted Liens**" means (i) the Permitted Priority Liens; (ii) the DIP Lender Charge; (iii) any charges created under the Initial Order or other Court Order subsequent in priority to the DIP Lender Charge; (iv) Liens existing prior to the Filing Date; and (v) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business.

"**Permitted Priority Liens**" means (i) the Administration Charge, (ii) the Directors' Charge, (iii) the KERP Charge (if applicable), (iv) the Transaction Fee Charge, (v) any Lien in respect of amounts payable by the Borrower for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims, in the case of each of the items listed in this clause (v), solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts has not been subordinated to the DIP Lender Charge granted by the Court and (vi) such other Liens existing as of the Filing Date that have not been subordinated to the DIP Lender Charge granted by the Court.

"**Permitted Variance**" means a variance of not more than 15% relative to the aggregate disbursements (excluding the DIP Lender Expenses) on a cumulative basis since the beginning of the period covered by the applicable DIP Budget.

"**Person**" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"**Plan**" means any plan of compromise or arrangement pursuant to the CCAA in respect of the Borrower.

"**Post-Filing Credit Extensions**" has the meaning given thereto in Section 5.

"**Post-Filing Margin Advances**" has the meaning given thereto in Section 5.

"**Restructuring Transaction**" means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, Plan or other material transaction of, or in respect of, the Borrower or all or substantially all of their business, assets or obligations.

"**Services**" has the meaning given thereto in Section 5.

"**SISP**" has the meaning given thereto in Section 28.

"**Subsequent Advance**" has the meaning given thereto in Section 4.

"**Subsequent Advance Conditions**" has the meaning given thereto in Section 8.

"**Taxes**" has the meaning given thereto in Section 27.

"**Transaction Fee Charge**" means a Court-ordered priority charge in favour of Greenhill & Co. Canada Ltd. for the transaction fee which may become properly due and payable under their engagement letter in an aggregate amount not to exceed $5,600,000.

"**Term Sheet**" has the meaning given thereto in the preamble.

"**Testing Period**" has the meaning given thereto in Section 13.

"**Variance Report**" has the meaning given thereto in Section 13.

"**Wetcon PSA**" means the Wetcon Purchase and Sale Agreement made as of July 10, 2023 between the Borrower, as seller and CITPL, as buyer, as amended from time to time.

"**Withholding Taxes**" has the meaning given thereto in Section 27.

SCHEDULE "C"
SUMMARY DIP BUDGET

See attached.

SCHEDULE "D"
FORM OF INITIAL ORDER

See attached.

SCHEDULE "E"
FORM OF AMENDED INITIAL ORDER

See attached.

2

Exhibit C to the Davies Cross, Transcript Brief, Tab 1.C, p. 209

EXHIBIT No. C
EXAMINATION OF
Leon Davies
Tacora Resources
DATE October 18, 2023
NETWORK COURT REPORTING

[redacted]

From: Chadwick, Robert
Sent: Sunday, September 10, 2023 2:39 PM
To: Lee Nicholson <leenicholson@stikeman.com>
Cc: Ashley Taylor <ATAYLOR@stikeman.com>; Joe Broking (joe.broking@tacoraresources.com) <joe.broking@tacoraresources.com>; Heng Vuong <heng.vuong@tacoraresources.com>; Nigel Meakin <Nigel.Meakin@fticonsulting.com>; Descours, Caroline <cdescours@goodmans.ca>
Subject: Re: Tacora Resources Inc.

We wanted to briefly respond to matters outlined in your letter which are not correct. There has been various discussions over the weekend that may have superseded certain matters- but wanted to ensure you properly understood the position of Cargill. The invoice was provided on September 5, 2023 in the normal course. The invoice is subject to a number of days on payment terms and also a grace period before it is payable by Cargill. Prior to the amounts under the invoice being due- the Company indicated and provided Cargill with an application record for a ccaa proceeding and a priming dip loan- both steps and related matters outlined in the materials trigger an event of default under the existing Cargill agreements. We advised FTI of the payment terms, the grace period and that we were served with an application record on September 7 and that Cargill has various set off rights and based on such matters- Cargill was not in a position to make the payment on September 8(the day we spoke with FTI). Based on such facts and the Company potentially proceeding to a ccaa filing- the amounts are not payable by Cargill at this time. Cargill is not in breach of any of its agreements or the APF. We have a secured margin facility which is available if there is a need for additional liquidity and Cargill is committed to continue to work with the Company to ensure it has sufficient liquidity to maintain its operations in the normal course. We are also available to discuss the payment of the invoice to ensure both the Company and Cargill rights are properly balanced. Cargill has continued to work with the Company to find solutions and is committed to continue to do so under the current circumstances. Rob

Robert J. Chadwick
Goodmans LLP

416.597.4285
rchadwick@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

3

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM	)	[TUESDAY], THE [24TH]
JUSTICE KIMMEL	)	DAY OF OCTOBER, 2023
	)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

(Applicant)

ORDER
(Solicitation Order)

THIS MOTION, made by Tacora Resources Inc. (the "**Applicant**"), for an Order approving, the procedures for a sale, investment, and services solicitation process in respect of the Applicant attached hereto as Schedule "A" (the "**Solicitation Process**") was heard this day by judicial videoconference via Zoom.

ON READING the affidavits of Joe Broking sworn October 9, 2023, and October **[●]**, 2023, and the Exhibits thereto, the affidavit of Chetan Bhandari sworn October 9, 2023, First Report of the Monitor dated October **[●]**, 2023, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Cargill, Incorporated and Cargill International Trading Pte Ltd., counsel for the Ad Hoc Group of Senior Noteholders, counsel for Resource Capital Fund VII L.P., counsel for Crossingbridge Advisors, LLC, and such other parties as listed on the Participant Information Form, with no one else appearing although duly served as appears from the affidavits of service of Natasha Rambaran, filed.

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Solicitation Process.

APPROVAL OF THE SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the Solicitation Process attached hereto as Schedule "A" is hereby approved and the Applicant, Financial Advisor, and Monitor are hereby authorized to implement the Solicitation Process pursuant to the terms thereof. The Financial Advisor, Applicant, and Monitor are hereby authorized to take any and all actions as may be necessary or desirable to implement and carry out the Solicitation Process in accordance with its terms and this Order.

4. **THIS COURT ORDERS** that the Financial Advisor, Applicant, and the Monitor are hereby authorized to immediately commence the Solicitation Process.

5. **THIS COURT ORDERS** that each of the Financial Advisor, Applicant, Monitor and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Solicitation Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Financial Advisor, Applicant, or Monitor, as applicable, in performing their obligations under the Solicitation Process, as determined by this Court.

6. **THIS COURT ORDERS** that, pursuant to section 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS), the Financial Advisor, Applicant, and Monitor are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the Solicitation Process in these proceedings.

7. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the Solicitation Process, the Financial Advisor and Monitor shall not take possession of the Property or be deemed to take possession of the Property.

PROTECTION OF PERSONAL INFORMATION

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Financial Advisor, Applicant, Monitor, and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective Solicitation Process participants (each, a "**Solicitation Process Participant**") and their advisors personal information of identifiable individuals ("**Personal Information**"), records pertaining to the Applicant's past and current employees, and information on specific customers, but only to the extent desirable or required to negotiate or attempt to complete a transaction under the Solicitation Process (a "**Transaction**"). Each Solicitation Process Participant to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information and limit the use of such Personal Information to its evaluation of a Transaction, and if it does not complete a Transaction, shall return all such information to the Financial Advisor, Applicant, or Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if required by the Financial Advisor, Applicant, or Monitor. The Successful Transaction Bidder shall maintain and protect the privacy of such information and, upon closing of the Transaction contemplated in the Successful Transaction Bid, shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the Solicitation Process in a manner that is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Financial Advisor, Applicant, or Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Financial Advisor, Applicant, or Monitor.

GENERAL

9. **THIS COURT ORDERS** that the Applicant or the Monitor or any interested party may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under the Solicitation Process.

10. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, Monitor,

and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Financial Advisor, Applicant, and 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 Financial advisor, Applicant, Monitor, and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Applicant and Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

_____

Schedule "A"

Procedures for the Sale, Investment and Services Solicitation Process

Tacora Resources Inc. ("**Tacora**") is a private company that is focused on the production and sale of high-grade and quality iron ore products that improve the efficiency and environmental performance of steel making. Tacora currently sells 100% of the iron ore concentrate production of the Scully Mine, an iron ore concentrate mine located near Wabush, Newfoundland and Labrador, Canada (the "**Scully Mine**"), pursuant to the Offtake Agreement with Cargill.

On October 10, 2023, Tacora commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Ontario Superior Court of Justice (Commercial List) in the City of Toronto (the "**Court**") pursuant to an order granted by the Court on the same day (as may be amended or amended and restated from time to time, the "**Initial Order**").

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**"). Greenhill & Co. Canada Ltd. (the "**Financial Advisor**") is acting as Tacora's financial advisor and investment banker.

On October **[●]**, 2023, the Court granted an order (the "**Solicitation Order**"), authorizing Tacora to undertake a sale, investment and services solicitation process (the "**Solicitation Process**") to solicit offers or proposals for a sale, restructuring or recapitalization transaction in respect of Tacora's assets (the "**Property**") and business operations (the "**Business**"). The Solicitation Process will be conducted by the Financial Advisor with the Monitor in the manner set forth in these procedures (the "**Solicitation Procedures**").

Defined Terms

1. Capitalized terms used in these Solicitation Procedures and not otherwise defined herein have the meanings given to them in Appendix "A".

Solicitation Procedures

Opportunity

2. The Solicitation Process is intended to solicit interest in, and opportunities for: (a) a sale of all, substantially all, or certain portions of the Property or the Business; or (b) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of Tacora or its Business as a going concern, or a combination thereof (the "**Transaction Opportunity**").

3. The Solicitation Process will also provide the ability for interested parties to investigate and conduct due diligence regarding an opportunity to arrange an offtake, service or other agreement in respect of the Business (the "**Offtake Opportunity**" and together with the Transaction Opportunity, the "**Opportunity**")).

General

4. The Solicitation Procedures describe the manner in which prospective bidders may

gain access to due diligence materials concerning Tacora, the Business and the Property, the manner in which interested parties may participate in the Solicitation Process, the requirements of and the receipt and negotiation of Bids received, the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith.

5. Tacora, in consultation with the Monitor and the Financial Advisor, may at any time and from time to time, modify, amend, vary or supplement the Solicitation Procedures, without the need for obtaining an order of the Court or providing notice to Phase 1 Bidders, Phase 2 Bidders, the Successful Bidder and the Back-Up Bidder, provided that the Financial Advisor and the Monitor determine that such modification, amendment, variation or supplement is expressly limited to changes that do not materially alter, amend or prejudice the rights of such bidders and that are necessary or useful in order to give effect to the substance of the Solicitation, the Solicitation Procedures and the Solicitation Order.

6. Except as set forth in these Solicitation Procedures, nothing in this Solicitation Process shall prohibit a secured creditor of Tacora (a) from participating as a bidder in the Solicitation Process, or (b) committing to Bid its secured debt, including a credit bid of some or all of its outstanding indebtedness under any loan facility (inclusive of interest and other amounts payable under any loan agreement to and including the date of closing of a definitive transaction) owing to such party in the Solicitation Process.

7. Tacora, in consultation with the Financial Advisor and the Monitor, shall have complete discretion with respect to the provision of any information to any party or any consultation rights in connection with the Solicitation Process, provided that, no information regarding any Bids received shall be provided to any stakeholder of Tacora or their respective advisors.

8. Notwithstanding anything to the contrary in these Solicitation Procedures, Tacora and the Financial Advisor, in consultation with the Monitor, may attempt to negotiate a stalking horse bid (a "**Stalking Horse Bid**") prior to the Phase 1 Bid Deadline to provide certainty for Tacora and the Property/Business during the Solicitation Process. If Tacora, with the approval of the Monitor, determines that it is appropriate to utilize a Stalking Horse Bid, such Stalking Horse Bid shall be subject to approval by the Court and Tacora shall bring a motion before the Court on notice to the service list in these CCAA Proceedings seeking approval to use the Stalking Horse Bid as a "stalking horse" in the Solicitation Process, together with approval of any necessary consequential amendments to these Solicitation Procedures. All interested parties that have executed an NDA in connection with this Solicitation Process shall be promptly informed of any such motion, Court approval for the use of the Stalking Horse Bid and any related amendments to these Solicitation Procedures. The terms of any Stalking Horse Bid must, at a minimum, meet all requirements under these Solicitation Procedures, including, for greater certainty, the criteria applicable to a Phase 2 Qualified Bid (which must provide for payment in cash of all obligations (unless the DIP Lender agrees otherwise) owing under the DIP Agreement in full).

Timeline

9. The following table sets out the key milestones under this Solicitation Process, which may be extended from time to time by Tacora, in consultation with the Financial Advisor

and with the consent of the Monitor, in accordance with the Solicitation Process:

Event	Timing
Phase 1	
1. Notice Monitor to publish a notice of the Solicitation Process on the Monitor's Website Financial Advisor / Tacora to publish notice of the Solicitation Process in industry trade publications, as determined appropriate Financial Advisor to distribute Teaser Letter and NDA (if requested) to potentially interested parties	No later than five (5) days following issuance of the Solicitation Order.
2. Phase 1 - Access to VDR Phase 1 Bidders provided access to the VDR, subject to execution of appropriate NDAs	October **[●]**, 2023 to December 1, 2023
3. Phase 1 Bid Deadline Deadline for Phase 1 Bidders to submit non-binding LOIs in accordance with the requirements of section 23	By no later than December 1, 2023 at 12:00 p.m. (Eastern Time)
4. Notification of Phase 1 Qualified Bid Deadline to notify a Phase 1 Bidder whether it has been designated as a Phase 2 Bidder invited to participate in Phase 2	By no later than December 6, 2023, at 12:00 p.m. (Eastern Time)
Phase 2	
5. Phase 2 Bid Deadline Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirements of section 34)	By no later than January 19, 2024, at 12:00 p.m. (Eastern Time)
6. Definitive Documentation Deadline for completion of definitive documentation in respect of a Successful Bid and filing of the Approval Motion	By no later than February 2, 2024

7. Approval Motion Hearing of Approval Motion in respect of Successful Bid (subject to Court availability)	Week of February 5, 2024
8. Outside Date – Closing Outside Date by which the Successful Bid must close	February 23, 2024 (subject to customary conditions related to necessary and required regulatory approvals acceptable to Tacora, in consultation with the Financial Advisor and the Monitor, in their sole discretion)

Solicitation of Interest

10. As soon as reasonably practicable, but, in any event, by no later than five (5) days after the granting of the Solicitation Order:

    (a) the Financial Advisor, in consultation with the Monitor and Tacora, will prepare a list of potential bidders, including (i) parties that have approached Tacora, the Financial Advisor, or the Monitor indicating an interest in the Opportunity, (ii) parties suggested by Tacora's secured creditors or their advisors, (iii) local and international strategic and financial parties, including offtakers and streamers, who the Financial Advisor, in consultation with Tacora and the Monitor, believes may be interested in the Opportunity; (iv) Cargill and the Ad Hoc Group; and (v) parties that showed an interest in Tacora and/or its assets prior to the date of the Solicitation Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the "**Potential Bidders**");

    (b) a notice of the Solicitation and any other relevant information that the Monitor considers appropriate regarding the Solicitation Process, in consultation with Tacora and the Financial Advisor, will be published by the Monitor on the Monitor's Website;

    (c) a notice of the Solicitation Process and any other relevant information that the Financial Advisor, in consultation with Tacora and the Monitor, considers appropriate may be published by the Financial Advisor in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Financial Advisor; and

    (d) the Financial Advisor, in consultation with Tacora and the Monitor, will prepare a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the Solicitation Process and inviting recipients of the Teaser Letter to express their interest pursuant to the Solicitation Process; and (ii) a form of non-disclosure agreement in form and substance satisfactory to the Financial Advisor, Tacora, the Monitor, and their respective counsel (an "**NDA**").

11. The Financial Advisor will cause the Teaser Letter to be sent to each Potential Bidder by no later than five (5) days after the Solicitation Order and to any other party who requests a copy of the Teaser Letter or who is identified to the Financial Advisor or the

Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable. A copy of the NDA will be provided to any Potential Bidder that requests a copy of same.

Phase 1: Non-Binding LOIs

Phase 1 Due Diligence

12. In order to participate in the Solicitation Process, and prior to the distribution of any confidential information, a Potential Bidder (each Potential Bidder interested in the Transaction Opportunity who has executed an NDA with Tacora, a "**Phase 1 Bidder**") must deliver to the Financial Advisor an executed NDA (with a copy to the Monitor).

13. Notwithstanding any other provision of this Solicitation Process, prior to Tacora executing an NDA with any Potential Bidder, Tacora, in consultation with the Financial Advisor and the Monitor, may require evidence reasonably satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor, of the financial wherewithal of the Potential Bidder to complete on a timely basis a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors.

14. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by Tacora to Phase 1 Bidders and Financing Parties (including those interested in the Offtake Opportunity) that have executed the NDA in accordance with Section 12 as soon as practicable. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of Tacora and the Opportunity. The Financial Advisor, in consultation with Tacora and the Monitor, may establish or cause Tacora to establish separate VDRs (including "clean rooms"), if Tacora reasonably determines that doing so would further Tacora's and any Phase 1 Bidder's compliance with applicable antitrust and competition laws, would prevent the distribution of commercially sensitive competitive information, or to protect the integrity of the Solicitation Process and Tacora's restructuring process generally. Tacora may also, in consultation with the Financial Advisor and the Monitor, limit the access of any Phase 1 Bidder to any confidential information in the VDR where Tacora may also, in consultation with the Financial Advisor and the Monitor, reasonably determine that such access could negatively impact the Solicitation Process, the ability to maintain the confidentiality of the information, the Business or its value.

15. Tacora, in consultation with the Financial Advisor and the Monitor, may (but is not required to) provide management presentations to Phase 1 Bidders. Any communications between Phase 1 Bidders and management of Tacora shall be supervised by representatives of the Financial Advisor and the Monitor, provided that such discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Financial Advisor and the Monitor shall continue to have duties to the Court to ensure that the Solicitation Process proceeds in a manner that complies with the CCAA and the terms of the Solicitation Process. The provisions of this section are subject to further order of the Court.

16. The Financial Advisor, Tacora, the Monitor, and their respective employees, officers,

directors, agents, other representatives and their respective advisors make no representation, warranty, condition or guarantee of any kind, nature or description as to the information contained in the VDR or made available in connection with the Solicitation Process. All Phase 1 Bidders (and Financing Parties) must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the Solicitation Process.

Communication Protocol

17. Each Phase 1 Bidder and Financing Party is prohibited from communicating with any Potential Bidder or another Phase 1 Bidder or Financing Party and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process, without the consent of the Financial Advisor and the Monitor, except as provided in these Solicitation Procedures. Notwithstanding the terms of any NDA entered into by a Phase 1 Bidder or Financing Party, all Phase 1 Bidders and Financing Parties shall comply with these Solicitation Procedures.

18. Any party interested in providing debt financing (a "**Debt Financing Party**"), equity financing (a "**Equity Financing Party**") or financing through an offtake or similar agreement (including a stream or royalty agreement) in respect of the Offtake Opportunity (a "**Offtake Financing Party**" and together with Debt Financing Parties, Equity Financing Parties, the "**Financing Parties**" and each, a "**Financing Party**") shall execute a NDA with Tacora or a joinder to a NDA with the Phase 1 Bidder which the Financing Party is interested in providing financing to, prior to receiving distribution of any confidential information.

19. Each Debt Financing Party must indicate to the Financial Advisor and the Monitor whether such Debt Financing Party is acting exclusively with a Phase 1 Bidder or conducting due diligence with the expectation of providing potential debt financing to potentially multiple Phase 1 Bidders. If a Debt Financing Party is acting exclusively with a Phase 1 Bidder, the Debt Financing Party may communicate with such Phase 1 Bidder but shall not communicate with another Phase 1 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process. If the Debt Financing Party is not acting exclusively with a Phase 1 Bidder, the Debt Financing Party may communicate with multiple Phase 1 Bidders, provided that Debt Financing Party confirms in writing to the Financial Advisor and the Monitor that the Debt Financing Party has appropriate internal controls and processes to ensure information related to Bids or potential Bids (including the identity of Potential Bidders and/or Phase 1 Bidders) is not shared with multiple Phase 1 Bidders.

20. Each Offtake Financing Party must indicate to the Financial Advisor and the Monitor whether such Offtake Financing Party is acting exclusively with a Phase 1 Bidder or conducting due diligence with the expectation of providing potential financing through an offtake or similar agreement (including a stream or royalty agreement) to potentially multiple Phase 1 Bidders. If an Offtake Financing Party is acting exclusively with a Phase 1 Bidder, the Offtake Financing Party may communicate with such Phase 1 Bidder but shall not communicate with another Phase 1 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process. If an Offtake Financing Party is not acting exclusively with

a Phase 1 Bidder, the Offtake Financing Party shall submit an Offtake IOI and may communicate with Phase 1 Bidders with the consent of the Financial Advisor and the Monitor on such terms and conditions as the Financial Advisor and the Monitor deem appropriate.

21. Each Equity Financing Party must indicate to the Financial Advisor and the Monitor whether such Equity Financing Party is acting exclusively with a Phase 1 Bidder or conducting due diligence with the expectation of providing potential equity financing to potentially multiple Phase 1 Bidders. If an Equity Financing Party is acting exclusively with a Phase 1 Bidder, the Equity Financing Party may communicate with such Phase 1 Bidder but shall not communicate with another Phase 1 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process. If an Equity Financing Party is not acting exclusively with a Phase 1 Bidder, the Equity Financing Party shall submit an Equity Financing IOI and may communicate with Phase 1 Bidders with the consent of the Financial Advisor and the Monitor on such terms and conditions as the Financial Advisor and the Monitor deem appropriate.

Phase 1 Bids

22. If a Phase 1 Bidder wishes to submit a bid in respect of the Transaction Opportunity (a "**Bid**"), it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, in accordance with section 23 below, a "**Phase 1 Qualified Bid**") to the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by the Financial Advisor not later than 12:00 p.m. (Eastern Time) on December 1, 2023, or such other date or time as may be agreed by Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor (the "**Phase 1 Bid Deadline**").

23. An LOI submitted by a Phase 1 Bidder will only be considered a Phase 1 Qualified Bid if the LOI complies at a minimum with the following:

    (a) it has been duly executed by all required parties;

    (b) it is received by the Phase 1 Bid Deadline;

    (c) it clearly indicates that:

        (i) the Phase 1 Bidder is (A) seeking to acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof (either one, a "**Sale Proposal**"); or (B) offering to make an investment in, restructure, recapitalize or refinance Tacora or the Business (a "**Recapitalization Proposal**").

    (d) in the case of a Sale Proposal, the Bid includes:

        (i) the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;

        (ii) details regarding any consideration which is not cash;

        (iii) any contemplated purchase price adjustment;

(iv) a specific indication of the expected structure and financing of the transaction (including, but not limited to the sources of financing to fund the acquisition);

(v) a description of the Property that is subject to the transaction and any of the Property expected to be excluded;

(vi) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Bidder intends to assume and those liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction, and shall specifically identify whether the Phase 1 Bidder intends to assume or maintain the existing Offtake Agreement on its existing terms or any proposed amendments, and if not, whether the Phase 1 Bidder anticipates requiring to be paired with a Financing Party interested in the Offtake Opportunity in connection with their proposed Bid;

(vii) information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Phase 1 Bidder has sufficient financial ability to complete the transaction contemplated by the Sale Proposal;

(viii) a description of the Phase 1 Bidder's intentions for the Business, including any plans or conditions related to Tacora's management and employees;

(ix) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

(x) any other terms or conditions of the Sale Proposal that the Phase 1 Bidder believes are material to the transaction.

(e) in the case of a Recapitalization Proposal, the Bid includes:

(i) a description of how the Phase 1 Bidder proposes to structure and finance the proposed investment, restructuring, recapitalization or refinancing (including, but not limited to the sources of financing to fund the transaction);

(ii) the aggregate amount of the equity and/or debt investment to be made in Tacora or its Business;

(iii) details on the permitted use of proceeds;

(iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Bidder intends to assume and those liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction, and shall specifically identify whether the Phase 1 Bidder intends to assume or maintain the existing Offtake Agreement on its existing terms or any proposed amendments and if not, whether the Phase 1 Bidder anticipates requiring to be paired with a Financing Party interested in the

Offtake Opportunity in connection with their proposed Bid;

(v) information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Phase 1 Bidder has sufficient ability to complete the transaction contemplated by the Recapitalization Proposal;

(vi) the underlying assumptions regarding the pro forma capital structure;

(vii) a description of the Phase 1 Bidder's intentions for the Business, including any plans or conditions related to Tacora's management and employees;

(viii) the equity, if any, to be allocated to the secured creditors, unsecured creditors, shareholders and/or any other stakeholder of Tacora;

(ix) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

(x) any other terms or conditions of the Recapitalization Proposal which the Phase 1 Bidder believes are material to the transaction.

(f) it provides written evidence, satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor, of its ability to consummate the transaction within the timeframe contemplated by these Solicitation Procedures and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital and, to the extent that the Phase 1 Bidder expects to finance any portion of the purchase price, the identity of the financing source and the steps necessary and associated timing to obtain the capital;

(g) it provides any relevant details of the previous investments or acquisitions, or any other experience a Phase 1 Bidder in the mining industry, including the date, nature of the investment, amount invested, geography and any other relevant information related to such investment;

(h) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for Tacora, in consultation with the Financial Advisor, and the Monitor, to determine that these conditions are reasonable in relation to the Phase 1 Bidder;

(i) it includes a statement disclosing any connections or agreements between the Phase 1 Bidder, on the one hand, and Tacora, its shareholders, creditors and affiliates and all of their respective directors and officers and/or any other known Phase 1 Bidder, on the other hand;

(j) it includes an acknowledgement that any Sale Proposal and/or Recapitalization Proposal is made on an "as-is, where-is" basis; and

(k) it contains such other information as may be reasonably requested by Tacora, in consultation with the Financial Advisor and the Monitor.

Assessment of Phase 1 Bids

24. Following the Phase 1 Bid Deadline, Tacora, in consultation with the Financial Advisor and the Monitor, will assess the LOIs received by the Phase 1 Bid Deadline and determine whether such LOIs constitute Phase 1 Qualified Bids.

25. Tacora, in consultation with the Financial Advisor and the Monitor, may following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid.

26. Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor, may (a) waive compliance with any one or more of the requirements specified above and deem such non-compliant bid to be a Phase 1 Qualified Bid; or (b) reject any LOI if it is determined that such Bid does not constitute a Phase 1 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interests of Tacora and its creditors and other stakeholders.

Financing Opportunity

27. To assist the Financial Advisor and the Monitor in making a determination of whether to introduce any Offtake Financing Party interested in the Offtake Opportunity to any Phase 1 Bidders, such parties may provide the Financial Advisor and the Monitor, prior to the Phase 1 Bid Deadline, an indication of interest in respect of the Offtake Opportunity (an "**Offtake IOI**"), which includes:

(a) the product to be purchased from Tacora and any required specifications;

(b) the term of the contract, including all options to extend;

(c) the committed volume of product to be purchased, including market price and hedged price (if applicable);

(d) product pricing terms, including price indices to be used, premiums, hedging terms (if any);

(e) delivery and payment terms, including delivery point for product;

(f) other services that the Phase 1 Bidder anticipates providing to Tacora, including any working capital financing;

(g) any proposed capital investment by the bidder and the form of such investment, including the criteria set forth in Sections 23(e)(ii), (iii) and (ix); and

(h) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer.

28. To assist the Financial Advisor and the Monitor in making a determination of e whether to introduce any Equity Financing Party interested in the Opportunity to any Phase 1

Bidders, such parties may provide the Financial Advisor and the Monitor, prior to the Phase 1 Bid Deadline, an indication of interest in respect of the Opportunity (an "**Equity Financing IOI**"), which includes:

(a) a description of how the Equity Financing Party proposes to structure and finance the proposed investment (including, but not limited to the sources of financing to fund the transaction);

(b) the aggregate amount of the equity investment to be made in Tacora or its Business;

(c) details on the permitted use of proceeds;

(d) the underlying assumptions regarding the pro forma capital structure; and

(e) an outline of any additional due diligence required to be conducted in order to commit to providing financing.

Selection of Phase 2 Bidders

29. The Financial Advisor shall notify each Phase 1 Bidder in writing as to whether the Phase 1 Bidder has been determined to be permitted to proceed to Phase 2 (each a "**Phase 2 Bidder**") by no later than December 4, 2023, at 12:00 p.m. (Eastern Time) or such other date or time as may be agreed by Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor.

Phase 2 – Formal Binding Offers

Phase 2 Due Diligence

30. Each Phase 2 Bidder shall be invited to participate in on-site tours and inspections at the Scully Mine (within reason and not at the expense of Tacora maintaining "business as usual" operations, and at the sole cost and expense of such bidder).

31. Tacora, in consultation with the Financial Advisor and the Monitor, shall allow each Phase 2 Bidder such further access to due diligence materials and information relating to the Property and Business as they deem appropriate in their reasonable business judgment and subject to competitive and other business considerations.

32. Phase 2 Bidders shall have the opportunity (if requested by such party) to meet with management of Tacora. Any communications or meetings between Phase 2 Bidders and management of Tacora shall be supervised by representatives of the Financial Advisor and the Monitor, provided that the discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Financial Advisor and the Monitor shall continue to have duties to the Court to ensure that the Solicitation Process proceeds in a manner that complies with the CCAA and the terms of these Solicitation Procedures. The provisions of this section are subject to further order of the Court.

33. Each Phase 2 Bidder will be prohibited from communicating with any other Phase 2 Bidder and their respective affiliates and their legal and financial advisors regarding the Transaction Opportunity during the term of the Solicitation Process, without the consent

of Tacora and the Monitor, in consultation with the Financial Advisor. Such communications shall only occur on such terms as Tacora, the Financial Advisor and the Monitor may determine.

Phase 2 Bids

34. A Phase 2 Bidder that wishes to make a definitive transaction proposal (a "**Phase 2 Bid**") shall submit a binding offer that complies with all of the following requirements to the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by the Financial Advisor not later than 12:00 p.m. (Eastern Time) on January 19, 2024, or such later date determined by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor (the "**Phase 2 Bid Deadline**"). Such Phase 2 Bid shall be a "**Phase 2 Qualified Bid**" if it meets all of the following criteria:

(a) it is received by the Phase 2 Bid Deadline;

(b) the Bid complies with all of the requirements set forth in respect of Phase 1 Qualified Bids other than the requirements set out in Sections 23(b) and 23(d)(ix) herein;

(c) the Bid is binding and includes a letter confirming that the Phase 2 Bid is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, if any, provided that if such Phase 2 Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the earlier of (a) completion of the transaction with the Successful Bidder, and (b) February 23, 2024, subject to further extensions as may be agreed to under the applicable transaction agreement(s), with the consent of the Monitor;

(d) the Bid is in the form of duly authorized and executed transaction agreements, and in the case of:

(i) a Sale Proposal, the Bid includes an executed share or asset purchase agreement, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a blackline to any model documents provided by Tacora during the Solicitation Process; and

(ii) a Recapitalization Proposal, the Bid includes the draft transaction documents contemplated to effect the Recapitalization Proposal, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a blackline to any model documents provided by Tacora during the Solicitation Process;.

(e) the Bid includes written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor;

(f) the Bid is not subject to the outcome of unperformed due diligence, internal approval(s) or contingency financing;

(g) any conditions to closing or required approvals, including any agreements or approvals with unions, regulators or other stakeholders, the anticipated time frame and any anticipated impediments for obtaining such approvals are set forth in detail, such that Tacora, the Financial Advisor and the Monitor, can assess the risk to closing associated with any such conditions or approvals;

(h) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing (including through the issuance of equity and/or debt in connection with such Bid and whether such party is assuming the Offtake Agreement on its existing terms, assuming the Offtake Agreement with amendments agreed to by Cargill or entering into an offtake or similar agreement with another party in connection with the Bid), or that is sponsoring, participating or benefiting from such Bid, and such disclosure shall include, without limitation: (i) in the case of a Phase 2 Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Bidder and the terms and participation percentage of such equity holder's interest in such Bid; and (ii) the identity of each entity that has or will receive a benefit from such Bid from or through the Phase 2 Bidder or any of its equity holders and the terms of such benefit;

(i) the Bid provides a detailed timeline to closing with critical milestones;

(j) the Bid is accompanied by a non-refundable good faith cash deposit (the "**Deposit**"), equal to 10% of the total cash component of the purchase price or investment contemplated under the Phase 2 Bid which shall be paid to the Monitor and held in trust pursuant to Section 44 hereof until the earlier of (i) closing of the Successful Bid or Back-Up Bid, as applicable; and (ii) rejection of the Phase 2 Bid pursuant to Section 43; and

(k) The Bid includes acknowledgements and representations of the Phase 2 Bidder that: (i) it had an opportunity to conduct any and all due diligence desired regarding the Property, Business and Tacora prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property or Tacora or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive transaction agreement executed by Tacora.

Assessment of Phase 2 Bids

35. Following the Phase 2 Bid Deadline, Tacora in consultation with the Financial Advisor and the Monitor, will assess the Phase 2 Bids received by the Phase 2 Bid Deadline and determine whether such Bids constitute Phase 2 Qualified Bids.

36. Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bid to be a Phase 2 Qualified Bid.

37. Phase 2 Bids may not be modified, amended, or withdrawn after the Phase 2 Bid Deadline without the written consent of Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Phase 2 Bid for Tacora,its creditors and other stakeholders.

38. Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, may reject any Phase 2 Bid if it is determined that such Bid does not constitute a Phase 2 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interest of Tacora and its creditors and other stakeholders.

Evaluation of Qualified Bids and Subsequent Actions

39. Following the Phase 2 Bid Deadline, Tacora, the Financial Advisor and the Monitor will review the Phase 2 Qualified Bids. In performing such review and assessment, the Financial Advisor, Tacora, and the Monitor may evaluate the following non-exhaustive list of considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the Phase 2 Bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the claims likely to be created by such Bid in relation to other Bids; (d) the counterparties to the transaction; (e) the terms of transaction documents; (f) the closing conditions and other factors affecting the speed, certainty and value of the transaction; (g) planned treatment of stakeholders, including employees; (h) the assets included or excluded from the Bid; (i) any restructuring costs that would arise from the Bid; (j) the likelihood and timing of consummating the transaction; (k) the capital sufficient to implement post-closing measures and transactions; and (l) any other factors that the Financial Advisor, Tacora, and Monitor may deem relevant in their sole discretion.

40. Following evaluation of the Phase 2 Qualified Bids, Tacora may, in consultation with the Financial Advisor and the Monitor, undertake one or more of the following steps:

    (a) accept one of the Phase 2 Qualified Bids (the "**Successful Bid**" and the offeror making such Successful Bid the "**Successful Bidder**") and take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid with Successful Bidder;

    (b) continue negotiations with Phase 2 Bidders who have submitted a Phase 2 Qualified Bids with a view to finalizing acceptable terms with one or more of Bidders that submitted Phase 2 Qualified Bids; or

    (c) schedule an auction with all Bidders that submitted Phase 2 Qualified Bids to determine the Successful Bid in accordance with auction procedures determined by the Financial Advisor and the Monitor, in consultation with Cargill and the Ad Hoc Group, provided they or any of their members are not Bidders that submitted Phase 2 Qualified Bids, which procedures shall be provided to all Bidders that submitted Phase 2 Qualified Bids at least four (4) Business Days prior to an auction.

41. Tacora, in consultation with the Financial Advisor and the Monitor, may select the next highest or otherwise best Phase 2 Qualified Bid which is a Sale Proposal or Recapitalization Proposal to be a back-up bid (the "**Back-Up Bid**" and such bidder, the

"**Back-Up Bidder**"). For greater certainty, Tacora shall not be required to select a Back-Up Bid.

42. If a Successful Bidder fails to consummate the Successful Bid for any reason, then the Back-Up Bid will be deemed to be the Successful Bid and Tacora will proceed with the transaction pursuant to the terms of the Back-Up Transaction Bid. Any Back-Up Bid shall remain open for acceptance until the completion of the transaction with the Successful Bidder.

43. All Phase 2 Qualified Bids (other than the Successful Bid and the Back-Up Bid, if applicable) shall be deemed rejected by Tacora on and as of the date of the execution of the definitive documents contemplated by the Successful Bid by Tacora.

44. All Deposits will be retained by the Monitor and deposited in a trust account. The Deposit (without interest thereon) paid by the Successful Bidder and Back-Up Bidder whose bid(s) is/are approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder and/or Back-Up Bidder, as applicable upon closing of the approved transaction and will be non-refundable, other than in the circumstances set out in the Successful Bid or the Back-Up Bid, as applicable. The Deposits (without interest) of Qualified Bidders not selected as the Successful Bidder and Back-Up Bidder will be returned to such bidders within five (5) Business Days after the selection of the Successful Bidder and Back-Up Bidder or any earlier date as may be determined by the Monitor, in consultation with the Financial Advisor and Tacora. The Deposit of the Back-Up Bidder, if any, shall be returned to such Back-Up Bidder no later than five (5) Business Days after closing of the transaction contemplated by the Successful Bid .

45. If a Successful Bidder or Back-Up Bidder breaches its obligations under the terms of the Solicitation Process, its Deposit shall be forfeited as liquidated damages and not as a penalty, without limiting any other claims or actions that Tacora may have against such Successful Bidder or Back-Up Bidder and/or their affiliates.

46. If no Phase 2 Qualified Bids are received by the Phase 2 Bid Deadline, the Solicitation Process shall automatically terminate.

Approval Motion

47. Prior to the Approval Motion, the Monitor shall provide a report to the Court providing information on the process and including its recommendation in connection with the relief sought at the Approval Motion. At the Approval Motion, Tacora shall seek the Approval Order.

48. The consummation of the transaction contemplated by the Successful Bid, or the Back-Up Bid if the Successful Bid does not close, will not occur unless and until the Approval Order is granted.

"As Is, Where Is"

49. Any sale of the Business and/or Property or any investment in Tacora or its Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Financial Advisor, Tacora, or Monitor, or their advisors or agents, except to the extent otherwise provided under any definitive sale or

investment agreement with the Successful Bidder executed by Tacora. None of the Financial Advisor, Tacora, or Monitor, or their advisors or agents, including the Financial Advisor, make any representation or warranty as to the information contained in the Teaser Letter, any management presentation or the VDR, except to the extent otherwise provided under any definitive sale or investment agreement with the Successful Bidder executed by Tacora. Each Phase 2 Bidder is deemed to acknowledge and represent that: (a) it has had an opportunity to conduct any and all due diligence regarding the Business and Property prior to making its Phase 2 Bid; (b) it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Business and Property in making its Bid; and (c) it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business and Property, or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale or investment agreement executed by Tacora.

No Entitlement to Expense Reimbursement or Other Amounts

50. Phase 1 Bidders and Phase 2 Bidders shall not be entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.

Jurisdiction

51. Upon submitting an LOI or a Phase 2 Bid, the Phase 1 Bidder or the Phase 2 Bidder, as applicable, shall be deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters relating to the Solicitation Process and the terms and conditions of these Solicitation Procedures, any Sale Proposal or Recapitalization Proposal.

52. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

53. Neither Tacora, the Financial Advisor nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the Solicitation Process arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid and Back-Up Bid.

54. The Monitor shall supervise the Solicitation Process as outlined herein. In the event that there is disagreement or clarification is required as to the interpretation or application of this Solicitation Process the responsibilities of the Monitor, the Financial Advisor or Tacora hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor or Tacora or any other interested party with a hearing which shall be scheduled on not less than three (3) Business Days' notice.

APPENDIX A

DEFINED TERMS

(a) "**Ad Hoc Group**" means the ad hoc group of holders of the Senior Notes and Senior Priority Notes issued by Tacora.

(b) "**Approval Motion**" means the motion seeking approval by the Court of the Successful Bid with the Successful Bidder, and if applicable, any Back-Up Bid if the Successful Bid is not consummated.

(c) "**Approval Order**" means an order of the Court approving, among other things, if applicable the Successful Bid and the consummation thereof, and if applicable, any Back-Up Bid if the Successful Bid is not consummated;

(d) "**Back-Up Bid**" shall have the meaning attributed to it in Section 41;

(e) "**Back-Up Bidder**" shall have the meaning attributed to it in Section 41;

(f) "**Bid**" shall have the meaning attributed to it in Section 22

(g) "**Business**" shall have the meaning attributed to it in the preamble;

(h) "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;

(i) "**Cargill**" means Cargill International Trading PTE Ltd. and its affiliates.

(j) "**CCAA**" shall have the meaning attributed to it in the preamble;

(k) "**Court**" shall have the meaning attributed to it in the preamble;

(l) "**Debt Financing Party**" **s**hall have the meaning attributed to it in Section 18;

(m) **"DIP Agreement"** means the DIP Loan Agreement between Tacora and Cargill, Incorporated, dated October 9, 2023, as may be amended from time to time;

(n) "**Equity Financing IOI**" **s**hall have the meaning attributed to it in Section 28;

(o) "**Equity Financing Party**" **s**hall have the meaning attributed to it in Section 18;

(p) "**Financial Advisor"** shall have the meaning attributed to it in the preamble;

(q) "**Financing Party**" **s**hall have the meaning attributed to it in Section 18;

(r) "**Initial Order**" shall have the meaning attributed to it in the preamble;

(s) **"LOI" s**hall have the meaning attributed to it in Section 22;

(t) "**Monitor**" shall have the meaning attributed to it in the preamble;

(u) "**Monitor's Website**" means http://cfcanada.fticonsulting.com/Tacora;

A1410

(v) "**NDA"** shall have the meaning attributed to it in Section 10(d);

(w) "**Offtake Agreement**" means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended;

(x) "**Offtake Financing Party**" **s**hall have the meaning attributed to it in Section 18;

(y) "**Offtake IOI**" **s**hall have the meaning attributed to it in Section 27;

(z) "**Offtake Opportunity**" shall have the meaning attributed to it in Section 3;

(aa) "**Opportunity**" shall have the meaning attributed to it in Section 3;

(bb) "**Phase 1 Bid Deadline**" shall have the meaning attributed to it in Section 22;

(cc) "**Phase 1 Bidder**" shall have the meaning attributed to it in Section 12;

(dd) "**Phase 1 Qualified Bid**" shall have the meaning attributed to it in Section 22;

(ee) "**Phase 2 Bid**" shall have the meaning attributed to it in Section 34;

(ff) "**Phase 2 Bid Deadline**" shall have the meaning attributed to it in Section 34;

(gg) "**Phase 2 Bidder**" shall have the meaning attributed to it in Section 29;

(hh) "**Phase 2 Qualified Bid**" shall have the meaning attributed to it in Section 34;

(ii) "**Potential Bidder"** shall have the meaning attributed to it in Section 10(a);

(jj) "**Property**" shall have the meaning attributed to it in the preamble;

(kk) "**Recapitalization Proposal**" shall have the meaning attributed to it in Section 23(c)(i);

(ll) "**Sale Proposal**" shall have the meaning attributed to it in Section 23(c)(i);

(mm) "**Scully Mine**" shall have the meaning attributed to it in the preamble;

(nn) "**Solicitation Order**" shall have the meaning attributed to it in the preamble;

(oo) "**Solicitation Process**" shall have the meaning attributed to it in the preamble;

(pp) "**Solicitation Procedures**" shall have the meaning attributed to it in the preamble;

(qq) "**Stalking Horse Bid**" shall have the meaning attributed to it in Section ;

(rr) "**Successful Bid**" shall have the meaning attributed to it in Section 40; and

(ss) "**Successful Bidder**" shall have the meaning attributed to it in Section 40.

(tt) "**Teaser Letter**" shall have the meaning attributed to it in Section 10(d);

A157

(uu) "**Transaction Opportunity**" shall have the meaning attributed to it in Section 2.

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 TACORA RESOURCES INC.

(Applicant)

Court File No.

A1412

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

ORDER
(Solicitation Order)

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Ashley Taylor (LSO #39932E)
Tel: 416-869-5236
Email: ataylor@stikeman.com

Lee Nicholson (LSO #66412I)
Tel: 416-869-5604
Email: leenicholson@stikeman.com

Natasha Rambaran (LSO #80200N)
Tel: 416-869-5504
Email: nrambaran@stikeman.com

Philip Yang (LSO #82084O)
Tel: 416-869-5593
Email: pyang@stikeman.com

Counsel to Tacora Resources Inc.

A159

4

CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to October 5, 2023

Last amended on April 27, 2023

À jour au 5 octobre 2023

Dernière modification le 27 avril 2023

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

1997, c. 12, s. 124; 2001, c. 9, s. 576; 2005, c. 47, s. 128; 2007, c. 29, s. 106, c. 36, s. 65.

titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer, par ordonnance, sur demande de la compagnie et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

1997, ch. 12, art. 124; 2001, ch. 9, art. 576; 2005, ch. 47, art. 128; 2007, ch. 29, art. 106, ch. 36, art. 65.

11.11 [Repealed, 2005, c. 47, s. 128]

11.11 [Abrogé, 2005, ch. 47, art. 128]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Financement temporaire

11.2 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté — d'un montant qu'il estime indiqué — en faveur de la personne nommée dans l'ordonnance qui accepte de prêter à la compagnie la somme qu'il approuve compte tenu de l'état de l'évolution de l'encaisse et des besoins de celle-ci. La charge ou sûreté ne peut garantir qu'une obligation postérieure au prononcé de l'ordonnance.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priorité — créanciers garantis

(2) Le tribunal peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Priorité — autres ordonnances

(3) Il peut également y préciser que la charge ou sûreté n'a priorité sur toute autre charge ou sûreté grevant les biens de la compagnie au titre d'une ordonnance déjà rendue en vertu du paragraphe (1) que sur consentement de la personne en faveur de qui cette ordonnance a été rendue.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

Facteurs à prendre en considération

(4) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la durée prévue des procédures intentées à l'égard de la compagnie sous le régime de la présente loi;

b) la façon dont les affaires financières et autres de la compagnie seront gérées au cours de ces procédures;

c) la question de savoir si ses dirigeants ont la confiance de ses créanciers les plus importants;

d) la question de savoir si le prêt favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;

e) la nature et la valeur des biens de la compagnie;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

f) la question de savoir si la charge ou sûreté causera un préjudice sérieux à l'un ou l'autre des créanciers de la compagnie;

g) le rapport du contrôleur visé à l'alinéa 23(1)b).

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 36, s. 65; 2019, c. 29, s. 138.

Facteur additionnel : demande initiale

(5) Lorsqu'une demande est faite au titre du paragraphe (1) en même temps que la demande initiale visée au paragraphe 11.02(1) ou durant la période visée dans l'ordonnance rendue au titre de ce paragraphe, le tribunal ne rend l'ordonnance visée au paragraphe (1) que s'il est également convaincu que les modalités du financement temporaire demandé sont limitées à ce qui est normalement nécessaire à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

1997, ch. 12, art. 124; 2005, ch. 47, art. 128; 2007, ch. 36, art. 65; 2019, ch. 29, art. 138.

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Cessions

11.3 (1) Sur demande de la compagnie débitrice et sur préavis à toutes les parties au contrat et au contrôleur, le tribunal peut, par ordonnance, céder à toute personne qu'il précise et qui y a consenti les droits et obligations de la compagnie découlant du contrat.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;

(b) an eligible financial contract; or

(c) a collective agreement.

Exceptions

(2) Le paragraphe (1) ne s'applique pas aux droits et obligations qui, de par leur nature, ne peuvent être cédés ou qui découlent soit d'un contrat conclu à la date à laquelle une procédure a été intentée sous le régime de la présente loi ou par la suite, soit d'un contrat financier admissible, soit d'une convention collective.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;

(b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(c) whether it would be appropriate to assign the rights and obligations to that person.

Facteurs à prendre en considération

(3) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

a) l'acquiescement du contrôleur au projet de cession, le cas échéant;

b) la capacité de la personne à qui les droits et obligations seraient cédés d'exécuter les obligations;

c) l'opportunité de lui céder les droits et obligations.

damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced.

1997, c. 12, s. 124; 2007, c. 36, s. 67.

immeuble de la compagnie débitrice constitue une réclamation, que la date du fait ou dommage soit antérieure ou postérieure à celle où des procédures sont intentées au titre de la présente loi.

1997, ch. 12, art. 124; 2007, ch. 36, art. 67.

Disclosure of financial information

11.9 (1) A court may, on any application under this Act in respect of a debtor company, by any person interested in the matter and on notice to any interested person who is likely to be affected by an order made under this section, make an order requiring that person to disclose any aspect of their economic interest in respect of a debtor company, on any terms that the court considers appropriate.

Factors to be considered

(2) In deciding whether to make an order, the court is to consider, among other things,

(a) whether the monitor approved the proposed disclosure;

(b) whether the disclosed information would enhance the prospects of a viable compromise or arrangement being made in respect of the debtor company; and

(c) whether any interested person would be materially prejudiced as a result of the disclosure.

Meaning of *economic interest*

(3) In this section, ***economic interest*** includes

(a) a claim, an eligible financial contract, an option or a mortgage, hypothec, pledge, charge, lien or any other security interest;

(b) the consideration paid for any right or interest, including those referred to in paragraph (a); or

(c) any other prescribed right or interest.

2019, c. 29, s. 139.

Divulgation de renseignements financiers

11.9 (1) Sur demande de tout intéressé sous le régime de la présente loi à l'égard d'une compagnie débitrice et sur préavis de la demande à tout intéressé qui sera vraisemblablement touché par l'ordonnance rendue au titre du présent article, le tribunal peut ordonner à cet intéressé de divulguer tout intérêt économique qu'il a dans la compagnie débitrice, aux conditions que le tribunal estime indiquées.

Facteurs à prendre en considération

(2) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, notamment, les facteurs suivants :

a) la question de savoir si le contrôleur acquiesce à la divulgation proposée;

b) la question de savoir si la divulgation proposée favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie débitrice;

c) la question de savoir si la divulgation proposée causera un préjudice sérieux à tout intéressé.

Définition de *intérêt économique*

(3) Au présent article, ***intérêt économique*** s'entend notamment :

a) d'une réclamation, d'un contrat financier admissible, d'une option ou d'une hypothèque, d'un gage, d'une charge, d'un nantissement, d'un privilège ou d'un autre droit qui grève le bien;

b) de la contrepartie payée pour l'obtention, notamment, de tout intérêt ou droit visés à l'alinéa a);

c) de tout autre intérêt ou droit prévus par règlement.

2019, ch. 29, art. 139.

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

R.S., 1985, c. C-36, s. 12; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 2004, c. 25, s. 195; 2005, c. 47, s. 130; 2007, c. 36, s. 68.

Échéances

12 Le tribunal peut fixer des échéances aux fins de votation et aux fins de distribution aux termes d'une transaction ou d'un arrangement.

L.R. (1985), ch. C-36, art. 12; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 2004, ch. 25, art. 195; 2005, ch. 47, art. 130; 2007, ch. 36, art. 68.

Leave to appeal

13 Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from

Permission d'en appeler

13 Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la

5

Court File No. _____

Tacora Resources Inc.

PRE-FILING REPORT OF THE PROPOSED MONITOR

October 9, 2023

E3

3. The Proposed Monitor understands that the Applicant will be seeking a further order (the "**Proposed Amended and Restated Initial Order**") at a subsequent hearing, to be scheduled with the supervising judge prior to the expiry of the Stay Period, granting certain broader relief. If appointed, the Monitor intends to file a further report in advance of that hearing to provide information on the relief sought in the Proposed Amended and Restated Initial Order.

4. The purpose of this Report is to inform the Court on the following:

   (a) The qualifications of FTI to act as Monitor and an overview of the involvement of FTI and its affiliates with the Applicant to date;

   (b) The state of the business and affairs of the Applicant and the causes of its financial difficulty and insolvency;

   (c) The proposed conduct of the CCAA Proceeding;

   (d) The Applicant's weekly cash flow forecast for the period October 9, 2023, to February 25, 2024 (the "**October 7 Forecast**");

   (e) The Applicant's request, and the Proposed Monitor's recommendation thereon, for:

      (i) Approval of the DIP Facility Term Sheet (the "**DIP Financing Agreement**") dated October 9, 2023, between the Applicant, as Borrower and Cargill, Incorporated ("**Cargill**" or the "**DIP Lender**"), pursuant to which the DIP Lender has agreed to advance up to a maximum principal amount of $75 million (the "**DIP Facility**") to the Applicant, subject to the terms and conditions of the DIP Financing Agreement, with an initial loan amount of up to $15.5 million being available prior to the comeback hearing; and

E3

(b) The DIP Facility is necessary, the terms of the DIP Financing Agreement are reasonable and within market parameters, it is the best interim financing facility currently available, and no creditor will be materially prejudiced by the approval of the DIP Financing Agreement or the granting of the DIP Charge;

(c) The quantum of the proposed Directors' Charge is reasonable in relation to the quantum of the estimated potential liability;

(d) The quantum of the proposed Administration Charge is reasonable in the circumstances; and

(e) The relief requested by the Applicant, including the approval of the DIP Financing Agreement, the granting of the DIP Charge, the Directors' Charge and the Administration Charge, is necessary, reasonable and justified.

11. Accordingly, the Proposed Monitor respectfully recommends that the Applicant's request for the Proposed Initial Order be granted by this Honourable Court.

FTI AND ITS AFFILIATES

QUALIFICATIONS TO ACT

12. FTI is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the "**BIA**") and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. FTI has provided its consent to act as Monitor.

6

Court File No. CV-23-00707394-00CL

Tacora Resources Inc.

FIRST REPORT OF THE MONITOR

October 20, 2023

FTI CONSULTING

E37

8. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars. Capitalized terms not otherwise defined herein have the meanings given to them in the Proposed Monitor's Pre-Filing Report (the "**Pre-Filing Report**"), a copy of which is attached hereto as **Appendix A,** or in the Initial Order.

EXECUTIVE SUMMARY

APPLICANT'S REQUEST FOR THE GRANTING OF THE ARIO

9. The Monitor is of the view that:

(a) The DIP Facility is necessary, the terms of the DIP Financing Agreement are reasonable and within market parameters, it is the best interim financing facility currently available, and no creditor will be materially prejudiced by the approval of the DIP Financing Agreement or the granting of the DIP Charge;

(b) The proposed increase in the quantum of the proposed Directors' Charge is reasonable and justified in relation to the quantum of the estimated potential liability;

(c) The continued engagement of Greenhill to assist the Applicant in the implementation of the Solicitation Process will be beneficial to the Applicant and its stakeholders generally and assist with the efficient completion of the CCAA Proceeding;

(d) The fees provided for in the Greenhill Engagement Letter are within market parameters;

(e) In the circumstances of this case, the Transaction Fee Charge to secure the potential Transaction Fees is appropriate;

(f) The KERP is appropriate, reasonable and justified in the circumstances and that the terms, conditions and amounts of potential payments are in line with employee retention plans approved in other CCAA proceedings; and

E5

E39

ACTIVITIES OF THE MONITOR SINCE THE GRANTING OF THE INITIAL ORDER

15. Since the granting of the Initial Order, the Monitor has been assisting the Applicant in its communications with employees, key suppliers, creditors and other stakeholders. Employees and key suppliers have generally exhibited a high degree of support and commitment to the ongoing operations, which have continued without any material interruption since the commencement of the CCAA Proceedings.

16. The Monitor has established a case website at http://cfcanada.fticonsulting.com/Tacora/ (the "**Monitor's Website**") where relevant information will be posted, together with all Court materials. In addition, the Monitor has set up phone (416-649-8138 and 1-833-420-9074) and email "hotlines" (tacora@fticonsulting.com) on which parties can contact the Monitor directly.

17. In accordance with paragraph 42 of the Initial Order:

    (a) On October 10, 2023, made the Initial Order publicly available on the Monitor's Website;

    (b) On October 13, 2023, sent a notice to every known creditor who has a claim against the Applicant of more than $1,000;

    (c) On October 13, 2023, posted a list of creditors based on the Applicant's books and records on the Monitor's Website; and

    (d) On October 16, 2023, published in the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA.

THE AMENDED AND RESTATED INITIAL ORDER

THE DIP FINANCING AGREEMENT

18. Details of the DIP Financing Agreement, together with the Proposed Monitor's (as the Monitor then was) comments and recommendation with respect thereto, were set out in paragraphs 23 to 67 of the Pre-Filing Report.

E7

E39

ACTIVITIES OF THE MONITOR SINCE THE GRANTING OF THE INITIAL ORDER

15. Since the granting of the Initial Order, the Monitor has been assisting the Applicant in its communications with employees, key suppliers, creditors and other stakeholders. Employees and key suppliers have generally exhibited a high degree of support and commitment to the ongoing operations, which have continued without any material interruption since the commencement of the CCAA Proceedings.

16. The Monitor has established a case website at http://cfcanada.fticonsulting.com/Tacora/ (the "**Monitor's Website**") where relevant information will be posted, together with all Court materials. In addition, the Monitor has set up phone (416-649-8138 and 1-833-420-9074) and email "hotlines" (tacora@fticonsulting.com) on which parties can contact the Monitor directly.

17. In accordance with paragraph 42 of the Initial Order:

    (a) On October 10, 2023, made the Initial Order publicly available on the Monitor's Website;

    (b) On October 13, 2023, sent a notice to every known creditor who has a claim against the Applicant of more than $1,000;

    (c) On October 13, 2023, posted a list of creditors based on the Applicant's books and records on the Monitor's Website; and

    (d) On October 16, 2023, published in the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA.

THE AMENDED AND RESTATED INITIAL ORDER

THE DIP FINANCING AGREEMENT

18. Details of the DIP Financing Agreement, together with the Proposed Monitor's (as the Monitor then was) comments and recommendation with respect thereto, were set out in paragraphs 23 to 67 of the Pre-Filing Report.

E7

E40

19. Subsequent to the granting of the Initial Order, a drafting error was discovered in paragraph 23(d) of the DIP Financing Agreement. The Applicant and the DIP Lender, in consultation with the Monitor, have agreed to a correction in order to properly reflect the intent of the provision.

20. The comments and recommendations with respect to the DIP Financing Agreement set out in the Pre-Filing Report are reiterated and endorsed by the Monitor. Based on the foregoing, the Monitor respectfully recommends that the Court grant the Applicant's request for approval of the DIP Financing Agreement and the granting of the DIP Charge.

THE DIRECTORS' CHARGE

21. The Proposed Monitor provided comments and recommendations with respect to the proposed Directors' Charge at paragraphs 68 to 75 of the Pre-Filing Report.

22. As stated in the Pre-Filing Report, the quantum of the proposed Directors' Charge is based on estimated amounts for which directors could potentially have statutory personal liability that could be outstanding during the CCAA Proceeding:

    (a) Wages, salaries and applicable withholdings;

    (b) Outstanding Newfoundland Health and Post-Secondary Education Tax liabilities pursuant to an agreed payment plan by which payments come due after the filing date;

    (c) Sales taxes; and

    (d) Accrued vacation pay.

23. Also as stated in the Pre-Filing Report, the amount for wages and salaries increases in the calculation of the amount for the Directors' Charge proposed under the ARIO primarily as a result of including a full payroll period, rather than only ten days as was included in the calculation of the amount for the Directors' Charge under the Initial Order.

E8

E55

THE MONITOR'S COMMENTS AND RECOMMENDATION

72. The Monitor has considered the Solicitation Process in light of the principles of section 36 of the CCAA and leading decisions dealing with the sale of assets in court-supervised proceedings. The Monitor is of the view that the Solicitation Process is consistent with those principles and provides for a broad, open, fair and transparent process with an appropriate level of independent oversight, that should encourage and facilitate bidding by interested parties and is reasonable in the circumstances. Furthermore, the Monitor does not believe that any aspect of the Solicitation Process should discourage parties from submitting offers.

73. Accordingly, the Monitor respectfully recommends that the Applicant's request for approval of the Solicitation Process be granted.

THE AHG CROSS-MOTION

74. The AHG Cross-Motion seeks the granting of the AHG ARIO rather than the ARIO as proposed by the Applicant. If the Court declines to grant the AHG ARIO, the AHG Cross-Motion seeks, in the alternative, to have various declarations or directions be included in the ARIO.

THE AHG ARIO

75. The AHG ARIO differs from the ARIO in that it provides for the Approval of the AHG DIP Proposal in place of the DIP Financing Agreement. In addition, there are material differences or changes at paragraphs 17, 27, 47, 48 and 49 of the AHG ARIO.

76. As noted earlier in this Report, the Monitor remains of the view that the DIP Financing Agreement is a superior DIP and recommends that it be approved. The Monitor does not recommend the approval of the AHG DIP Proposal.

77. In the AHG ARIO, paragraph 17 of the ARIO proposed by the Applicant is changed to delete the text struck through below and add the underlined text as follows:

E23

E56

> "17. THIS COURT ORDERS that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicant in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicant in respect of obligations arising on or after the date of this Order, each without the consent of the Applicant and the Monitor, or leave of this Court, ~~provided that nothing in this Order shall prejudice any arguments any person may want to make in seeking leave of the Court or following the granting of such leave~~. For greater certainty, Cargill shall not set-off any amount due under the Advance Payment Facility Agreement (as defined in the Broking Affidavit) against any amounts that are or may become due to the Applicant on or after the date of this Order."

78. The purpose of paragraph 17 of the ARIO, which was granted as paragraph 13 of the Initial Order, is to prevent parties from exercising pre-filing to post-filing set-off. Pre-filing amounts are due to Cargill under the Advanced Payment Facility Agreement and various amounts in respect of pre-filing deliveries of iron ore remain owing to the Applicant by Cargill. Because the proposed language of paragraph 17 of the AHG ARIO omits the phrase "in respect of obligations arising" after the word "Applicant" in the final sentence, it could have the effect of prohibiting Cargill from exercising any pre-filing to pre-filing set-off rights it might have.

79. Paragraph 27 of the AHG ARIO states:

E24

E59

87. Despite the September 11 DIP Agreement[4] including provision for a KERP, and notwithstanding multiple requests from the Applicant's advisors and from the Monitor, as at the date of this Report, the Ad Hoc Group have not yet provided any details of what would constitute a KERP acceptable to the Ad Hoc Group. Furthermore, neither the AHG Cross-Motion nor any of the materials filed in support thereof provide any details of which employees would be included in the KERP, what their bonus entitlements would be or the terms and conditions for payment. Accordingly, the AHG is seeking approval of a KERP, the terms of which have not been disclosed to the Applicant or the Court.

88. Considering all of the forgoing, the Monitor respectfully recommends that the AHG Cross-Motion for the granting of the AHG ARIO be dismissed.

REQUESTED DECLARATIONS OR DIRECTIONS

89. Set forth below is a description of the declarations or directions that, if the AHG ARIO is not granted, the Ad Hoc Group is asking to be included in the ARIO (collectively, the "**AHG Declarations**"), together with the Monitor's observations and recommendations with respect thereto.

90. The Ad Hoc Group seeks direction that any DIP financing proposal approved by the Court not prevent or in any way hinder the disclaimer of the Offtake Agreement, including, but not limited to, by making such a disclaimer an "event of default".

91. Paragraphs 21(r) (Affirmative Covenants) and 23(d) (Events of Default) of the DIP Financing Agreement state:

> "21(r) Comply with the terms, and keep in full force and effect, each of (i) the Offtake Agreement, (ii) the Onshore Agreement and (iii) the Wetcon PSA (other than any notice delivered under Section 4.4 thereof unless delivered following an Event of Default and with leave of the Court in accordance with Section 24 hereof);

[4] As defined in the AHG Cross-Motion.

E27

7

you and any member of Cargill regarding Tacora's restructuring, including without limitation the approval of either The Ad Hoc Group DIP or the Cargill DIP."

So this paragraph, paragraph number 2, is addressed to communications that you had with other individuals at Cargill regarding the Tacora proposed restructuring, including the approval of either The Ad Hoc Group DIP -- "DIPs" might be more accurate, both the August, September, and October DIPs -- and the Cargill DIP. Were you able to locate any such documents?

A. Yes.

41. Q. And have you, through your counsel -- or have you provided those to your counsel?

A. I have.

42. Q. And who at Cargill were you primarily communicating with in respect of Tacora's restructuring and the DIP proposals?

A. I've had communication, in my capacity as a Director of Tacora, with Lee Kirk and with Carlo Carrelo.

43. Q. And what was the purpose of those communications with Mr. Carrelo and Mr. Kirk?

A. It was -- the purpose of that

communication was to get a update on the status of -- of whether Cargill would be providing a DIP and further to -- or in the interests of Tacora, to encourage the provision of a DIP proposal to Tacora with the interest of providing the Tacora business with options.

44. Q. So you reached out to Mr. Kirk and Mr. Carrelo to encourage them, on behalf of Cargill, to provide a DIP?

A. To -- to Mr. Kirk.

45. Q. And was that in the August/September period or in the early October period?

A. In the October period.

46. Q. And how did you communicate with Mr. Kirk and Mr. Carrelo about this? Did you communicate by e-mail, text, messaging app?

A. Primarily, I communicated with Mr. Kirk by -- by messaging, and I had a -- I had a conversation with him.

47. Q. What messaging app did you use?

A. Teams.

48. Q. And have you provided those Teams messages to your counsel?

A. I have.

49. Q. Thank you. And we can come to this

conversations, to the extent you recall?

A. The substance was to -- to encourage Mr. Kirk that Cargill should consider to provide a DIP to Tacora, and in return to -- to receive some updates on -- from Cargill, that I could provide back to the Board of Directors to update on the potential approval process.

53. Q. And did you provide those updates to the Board?

A. The context provided to the Board on October the 8th was related to the -- the approval process.

54. Q. Meaning what specifically?

A. That specifically at the time, Cargill were getting internal approvals to submit the DIP proposal, and that specifically this was happening over a short period of time and required various different approvals, both in Singapore and in the headquarters in Minneapolis.

And that the approvals were moving forward, but that I -- that there was -- we were not -- that there was not 100 percent certainty of the timing of the final approval, given that this was occurring, I believe, on the 8th of October, which was a Sunday, and would require the attention of Cargill's executive

MR. SWAN: You're refusing?

MR. KOLLA: You have my position already. If it's included in what you've already asked for, you have my position.

MR. SWAN: That's a refusal, just to be clear?

MR. KOLLA: You have my position.

MR. SWAN: And is your position a refusal?

MR. KOLLA: The transcript is going to say exactly what the transcript says. You know it as well as I do.

MR. SWAN: Well, it shouldn't be a foul word. If you're refusing, you can just say it.

MR. KOLLA: The transcript is going to reflect exactly what I've already done. You said it was part of your prior request; you have my position about what that request was in respect of.

--- REFUSAL NO. 4

BY MR. SWAN:

166. Q. Is it Lee Kirk that you currently report to at Cargill?

A. Yes.

167. Q. And after Tacora Board meetings, how is it that you communicate with Mr. Kirk about those Board meetings?

A. I do not.

168. Q. You do not?

A. No. Unless there's a specific request made to me by the Board to communicate with Mr. Kirk, I do not communicate about Board meetings with people from Cargill. I have my role as a Tacora director and I take my fiduciary duties very seriously as a director of Cargill (sic), and I have my role as an employee of Cargill, and which is completely separate. And it is in my role as an employee of Cargill that I report to Mr. Kirk, not in my role as a director of Tacora.

169. Q. Who was it that proposed appointing you as Cargill's nominee on the Tacora Board?

A. That was my proposal.

170. Q. You proposed it? And who --

A. Yes.

171. Q. -- did you propose it to?

A. To Mr. Mulvihill.

172. Q. And why did you want to be on the Tacora Board?

A. We were at a point where the cadence of Board meetings had increased dramatically. At the time that Mr. Mulvihill had been appointed as a director of Tacora, the Board would maybe meet once

A. The mine consistently was producing less than that over many years of its operation, including since the restart.

201. Q. Is Cargill Inc. a parent company to Cargill International?

A. As I said before, I do not -- I'm not familiar with the corporate structure of Cargill. We have operations in, I think, seventy countries, also.

202. Q. Well, under the DIP facility, Cargill Inc. is the lender, and the facility indicates that Cargill Inc. can cause Cargill International to do certain things, such as continue existing arrangements such as the Offtake Agreement.

Do you know how it is that Cargill Inc. can cause Cargill International to take steps?

A. I do not.

203. Q. And you agree with me, I presume, that Cargill International is the party to the various operating agreements with Tacora, including the Offtake Agreement? It's Cargill International that's the party?

A. You're referring to Cargill International Trading PTE Limited of Singapore?

204. Q. Correct.

A. I believe so. But I cannot say with

A. I just answered. Not that I recall.

259. Q. I said: Did you have any discussions. Did you have any other communications with anyone at Cargill in the August/September period about whether Cargill should submit a DIP, the potential withdrawal of that proposal, or any terms of that?

A. Not that I recall.

260. Q. All right. I would ask you to look to see whether you have any written communications in any form with anyone at Cargill about that subject that I just identified in my prior question?

MR. KOLERS: I think that Mr. Davies has already looked for that. We can ask him to confirm that. And -- well, let's stop there for a second. Mr. Davies, have you already looked for such communications before today -- in the last twenty-four hours?

THE DEPONENT: Yeah.

MR. KOLERS: And did you find any such communications?

THE DEPONENT: I didn't.

MR. KOLERS: Sorry, that was "didn't" as in `did not'?

THE DEPONENT: I didn't. I did not.

MR. KOLERS: Okay.

purpose, I assume, or you wouldn't have approved it?

A. The Board was satisfied that a DIP was better than no DIP.

277. Q. And the Board was satisfied that The Ad Hoc DIP was sufficient for the purpose?

A. The Board acted upon the advice of the advisors, and the advice of the advisors was clear that a DIP is better than no DIP. And therefore, the clear advice was that the Board should approve this DIP.

278. Q. Well, you're not quite answering my question. I appreciate your answer, but you're not quite answering my question. The Board would not have approved, presumably, The Ad Hoc DIP if it wasn't satisfactory for the intended purpose, is that not right?

A. Certain reservations related to the DIP were -- were discussed and acknowledged, but the advice from the advisors was very clear that: `This is -- this is the only proposal we have on the table, and that going into a CCAA process with a DIP is better than going into the CCAA process with no DIP'.

279. Q. And the advisors also told the Board that this DIP was satisfactory for the purpose of going into the CCAA process?

290. Q. This is in the October period, obviously. And what happened when Greenhill reached out to Cargill? What was the response -- the initial response?

MR. KOLERS: Sorry, just to be clear, I don't believe Mr. Davies was involved in those discussions. You can ask him, but I presume you're just asking him what he was reported to by Greenhill at the Board meetings?

MR. SWAN: I'm asking him what he understands, either from the Board meeting or from other sources of information.

MR. KOLERS: So, Mr. Davies, in answering your understanding, please be clear to indicate where it came from.

THE DEPONENT: Okay. My understanding from Greenhill's feedback to the Board is that Cargill were considering.

BY MR. SWAN:

291. Q. And was it at this point or a subsequent point that you called Mr. Kirk or communicated with Mr. Kirk?

A. Subsequently.

292. Q. All right. So what happened between Cargill, after being asked, considering a DIP and your

reach-out to Mr. Kirk, based on your knowledge?

A. I do not know. My understanding is that the DIP Term Sheet submitted on behalf of Cargill was negotiated by Goodmans as counsel to Cargill. And so I had no discussions about the terms of that -- that DIP.

I provided no information to Cargill about -- from the Board, other than to have a general discussion to encourage on behalf of Tacora for a alternative proposal for the Board to consider.

293. Q. And what was the trigger for you to call Mr. Kirk or contact Mr. Kirk?

A. I don't recall. I speak to Mr. Kirk every day. He's my line manager. We work on many, many different areas of business every day.

294. Q. Well, that may be the case, but here you were specifically speaking about a Cargill DIP and perhaps an advanced Cargill DIP over what was being proposed. So what triggered you to do that?

A. I said I didn't discuss the terms. I merely believed that it was in the interest of Tacora to have more than one DIP proposal to consider.

295. Q. And you said that to Mr. Kirk?

A. I don't recall the specific words I used.

evaluating the merits -- the positives and the negatives of each of the two proposals.

312. Q. And you were present throughout that discussion?

A. I was.

313. Q. And Board members spoke?

A. They did.

314. Q. And presumably asked questions?

A. That's correct.

315. Q. And that included you?

A. I believe that I asked one/maybe two questions, yes.

316. Q. And at no point in the October 8th meeting did you leave the meeting, did you?

A. I did not.

317. Q. And despite the fact that a DIP proposal from your employer, Cargill, was presented, correct?

A. Correct.

318. Q. And it is stated in one of the Affidavits that you did not vote on this proposal?

A. That's correct.

319. Q. In fact, you didn't recuse yourself from voting -- if I have it right, just based on the document I've seen this morning, you didn't recuse

yourself, you just elected not to vote because the two other Board members had already voted, is that what happened?

A. No, I followed the advice of Stikeman Elliott around, firstly, the presence ---

MR. KOLERS: So...

THE DEPONENT: Oh, sorry.

MR. KOLERS: I mean, I ---

BY MR. SWAN:

320. Q. So let me understand, Mr. -- that wasn't my question, so you've sort of strayed into advice. Your evidence, I take it, is you did not vote, and you did so on the basis of advice, is that right?

MR. KOLERS: I don't think that's an appropriate question.

--- REFUSAL NO. 7

BY MR. SWAN:

321. Q. And -- well, let's take that in two pieces. You did not vote?

A. Correct.

322. Q. However, you remained present throughout the entire meeting, correct?

A. Correct.

323. Q. And you remained present while others

voted?

A. Correct.

324. Q. And Mr. Davies, you were aware, I take it, that one of the terms of the Cargill DIP makes it an event of default if the Offtake Agreement is terminated, suspended, or disclaimed? Were you aware of that?

A. I was.

325. Q. And you were also aware that that was not a term of The Ad Hoc Group proposal -- DIP proposal, correct?

A. I'm aware of that.

326. Q. We're going to call up a document on screen-share.

MR. KOLERS: Can you make that larger, please?

BY MR. SWAN:

327. Q. This is an e-mail from a Mr. Gaurav Mehta to two individuals at Greenhill. And this group that Mr. Mehta was representing, called "IR2", was considering a DIP proposal in August/September of 2023 and indicated that existing Cargill -- a term would be that "existing Cargill arrangements were terminated or renegotiated". Were you aware of this communication or this position taken by IR2?

A. I haven't seen this document before. I am aware from the earlier presentation from Greenhill that IR2 came with a number of terms which -- which were considered by the advisors to be unacceptable to the stakeholders of Tacora, not least the required haircut on the debt, in addition to the Cargill Offtake, to the extent that it should not be considered further. That's my recollection of the Greenhill presentation and commentary from -- from the earlier.

328. Q. All right. Well, maybe we will ask that question, then, of Mr. Bhandari. And the question of a KERP, a key employee retention plan, that came before the Board, as well?

A. That's correct.

329. Q. And the initial structure of the KERP, Mr. Broking had input into?

A. I don't know the answer to that.

330. Q. You don't know one way or the other?

A. I don't know one way or the other.

331. Q. Okay. And you are aware that the company is proposing a solicitation process within the CCAA proceeding, a so-called "SISP", you're aware of that?

A. I am.

332. Q. And do you agree with me that, given present circumstances, it is important that that SISP process move forward quickly?

A. I believe that the SISP process moving forward in a controlled and appropriate manner is of importance, yes.

333. Q. Well, it ought not to be delayed, right?

A. Correct.

334. Q. All right.

MR. SWAN: Let's pause there and I will come back in fifteen minutes at ten minutes after the hour and we'll have a few questions -- a certain number of questions in respect of the documents that have been provided to us today.

--- OFF THE RECORD (12:57 P.M.) ---

--- UPON RESUMING (1:17 P.M.) ---

MR. SWAN: I don't think I'll be more than ten minutes. Possibly less.

MR. KOLERS: Okay.

BY MR. SWAN:

335. Q. Mr. Davies, do you have an indemnity from Cargill in respect of your participation as a Board member of Tacora?

A. I don't know.

336. Q. You don't know?

A. I believe so, but I don't -- I can't say with certainty.

337. Q. Right. I'm going to share-screen with a few documents, among those that were produced this morning. The first are the minutes of the Board of September 6, 2023. And these are the Minutes of the Meeting of the Board of Directors of Tacora dated September 6, 2023. And have you seen these, Mr. Davies?

A. Yes.

338. Q. All right.

MR. SWAN: I'd like to mark those as Exhibit 1 to this examination.

--- EXHIBIT NO. 1: Minutes of the Meeting of the Board of Directors of Tacora Resources Inc., dated September 6, 2023.

THE REPORTER: Okay, thank you.

BY MR. SWAN:

339. Q. And the Secretary of the meeting is indicated to be Wei -- and this is in the second paragraph, Wei Yan, W-E-I Y-A-N. And I take it that Wei Yan is a lawyer at the Stikemans law firm?

MR. KOLERS: Yes, that's correct.

MR. SWAN: Thank you.

BY MR. SWAN:

340. Q. Let's then move to the minutes of the Tacora Board meeting of September 7, 2023. There seems to be an inconsistency here. It references in bold at the top the date of September the 7th, but it then says that a meeting of the Board of Directors of Tacora was held on September the 12th. Can you confirm for us whether this is a meeting on September the 7th or September the 12th?

MR. KOLERS: Sorry, one sec. Yeah, we'll -- I obviously hadn't noticed that, but we'll advise you.

MR. SWAN: Yes, I suspect that it is probably a meeting of September the 12th, given what is stated there in the first sentence.

--- UNDERTAKING NO. 3

BY MR. SWAN:

341. Q. Mr. Nicholson is the Secretary of the meeting and he is a lawyer at the Stikemans law firm?

MR. KOLERS: That's correct.

BY MR. SWAN:

342. Q. And if you turn over, then, to the next page, page 2 of these minutes, I'll just give you a moment to read this. If you can read the second paragraph, which begins: "Mr. Davies raised"? And then three paragraphs later, it again begins "Mr.

Davies".

"Mr. Davies stated two objections to moving forward with the approval of the DIP."

And the DIP being discussed here is The Ad Hoc DIP. Did you raise objection to The Ad Hoc DIP in this meeting, which we believe is on September -- one of September 7 or 12?

A. I raised that I had material concerns for Tacora about its ability to meet the production forecast and the covenant that had been explained to us in the Board meeting requiring that 85 percent of the production must be met on a weekly basis, given my knowledge of the operation of this asset and the number of times that that's been an issue.

I did not oppose to move forward per se on the DIP, but I registered my concern and said, "This is an issue which needs to be discussed". And the advisors committed to go and further discuss that point with The Ad Hoc Group. However, that, I believe, may be -- was the previous meeting.

At that point, the advisors -- I had raised my concerns, and as it states there, I voted in favour on September the -- I need to validate what date this specific Board meeting was.

343. Q. Right.

MR. KOLERS: Mr. Swan, could you maybe scroll to the bottom of it, so we could see if there's any date or any vote at the end?

MR. SWAN: There does not appear to be.

MR. KOLERS: I see.

MR. SWAN: However, there is an attached resolution which bears the date September the 7th. So that might lead a person to conclude that this is a -- this is, indeed, a September 7th Board meeting and that first sentence contains the error.

MR. KOLERS: Okay. Well, as I said, we'll confirm that, but thanks for that clarification.

BY MR. SWAN:

344. Q. So if this is, indeed, a September the 7th meeting, you were raising concerns about The Ad Hoc DIP. And the only other party who had advanced at all in this process and ultimately withdrew in terms of a DIP provider, was Cargill, right?

A. I don't see that those two points are connected. I was ---

345. Q. Well, don't worry ---

A. I was ---

346. Q. Don't worry about whether the points are connected, just answer my question.

A. Could you break the questions into two?

347. Q. There were only two parties that got past an initial stage during the DIP -- first DIP process, and those two parties were The Ad Hoc Group and Cargill, right?

MR. KOLERS: So, Mr. Swan, just in fairness to the witness, I believe the timing of this, even if it's September 7th, is after the Cargill DIP is already gone. So I just think you should be careful about how you phrase the question, in fairness to the witness. I don't think there's a Cargill DIP being discussed, or presented, or considered by the Board at this meeting.

BY MR. SWAN:

348. Q. Well, my question, as put, was that: The only two parties that had advanced at all, whether one had withdrawn or not, were Cargill and The Ad Hoc Group. I think you told me that earlier, did you not, Witness?

A. I did.

MR. KOLERS: Yeah, I just see at the top of the page currently on the screen, it does say to be aware that Cargill had not submitted a DIP financing proposal. So it looks like this is after Cargill's out.

MR. SWAN: Let's move forward to the next

document. Let's mark that set of minutes of the Board of Directors Meeting, which we believe is September 7, 2023. Subject to correction, but I think that is September 7, 2023.

--- EXHIBIT NO. 2: Minutes of the Meeting of the Board of Directors of Tacora Resources Inc., dated September 7, 2023.

BY MR. SWAN:

349. Q. And let's then move forward to the minutes of the meeting of the Directors on September 11, 2023. And if we then look on the second page, the first paragraph on the second page refers to...

MR. SWAN: Just a little bit further.

BY MR. SWAN:

350. Q. And just before we move on to the next page, at the bottom of the first page, it says: "Status of negotiations". This is on September the 11th. It refers to "attempts to find a mutually agreeable path forward", and "Mr. Bhandari summarized the status of ongoing negotiations". Do you see that, sir?

A. Yes.

351. Q. And the reference in the introductory paragraph immediately before that is the status of negotiations among The Ad Hoc Group and Cargill, do

you see that?

A. Yes.

352. Q. And in fact, what it says is:

"Mr. Broking advised that the purpose of the meeting was to provide an update on the status of negotiations among The Ad Hoc Group and Cargill to discuss certain amendments to the DIP Term Sheet and to update the Board on a potential CCAA filing."

The negotiations being referenced here vis-a-vis Cargill remain a restructuring negotiation, is that correct? A CBCA restructuring?

A. I don't know the mechanism.

353. Q. Well, there were negotiations ongoing at this time on September 11th involving Tacora, Cargill, and separately The Ad Hoc Group, in an effort to find a path forward for the company?

A. Correct.

354. Q. Do you recall that?

A. I do recall that, yes.

355. Q. And so the company was still involved in negotiations of that sort with Cargill at that time? Do you agree with that?

A. Yes.

356. Q. And again, you did not recuse yourself from any part of this Board meeting, is that right?

A. Correct.

357. Q. In fact, you've never recused yourself from any part of a Tacora Board meeting?

A. Correct.

358. Q. And if we go over to the next page -- well, I think it speaks for itself, so we can move on.

MR. SWAN: Let's mark that as Exhibit 3.

--- EXHIBIT NO. 3: Minutes of the Meeting of the Board of Directors of Tacora Resources Inc., dated September 11, 2023.

BY MR. SWAN:

359. Q. And let's then go to the September 12th minutes. And just to orient you, September 12th was the day after The Ad Hoc DIP agreement was signed and the day that some had anticipated might be a CCAA filing, but instead further negotiations took place with certain parties.

And you'll see if we scroll down on this page, there is a heading: "Status of Potential Recapitalization Transaction". Mr. Bhandari providing a summary of negotiations. And then the last paragraph provides:

"The Board was also advised that Cargill had transferred approximately $6 million to its legal counsel for payment to the company in respect of

unpaid and overdue invoices under the Offtake Agreement that would be paid to the company if an agreement was reached."

Do you see that?

A. I see that.

360. Q. And is it the case that you, as a Board member, were advised of that, as it indicates here?

A. Advised in the Board meeting?

361. Q. Advised in the Board meeting. Where it says: "The Board was also advised that Cargill", etcetera, in that last paragraph.

A. Yes.

362. Q. And what you were told was that Cargill did not pay the $6 million to Tacora. Rather, it transferred it to the Goodmans law firm for payment to the company if an agreement was reached with Cargill, do you see that?

A. I see that.

363. Q. And that's what you were advised?

A. Yes.

364. Q. Thank you.

MR. SWAN: Let's mark that as Exhibit 4.

--- EXHIBIT NO. 4: Minutes of the Meeting of the Board of Directors of Tacora Resources Inc., dated September 12, 2023.

BY MR. SWAN:

365. Q. Next, we're going to look at an exchange of text messages between yourself and Mr. Broking. And my question is: There doesn't appear to be a date on this. Are you able to tell us what the date of this series of messages is? It's been -- some of the subsequent pages have been redacted and that may help you to identify the date, but can you just advise me the date of that?

A. I cannot.

MR. SWAN: Well, I guess I'm asking your counsel, by undertaking, to advise me of that date.

MR. KOLERS: Yeah, we can do that.

--- UNDERTAKING NO. 4

BY MR. SWAN:

366. Q. And at the bottom of that page, it says:

"Need bridge money by Monday or sooner. Need train payments also."

And is that Mr. Broking speaking to you or you --

A. Yes.

367. Q. -- speaking to Mr. Broking?

A. That's Mr. Broking speaking to me.

368. Q. Your comments are in blue here, I take

it?

A. Correct.

369. Q. And then you write: "Let's get ink on paper." It says "now", but you intended to say "know". "You know Cargill will be good." Do you see that?

A. I do.

370. Q. What are you referring to there in terms of getting "ink on paper"?

A. I don't know precisely without seeing the dates.

371. Q. All right. Well, when you identify the dates, can you also tell me what you meant when you -- what document you were referring to, or potential document, when you say "get ink on paper"? It may be apparent from the date, but if it's not, I'd like to know.

MR. KOLERS: Mr. Swan, if you just give us one minute, I think we can tell you what the date is. Okay, sorry, we can't do that sitting here. So...

MR. SWAN: You'll advise me?

MR. KOLERS: We'll advise you.

--- UNDERTAKING NO. 5

MR. SWAN: And the second part of that was: Once the witness is aware of the date, what "ink on

paper" he was referring to?

MR. KOLERS: Understood.

MR. SWAN: All right.

--- UNDERTAKING NO. 6

MR. SWAN: Have we marked that yet? Let's mark that as Exhibit 5. Exhibit 5 being this exchange of text messages between Mr. Broking and Mr. Davies.

--- EXHIBIT NO. 5: Exchange of text messages between Mr. Broking and Mr. Davies.

BY MR. SWAN:

372. Q. Let's go next to an exchange of texts between Mr. Davies and Mr. Carrelo. So this is an exchange of messages that you have produced between yourself and Mr. Carrelo dated October 5, it would seem, or at least it starts on October 5, 2023. Can you confirm that this is an exchange of texts between you and Mr. Carrelo of Cargill?

A. That's correct.

MR. SWAN: Let's mark that as Exhibit 6.

--- EXHIBIT NO. 6: Exchange of text messages between Mr. Carrelo and Mr. Davies.

BY MR. SWAN:

373. Q. And then we want to follow up with one more of these text exchanges. This is a text exchange -- is this on a particular platform?

A. That's on Microsoft Teams.

374. Q. That's a Teams text exchange, okay. And it appears to be an exchange between you and whom else?

A. Lee Kirk.

375. Q. Lee Kirk?

A. Yeah.

376. Q. And if we go over to the second page of that, Mr. Kirk says at 9:23 a.m.: "This is all going to be a bit tricky" -- this is on October 6th, 9:23 a.m.

"This is all going to be a bit tricky as I will be on the move to Paris this afternoon, so I will need someone working with me who can step in if I am not available."

Do you know what that refers to?

A. This is related to him, I believe, discussing internally on his approval process.

377. Q. Approval for the Cargill DIP?

A. Correct.

378. Q. And if we go down that page about halfway down, there is a note from you on October the 6th at 1:17 p.m. and you say:

"I know C3 trended up to mid 20s. Let me check 65/62."

And I think we know what "65/62" is in terms of ore grade. What are you referencing when you say: "I know C3 trended up to mid 20s"?

A. That's the freight cost. C3 is a freight cost from Brazil to China, which is referenced on fixing freight rates from Canada to China.

379. Q. And you say: "Let me check 65/62." Where were you going to check that?

A. I was going to check it internally with information from price reporting agencies of what the current 65/62 price was.

380. Q. All right. And was there any Cargill analysis that was done in and around this period as to support the proposed Cargill DIP?

A. I don't know because I didn't check this.

381. Q. So you don't know whether Cargill did any analysis, is that your evidence?

A. I don't know whether Cargill did any analysis.

382. Q. All right. Just one moment, please.

MR. KOLERS: I think you're on mute.

MR. SWAN: Okay, so if we can just scroll down to there?

BY MR. SWAN:

Q. We saw that reference to: "This is all going to be a bit tricky." It then says from -- you then say Phil -- you confirm that Phil is on a flight, and you say: "Happy to help however I can." What did you mean by that?

A. It was a general offer of help to my line manager, who was in -- as he stated, he was in transit.

383. Q. An offer of help in respect of the proposed Cargill DIP, is it not? That's what you were talking about?

A. It was -- it was -- as I mentioned, I was not involved in any of the Cargill negotiations or analysis. I was coming at this from the perspective of a Tacora director seeking to encourage Cargill to provide a DIP proposal.

384. Q. And in the context of seeking to encourage Cargill to provide a DIP proposal, you said to your boss, Mr. Kirk: "Happy to help however I can", right? Those are your words?

A. Those are my words.

MR. SWAN: Let's mark that exchange as Exhibit 7.

--- EXHIBIT NO. 7: Exchange of messages between Mr. Kirk and Mr. Davies (Microsoft Teams).

MR. SWAN: And then I have a few other documents that we referred to earlier, that I'd like to mark as exhibits and then we'll be done. The first was the Notice of Examination. Let's mark that as Exhibit 8.

MR. KOLERS: Fine.

MR. SWAN: Pardon?

MR. KOLERS: I said that's fine.

MR. SWAN: Yes, thank you.

--- EXHIBIT NO. 8: Notice of Examination.

MR. SWAN: The second was we looked at the non-binding indicative Term Sheet that was provided by Cargill in the August/September DIP process, and I asked you a question about that. Let's -- you said you hadn't seen that, so I guess we'd best mark that Exhibit A for identification.

MR. KOLERS: I was just going to say the same thing. So that's fine.

--- EXHIBIT A: For Identification. Term Sheet provided by Cargill.

MR. SWAN: We also looked at the September 8, 2023 letter from Stikemans to Goodmans. I would propose to mark that as Exhibit 9.

MR. KOLERS: Yeah, I think that's already in the record.

MR. SWAN: It is, in fact. It is attached to Mr. Gray's Affidavit. But since I referred to it on this examination, for the purpose of housekeeping, why don't we just mark it as Exhibit 9?

MR. KOLERS: All right.

--- EXHIBIT NO. 9: Letter dated September 8, 2023 to Goodmans from Stikemans.

MR. SWAN: And finally, there was an e-mail from IR2 from August of 2023 that this witness was not able to identify, but which was put to him. Let's mark that as Exhibit B for identification.

MR. KOLERS: That's fine.

MR. SWAN: All right.

--- EXHIBIT B: For Identification. August 2023 e-mail from IR2.

MR. SWAN: I may have one other question. I just have to look at one of your recently-produced documents. All right, thank you, Mr. Davies, we have no more questions. Subject to the answers to undertakings, advisements, and refusals, and the usual reservations, those are my questions.

MR. KOLERS: Okay. Mr. Davies, sorry, I know it's late and we kept you longer than you expected. I'm wondering if you'd indulge us, though, for maybe five minutes? If we can just go off? I'd

just like to consider whether I have any questions.

--- OFF THE RECORD (1:49 P.M.) ---

--- UPON RESUMING (1:56 P.M.) ---

MR. KOLERS: Just some very short questions for Mr. Davies. But maybe, Peter, if you have any questions, do you want to go first or do you want me to go first?

MR. KOLLA: I'm happy to go first.

MR. KOLERS: Why don't you go ahead?

MR. KOLLA: Mr. Swan, perhaps one of your colleagues could assist with this? Could we get Exhibit 5 back up on the screen, please?

MR. SWAN: Exhibit 5 being what?

MR. KOLLA: It is a text exchange between Mr. Davies and Mr. Broking. It was Exhibit 5 of this examination.

EXAMINATION BY MR. KOLLA:

385. Q. Am I right, Mr. Davies, that at the very top, your writing is in blue?

A. Correct.

386. Q. And you say in the very top text there on Exhibit 5 to this examination:

"I just don't want to see 600 hardworking people lose their jobs."

Do you see that?

A. That's correct.

387. Q. What did you mean by that?

A. I believe that the operational stability of Tacora is highly dependent on the -- on people that work there. That one of the biggest challenges that Tacora has faced over the last few years is its inability to bring in sufficient skilled operational leadership in key roles. I'm a firm believer that a CCAA process creates material risk and that we will lose -- and that Tacora will lose key workers.

And that even the loss of a handful of these key workers could result in the operation being forced to shut down, as was the case once before in a CCAA process. So there's a -- there's a lot of noise going back and forth amongst the parties, but for me, the most important thing that we were -- we should have been -- you know, our duty as directors of Tacora was try to look after (inaudible) and not see hardworking people be put out of work.

388. Q. Thank you. You will recall that you were...

MR. KOLLA: You can take that exhibit down now from the screen. Thank you.

BY MR. KOLLA:

389. Q. You will recall you were asked about a letter dated September 8th, 2023, which was marked as Exhibit 9, that counsel to Tacora sent to counsel to Cargill about payment that had not been made. Are you aware that the payment in question that was addressed in that letter was subsequently made by Cargill and received by Tacora?

A. I am.

390. Q. Okay, thank you.

MR. KOLLA: And is it -- Ms. Fox, is it possible to put up that document or should we go back to that one? Maybe we'll circle back to that one. Oh, here we go, sorry. We're seeing the screen-share here.

BY MR. KOLLA:

391. Q. I'm showing you now an e-mail from Robert Chadwick of the Goodmans firm, dated September 10th, 2023, to Lee Nicholson at the Stikeman firm. The subject line "Re: Tacora Resources Inc."

MR. SWAN: Can I just interrupt? Where does this document come from? I don't think we've ever seen it.

MR. KOLLA: Okay, well, I'm going to address that.

BY MR. KOLLA:

392. Q. I understand that this was the response that was sent by the Goodmans firm to the Stikeman Elliott letter that is at Exhibit 9. And you see at the bottom, it's got the September 8th e-mail from Mr. Nicholson, with an attachment, which I understand is the letter that is at Exhibit 9. Sir, are you aware that this was sent? Do you know?

A. No.

393. Q. Okay.

MR. KOLLA: I'd like to mark this for identification, then, as Exhibit B, please.

MR. SWAN: I think that's Exhibit C for identification.

MR. KOLLA: My apologies. Exhibit C. Thank you.

--- EXHIBIT C: For Identification. Letter dated September 10, 2023 to Lee Nicholson of Stikeman Elliott from Robert Chadwick of Goodmans.

BY MR. KOLLA:

394. Q. You will recall, Mr. Davies, that you were asked about the Offtake Agreement. Can you advise when the Offtake Agreement between Cargill and Tacora was first entered into?

A. The Offtake Agreement was entered into in early 2017.

395. Q. Okay, thank you. And can you advise when the noteholders, who are a party to now the CCAA, when they became investors in Tacora?

A. My understanding is that was in 2021.

396. Q. Thank you. Are you aware, Mr. Davies, of any advantage Cargill received from you being a director of Tacora, in respect of advancing or securing the DIP agreement that Tacora entered into with Cargill regarding the CCAA proceeding?

A. Absolutely not.

MR. SWAN: Objection. I don't understand that question.

MR. KOLLA: The witness did, so...

MR. SWAN: Well, it doesn't matter. I didn't.

MR. KOLLA: Okay, but the witness did. So, Witness, you can answer the question, please.

THE DEPONENT: Would you mind just please repeating?

MR. SWAN: Can you please repeat the question, Mr. Kolla?

MR. KOLLA: Sure.

BY MR. KOLLA:

397. Q. Are you aware of any advantage that Cargill received from you being a director of Tacora

MR. KOLLA: Please. Thank you very much.

BY MR. KOLLA:

400. Q. Mr. Davies, just to make sure we got the answer on the record, are you aware of any advantage that Cargill received from you...

MR. KOLLA: And it's not a leading question, sir, it's a directed question. I want to know his answer on this evidence, which is an important question, which will be important for the Court. So I'll ask the witness again.

BY MR. KOLLA:

401. Q. Are you aware of any advantage that Cargill received from you being a director of Tacora in respect of advancing or securing the DIP Agreement that Tacora entered with Cargill regarding this CCAA proceeding?

A. No.

402. Q. Mr. Swan referred you to Exhibit 7, which is texts between yourself and Mr. Kirk, and he referred to a text where there was an offer to help Mr. Kirk. Did you provide any such help to Mr. Kirk?

A. I did not.

403. Q. Did you provide any confidential information to Cargill that you received from Tacora or as a Tacora Board member, when Tacora was

considering a DIP for this CCAA proceeding?

A. I did not.

404. Q. Did you provide any confidential information to Cargill that you received from Tacora or as a Tacora Board member at any time?

A. I did not.

405. Q. When did you first learn about the substantive terms of the DIP proposals, being the Cargill proposal and The Ad Hoc Group proposal, in the October 2023 time period?

A. At the Board meeting on October the 8th, there was a presentation from -- from Greenhill, that was projected live on-screen during the meeting, and a presentation that was circulated after the start of the meeting. That was the first time I heard of the terms of the two proposals.

406. Q. Thank you. And Mr. Davies, can you provide any examples within the last year when Tacora has encountered problems in its business? And if so, how Cargill addressed those problems?

A. Yeah, I mean, I think there's been a number of occasions over the past year. One of them, for instance, you know, Tacora clearly were facing liquidity challenges already late in 2022, firstly in terms of its ability to meet the November 2022 coupon

payment. And where there was an intention for another investment to come in, but needed time to get through to that point.

Yeah, Cargill have -- Cargill's a big organization. We have over 150 years of experience, and the philosophy of Cargill is that we -- we work with our customers and we consider the -- whether that's a mining -- in the metals context, or whether that's a mining company, or a steel mill, or steel end user, to try to find solutions to their problems. And we work collaboratively.

So Cargill provide initially a preferred equity solution to enable a bridge group. When the other deal fell away, Cargill then -- it was very clear at that point that the other shareholders of Tacora were unable to continue to support the business, Cargill stepped in and provided -- and worked on an advance payment facility where -- which would enable a sales process for Tacora to be run.

There's two fundamental risks to Tacora's operating cash flow. The first one is that the -- that the production should fall short of budget, the second one is that the iron ore price should collapse. So this was a -- this was a solution designed in working together with Tacora, which would provide both

a risk management solution to the business, which would give pricing downside protection for a period of time, so that you had sufficient runway to run an orderly process.

And secondly, to provide Cargill employees to help support the operational leadership at site throughout the period of the -- of 2023. During the period of Cargill supporting the operation, with operational leadership, you know, Tacora enjoyed record production for consecutive months, which enabled, you know, a further demonstration in confidence in the viability of Tacora as an asset for potential investors, by demonstrating how that would reflect in a reduced cost structure for Tacora.

And so, you know, I think -- and on multiple occasions, that's always been the Cargill philosophy. If our customers have a challenge, Cargill will work together with the customer to find a solution, to help their business through difficult times.

407. Q. Thank you.

MR. KOLLA: Those are my questions.

MR. KOLERS: Okay, I have just a couple myself.

MR. SWAN: I have a re-examination question arising out of the last question, but I can save it

8

All the shit and all the noise, I just don't want to see 600 hard working people lose their jobs.

That's why I/we are here buddy

AGREE

When does this need to be done by btw?

Need bridge money by Monday

Or sooner

Need train payments also

Yep. Let's get ink on paper, you now Cargill will be good

*know

Yep. Let’s get ink on paper, you now Cargill will be good

*know

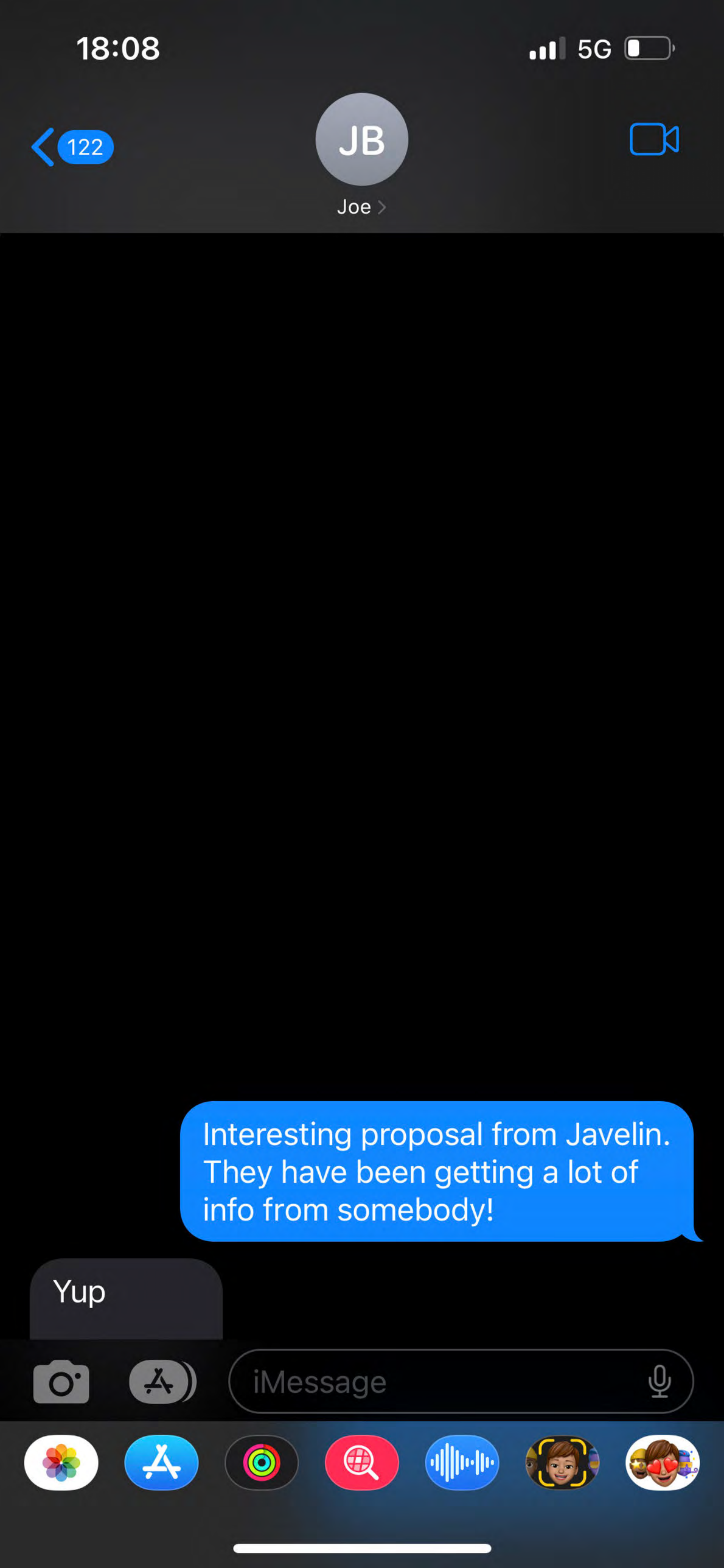
I love Cargill

Andrew booking his PaL flight

So he can be onsite for the shutdown

Shout if you disagree pls

Don’t disagree. Let’s get the deal terms agreed


18:08
5G
122
JB
Joe
Interesting proposal from Javelin. They have been getting a lot of info from somebody!
Yup
iMessage

9

Court File No. CV-23-00707394 00CL

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 TACORA RESOURCES INC.

NOTICE OF EXAMINATION

TO: **LEON DAVIES**

YOU ARE REQUIRED TO ATTEND,

☐ in person

☐ by telephone

[X] by video conference

at the following location:

https://networkcourt.zoom.us/j/95851663878?pwd=QjRmeStubGVJQzRPbkVMUWxRc1UwZz09

on October 18, 2023, at 10:00 a.m., for an examination under rule 39.03(1).

If you object to the method of attendance, you must notify the other parties or their lawyers. If you and the other parties cannot come to an agreement on the method of attendance, one of the parties must request a case conference for the court to make an order under Rule 1.08(8).

YOU ARE REQUIRED TO PRODUCE at the examination the following documents and things:

1. All documents in your possession, power or control, including without limitation any notes, communications, emails (and attachments), texts, WhatsApp messages, Slack messages, Signal messages, voice-mail recordings or transcriptions, agreements, draft agreements, terms sheets or draft term sheets, slide-decks, PowerPoints, Excel or analogous spreadsheets, written analyses, charts, graphs, and information recorded or stored by means on any device in your possession, control or power, (all collectively, "**Documents**") which are relevant to any matters in issue on the motions returnable before the court on October 24,

and **without in any way limiting the generality of the foregoing**:

2. Any and all Documents you have in your possession power or control containing communications between you and any member of Cargill regarding Tacora's restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

3. Any and all Documents in your possession power or control containing any notes you took during any meeting of the board of directors, including without limitation the approval of either the AHG DIP or the Cargill DIP;

4. Any and all Documents you have in your possession power or control containing communications between you and any Joe Broking regarding Tacora's restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

5. Any and all Documents you have in your possession power or control containing communications between you and FTI or its advisors regarding Tacora's restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

6. Any and all Documents you have in your possession power or control containing communications between you and Greenhill or Stikeman regarding Tacora's restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

7. Any and all Documents you have in your possession power or control containing communications between you and any member of Tacora's board or management regarding its restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

8. Any and all minutes of the meetings of the board of directors of Tacora in which you participated;

9. Any and all Documents in your possession power or control providing analysis or views on any of Tacora's agreements with Cargill (including, without limitation, the Offtake Agreement, the APF, the Stockpile Agreement, and the Wetcon Agreement);

10. Any and all Documents in your possession power or control providing analysis or views on the impact of Tacora's hedging arrangements with Cargill;

11. Any and all Documents in your possession power or control providing analysis or views on Tacora's economic impact on Cargill;

12. Any and all Documents you have in your possession power or control in connection with the potential disclaimer of the Offtake Agreement and the impact of such a disclaimer on Tacora.

October 16, 2023

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

Kevin Zych (LSO#33129T)
Tel No: 416-777-5738
Email: zychk@bennettjones.com

Richard Swan (LSO#32076A)
Tel No: 416-777-7479
Email: swanr@bennettjones.com

Sean Zweig
Tel No: 416-777-6254
Email: zweigs@bennettjones.com

Mike Shakra
Tel No: 416-777-6236
Email: shakram@bennettjones.com

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

Lawyers for the Ad Hoc Group of Noteholders

TO: **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

Ashley Taylor (LSO #39932E)
Tel: (416) 869-5236
Email: ataylor@stikeman.com

Lee Nicholson (LSO #66412I)
Tel: (416) 869-5604
Email: leenicholson@stikeman.com

Natasha Rambaran (LSO #80200N
Tel: (416) 869-5504
Email: nrambaran@stikeman.com

Philip Yang (LSO #82084O)
Tel : (416) 869-5593
Email: pyang@stikeman.com

Lawyers for Tacora Resources Inc.

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 TACORA RESOURCES INC. **(Applicant)**	Court File No. CV-23-00707394 00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF EXAMINATION

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

Kevin Zych (LSO#33129T)
Richard Swan (LSO#32076A)
Sean Zweig (LSO#57307I)
Mike Shakra (LSO#64604K)
Thomas Gray (LSO# 82473H)

Tel: 416.863.1200 / Fax: 416.863.1716
Lawyers for the Ad Hoc Group of Noteholders

10

Court File No. CV-23-00707394 00CL

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 TACORA RESOURCES INC.

NOTICE OF EXAMINATION

TO: **PAULO CARRELO**

YOU ARE REQUIRED TO ATTEND,

☐ in person

☐ by telephone

[X] by video conference

at the following location:

https://networkcourt.zoom.us/j/92047613634?pwd=bVc4MFl3QVExUXc5VStoZlZTS1QzUT09

on October 19, 2023, at 10:00 a.m., for an examination under rule 39.03(1).

If you object to the method of attendance, you must notify the other parties or their lawyers. If you and the other parties cannot come to an agreement on the method of attendance, one of the parties must request a case conference for the court to make an order under Rule 1.08(8).

YOU ARE REQUIRED TO PRODUCE at the examination the following documents and things:

1. All documents in your possession, power or control, including without limitation any notes, communications, emails (and attachments), texts, WhatsApp messages, Slack messages, Signal messages, voice-mail recordings or transcriptions, agreements, draft agreements, terms sheets or draft term sheets, slide-decks, PowerPoints, Excel or analogous spreadsheets, written analyses, charts, graphs, and information recorded or stored by means on any device in your possession, control or power, (all collectively, "**Documents**") which are relevant to any matters in issue on the motions returnable before the court on October 24,

and **without in any way limiting the generality of the foregoing**:

2. Any and all Documents you have in your possession power or control containing communications between you and Leon Davies or any previous Cargill appointee to Tacora's board regarding Tacora's restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

3. Any and all Documents you have in your possession power or control containing communications between you and Tacora or its advisors regarding Tacora's restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

4. Any and all Documents you have in your possession power or control containing communications between you and FTI or its advisors regarding Tacora's restructuring, including without limitation the approval of either the AHG DIP or the Cargill DIP;

5. Any and all Documents in your possession power or control providing analysis or views on any of Tacora's agreements with Cargill (including, without limitation, the Offtake Agreement, the APF, the Stockpile Agreement, and the Wetcon Agreement);

6. Any and all Documents in your possession power or control providing analysis or views on the impact of Tacora's hedging arrangements with Cargill;

7. Any and all Documents in your possession power or control providing analysis or views on Tacora's economic impact on Cargill;

8. Any and all Documents you have in your possession power or control in connection with the potential disclaimer of the Offtake Agreement and the impact of such a disclaimer on Tacora; and

9. Any and all Documents in your possession power or control discussing Cargill's strategy for its negotiations in respect of Tacora's restructuring.

October 16, 2023

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

Kevin Zych (LSO#33129T)
Tel No: 416-777-5738
Email: zychk@bennettjones.com

Richard Swan (LSO#32076A)
Tel No: 416-777-7479
Email: swanr@bennettjones.com

Sean Zweig
Tel No: 416-777-6254
Email: zweigs@bennettjones.com

Mike Shakra
Tel No: 416-777-6236
Email: shakram@bennettjones.com

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

Lawyers for the Ad Hoc Group of Noteholders

TO: **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

Ashley Taylor (LSO #39932E)
Tel: (416) 869-5236
Email: ataylor@stikeman.com

Lee Nicholson (LSO #66412I)
Tel: (416) 869-5604
Email: leenicholson@stikeman.com

Natasha Rambaran (LSO #80200N
Tel: (416) 869-5504
Email: nrambaran@stikeman.com

Philip Yang (LSO #82084O)
Tel : (416) 869-5593
Email: pyang@stikeman.com

Lawyers for Tacora Resources Inc.

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 TACORA RESOURCES INC. **(Applicant)**	Court File No. CV-23-00707394 00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF EXAMINATION

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

Kevin Zych (LSO#33129T)
Richard Swan (LSO#32076A)
Sean Zweig (LSO#57307I)
Mike Shakra (LSO#64604K)
Thomas Gray (LSO# 82473H)

Tel: 416.863.1200 / Fax: 416.863.1716
Lawyers for the Ad Hoc Group of Noteholders

11

Court File No.

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 TACORA RESOURCES INC.

Applicant

AFFIDAVIT OF JOE BROKING
(Sworn October 9, 2023)

I, **JOE BROKING**, of the City of Grand Rapids, in the State of Minnesota, United States of America, MAKE OATH AND SAY:

1. I am the President and Chief Executive Officer of Tacora Resources Inc. ("**Tacora**" or the "**Company**" or the "**Applicant**"). I have been the President and Chief Executive Officer of Tacora since October 2021. Prior to becoming President and Chief Executive Officer, I was Executive Vice President and Chief Financial Officer of Tacora from July 2017 to October 2021. I have also been a member of the Company's board of directors (the "**Board**") since October 2021.

2. Together with other members of management, I am responsible for overseeing the Company's operations, liquidity management and restructuring efforts. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of the Company and have spoken with certain of the directors, officers and/or employees of the Company, as necessary. Where I have relied upon such information, I believe such information to be true.

3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. This affidavit is sworn in support of the Applicant's application (the "**Application**") to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The Applicant is seeking an initial order (the "**Initial Order**") in the form of the draft order included at Tab 4 of the Application Record:

C. Offtake Agreement & Stockpile Agreement

34. Tacora sells 100% of the iron ore concentrate production at the Scully Mine to Cargill International Trading Pte Ltd. ("**Cargill**") pursuant to an offtake agreement between Tacora, as seller, and Cargill, as buyer, dated April 5, 2017, and restated on November 9, 2018 (as amended from time to time, the "**Offtake Agreement**"). Pursuant an amendment dated March 2, 2020, the term of the Offtake Agreement was extended to a life of mine contract such that Tacora is required to sell and Cargill is required to buy all iron ore concentrate produced at the Scully Mine while it remains operational. The sale of the iron ore concentrate is also subject to a stockpile agreement between Tacora, as seller, and Cargill, as buyer, dated December 17, 2019 (the "**Stockpile Agreement**"), which works in conjunction with the Offtake Agreement.

35. As set out above, the iron ore concentrate from a stockpile located at the Port is loaded onto vessels that ship the iron ore concentrate to final customers at various locations overseas. The vessels are arranged by Cargill and Cargill markets and sells Tacora's iron ore concentrate to customers in Europe, the Middle East, and East Asia pursuant to the Offtake Agreement. Due to the high Fe (iron) content, the iron ore concentrate is marketed as high-grade premium blending concentrate that is used to upgrade other commodity grade and sub-commodity grade products, particularly from Australia.

36. Payment by Cargill to Tacora under the Offtake Agreement proceeds in roughly three stages:

(a) First, by three (3) business days prior to the first laycan (i.e., the first day a vessel may arrive at the terminal port to pick-up iron ore), the provisional purchase price is calculated. Tacora sends an invoice to Cargill once the vessel is loaded at the Port and Cargill pays Tacora for the iron ore concentrate shortly thereafter. While the Stockpile Agreement is effective the provisional price is compared to the average stockpile provisional price that was already paid with a true-up payment paid as appropriate. If the Stockpile Agreement is no longer in force, no true-up payment occurs as no prior payments will have been made for the iron ore concentrate delivered to the stockpile;

(b) Second, for tonnes on the ocean, Tacora and Cargill calculate and agree on mark-to-market amounts twice a week on Monday and Wednesday based on the average of the last five pricing days for Platts 62% Index, which is a benchmark

invoice (typically on Wednesday). Pursuant to the Stockpile Agreement, all iron ore concentrate purchased by Cargill becomes Cargill's property at the moment of unloading by Tacora to the stockpile. The Stockpile Agreement provides Tacora with significant working capital while it remains in effect. As result of the Stockpile Agreement, Tacora receives weekly cash receipts, rather than payments only when vessels are loaded, which occurs approximately every 3-4 weeks. While the Stockpile Agreement was initially scheduled to terminate on October 10, 2023, the Company will continue to have the benefit of the Stockpile Agreement during the CCAA Proceedings as a result of the Company entering into the DIP Agreement with Cargill Inc., unless an Event of Default exists under the DIP Agreement.

39. As noted above, Tacora relies on Cargill for 100% of its revenue from the Scully Mine as Cargill purchases all of the iron ore concentrate produced from the Scully Mine and Tacora does not have any other purchasers of iron ore concentrate. It is crucial for Tacora's business that the Company continue to have a source to sell its iron ore concentrate to during the CCAA Proceedings.

D. MFC Royalty

40. On November 17, 2017, Tacora entered into an amendment and restatement of consolidation of mining leases (the "**MFC Royalty**") with 0778539 B.C. Ltd. (formerly, MFC Bancorp Ltd.) ("**MFC**"), pursuant to which the parties agreed to amend and restate a lease which provided Tacora with tenure and mining rights to certain premises constituting the Scully Mine in exchange for an ongoing royalty payment based on production. A copy of the MFC Royalty is attached hereto as **Exhibit "D"**.

41. Pursuant to the MFC Royalty, Tacora is required to pay 1128349 B.C. Ltd. (the beneficiary of the MFC Royalty) 7% of its net revenue (less certain expenses determined in accordance with the calculations set out therein) derived from the sale of its iron ore concentrate. Tacora must pay these amounts on or before the 25th day of January, April, July, and October each year (the **"Quarterly Payments"**). Tacora has made the required Quarterly Payments to MFC other than the payment due July 25, 2023, which totals C$5,865,004, inclusive of a 20% withholding tax of C$1,173,000 owed to the Government of Newfoundland & Labrador if and when the payment is made. The MFC Royalty provides for a 30-day grace period before failure to make a Quarterly Payment constitutes a default and an additional 60-day notice period to cure such default before MFC may exercise remedies under the MFC

and (b) Cargill in respect of an Advance Payments Facility (as defined below). As described further below, the secured indebtedness shares the same collateral and security package and is subject to an intercreditor agreement between the parties. The secured debt and its respective priority rankings are summarized in the below chart and detailed further below:

	Cargill	Senior Noteholders
First Ranking	$4,717,648 of Margin Advances and Prepay Advances pursuant to the Advance Payments Facility	$27,521,634 of Senior Priority Notes
Second Ranking	$30,000,000 of Initial Advances pursuant to the Advance Payments Facility	$225,000,000 of Senior Notes in principal and $9,281,250 in unpaid interest
Total	$34,717,648	$261,802,884

68. Copies of personal property security searches in respect of Tacora in Ontario and Newfoundland and Labrador conducted as at August 29, 2023, and September 1, 2023, respectively, are attached hereto as **Exhibits "G"** and **"H"**.

(i) Senior Notes

69. In May 2021, Tacora issued $175,000,000 of Senior Notes bearing interest at a rate of 8.25% (the "**Initial Senior Notes**") pursuant to an indenture (the "**Senior Notes Indenture**"), among Tacora and Wells Fargo Bank, National Association, as trustee and collateral agent for the Initial Senior Notes.

70. In February 2022, Tacora issued an additional $50,000,000 of Senior Notes bearing interest at a rate of 8.25% (together with the Initial Senior Notes, the "**Senior Notes**") pursuant to a second supplemental indenture, among Tacora and Computershare Trust Company, N.A., as successor to the initial trustee, and collateral agent for the Senior Notes (the "**Notes Trustee**").

71. The aggregate principal amount outstanding pursuant to the issued Senior Notes is $225,000,000. Interest on the Senior Notes is payable semi-annually in arrears on May 15 and November 15 of each year. An interest payment which was originally due May 15, 2023, in the amount of approximately $9,281,250 remains outstanding under the Senior Notes. As set out further below, the applicable grace period under the Senior Notes Indenture with respect to the interest payment was extended to the earlier of (a) November 3, 2023; or (b) the occurrence of the termination or acceleration of the Advance Payments Facility (which currently is scheduled to occur on October 10, 2023), with the consent of the majority of Senior Noteholders as part of Tacora's liquidity preservation efforts.

72. Tacora's obligations in respect of the Senior Notes are secured by, among other things:

(a) a general security agreement dated May 11, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora granted the Notes Trustee security interests in substantially all Tacora's present and after-acquired personal property;

(b) an assignment of material contracts dated May 11, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora assigned all its right, title and interest in and to various material contracts to the Notes Trustee;

(c) a deed of hypothec dated August 3, 2021, executed by Tacora in favour of the Notes Trustee, as amended by a deed of correction dated August 16, 2021, between the same parties. Pursuant to the agreement, Tacora hypothecated all its present and future movable and immovable property to and in favour of the Notes Trustee;

(d) a share pledge agreement dated August 4, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora pledged the issued and outstanding shares of Tacora Norway to and in favour of the Notes Trustee; and

(e) a debenture dated August 9, 2021, executed by Tacora in favour of the Notes Trustee, as amended by a debenture amending agreement dated February 16, 2022. Pursuant to the debenture, Tacora granted a security interest in substantially all its owned real estate holdings to and in favour of the Notes Trustee

to sixty (60) days, such that there would be no event of default under the Senior Notes and Senior Priority Notes for non-payment of interest until July 15, 2023.

78. Tacora entered into a third supplemental indenture dated June 23, 2023 (the "**Third Supplemental Indenture**") to modify the Note Indentures and to provide for, among other things: (a) the proceeds of indebtedness incurred pursuant to a Senior Secured Hedging Facility (as defined in the Senior Priority Notes Indenture) to be used to fund Tacora's working capital needs; (b) an increase in the amount of indebtedness and liens with payment priority over the Senior Priority Notes that could be incurred under the Senior Priority Notes Indenture; and (c) a further extension of the grace period before a default in the payment of interest on the Senior Notes and the Senior Priority Notes constitutes an event of default to September 12, 2023 (120 days following the original interest payment date of May 15, 2023).

79. Tacora entered into a fourth supplemental indenture dated September 8, 2023 (the "**Fourth Supplemental Indenture**") to modify the Note Indentures and to provide for, among other things, an extension to the maturity date under the Senior Priority Notes and a further extension of the grace period before a default in the payment on the Senior Notes to the earlier of (a) November 3, 2023; or (b) the occurrence of the termination or acceleration of the Advance Payments Facility.

80. Copies of the above-referenced documents have not been attached to this affidavit given their length. However, copies are available upon request.

(iii) Advance Payments Facility

81. In or around December 2022, Tacora required additional financing to fund operations through the Company's liquidity challenges. On January 3, 2023, Tacora, as seller, and Cargill, as buyer, entered into an advance payment facility agreement (as amended from time to time, the "**APF Agreement**"). Pursuant to the APF Agreement, Cargill provided Tacora with an advance payment facility (the "**Advance Payments Facility**") under which Cargill made advance payments under the Offtake Agreement in the total principal amount of $30,000,000 (the "**Initial Advances**") to Tacora. Until termination of the APF Agreement, Cargill is required to continue paying Tacora for iron ore concentrate under the Offtake Agreement and may not credit such deliveries against the outstanding balance of the Advance Payments Facility.

85. On June 23, 2023, Tacora entered into a further amendment to the APF Agreement (the "**Third APF Amendment**") to provide greater flexibility to Tacora on utilizing the new margin facility provided by the Second APF Amendment. Under the Third APF Amendment, Cargill, in its sole discretion, could make additional prepay advances ("**Additional Prepay Advances**" and together with the Margin Advances, the "**Senior Priority Advances**") to Tacora utilizing any availability under the $25,000,000 facility created by the Second APF Amendment. On June 29, 2023, Cargill made an Additional Prepay Advance in the amount of $3,000,000. No further Additional Prepay Advances have been made by Cargill and the only Additional Prepay Advance was repaid by Tacora. Additional Prepay Advances are repayable upon demand and rank *pari passu* with the Senior Priority Note and the Margin Advances, and senior to the Senior Notes and the Initial Advances. A copy of the Third APF Amendment, which includes the current version of the APF Agreement is attached hereto as **Exhibit "I"**.

86. In connection with discussions and negotiations between Tacora's stakeholders regarding a potential consensual recapitalization transaction, as described below, Cargill agreed to extend the maturity date of the Advance Payments Facility from time-to-time, most recently to October 10, 2023.

87. As of the date of this affidavit, there is approximately $4.7 million of Senior Priority Advances outstanding.

88. Tacora's obligations (including the Initial Advances, Margin Advances and Additional Prepay Advances) under the APF Agreement are secured with a collateral and security package substantially similar to the Senior Notes Security, including by, among other things:

(a) a debenture dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora granted a security interest in substantially all of its owned real property holdings to and in favour of Cargill;

(b) a general security agreement dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora granted Cargill security interests in substantially all of Tacora's present and after-acquired personal property;

(c) an assignment of material contracts dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora assigned all its right, title,

Notes constitutes an event of default to the earlier of (a) November 3, 2023; or (b) the occurrence of the termination or acceleration of the Advance Payments Facility. The additional time provided the Company with additional time to discuss with its secured creditors and another potential investor regarding a potential recapitalization transaction. On September 8, 2023, the consent solicitation successfully closed with 100% consent of holders of Senior Priority Notes and consent of holders representing over 91% of the principal amount of the Senior Notes.

124. The Company also pursued other initiatives in response to the Quebec wildfires, which included:

(a) Negotiating further payment deferrals with SFPPN and QSN&L;

(b) Negotiating payment holidays in respect of their leases with Komatsu; and

(c) Negotiating deferment of tax and capital works payments owed to the Town of Wabush pursuant to a grant-in-lieu of taxes.

125. Subsequently, to further enhance the Company's liquidity position in the face of continued negative cash flow, Cargill and the Company entered into a Wetcon Purchase and Sale Agreement (the "**Wetcon Agreement**") dated July 10, 2023, whereby Cargill agreed to purchase a stockpile of 172,000 tonnes of wet concentrate from Tacora, located at the Scully Mine. Pursuant to the Wetcon Agreement, Cargill could make an upfront payment of $5,000,000 to Tacora for 117,000 tonnes of wet concentrate. Payment of the remaining $2,300,000 is due to Tacora upon conversion and shipment of the remaining 55,000 tonnes of wet concentrate. The Wetcon Agreement also provides an option for Cargill to purchase up to an additional 53,000 tonnes of wet concentrate (for a total of 225,000 tonnes) as an additional deferred amount and contemplates that any additional wet concentrate added to the stockpile purchased by Cargill automatically becomes the property of Cargill. The Wetcon Agreement confirmed that the Stockpile Purchase Agreement would terminate on the earlier of September 12, 2023, or an event of default and acceleration of the Advance Payments Facility. The Stockpile Purchase Agreement termination date was subsequently extended on numerous occasions and most recently to October 10, 2023. As at September 4, 2023, there were approximately 194,741 tonnes of wet concentrate at the Wetcon stockpile (the "**September 4 Wetcon Amount**").

126. On September 12, 2023, as part of the discussions between Tacora's stakeholders and to assist the liquidity of the Company, the Wetcon Agreement was amended to provide that Cargill would make payment of $3,954,171.43 in full and final satisfaction of all deferred amounts owing by Cargill to Tacora under the Wetcon Agreement in respect of the September 4 Wetcon Amount.

B. Strategic Process

127. As described above, on January 23, 2023, Tacora engaged Greenhill to assist with a strategic review process to explore, review, and evaluate a broad range of alternatives for the Company, including sale opportunities or additional investment into Tacora (the "**Strategic Process**"). Greenhill also assisted the Company with the various capital raises described above to improve the Company's liquidity position.

128. Commencing in March 2023, Greenhill reached out to 31 financial and strategic parties in connection with a potential sale or financing transaction. Numerous parties executed confidentiality agreements with the Company and Greenhill and the Company facilitated due diligence for parties interested in the opportunity. The Company subsequently received several letters of intent and term sheets in respect of potential transactions. The Company executed a letter of intent for a sale of the Company and facilitated advanced due diligence for the party. However, recently, the interested party advised it was no longer interested in advancing the transaction completed by its letter of intent.

129. Most recently in the Strategic Process, Cargill, the Senior Noteholders and another party engaged in significant, advanced discussions regarding a consensual restructuring and recapitalization transaction to address Tacora's liquidity issues, over leveraged capital structure, and need for additional investment to achieve nameplate capacity of 6.0 Mtpa. The Company understood that an agreement in principle was reached between the parties in mid-September, however, following advanced discussions on a binding agreement and the Company's best efforts to encourage a consensual resolution, the parties were unable to reach agreement that would avoid the need to file for protection under the CCAA.

130. In these CCAA Proceedings, the Company intends to continue the Strategic Process, with the assistance of Greenhill, and will seek to have a Solicitation Process, in the form included in the Application Record, approved at the Comeback Motion. The proposed Solicitation Process was designed by the Company, in consultation with Greenhill, its legal

126. On September 12, 2023, as part of the discussions between Tacora's stakeholders and to assist the liquidity of the Company, the Wetcon Agreement was amended to provide that Cargill would make payment of $3,954,171.43 in full and final satisfaction of all deferred amounts owing by Cargill to Tacora under the Wetcon Agreement in respect of the September 4 Wetcon Amount.

B. Strategic Process

127. As described above, on January 23, 2023, Tacora engaged Greenhill to assist with a strategic review process to explore, review, and evaluate a broad range of alternatives for the Company, including sale opportunities or additional investment into Tacora (the "**Strategic Process**"). Greenhill also assisted the Company with the various capital raises described above to improve the Company's liquidity position.

128. Commencing in March 2023, Greenhill reached out to 31 financial and strategic parties in connection with a potential sale or financing transaction. Numerous parties executed confidentiality agreements with the Company and Greenhill and the Company facilitated due diligence for parties interested in the opportunity. The Company subsequently received several letters of intent and term sheets in respect of potential transactions. The Company executed a letter of intent for a sale of the Company and facilitated advanced due diligence for the party. However, recently, the interested party advised it was no longer interested in advancing the transaction completed by its letter of intent.

129. Most recently in the Strategic Process, Cargill, the Senior Noteholders and another party engaged in significant, advanced discussions regarding a consensual restructuring and recapitalization transaction to address Tacora's liquidity issues, over leveraged capital structure, and need for additional investment to achieve nameplate capacity of 6.0 Mtpa. The Company understood that an agreement in principle was reached between the parties in mid-September, however, following advanced discussions on a binding agreement and the Company's best efforts to encourage a consensual resolution, the parties were unable to reach agreement that would avoid the need to file for protection under the CCAA.

130. In these CCAA Proceedings, the Company intends to continue the Strategic Process, with the assistance of Greenhill, and will seek to have a Solicitation Process, in the form included in the Application Record, approved at the Comeback Motion. The proposed Solicitation Process was designed by the Company, in consultation with Greenhill, its legal

(c) Approximately $9.2 million in respect of unpaid interest on the Senior Notes, where, pursuant to the Fourth Supplemental Indenture, the applicable grace period expires on the occurrence of the termination or acceleration of the Advance Payments Facility (which is due on October 10, 2023).[2]

134. In anticipation of the Company's liquidity issues and impending debt maturities and interest payments, Greenhill commenced a solicitation process to obtain debtor-in-possession ("**DIP**") financing on behalf of Tacora on August 14, 2023 (the "**DIP Process**"). Following the DIP Process and extensive arm's length negotiations to achieve the best terms possible in the circumstances, the Company selected Cargill Inc.'s proposal as the best available option and the parties worked to substantially finalize an agreement. I understand that a representative from Greenhill is swearing an affidavit to provide details on the DIP Process.

135. On October 9, 2023, Tacora entered into the DIP Agreement with Cargill Inc. A copy of the DIP Agreement (without schedules) is attached hereto as **Exhibit "K"**.

136. The primary terms of the DIP Agreement are summarized immediately below:

Summary of Key Terms of the DIP Agreement	
DIP Lender	Cargill, Incorporated
Maximum DIP Facility Amount	$75,000,000 <u>Permitted Uses</u> • Pay the reasonable and documented professional and advisory fees and expenses (including legal and fees and expenses) of Tacora and the Monitor; • Pay the reasonable and documented DIP Lender Expenses; • Pay the interest, fees and other amounts owing to the DIP Lender under the DIP Agreement; and • Fund, in accordance with the DIP budget, Tacora's funding requirements during the CCAA Proceedings.
Funding/Availability	Initial Advance – $15,500,000 Subsequent Advances – Bi-weekly advances of no less than $1,000,000, with amounts determined based on the funding needs of Tacora as set forth in the DIP budget.

[2] Prior to the Fourth Supplemental Indenture entered into on September 8, 2023, the applicable grace period before an event of default occurred for unpaid interest on the Senior Notes was September 8, 2023.

12

AMENDMENT NO. 1 TO AMENDED AND RESTATED ADVANCE PAYMENTS FACILITY AGREEMENT

THIS AMENDING AGREEMENT made as of the 23 day of June, 2023.

AMONG:

TACORA RESOURCES INC., together with its successors and assigns (the "**Seller**")

- and -

CARGILL INTERNATIONAL TRADING PTE LTD., solely in its capacity as lender, together with its successors and assigns (the "**Buyer**")

1. DEFINITIONS

Capitalized terms used in this Amending Agreement (this "**Amending Agreement**") but not otherwise defined in this Amending Agreement are defined in the Amended and Restated Advance Payments Facility Agreement dated as of May 29, 2023 among the Seller and the Buyer (the "**A&R APF Agreement**").

2. AMENDMENTS TO THE A&R APF AGREEMENT

In consideration of the covenants, conditions, agreements and promises contained in this Amending Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Seller and the Buyer, the Seller and the Buyer hereby agree to amend the A&R APF Agreement as set forth in Schedule A hereto by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and by adding the underlined text (indicated textually in the same manner as the following example: underlined text).

3. CONDITIONS PRECEDENT TO AMENDING AGREEMENT

3.1 The effectiveness of this Amending Agreement shall be subject to the following conditions precedent, all of which shall be for the benefit of the Buyer and shall be satisfied on or prior to the date hereof, in each case in form and substance satisfactory to the Buyer:

(a) the Buyer shall have received evidence of amendments to the Indenture permitting, among other things, the amendments to the A&R APF Agreement contemplated hereunder and further extending the interest payment cure period thereunder, together with such supporting opinions addressed to the Buyer, in form and substance satisfactory to it;

(b) receipt by the Buyer of an updated Cash Flow Forecast (through to September 12, 2023) in form and substance satisfactory to the Buyer; and

(c) (i) all representations and warranties contained in the A&R APF Agreement and the Financing Documents shall be true and correct as of the date hereof as if made on such date, (ii) no Default or Event of Default shall have occurred and is continuing and (iii) there shall have been no Material Adverse Effect, and the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

4. MISCELLANEOUS

4.1 Further Assurances

The Seller shall at its expense, from time to time do, execute and deliver, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Buyer may reasonably request for the purpose of giving effect to this Amending Agreement.

4.2 Continuing Effect

Each of the Seller and the Buyer acknowledges and agrees that the A&R APF Agreement, as amended by this Amending Agreement, continues in full force and effect and is hereby ratified and confirmed. Provisions of the A&R APF Agreement that have not been amended by this Amending Agreement remain in full force and effect, unamended. This Amending Agreement shall not, except as expressly provided herein, operate as an amendment or waiver of any right or remedy of any party under the A&R APF Agreement nor constitute a waiver of any provision thereof.

4.3 Disclosure

No press release or other public disclosure concerning the transactions contemplated herein shall be made by the Seller without the prior consent of the Buyer (such consent not to be unreasonably withheld); *provided*, however, that the Seller shall, after providing the Buyer and its Advisors with copies of all related documents and an opportunity to consult with the Buyer and its Advisors as to the contents, make prompt disclosure of the material terms of this Amending Agreement and make such disclosure as may be required by applicable law, by any Governmental Entity having jurisdiction over the Seller. Notwithstanding the foregoing, no information with respect to the identity of the Buyer shall be disclosed by the Seller except as may be required by applicable law, or by any Governmental Entity having jurisdiction over the Seller.

4.4 Conflict

To the extent that there is any inconsistency between this Amending Agreement and the A&R APF Agreement or any of other Financing Documents, this Amending Agreement shall govern.

4.5 **Amendments and Waivers**

This Amending Agreement shall only be amended or waived with the consent of the Buyer and the Seller in writing.

4.6 **Governing Law**

This Amending Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

4.7 **Confidentiality**

This Amending Agreement is being executed on a highly confidential basis on the understanding that this Amending Agreement, any related documents, the existence and contents thereof and the existence and contents of any discussions related thereto ("**Confidential Information**") shall not be disclosed by the Seller or the Buyer to any third party or made public without the prior written consent of the other party, except for disclosure to such party's legal and financial advisors, directors, officers and employees who are bound by the terms of confidentiality arrangements to keep all such Confidential Information confidential (with the applicable party bearing all risk of such disclosure).

4.8 **Counterparts; Electronic Signatures**

This Amending Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures provided by electronic transmission shall be valid and binding.

4.9 **Indemnity**

The Seller shall indemnify and hold harmless the Buyer and its Affiliates, and each such Person's respective officers, directors, shareholders, employees, legal counsel, agents and representatives (each, an "**Indemnified Person**"), from and against any and all suits, actions, proceedings, orders, claims, damages, losses, liabilities and expenses (including reasonable and documented legal fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as a result of or in connection with (i) the breach by the Seller of its obligations in connection with or arising out of the transactions contemplated under this Amending Agreement and the other documents related thereto and any actions or failures to act in connection therewith including the taking of any enforcement actions by the Buyer and (ii) all legal costs and expenses arising out of or incurred in connection with disputes between or among the Buyer, the Seller and/or any other party or parties to any of the documents related thereto (collectively, "**Indemnified Liabilities**"); provided that the Seller shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results from that Indemnified Person's gross negligence or wilful misconduct. No Indemnified Person shall be responsible or liable to any other party to any document related thereto, any successor, assignee or third party beneficiary of such Person or any other Person asserting claims derivatively through such party, for indirect, punitive,

exemplary or consequential damages which may be alleged as a result of any transaction contemplated hereunder or under any of the documents related thereto.

4.10 **No Waiver**

The Buyer's failure, at any time or times, to require strict performance by the Seller of any provision of this Amending Agreement or any other document related thereto shall not waive, affect or diminish any right of the Buyer thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Except as otherwise provided for herein, none of the undertakings, agreements, warranties, covenants and representations of the Seller contained in this Amending Agreement or any of the other documents related thereto and no Default or Event of Default shall be deemed to have been suspended or waived by the Buyer, as applicable, unless such waiver or suspension is by an instrument in writing from the Buyer and directed to the Seller specifying such suspension or waiver.

4.11 **Remedies**

The Buyer's rights and remedies under this Amending Agreement shall be cumulative and nonexclusive of any other rights and remedies that the Buyer may have under any other agreement, including the other documents related thereto, by operation of law or otherwise. Recourse to the Collateral shall not be required.

4.12 **Severability**

Wherever possible, each provision of this Amending Agreement and the other documents related thereto shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amending Agreement or any other document related thereto shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amending Agreement or such other document related thereto.

4.13 **Section Titles**

The Section titles contained in this Amending Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

4.14 **Reinstatement**

This Amending Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against the Seller for liquidation or reorganization, should the Seller become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of the Seller's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the obligations under the Advances, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Advances, whether a

fraudulent preference, reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations under the Advances shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

4.15 **No Strict Construction**

The parties hereto have participated jointly in the negotiation and drafting of this Amending Agreement. In the event an ambiguity or question of intent or interpretation arises, this Amending Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Amending Agreement.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amending Agreement to be executed by their duly authorized representatives as of the date first written above.

TACORA RESOURCES INC., as Seller

Per: DocuSigned by: Joe Broking 0E8B8BB7AB404D8... _____
Name:
Title:

CARGILL INTERNATIONAL TRADING PTE LTD., as Buyer

Per: _____
Name:
Title:

Per: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amending Agreement to be executed by their duly authorized representatives as of the date first written above.

TACORA RESOURCES INC., as Seller

Per: _____
Name:
Title:

CARGILL INTERNATIONAL TRADING PTE LTD., as Buyer

Per: Philip Mulvihill
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE A

Amendments to A&R APF Agreement

See attached.

~~Execution Copy~~

As Amended by Amendment No. 1.

AMENDED AND RESTATED
ADVANCE PAYMENTS FACILITY AGREEMENT

by and among:

TACORA RESOURCES INC.
as Seller

and

CARGILL INTERNATIONAL TRADING PTE LTD.
as Buyer

Dated May 29, 2023

~~Execution Copy~~

As Amended by Amendment No. 1.

TABLE OF CONTENTS

AMENDED AND RESTATED ADVANCE PAYMENTS FACILITY AGREEMENT

THIS AGREEMENT made as of the 29th day of May, 2023.

AMONG:

TACORA RESOURCES INC., together with its successors and assigns (the "**Seller**")

- and -

CARGILL INTERNATIONAL TRADING PTE LTD., solely in its capacity as lender, together with its successors and assigns (the "**Buyer**")

RECITALS:

WHEREAS the Seller and the Buyer are parties to that certain Advance Payments Facility Agreement made as of January 3, 2023 (the "**Original Facility Agreement**"), as amended by an amending agreement made as of April 29, 2023 (the "**First Amendment**"), and as supplemented by a consent dated as of May 11, 2023 (collectively, the "**Existing Facility Agreement**").

AND WHEREAS, the Seller and the Buyer wish to amend and restate, in its entirety and without novation, the Existing Facility Agreement pursuant to this Agreement.

NOW THEREFORE in consideration of the covenants, conditions, agreements and promises contained herein and for other consideration, the receipt and sufficiency of which are acknowledged, the Seller and the Buyer hereby agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement are defined on Schedule C.

2. ADVANCE PAYMENT TERMS

2.1 Advance Payment

The Seller requested and the Buyer made, by way of the Original Advances, an advance payment under the Offtake Agreement, against future deliveries of Product thereunder in accordance with the terms of this Agreement and the Offtake Agreement, in order to provide liquidity and financing to the Seller.

The Original Advances constitute an advance payment against delivery of Product in accordance with the Offtake Agreement, it being agreed as follows:

(a) Until the Termination Date, the Buyer shall pay the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement and such

deliveries shall not be credited against the outstanding balance of the funded Original Advances.

(b) The Seller shall use its reasonable best efforts to deliver a minimum of 55,000 DMT of the Product over each four-week period, or such other amount as may be agreed between the Seller and the Buyer from time to time in their sole discretion.

(c) Upon the occurrence of the Termination Date, the outstanding Original Advances (including the Floor Price Premium), together with all other Advances, shall be repaid in accordance with Section 4.

2.2 **Margin Advances and Additional Prepay Advances**

In addition to the Original Advances, the Seller has requested and the Buyer has agreed to make additional advances of credit in connection with the Offtake Agreement~~-~~, on the following terms:

(a) Margin Advances. The Seller has requested and the Buyer has agreed to make the following advances in order to fund any Margin Amount owing as of the Effective Date and any additional amount required to be paid by the Seller and held by the Buyer under the Offtake Agreement from time to time, on the following terms~~:~~

(i) ~~(a)~~The Seller and the Buyer agree that the Offtake Agreement shall be amended, pursuant to this clause 2.2(a)(i) for the period from the Effective Date until the later of (~~i~~A) the date on which the Buyer, at its option, elects to no longer make the Margin Advances available to the Seller pursuant to this Agreement and (~~ii~~B) the date on which all Senior Priority Obligations are indefeasibly repaid in full in cash (such later date being the "**Offtake Amendment Termination Date**"), in order to remove the threshold set out therein in respect of any Margin Amount owed by the Seller (but for certainty, not any threshold set out therein in respect of any Margin Amount owed by the Buyer). In particular, the Seller and the Buyer agree that Section 15.3 of the Offtake Agreement shall be amended, pursuant to this clause 2.2(a) for the duration of the term of this Agreement, to (~~i~~A) delete the words "and greater than $7.5 million" and (~~ii~~B) delete the words "less $5 million" from the second sentence of Section 15.3. For greater certainty, the Seller and the Buyer agree that (1) for purposes of determining the Margin Amount owing under the Offtake Agreement on any Calculation Date, the calculation shall not include any amounts owing in respect of the Margin Advance Fee; and (2) clause 2.2(a)(i) does not limit the Buyer's obligation to make available Margin Advances until the Termination Date in accordance with and subject to this Agreement.

(ii) ~~(b)~~Subject to, and after giving effect to, the amendment to the Offtake Agreement set out in clause 2.2(a)(i), above:

(A) ~~(i)~~The net amount owing to the Buyer by the Seller as of the Effective Date in respect of, without duplication: (~~A~~1) any Margin

Amount and (~~B~~2) any FPM Payable Amount under clause 13.2 of the Offtake May Side Letter, if any, shall be deemed to be an advance made by the Buyer to the Seller on the Effective Date (the "**Initial Margin Advance**");

(B) ~~(ii)~~from and after the Effective Date, if, on any Calculation Date, the net amount owing to the Buyer by the Seller in respect of, without duplication: (~~A~~1) any Margin Amount, (~~B~~2) any FPM Payable Amount under clause 13.2 of the Offtake May Side Letter and (~~C~~3) other amounts in respect of margin pursuant to additional hedging arrangements entered into by the Buyer and the Seller from time to time (collectively the "**Seller Offtake Margin Amounts**"), if any, such that the Buyer is entitled to hold margin on such Calculation Date in an amount equal to such Seller Offtake Margin Amounts, such margin requirement shall be satisfied by way of a deemed advance from the Buyer to the Seller under this Agreement (together with the Initial Margin Advance, each, a "**Margin Advance**"), which Margin Advance shall then be held by the Buyer as margin under Section 15.3 of the Offtake Agreement;

(C) ~~(iii)~~the amount outstanding under the Margin Advances shall be recalculated on each Calculation Date and increased or decreased to reflect the Seller Offtake Margin Amounts, if any, required to be paid by the Seller to the Buyer thereunder and held by the Buyer as margin in accordance with Section 15.3 of the Offtake Agreement, it being understood that if at any time the Seller Offtake Margin Amounts (inclusive of the Margin Advance Fee) are zero or are owed by the Buyer to the Seller, then the amount outstanding under the Margin Advances shall be zero.

(iii) ~~(c)~~The Margin Advances may, at the option of the Seller be repaid at any time in whole or in part without premium or penalty. Any amount of the Margin Advances so repaid shall remain available to be re-advanced in accordance with this Section 2.2, until the Termination Date.

(b) Additional Prepay Advances. The Buyer may, in its sole discretion, upon request of the Seller in accordance with Section 2.3(c), make one or more additional advance payments under the Offtake Agreement against future deliveries of Product thereunder (each such additional advance being, an "**Additional Prepay Advance**"), which Additional Prepay Advances shall be in accordance with the terms of this Agreement, and which shall be used to provide additional liquidity and financing to the Seller, on the following terms:

(i) Each Additional Prepay Advance shall constitute an advance payment against delivery of Product in accordance with the Offtake Agreement.

(ii) The Additional Prepay Advances shall be repayable on demand, in accordance with Section 4.

(iii) Until the earlier of (1) the date which is five (5) Business Days following the date on which the Buyer demands repayment of the Additional Prepay Advances and (2) the Termination Date, the Buyer shall pay the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement and such deliveries shall not be credited against the outstanding balance of the funded Additional Prepay Advances, provided that, if the Termination Date occurs solely as a result of an Event of Default arising from the Seller's failure to repay the Additional Prepay Advances on demand (absent any other Event of Default), the Buyer shall continue pay the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement until the date which is five (5) Business Days after the Buyer demands repayment of the Additional Prepay Advances.

(iv) Upon the earlier of (1) the date on which the Buyer demands repayment of the Additional Prepay Advances and (2) the occurrence of the Termination Date, the outstanding Additional Prepay Advances shall be repaid in accordance with Section 4.

(v) The Additional Prepay Advances may, at the option of the Seller, be repaid at any time in whole or in part without premium or penalty.

(c) ~~(d)~~Maximum Senior Priority Advance Amount. The Seller shall not be permitted to incur ~~Margin Advances hereunder in excess of the Maximum Margin~~ any Margin Advance or Additional Prepay Advance, as applicable, hereunder in an amount that would, together with the amount of all Margin Advances (including the Margin Advance Fee) and Additional Prepay Advances then outstanding, exceed, in the aggregate, the Maximum Senior Priority Advance Amount, and if at any time the aggregate amount of all Margin Advances ~~exceeds~~ (including the Margin Advance Fee) together with all Additional Prepay Advances exceeds, in the aggregate, the Maximum ~~Margin~~ Senior Priority Advance Amount, the Seller shall immediately pay to the Buyer such amount, in cash, as is required to reduce the aggregate amount of all Margin Advances and Additional Prepay Advances to an amount equal to or less than the Maximum ~~Margin~~ Senior Priority Advance Amount (the "**Excess ~~Margin~~ Senior Priority Advance Amount**". Failure to pay the Excess ~~Margin~~ Senior Priority Advance Amount at any time shall constitute an Event of Default hereunder.

(d) ~~(e)~~Upon the occurrence of the Termination Date, (i) the outstanding Margin Advances (including the Margin Advance Fee) and Additional Prepay Advances, together with all other Advances, shall be repaid in accordance with Section 4 and (ii) provided that the Offtake Amendment Termination Date has occurred, the amendments to the Offtake Agreement set forth in Section 2.2(a)(i) shall be of no further force and effect and the Offtake Agreement shall revert to its terms as in effect prior to the amendments contemplated by Section 2.2(a)(i).

(e) ~~(f)~~The Margin Advances (including the Margin Advance Fee) and the Additional Prepay Advances shall constitute the "Senior Secured Hedging Facility" under the

Indenture and shall constitute Senior Priority Obligations hereunder and "Senior Priority Obligations" under the Indenture and the Senior Priority Intercreditor Agreement.

2.3 **Funding of Advances**

(a) Original Advances. The funding of the Original Advances pursuant to this Agreement occurred on (i) January 9, 2023, in respect of the Initial Advance (the "**Initial Advance Date**") (on which date the deemed advance of the Floor Price Premium also occurred and (ii) February 24, 2023, in respect of a Subsequent Advance (as defined in the Existing Facility Agreement) of $5,000,000 and form part of the Obligations hereunder. The Original Advances constitute Pari Passu Indebtedness under the Indenture and the Pari Passu Intercreditor Agreement.

(b) Margin Advances. The funding of the Initial Margin Advance, together with the Margin Advance Fee shall be deemed to be funded by the Buyer on the Effective Date, and any subsequent Margin Advance shall be deemed to be funded by the Buyer on each Calculation Date. The Margin Advances (including the Margin Advance Fee) and the Additional Prepay Advances shall constitute the "Senior Secured Hedging Facility" under the Indenture, shall form part of the Obligations hereunder, and shall constitute Senior Priority Obligations hereunder and "Senior Priority Obligations" under the Indenture and the Senior Priority Intercreditor Agreement.

(c) Additional Prepay Advances. The Additional Prepay Advances may be funded by the Buyer, in its sole discretion upon written request (which may be my e-mail) by the Seller (the "**Additional Prepay Draw Request**"). Unless otherwise agreed to by the Buyer, in its sole discretion, each Additional Prepay Draw Request shall (i) set out the requested amount of the Additional Prepay Advance, (ii) set out the requested date of such Additional Prepay Advance (which may be no earlier than the third Business Day of the following week) and (iii) be delivered by no later than 4:00 p.m. (Toronto time) on the last Business Day of the week prior to the week in which the Additional Prepay Advance is requested, provided, that, an updated weekly cash flow projection in respect of the week in which the Additional Prepay Advance is requested to be funded has also been delivered by no later than 9:00 p.m. (Toronto time) on the second last Business Day of such prior week. The Seller and the Buyer shall use commercially reasonably efforts to schedule a conference call prior to the delivery of any Additional Prepay Draw Request to discuss the weekly cash flow projection delivered by the Seller and any anticipated Additional Prepay Draw Request. The Buyer shall, by no later than 12:00 p.m. (Toronto time) on the second Business Day of the week following delivery of the applicable Additional Prepay Draw Request, notify the Seller in writing (which may be by e-mail) whether it shall make the Additional Prepay Advance requested in such Additional Prepay Draw Request on the date requested therein. The Additional Prepay Advances shall form part of the Obligations hereunder, and shall constitute Senior Priority Obligations hereunder and "Senior Priority Obligations" under the Indenture and the Senior Priority Intercreditor Agreement.

2.4 **Fees**

(a) Floor Price Premium. As consideration for entering into the Offtake January Amendment and guaranteeing the Floor Price thereunder, the Seller agreed to pay the Buyer a premium of $15,000,000 (the "**Floor Price Premium**") which was funded from the Initial Advance and an amount equal to the Floor Price Premium is deemed to have been advanced to the Seller on the Initial Advance Date, and forms part of the Obligations. The Floor Price Premium was fully earned and paid upon the entry into of the Offtake January Amendment and the concurrent funding of the Initial Advance, whether or not any deliveries are made against or in respect of the Initial Advance.

(b) Margin Advance Fee. As consideration for the amendments to the Offtake Agreement set out in clause 2.2(a)(i) above, and for making available the Margin Advances from time to time pursuant to Section 2.2, the Seller shall pay the Buyer a fee of $700,000 (the "**Margin Advance Fee**") which shall be fully earned and payable on the Effective Date and shall constitute a Margin Advance. The Margin Advance Fee shall be paid-in-kind by adding the Margin Advance Fee to the outstanding amount of the Obligations on the Effective Date and the Margin Advance Fee shall be deemed to have been advanced to the Seller concurrently with the Initial Margin Advance on the Effective Date.

2.5 **Currency**

All advances and payments shall be made in United States dollars. All references to "$", "Dollars" or "dollars" shall be references to United States dollars unless otherwise expressly indicated.

2.6 **Purpose**

(a) The proceeds of the Original Advances (other than the amount used to pay the Floor Price Premium) shall be used solely to fund (i) the ongoing operations at the Mine and general corporate expenses relating to management of the Seller, strictly in accordance with the Liquidity Management Plan and Cash Flow Forecast and (ii) the development and implementation of the Restructuring Plan for the Seller, which Restructuring Plan, as amended in accordance with this Agreement, shall at all times remain acceptable to the Buyer.

(b) A portion of the Initial Advance in an amount equal to the Floor Price Premium was deemed to be advanced on the Initial Advance Date and the Seller authorized and directed the Buyer to retain such amount on account of the Floor Price Premium.

(c) The Margin Advances and the Additional Prepay Advances are intended to provide additional liquidity to the Seller and permit the Seller to fund (i) the ongoing operations at the Mine and general corporate expenses relating to management of the Seller, strictly in accordance with the Liquidity Management Plan and Cash Flow Forecast and (ii) the development and implementation of the

Restructuring Plan for the Seller, which Restructuring Plan, as amended in accordance with this Agreement, shall at all times remain acceptable to the Buyer.

3.SECURITY AND INTERCREDITOR MATTERS

3.1 As security for payment and performance of the Obligations (including the Senior Priority Obligations), the Seller shall grant a Lien in all of the property, assets and undertaking of the Seller (the "**Security**"), subject only to Permitted Liens.

3.2 The Seller shall take all steps necessary at all times to ensure that:

(a) the Security, to the extent it secures the Obligations (other than the Senior Priority Obligations) shall constitute "Pari Passu Liens" as defined under the Indenture and that the Obligations (other than the Senior Priority Obligations) shall constitute "Pari Passu Indebtedness" as defined under the Indenture and "Initial Additional Pari Passu Lien Obligations" as defined under the Pari Passu Intercreditor Agreement; and

(b) the Security, to the extent it secures the Senior Priority Obligations shall constitute "Senior Priority Liens" as defined under the Indenture and that the Senior Priority Obligations shall constitute "Senior Priority Obligations" as defined under the Indenture and the Senior Priority Intercreditor Agreement.

3.3 If at any time following the Initial Advance Date, the Seller or any of its subsidiaries provides any guarantee, security, lien or other credit support to the Notes Collateral Agent or otherwise in connection with the Indenture, it shall provide a guarantee of the Obligations to the Buyer in form and substance satisfactory to the Buyer and shall grant equivalent security, liens or other credit support to the Buyer.

3.4 If at any time following the Initial Advance Date, the Seller acquires any rights (whether owned or lease) in real property or immovable property in the Province of Quebec it shall, concurrently with the acquisition of such rights deliver a deed of hypothec charging all real property immovable property in the Province of Quebec in form and substance satisfactory to the Buyer and its counsel.

4.REPAYMENT OF ADVANCES

4.1 ~~On~~ Subject to Section 4.2 below, on the earlier of (i) the date on which demand is made following the occurrence of an Event of Default which has not been waived by the Buyer and (ii) ~~July 14~~September 12, 2023 (such earlier date being the "**Termination Date**"), all outstanding Advances made hereunder shall be due and payable in full and, (A) with respect to the Original Advances, at the Buyer's option, the repayment of such Original Advances shall be made either (1) via weekly deliveries of Product in accordance with the Offtake Agreement, the Purchase Price for which shall not be paid by the Buyer but shall instead be credited against the outstanding Original Advances; or (2) in cash, ~~and~~ (B) with respect to the Margin Advances, the repayment thereof shall be made in cash and (C) with respect to the Additional Prepay Advances, the repayment thereof shall be made in any of the following manners (or any combination thereof), at the Buyer's

option: (1) from time to time, upon not less than five (5) Business Days' prior notice to the Seller, via deliveries of Product in accordance with the Offtake Agreement without payment of the Purchase Price in respect thereof by the Buyer, and with such deliveries instead being credited against the outstanding Additional Prepay Advances; (2) immediate transfer of title from Seller to the Buyer of Ore, which Ore may be in the form of wet concentrate (measured in WMT) and with a value calculated in a manner consistent with the methodology set out in Schedule I or in the form of dry concentrate (measured in DMT) and with a value calculated in a manner consistent with the Offtake Agreement or (3) in cash.

4.2 Notwithstanding the foregoing, it is agreed and acknowledged by the Seller that, in addition to being repayable on the Termination Date, the Additional Prepay Advances shall repayable immediately on demand by the Buyer at any time prior to the Termination Date, and that such repayment shall be made in the manner selected by the Buyer, at the Buyer's option, in accordance with clause (C) of Section 4.1 above (which repayment if elected by the Buyer to be made pursuant to sub-clause (1) thereof, shall not be required to be made on less than five (5) Business Days' prior notice to the Seller of such election).

4.3 ~~4.2~~The Advances may be prepaid at any time without premium or penalty, it being agreed that the Floor Price Premium was fully earned and paid upon the entry into of the Offtake January Amendment and the concurrent funding of the Initial Advance, notwithstanding any voluntary prepayment of the Advances prior to the Termination Date, and whether or not any deliveries are made.

5.PAYMENTS CONSTITUTING INTEREST

5.1 The parties shall comply with the following provisions to ensure that no receipt by the Buyer of any payments to the Buyer hereunder would result in a breach of section 347 of the *Criminal Code* (Canada):

(a) If any provision of this Agreement or any of the other documents related to this Agreement would obligate the Seller to make any payment to the Buyer of an amount that constitutes "interest", as such term is defined in the *Criminal Code* (Canada) and referred to in this section as "**Criminal Code interest**", during any one-year period after the Initial Advance Date in an amount or calculated at a rate which would result in the receipt by the Buyer of Criminal Code interest at a criminal rate (as defined in the *Criminal Code* (Canada) and referred to in this section as a "**criminal rate**"), then, notwithstanding such provision, that amount or rate during such one-year period shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not result in the receipt by the Buyer during such one-year period of Criminal Code interest at a criminal rate, and the adjustment shall be effected, to the extent necessary, as follows:

(i) first, by reducing the amount or rate of such amounts which constitute Criminal Code interest required to be paid to the Buyer during such one-year period; and

(ii) thereafter, by reducing the fees and other amounts required to be paid to the Buyer during such one-year period which would constitute Criminal Code interest.

The dollar amount of all such reductions made during any one-year period is referred to in this section as the "**Excess Amount**".

(b) Any Excess Amount shall be payable and paid by the Seller to the Buyer in the then next succeeding one-year period or then next succeeding one-year periods until paid to the Buyer in full, subject to the same limitations and qualifications set out in paragraph (a), so that the amount of Criminal Code interest payable or paid during any subsequent one-year period shall not exceed an amount that would result in the receipt by the Buyer of Criminal Code interest at a criminal rate.

(c) Any amount or rate of Criminal Code interest referred to in this section shall be calculated and determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the Advances remain outstanding on the assumption that any charges, fees or expenses that constitute Criminal Code interest shall be pro-rated over the period commencing on the Initial Advance Date and ending on the relevant Termination Date (as may be extended by the Buyer from time to time hereunder) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Buyer shall be conclusive for the purposes of such calculation and determination.

5.2 If the Advances are not repaid when due, all outstanding amounts then owing under or in respect of the Advances will bear interest at 10% per annum, compounded monthly on the last day of each month, and payable on demand.

6.ADEQUATE PROTECTION

6.1 The Seller agrees and acknowledges that:

(a) there are a number of key financial and operational covenants which have been critical to the Buyer in committing to enter into this Agreement and provide the Advances to the Seller hereunder, without which the Buyer would not have agreed to enter into this Agreement or provide the funding contemplated hereunder, including:

(i) pursuant to Section 9(m)~~.1(m~~ of this Agreement, the Seller is restricted from creating, incurring, or guaranteeing any Indebtedness for borrowed money other than (i) Indebtedness and Guarantees existing on the Original Agreement Date and (ii) Indebtedness under the Initial 2023 Notes; and

(ii) pursuant to Section 9(n)~~.1(n~~ of this Agreement, the Seller is restricted from creating or incurring any Liens, except Permitted Liens.

(b) the ability of the Seller to satisfy its obligations to the Buyer hereunder could be significantly affected or materially impaired if the financial position of the Seller changes, including if any additional Indebtedness or Liens are incurred in violation of the foregoing covenants;

(c) any debtor-in-possession financing, other interim financing or any other charges granted by any court under the CCAA, the BIA or other similar legislation in Canada or in any other jurisdiction, or pursuant to or in connection with any proceedings under such statutes (each, a "**DIP Financing**") would result in a breach of any of the foregoing covenants and could materially prejudice the Buyer; and

(d) the Seller shall first provide the Buyer with an opportunity to reach agreement on DIP Financing should it become necessary before agreeing to such DIP Financing from another party.

7.CONDITIONS PRECEDENT

7.1 Conditions Precedent to Effectiveness

This Agreement shall become effective upon the satisfaction or waiver of the following conditions precedent, all of which are for the benefit of the Buyer, in each case in form and substance satisfactory to the Buyer:

(a) execution and delivery by the Seller of this Agreement;

(b) execution and delivery of a confirmation of Security in form and substance substantially similar to the confirmation delivered to the Notes Collateral Agent in connection with the issuance of the Initial 2023 Notes;

(c) execution and delivery of all documents required for the Senior Priority Obligations hereunder to constitute "Senior Priority Obligations" under the Senior Priority Intercreditor Agreement;

(d) delivery of legal opinions from counsel to the Seller, in each applicable jurisdiction, including customary assumptions and qualifications, opinions confirming, among other things (i) corporate existence, authority and due execution and delivery, (ii) no breach of applicable law or constating documents including the Amended Shareholders' Agreement, (iii) the registration and perfection of the Security and confirmation that such Security continues to secure the Obligations (including the Senior Priority Obligations) and that all of the Obligations (including the Senior Priority Obligations) are permitted to be incurred and so secured by the Security pursuant to the Required Consents, (iv) the enforceability of this Agreement, (v) confirmation that the Obligations (other than the Senior Priority Obligations) constitute Initial Additional Pari Passu Lien Obligations under the Pari Passu Intercreditor Agreement and that the Senior Priority Obligations constitute Senior Priority Obligations under the Senior Priority Intercreditor Agreement; and (vi) no breach under the Indenture;

(e) satisfaction that, upon the effectiveness of this Agreement, the Seller shall have sufficient liquidity to fund its operations in accordance with the Liquidity Management Plan and the Cash Flow Forecast; and

(f) (i) no Default or Event of Default has occurred and is continuing and (ii) there shall have been no Material Adverse Effect, and the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

7.2 **Conditions Precedent to the Initial Advance**

The funding of the Initial Advance (including the deemed advance of an amount equal to and to be applied to the Floor Price Premium) was subject to the following conditions precedent, all of which are for the benefit of the Buyer and were satisfied or waived in connection with the Initial Advance, in each case in form and substance satisfactory to the Buyer:

(a) execution and delivery by the Seller of this Agreement and the Security Documents;

(b) execution and delivery of all documents required for the Buyer and the Obligations to accede to the Pari Passu Intercreditor Agreement and form part of and have the benefit of the provisions thereof as Initial Additional Pari Passu Lien Obligations;

(c) execution and delivery of the Amended Shareholders' Agreement, the Offtake January Amendment and the Preferred Share Amendments;

(d) continuance of the Seller as an Ontario corporation under the *Business Corporations Act* (Ontario);

(e) amendment of governing documents of Proterra M&M MGCA B.V. and Proterra M&M Co-Invest LLC, in form and substance satisfactory to the Buyer, it being understood that Buyer shall use its commercially reasonable efforts to assist the Seller in satisfying this condition;

(f) issuance of the Cargill Warrants (as defined in the Original Advance Agreement) in form and substance satisfactory to the Buyer and Cargill;

(g) satisfaction of the Floor Price Premium from the proceeds of the Initial Advance;

(h) receipt of a certified copy of the Amended Shareholder Agreement and all other constating documents and by-laws of the Seller, and of all corporate and other proceedings taken and required to be taken by the Seller to authorize, *inter alia*, (i) the execution and delivery of this Agreement and the other Financing Documents to which it is a party and the performance of the transactions contemplated thereby; (ii) a certificate of status of the Seller; and (iii) a certificate of incumbency of the Seller;

(i) (i) completion of all necessary lien and other searches, together with all registrations, filings and recordings wherever the Buyer deems appropriate in

connection with the Security, and (ii) satisfaction that there are no Liens ranking pari passu with or in priority to the Security except Permitted Liens;

(j) satisfaction that the Seller maintains adequate insurance coverage of such type and in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope acceptable to the Buyer, with appropriate endorsements in favour of the Buyer;

(k) constitution of the board of directors of the Seller in accordance with the Amended Shareholders' Agreement provided that board positions to be filled by any independent directors contemplated by the Amended Shareholders' Agreement may be vacant at the time of the Initial Advance for purposes of this condition precedent and such independent directors may be appointed following the Initial Advance in accordance with the Amended Shareholders' Agreement;

(l) delivery of legal opinions from counsel to the Seller, in each applicable jurisdiction, including customary assumptions and qualifications, opinions confirming, among other things (i) corporate existence, authority and due execution and delivery, (ii) no breach of applicable law or constating documents, including, as applicable, the amended and restated shareholders' agreement as in effect on the Original Agreement Date, and/or the Amended Shareholders' Agreement, (iii) the registration and perfection of the Security, (iv) the enforceability of this Agreement and the other applicable Security Documents set out in Schedule A, the Offtake January Amendment and the Cargill Warrants (as defined in the Original Advance Agreement), (v) confirmation that the Obligations constitute Initial Additional Pari Passu Lien Obligations under the Pari Passu Intercreditor Agreement and (vi) no breach under the Indenture;

(m) completion by the Seller of an operational assessment review in form and substance satisfactory to the Buyer by no later than January 1, 2023;

(n) receipt of the Cash Flow Forecast, Liquidity Management Plan, Operational Turnaround Plan and Retention Plan (as defined in the Existing Facility Agreement) all in form and substance satisfactory to the Buyer;

(o) satisfaction with the identity, scope and extent of the authority of the chief transaction officer retained by the Seller to advance the Liquidity Management Plan, Operational Turnaround Plan, Retention Plan (as defined in the Existing Facility Agreement) and Restructuring Plan;

(p) satisfaction that, if the Initial Advance (excluding an amount equal to the Floor Price Premium), the Subsequent Advance (as defined in the Existing Facility Agreement) and the Final Advance (as defined in the Existing Facility Agreement) have been funded, assuming satisfaction of the applicable conditions precedent set out in Section 7 hereof, the Seller shall have sufficient liquidity to fund its operations in accordance with the Liquidity Management Plan and the Cash Flow Forecast; and

(q) (i) all representations and warranties contained in this Agreement and the Financing Documents remain true and correct as of the Initial Advance Date, (ii) no Default or Event of Default has occurred and is continuing and (iii) there shall have been no Material Adverse Effect, and the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

7.2 **Conditions Precedent to each Margin Advance and each Additional Prepay Advance**

The availability and deemed funding of each Margin Advance and/or each Additional Prepay Advance shall be subject to the following conditions precedent, all of which shall be for the benefit of the Buyer and shall be satisfied prior to each deemed Margin Advance and each Additional Prepay Advance, in each case in form and substance satisfactory to the Buyer:

(a) the amount of such Margin Advance or Additional Prepay Advances, as applicable, together with the aggregate amount of all Margin Advances and Additional Prepay Advances then outstanding~~.~~, shall not exceed the Maximum ~~Margin~~ Senior Priority Advance Amount;

(b) all representations and warranties contained in this Agreement and the Financing Documents remain true and correct as of the applicable Calculation Date on which the Margin Advance ~~is~~ or the Additional Prepay Advance, as applicable is made or deemed to be made;

(c) no Default or Event of Default shall have occurred and be continuing; and

(d) there shall have been no Material Adverse Effect,

and, if requested, the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

8.REPRESENTATIONS AND WARRANTIES

The Seller makes each of the following representations and warranties:

(a) The Seller is a corporation duly formed and validly existing under the laws of the jurisdiction of its formation, and is duly qualified, licensed or registered to carry on business under the applicable law in all jurisdictions in which the nature of its assets or business makes such qualification necessary.

(b) The execution, delivery and performance by the Seller of this Agreement and the other Financing Documents:

(i) are within its corporate power;

(ii) have been duly authorized by all necessary corporate, action, including all necessary consents of the holders of its Equity Securities, where required;

(iii) do not (A) contravene the Amended Shareholders' Agreement, articles, by-laws or other constating documents, as applicable, (B) violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to it or any of its properties or assets, (C) conflict with or result in the breach of, or constitute a default under, or require a consent under, any Material Contract (other than such consents as have been obtained including, the Required Consents) or (D) result in the creation or imposition of any Lien upon any of its property except pursuant to the Security Documents; and

(iv) do not require the consent of, authorization by, approval of or notification to any Governmental Entity.

(c) This Agreement and the other Financing Documents constitute valid and binding obligations of the Seller enforceable in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity, whether asserted in a proceeding in equity or law.

(d) The Seller (i) owns its assets with good and marketable title thereto, free and clear of all Liens, except for Permitted Liens, (ii) does not own or lease any real property other than as described on Schedule E and (iii) maintains no business in any jurisdiction other than as set out on Schedule E. The Seller does not own or lease any real property or immovable property in the Province of Quebec other than as set out on Schedule E.

(e) There is no Default or Event of Default that has occurred and is continuing as of the date hereof.

(f) The Seller does not have any Material Liabilities except (i) Liabilities which are reflected and properly reserved against in the Financial Statements, (ii) Liabilities incurred in the ordinary course of business, having regard to the current financial condition of the Seller and as reflected in the Cash Flow Forecast, (iii) current Liabilities arising in the ordinary course under the Contracts to which the Seller is a party and (iv) Liabilities under the Initial 2023 Notes.

(g) Other than the fees of GLC Advisors & Co., LLC, and the fees and expenses of Greenhill & Co. Canada Ltd., each of which have been separately disclosed to the Buyer, provisions for all payments, fees and retainers for professionals and advisors engaged by the Seller or its subsidiaries and all transaction, success, performance or change of control payments payable thereunder or in connection therewith (the "**Professional Fees**"), and have been accounted for in the Liquidity Management Plan and included in the Cash Flow Forecast.

(h) Except for the claims set out in the letters disclosed on Schedule 8(h), true, correct and complete copies of which have been delivered to the Buyer, there is not now pending or, to the knowledge of the Seller, threatened against the Seller or any of its subsidiaries, nor has the Seller received notice in respect of, any Material

claim, potential claim, litigation, action, suit, arbitration or other proceeding by or before any Governmental Entity.

(i) A complete and accurate list of all Material Contracts and amendments thereto is set forth on Schedule E hereto and all such agreements are in full force and effect.

(j) Except as would not have a Material Adverse Effect:

(i) The Seller is in possession of all, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, registrations and orders of any Governmental Entity in Canada and other jurisdictions necessary for the Seller to carry on its business as it is now being conducted (the "**Company Permits**"), the Company Permits are valid and in good standing and no suspension or cancellation of any of the Company Permits is pending or, to the knowledge of the Seller, threatened; and

(ii) to the knowledge of the Seller, neither the Seller nor any of its subsidiaries has received any written notice that any Governmental Entity (including, without limitation, Governmental Entities outside of Canada) has commenced, or threatened to initiate, any action to withdraw its approval for, revoke, request the recall of, or otherwise impair restrict or vary any Company Permits, or to restrain, impede or prohibit the execution, delivery and performance by the Seller of this Agreement or require or purport to require a variation of this Agreement.

(k) The Seller maintains adequate insurance coverage of such type and in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope as is prudent for such a business, with appropriate endorsements in favour of the Buyer.

(l) The Security Documents create a valid and continuing perfected Lien on the personal property described therein (collectively, the "**Collateral**") in favour of the Buyer having the priority set forth herein, subject only to Permitted Liens. There are no other Liens on the Collateral other than Permitted Liens.

(m) As of the date of this Agreement, Schedule F sets out the corporate structure of the Seller and its subsidiaries, including particulars of authorized, issued and outstanding capital of each such entity and the percentage ownership interest.

(n) All consents required to permit the Security to attach to all Material assets and property of the Seller (including all Material Contracts and all real property rights disclosed on Schedule E) are listed on Schedule G (the "**Required Consents**"), which have been obtained. Other than the assets and property subject to the Required Consents (which have been obtained), no other Material asset or property of the Seller constitutes a Restricted Asset (as defined in any applicable Security Document). The Seller has not obtained any consent in favour of the

Notes Collateral Agent or any other holder of Indebtedness (or any agent or trustee on its behalf) other than consents substantially similar to the Required Consents.

(o) All documents constituting the Notes Collateral Documents (as defined in the Pari Passu Intercreditor Agreement and the Senior Priority Intercreditor Agreement), and all consents obtained in connection therewith, are set out on Schedule H.

(p) Neither the Financial Statements delivered to the Buyer or its Advisors from time to time nor any other written statement or information (other than projections, which are subject to following sentence) furnished by or on behalf of or at the direction of the Seller to the Buyer or its Advisors in connection with the negotiation, consummation or administration of this Agreement contain, as of the time such statements were so furnished, any untrue statement of a material fact or an omission of a material fact as of such time, which material fact is necessary to make the statements contained therein not misleading. All such statements, taken as a whole, together with this Agreement, all of the other Financing Documents and all other relevant documents do not contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained herein or therein not misleading. All financial projections, including the Cash Flow Forecast, furnished or made available by the Seller to the Buyer and its Advisors have been prepared in good faith, on the basis of all known facts and using reasonable assumptions and the Seller believes such projections to be fair and reasonable.

(q) All written information furnished by or on behalf of the Seller to the Buyer or its Advisors for the purposes of, or in connection with, this Agreement, the other Financing Documents or any other relevant document or any other transaction contemplated thereby, is true and accurate in all Material respects on the date as of which such information is dated or certified, and not incomplete by omitting to state any material fact necessary to make such information not misleading at such time in light of then-current circumstances.

(r) Except for the Tacora Orion Letter, there are no agreements between the Seller or any of its subsidiaries and any holder of debt or Equity Securities of the Seller or such subsidiaries with respect to any restructuring, refinancing or recapitalization matters.

9.COVENANTS

The Seller on behalf of itself and its subsidiaries covenants and agrees to comply with the following covenants unless otherwise expressly consented to by the Buyer in writing in advance:

(a) The Seller shall duly and punctually make the deliveries of Product and/or pay the amounts on and in respect of the Advances in each case when due and payable under this Agreement and the Offtake Agreement, as applicable.

(b) The Seller shall use the proceeds of the Advances only in accordance with Section 2.6.

(c) The Seller shall comply with the terms of the Offtake Agreement.

(d) The Seller shall maintain at all times adequate insurance coverage of such kind and in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope acceptable to the Buyer, with appropriate endorsements in favour of the Buyer.

(e) The Seller shall deliver to each of the Buyer and/or such representatives as may be reasonably designated by the Buyer:

(i) on the third Business Day of every week, a report as to the Seller's actual cash flows for the immediately preceding week, accompanied by a variance analysis explaining how and why actual results for such immediately preceding week varied from the applicable week in the Cash Flow Forecast;

(ii) on the first Business Day of each week, updates regarding the progress made under the Liquidity Management Plan and the Restructuring Plan and make such amendments thereto as may be reasonably requested by the Buyer;

(iii) notice forthwith upon the Seller determining that there will be a Material change from the Cash Flow Forecast, or of any other Material developments with respect to the business and affairs of the Seller or the operations at the Mine;

(iv) notice forthwith upon the Seller receiving notice from any creditor, Governmental Entity, landlord or other third party of a default, demand, acceleration or enforcement in respect of any material obligation of the Seller;

(v) notice forthwith and copies to the Buyer of, any discussion papers, term sheets, letters of intent, commitment letters, offers or agreements entered into by the Seller after Original Agreement Date, relating to (i) a Sale Transaction, (ii) a Restructuring or Recapitalization Transaction or (iii) a Change of Control;

(vi) notice forthwith of any intention to seek any financing, refinancing or any "debtor-in-possession" financing under the CCAA or the BIA;

(vii) notice forthwith of any Default or Event of Default;

(viii) from time to time as requested by the Buyer, updates on the Retention Plan and make some amendments thereto as may be reasonably requested by the Buyer;

(ix) promptly following delivery thereof, copies of any weekly reporting delivered to the holders of the Initial 2023 Notes (or any of them, whether in their capacity as holders of the Initial 2023 Notes or otherwise); and

(x) such other information as may be requested by the Buyer or its Advisors from time to time acting reasonably.

(f) The Seller shall review the Operational Turnaround Plan and the progress made thereunder with the Buyer on the first Business Day of each calendar month following the Initial Advance Date and such Operational Turnaround Plan shall in each case remain acceptable to, or amended as may be reasonably required by, the Buyer.

(g) The Seller shall work cooperatively with the Buyer to implement the Restructuring Plan;

(h) The Buyer shall have the right to engage at any time a financial advisor to assist it in relation to the Advances and any Liquidity Event, and all reasonable and documented fees of such advisor, excluding any success or transaction fee (unless expressly consented to by the Seller), shall be reimbursed by the Seller and shall form part of the Obligations in accordance with Section 12.

(i) The Seller shall not be entitled to make any Distribution or Affiliate Payment, other than a Distribution or Affiliate Payment that is contemplated by the Cash Flow Forecast (and in the case of any Affiliate Payment made to any Shareholder and/or its Affiliates, that is contemplated by the Cash Flow Forecast and approved in writing by the Buyer) or any Distribution to the Buyer on account of existing preferred shares held by Buyer.

(j) The Seller shall not make any Material expenditures except to the extent such expenditures are consistent with the Liquidity Management Plan and reflected in the Cash Flow Forecast.

(k) The Seller shall not amalgamate, consolidate with or merge into or sell all or substantially all of its assets to another entity, or change the nature of its business or their corporate or capital structure or enter into any agreement committing to such actions, provided that the Buyer shall not withhold consent in respect of any of the foregoing events if prior to concurrently with completion of any of such event, the Obligations are repaid in full.

(l) The Seller shall not issue any Equity Securities nor create any new class of Equity Securities or amend any terms of its existing Equity Securities other than (i) the Permitted Issuances; and (ii) the issuance of the Seller's common shares that would not result in a Change of Control.

(m) The Seller shall not create, incur or Guarantee any Indebtedness other than, without duplication, (i) Indebtedness and Guarantees existing on the Original

Agreement Date, (ii) the Obligations and (iii) Indebtedness under the Existing Notes and the Initial 2023 Notes.

(n) The Seller shall not create or incur any Liens other than Permitted Liens.

(o) The Seller shall not make any Investments or acquisitions of any kind, direct or indirect, and, following the Original Agreement Date, the Seller shall not make further Investments in, payments to, or provide any Guarantees or financial assistance in favour of, its subsidiaries, without the Buyer's prior written consent.

(p) The Seller shall not increase compensation or severance entitlements or other benefits payable to directors, senior officers or senior management (including by way of a "KERP"), or pay any bonuses whatsoever, other than (i) as required by law or (ii) pursuant to the terms of the Retention Plan and ~~as~~ set out in the Cash Flow Forecast.

(q) The Seller shall not be entitled to pay any Professional Fees except for, without duplication: (i) such Professional Fees provided for and specifically listed in the Cash Flow Forecast and (ii) all fees and expenses payable to GLC Advisors & Co., LLC, Greenhill & Co. Canada Ltd., Bennett Jones LLP and Hatch Ltd., pursuant to their engagement letters dated as of April 25, 2023, January 23, 2023, March 1, 2023 and March 1, 2023, respectively, and the fee letter between the Seller and Bennett Jones dated March 1, 2023, each as in effect on the date of this Agreement, unamended.

(r) The Seller shall operate its businesses in accordance with the Liquidity Management Plan, the Operational Turnaround Plan, the Restructuring Plan and the Cash Flow Forecast.

(s) The Seller shall maintain a minimum liquidity of $5,000,000 tested on a weekly basis along with the variance analysis under the Cash Flow Forecast.

(t) Following a reasonable advance request by the Buyer or its Advisors, the Seller, shall, to the extent permitted by law and the terms of any contractual confidentiality obligations:

(i) provide the Buyer and/or its Advisors with reasonable access to its books and records for use in connection with the transactions contemplated by this Agreement; and

(ii) make its officers and legal and financial advisors available on a reasonable basis for any discussions with the Buyer and/or its Advisors.

(u) The Seller shall not make or permit to be made any changes to composition (including addition, removal or replacement of directors) of the board of directors of the Seller (other than a resignation by a director), except in accordance with the Amended Shareholders Agreement and the First Noteholder Side Letter.

(v) The Seller shall not, to the extent it is required to do so, consent to, or take any steps in furtherance of the exercise of any conversion right under any Equity Securities issued by it.

(w) The Seller shall not transfer, lease, license or otherwise dispose of all or any part of its property, assets or undertaking, except pursuant to a Liquidity Event which has been approved by the Buyer.

(x) The Seller shall not enter into, extend, renew, waive or otherwise modify any of its Material Contracts.

(y) The Seller shall not enter into, extend, renew, waive or otherwise modify in any respect the terms of any transaction with an Affiliate (other than the Buyer or Cargill), other than extension or renewal of existing operational arrangements which are in compliance with the Liquidity Management Plan, the Operational Turnaround Plan and the Cash Flow Forecast.

(z) The Seller shall not (i) deliver any guarantee, security, lien or other credit support to the Notes Collateral Agent or otherwise in connection with the Indenture, unless, concurrently therewith it shall comply with the requirements of Section 3.3 and it shall provide the equivalent guarantees, security, liens or other credit support to the Buyer or (ii) acquire any rights in any real property or immovable property in the Province of Quebec unless, concurrently therewith it shall comply with the requirements of Section 3.4.

(aa) The Seller shall not form any subsidiary after the Original Agreement Date without the prior written consent of the Buyer and, to the extent so consented, delivery of all guarantees, Security Documents and other credit support as may be required by the Buyer in connection therewith.

(bb) In the event that the Seller agrees pursuant to ~~any~~ a Noteholder Side Letter or other binding agreement between the Seller and any holders of Initial 2023 Notes or other notes issued under the Indenture (each such binding agreement being, a "**Noteholder Restructuring Agreement**") to meet any milestone related to advancing a Liquidity Event pursuant thereto (each, a "**Milestone**"), then the Seller covenants to the Buyer that it shall meet each such Milestone pursuant to this Agreement by the same deadline as set out in such Noteholder Restructuring Agreement (or such later deadline as may be agreed by the Buyer in its sole discretion).

(cc) The Seller shall, by no later than the date that is ten (10) Business Days following the Effective Date (or such later date as may be expressly agreed by the Buyer in writing), obtain supplements or confirmations to the Required Consents listed under the heading "Counterparty Consents re Material Contracts" in Schedule G.

10.EVENTS OF DEFAULT

10.1 Each of the following shall constitute an event of default hereunder and under the Security Documents (each, an "**Event of Default**"):

(a) the failure to pay any amount (including fees and expenses or any Excess ~~Margin~~ Senior Priority Advance Amount) or make any delivery in respect of the Advances when the same shall become due and payable hereunder or are required to be made or delivered pursuant to the Offtake Agreement;

(b) the failure by the Seller to perform or comply with any term, condition, covenant or obligation contained herein (other than the items expressly set out in paragraph (a) above) or in any other Financing Document or any other document delivered pursuant to the terms hereof or thereof or in connection herewith or therewith on their part to be performed or complied with and, to the extent capable of being remedied, such failure remains unremedied for three (3) Business Days;

(c) if any representation, warranty or other statement of the Seller made or deemed to be made in this Agreement, any other Financing Document or in any other document delivered pursuant to the terms thereof or in connection therewith shall prove untrue in any material respect as of the date made;

(d) the occurrence of a default or an event of default under any Indebtedness of the Seller, including, for certainty, under the Indenture (or any supplemental indenture thereunder) or under any Noteholder Restructuring Agreement, provided that, (i) solely with respect to the existing ~~default~~ defaults under the Indenture set out on Schedule 10.1, such ~~default~~ defaults shall not constitute and Event of Default hereunder unless the obligations under the Indenture are accelerated or otherwise declared due and payable as a result thereof, or the Notes Collateral Agent or any holders thereunder initiate any enforcement steps in respect thereof; (ii) failure by the Seller to pay the May 15, 2023 interest payment under the Indenture shall only constitute an Event of Default hereunder if not paid in full in cash prior to the expiry of the applicable cure period in respect thereof; and (iii) failure by the Seller to pay the quarterly royalty payment pursuant to the amended and restatement of the consolidation of mining leases dated October 30, 2017 shall only constitute an Event of Default hereunder if not paid in full in cash prior to May 25, 2023;

(e) a revocation, termination or cancellation of, any Material Contract or a default thereunder that would permit the revocation, termination or cancellation thereof by any third party;

(f) failure by the Seller, in the opinion of the Buyer, acting reasonably, to comply with the terms of, take any proposed steps under, or meet any milestones or metrics set out in the Liquidity Management Plan, the Operational Turnaround Plan, the Retention Plan or the Restructuring Plan, in each case on the timelines set out therein;

(g) the existence of an adverse variance of cumulative actual net cash flow from the Cash Flow Forecast by an amount exceeding 10% in respect of any four week period;

(h) any change to the composition (including addition, removal or replacement of directors) of the board of directors of the Seller that is not in accordance with the Amended Shareholders Agreement and the First Noteholder Side Letter, except as arising from resignation by a director;

(i) the cessation (or threat of cessation) by the Seller to carry on business in the ordinary course, having regard to the current financial condition of the Seller;

(j) the denial or repudiation by the Seller of the legality, validity, binding nature or enforceability of this Agreement, the other Financing Documents or any other document or certificate delivered pursuant to the terms hereof or thereof or the Offtake Agreement;

(k) the cessation of any of the Security Documents to constitute, in whole or in part, a Lien on the Collateral in the priority contemplated by this Agreement;

(l) the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of $250,000 against the Seller or the Collateral that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy;

(m) the commencement by the Seller or any of its subsidiaries organized under the laws of the United States of America or Canada (or any state, province, territory other subdivision thereof) of any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of such entity, including without limitation, under the BIA (including the filing of a notice of intention to make a proposal), CCAA, *Winding-up and Restructuring Act* (Canada), the CBCA or any similar law of another jurisdiction, including provisions of corporate statutes providing for a stay of proceedings or the compromise of claims;

(n) the appointment of any receiver, receiver-manager, interim receiver, monitor, liquidator, assignee, custodian, trustee, sequestrator or other similar entity in respect of the Seller or any of its subsidiaries organized under the laws of the United States of America or Canada (or any state, province, territory other subdivision thereof), or all or any part of their respective property, assets or undertaking;

(o) the act of the Seller or any of its subsidiaries organized under the laws of the United States of America or Canada (or any state, province, territory other subdivision thereof): (i) making a general assignment for the benefit of its

creditors, including without limitation, any assignment made pursuant to the BIA, (ii) acknowledging its insolvency or is declared or becomes bankrupt or insolvent, (iii) failing to meet its liabilities generally as they become due, or (iv) committing an act of bankruptcy under the BIA or any similar law of any jurisdiction;

(p) the occurrence of any Liquidity Event;

(q) the failure by the Seller to pay the May 15, 2023 interest payment under the Indenture in full in cash prior to the expiry of the applicable cure period in respect thereof;~~or~~

(r) the failure by the Seller to meet any Milestone in accordance with Section 9(bb)~~.1(bb).~~; or

(s) a default under any Noteholder Side Letter.

11.REMEDIES

Following the occurrence of an Event of Default, without limiting the remedies available under the Security Documents or hereunder, the Buyer may:

(a) on demand, accelerate all payments due by the Seller hereunder, and set off amounts owing by the Buyer to the Seller against amounts owing by the Seller to the Buyer, provided that if the Event of Default relied upon by the Buyer to demand or accelerate such payments has arisen solely as a result of the Seller's failure to repay the Additional Prepay Advances on demand (absent any other Event of Default), the Buyer shall not set-off the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement against the Advances until the date which is five (5) Business Days after the Buyer demands repayment of the Additional Prepay Advances;

(b) apply to a court (i) for the appointment of an interim receiver or a receiver and manager of the undertaking, property and assets of the Seller, (ii) for the appointment of a trustee in bankruptcy of the Seller, or (iii) to seek other relief; or

(c) without limiting the foregoing, the Buyer shall have the power and rights of a secured party under section 17, 17.1 and Part V of the *Personal Property Security Act* (Ontario).

12.EXPENSES

The Seller shall be obligated to, on the Termination Date, reimburse the Buyer for all reasonable out-of-pocket expenses and costs, including, without limitation, all reasonable and documented legal and advisory fees, incurred by each of the Buyer and its Advisors in connection with any matter arising hereunder or any documents issued in connection with this Agreement or any of the Financing Documents. All such reimbursement and/or payment obligations shall form part of the Obligations and shall be secured by the Security.

13.TAXES

13.1 All payments in cash or in kind made by the Seller to the Buyer, including without limitation any payments required to be made from and after the exercise of any remedies available to the Buyer upon an Event of Default, shall, except as required by applicable law, be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes (other than Excluded Taxes) are required by applicable law to be deducted or withheld ("**Withholding Taxes**") from any amount payable in cash or in kind to the Buyer hereunder or under any other document delivered pursuant to the terms hereof, the amount so payable to the Buyer shall be increased to the extent necessary to yield to the Buyer on a net basis after withholding and remitting all Withholding Taxes, the amount the Buyer would have received had no Withholding Taxes been payable, and the Seller shall provide evidence satisfactory to the Buyer that the Taxes have been so withheld and remitted to the applicable Governmental Entity on a timely basis.

13.2 In addition, the Seller shall reimburse and indemnify the Buyer for any Withholding Taxes paid by the Buyer within 10 days upon receiving evidence from the Buyer that it has paid the Withholding Taxes, whether or not such Withholding Taxes were correctly or legally asserted. If the Buyer determines, in its sole discretion exercised in good faith, that it has received a refund of Withholding Taxes remitted to a Governmental Entity pursuant to Section 13.1 or to which it has been indemnified and reimbursed by the Seller pursuant to this Section 13.2, it shall pay to the Seller an amount equal to such refund, net of all out-of-pocket expenses (including any taxes) and without interest. The Seller shall, upon request, repay to the Buyer the amount paid over to the Seller hereunder in the event that the Buyer is required to repay such refund to a Governmental Entity.

13.3 The Buyer will take all commercially reasonable steps to obtain a refund of any Withholding Taxes payable by it pursuant to Section 13.2, provided that nothing in this Section 13.3 shall be construed to require the Buyer to:

(a) make available its Tax returns or any other information which it deems confidential to the Seller or any other Person; or

(b) pay any amount pursuant to this Section 13.3, the payment of which would place the Buyer (or any of its Affiliates) in a less favourable net after-Tax position than the Buyer (or any of its Affiliates) would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld, or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

13.4 The Buyer represents that it is a resident of Singapore for purposes of the tax convention between the governments of Canada and Singapore entitled to the benefits of such convention, it does not have a permanent establishment in Canada as defined in such Convention and it is receiving any amounts paid by the Seller pursuant to this Agreement

in the ordinary course of its business; provided, for greater certainty, that Seller's obligations described in Sections 13.1 and 13.2 (i) are not conditional on this section 13.4, and (ii) remain enforceable against Seller notwithstanding any assessment, reassessment or other assertion by a Tax authority, or a finding of a court of competent jurisdiction, that is inconsistent with the representations contained in this section 13.4.

14.MISCELLANEOUS

14.1 Further Assurances

The Seller shall at its expense, from time to time do, execute and deliver, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Buyer may reasonably request for the purpose of giving effect to this Agreement, perfecting, protecting and maintaining the Liens created by the Security establishing compliance with the representations, warranties and conditions of this Agreement or any other document delivered in connection herewith.

14.2 Disclosure

No press release or other public disclosure concerning the transactions contemplated herein shall be made by the Seller without the prior consent of the Buyer (such consent not to be unreasonably withheld); *provided*, however, that the Seller shall, after providing the Buyer and its Advisors with copies of all related documents and an opportunity to consult with the Buyer and its Advisors as to the contents, make prompt disclosure of this Agreement and make such disclosure as may be required by the Indenture, by applicable law or by any Governmental Entity having jurisdiction over the Seller. Notwithstanding the foregoing, no information with respect to the identity of the Buyer shall be disclosed by the Seller except as may be required by applicable law, or by any Governmental Entity having jurisdiction over the Seller.

14.3 Conflict

To the extent that there is any inconsistency between this Agreement and any of other Financing Documents, this Agreement shall govern.

14.4 Amendments and Waivers

This Agreement shall only be amended or waived with the consent of the Buyer and the Seller in writing.

14.5 Assignments and Participations

The Buyer may assign all or any portion of its Advances and related rights under this Agreement and the other Financing Documents, without the consent of any other party, provided that the Margin Advances and related rights shall only be assigned if the Offtake Agreement is also assigned. The Seller may not assign its rights hereunder without the consent of the Buyer.

The Buyer may also grant a participation (whether by way of equitable assignment, limited recourse deposit or otherwise) (each a "Participation") to any other person (a "**Participant**") in the whole or any part of any of its Advances (whether before or after the funding of such

Advances) under which the Participant shall be entitled to the benefit of the same rights under this Agreement with respect to such Participation as if it were a party hereto in the place and stead of the Buyer; provided that in respect of such participated share and as between the Participant and the Seller, (i) the Buyer (and not the Participant) shall remain solely entitled to enforce such rights, and shall remain solely responsible for the performance of all obligations, of the Buyer under this Agreement with respect to such participated share, (ii) such Participant shall have no direct enforceable rights against the Seller in respect of such participated share, other than against the Buyer; (iii) no party hereto, other than the Buyer, shall have any obligations to such Participant with respect to such participated share; and (iv) the consent of the Participant is not required under the terms of such participation to any change to this Agreement, except for changes that (1) increase the aggregate amount of the Advances in excess of the participated share agreed to by the Participant or (2) postpone or defer the time for the payment or repayment of any Advance or any other amount payable hereunder to which such Participant has a right.

14.6 **Governing Law**

(a) This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(b) The Seller hereby consents and agrees that the courts of the Province of Ontario shall have non-exclusive jurisdiction to hear and determine any claims or disputes between the Seller and the Buyer pertaining to this Agreement or any of the other documents related thereto or to any matter arising out of or relating to this Agreement or any of the other documents related thereto. Nothing in this Agreement shall be deemed or operate to preclude the Buyer from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the obligations, or to enforce a judgment or other court order. The Seller expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and the Seller hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Seller hereby waives personal service of the summons, complaint and other process issued in any such action or suit and agrees that service of such summons, complaints and other process may be made by registered mail (return receipt requested) addressed to it at the address set forth in Section 14.13 of this Agreement and that service so made shall be deemed completed upon the earlier of its actual receipt thereof or three (3) Business Days after deposit with Canada Post, proper postage paid.

14.7 **Confidentiality**

This Agreement is being executed on a highly confidential basis on the understanding that this Agreement, any related documents, the existence and contents thereof and the existence and contents of any discussions related thereto ("**Confidential Information**") shall not be disclosed by the Seller or the Buyer to any third party or made public without the prior written consent of the other party, except for disclosure to such party's legal and financial advisors, directors, officers and employees who are bound by the terms of confidentiality arrangements to keep all

such Confidential Information confidential (with the applicable party bearing all risk of such disclosure).

14.8 **Counterparts; Electronic Signatures**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures provided by electronic transmission shall be valid and binding.

14.9 **Indemnity**

The Seller shall indemnify and hold harmless the Buyer and its Affiliates, and each such Person's respective officers, directors, shareholders, employees, legal counsel, agents and representatives (each, an "**Indemnified Person**"), from and against any and all suits, actions, proceedings, orders, claims, damages, losses, liabilities and expenses (including reasonable and documented legal fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as a result of or in connection with (i) the breach by the Seller of its obligations in connection with or arising out of the transactions contemplated under this Agreement and the other documents related thereto and any actions or failures to act in connection therewith including the taking of any enforcement actions by the Buyer and (ii) all legal costs and expenses arising out of or incurred in connection with disputes between or among the Buyer, the Seller and/or any other party or parties to any of the documents related thereto (collectively, "**Indemnified Liabilities**"); provided that the Seller shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results from that Indemnified Person's gross negligence or wilful misconduct. No Indemnified Person shall be responsible or liable to any other party to any document related thereto, any successor, assignee or third party beneficiary of such Person or any other Person asserting claims derivatively through such party, for indirect, punitive, exemplary or consequential damages which may be alleged as a result of any transaction contemplated hereunder or under any of the documents related thereto.

14.10 **No Waiver**

The Buyer's failure, at any time or times, to require strict performance by the Seller of any provision of this Agreement or any other document related thereto shall not waive, affect or diminish any right of the Buyer thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Except as otherwise provided for herein, none of the undertakings, agreements, warranties, covenants and representations of the Seller contained in this Agreement or any of the other documents related thereto and no Default or Event of Default shall be deemed to have been suspended or waived by the Buyer, as applicable, unless such waiver or suspension is by an instrument in writing from the Buyer and directed to the Seller specifying such suspension or waiver.

14.11 **Remedies**

The Buyer's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that the Buyer may have under any other agreement, including the other documents related thereto, by operation of law or otherwise. Recourse to the Collateral shall not be required.

14.12 **Severability**

Wherever possible, each provision of this Agreement and the other documents related thereto shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any other document related thereto shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or such other document related thereto.

14.13 **Notices**

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered

(a) upon the earlier of actual receipt and three (3) Business Days after deposit with Canada Post, registered mail, return receipt requested, with proper postage prepaid,

(b) upon receipt, when sent by electronic mail,

(c) one (1) Business Day after deposit with a reputable courier for overnight delivery with all charges prepaid, or

(d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address indicated on Schedule B hereto or to such other address as may be substituted by notice given as herein provided.

The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than the Seller) designated Schedule B to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

14.14 **Section Titles**

The Section titles and Table of Contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

14.15 **Reinstatement**

This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against the Seller for liquidation or reorganization, should the Seller become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of the Seller's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the obligations under the Advances, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Advances, whether as a fraudulent preference, reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations under the Advances shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

14.16 **No Strict Construction**

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

14.17 **Permitted Liens**

Except as otherwise expressly provided in this Agreement, the designation of any Lien as a "Permitted Lien" is not, and shall not be deemed to be, an acknowledgment by the Buyer that the Lien shall have priority over the security interests granted to the Buyer in the Collateral pursuant to the Security Documents.

14.18 **Principles of Construction**

(a) Unless otherwise specified, references in this Agreement or any of the Exhibits, Annexes, Schedules or Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement or any such Annex, Exhibit or Schedule.

(b) Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; the word "or" is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the agreement) or, in the case of

Governmental Entities, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. Whenever any provision in any agreement refers to the knowledge (or an analogous phrase) of the Seller, such words are intended to signify that the Seller has actual knowledge or awareness of a particular fact or circumstance or that the Seller or, if it had exercised reasonable diligence, would have known or been aware of such fact or circumstance.

(c) All Annexes, Schedules, Exhibits and other attachments (collectively, "**Appendices**") hereto, or expressly identified to this Agreement, are incorporated herein by reference, and taken together with this Agreement, shall constitute one single agreement.

14.19 **Iron Ore Stockpile Agreement**

For the duration of the term of this Agreement, the Buyer: (a) agrees that the Iron Ore Stockpile Purchase Agreement dated December 17, 2019 between the Seller and the Buyer shall continue for the term of this Agreement; and (b) shall continue to provide onsite technical support to the Seller, at no cost to the Seller, in such manner as determined by the Buyer in its sole discretion.

14.20 **Amendment and Restatement**

From and after the Effective Date, this Agreement shall for all purposes be deemed to be an amendment and restatement of the Existing Facility Agreement in its entirety and shall, from and after the Effective Date, supersede the Existing Facility Agreement. The amendment and restatement of the Existing Facility Agreement pursuant to this Agreement shall not in any manner be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the Obligations and liabilities of the Seller evidenced by or arising under the Existing Facility Agreement, and the Security and Liens securing such Obligations and liabilities shall not in any manner be impaired, limited, terminated, waived or released. All of the Security and the other Financing Documents (other than the Existing Facility Agreement) delivered in connection with the Existing Facility Agreement are hereby expressly reaffirmed by the Seller, and shall remain in full force and effect.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

TACORA RESOURCES INC., as Seller

Per: _____
Name:
Title:

CARGILL INTERNATIONAL TRADING PTE LTD., as Buyer

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE C
DEFINITIONS

Defined Term	Section Number
Appendices	~~14.1(c)~~ 14.18(c)
Additional Prepay Advances	2.2(b)
Additional Prepay Draw Notice	2.3(c)
Buyer	Parties
Collateral	~~8.1(l~~8(l)
Company Permits	~~8.1(j)(i)~~8(j)(i)
Confidential Information	14.7
Criminal Code interest	5.1(a)
criminal rate	5.1(a)
Event of Default	10.1
Excess Amount	5.1(a)
Excess ~~Margin~~ Senior Priority Advance Amount	2.2(c)
Existing Facility Agreement	Recitals
First Amendment	Recitals
Floor Price Premium	2.4
Indemnified Liabilities	14.9
Indemnified Person	14.9
Initial Advance Date	~~2.2~~2.3(a)
Initial Margin Advance	~~2.2(b)(i)~~2.2(a)(ii)(A)
Margin Advance	2.2(a)(ii)(B)
Milestone	~~9.1(bb~~9(bb)
Noteholder Restructuring Agreement	~~9.1(bb~~9(bb)
Offtake Amendment Termination Date	2.2(a)(i)
Original Facility Agreement	Recitals
Required Consents	~~8.1(n~~8(n)
RSA	~~9.1(bb~~9(bb)
Security	3.1
Seller	Parties
Seller Offtake Margin Amounts	~~2.2(b)(ii)~~2.2(a)(ii)(B)
Taxes	13.1
Termination Date	4.1
Withholding Taxes	13.1

In addition, the following terms used in this Agreement shall have the following meanings:

"**2023 Notes Warrants**" means the 346,624,268 penny warrants issued to certain holders of the Initial 2023 Notes, as consideration for backstopping the purchase of the Initial 2023 Notes and entry into certain amendments to the Indenture, which shall be immediately exercisable for a two-year period and expiring on May 11, 2025.

"**Advances**" means, collectively, the Original Advances (including the Floor Price Premium) ~~and~~ , the Margin Advances and the Additional Prepay Advances, and each individually, an "**Advance**".

"**Advisors**" means the legal and financial advisors to the Buyer.

"**Affiliate**" means (a) any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any other Person; (b) any Person which beneficially owns or holds, directly or indirectly, 10% or more of any class of voting stock or equity interest (including partnership interests) of any other Person; (c) any Person, 10% or more of any class of the voting stock (or if such Person is not a corporation, 10% or more of the equity interest, including partnership interests) of which is beneficially owned or held, directly or indirectly, by any other Person; or (d) any Person related within the meaning of the *Income Tax Act* (Canada) to any such Person and includes any "Affiliate" within the meaning specified in the CBCA on the Original Agreement Date.

"**Affiliate Payments**" means all payments to shareholders, directors, senior executives and their related parties or Affiliates, whether under contract or otherwise, including bonus payments, transaction payments, change of control payments, management fees, consulting or advisory fees or amounts payable in respect of reimbursements.

"**Amended Shareholders Agreement**" means the second amended and restated shareholders' agreement by and among the Seller and the Shareholders, in form and substance satisfactory to the Buyer.

"**BIA**" means the *Bankruptcy and Insolvency Act* (Canada), as amended.

"**Business Day**" means each day other than a Saturday or Sunday or a statutory or civic holiday that banks are open for business in Canada, the United States of America and Singapore.

"**Calculation Date**" has the meaning given to such term in the Offtake Agreement.

"**Cargill**" means Cargill, Incorporated.

"**Cargill Initial Warrants**" means penny warrants issued to Cargill as additional consideration for the Initial Advance and entry into the Original Facility Agreement, which shall be exercisable into common shares, representing a 10% equity ownership in the Seller on a fully-diluted basis and be immediately exercisable for a two-year period and expiring on January 9, 2025.

"**Cargill Extension Warrants**" means the penny warrants issued to Cargill as additional consideration for entry into the First Amendment, including the extension of the Termination Date thereunder, which shall be exercisable into common shares, representing a 25% equity ownership in the Seller on a fully-diluted basis and be immediately exercisable for a two-year period and expiring on April 29, 2025, all of which shall be issued pursuant to a warrant certificate in form and substance satisfactory to the Buyer and Cargill.

"**Cash Flow Forecast**" means the weekly cash flow forecast for the Seller for the period from January 1, 2023 until ~~July 14~~**[September 12]**, 2023, as delivered to the Buyer in connection with the First Amendment, which cash flow forecast shall contain, among all other items, all

anticipated Professional Fees, presented on a weekly basis, as may be amended from time to time with the prior written consent of the Buyer.

"**CBCA**" means the *Canada Business Corporations Act*, as amended.

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada), as amended.

"**Change of Control**" means the occurrence of any one of the following event:

(a) any person or group (other than Cargill, the Buyer or their Affiliates) acting in concert directly or indirectly (i) shall have acquired beneficial ownership or control of 50% or more on a fully diluted basis of the aggregate voting power of the Seller's Equity Securities or (ii) shall have otherwise acquired Control of the Seller; or

(b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Seller by persons who were neither (a) nominated by the board of directors of the Seller as composed on the Initial Advance Date nor (b) appointed by directors so nominated.

"**Contracts**" means all agreements, contracts, leases (whether for real or personal property), purchase orders, undertakings, covenants not to compete, employment agreements, confidentiality agreements, licenses, instruments, obligations and commitments to which a Person is a party or by which a Person or any of its assets are bound or affected, whether written or oral.

"**Control**" (including the terms "controlled by" and "under common control with"), means the possession, directly or indirectly, whether by voting rights or otherwise, of the power to direct or cause the direction of the management and policies of the Person in question.

"**Default**" means any event or occurrence that, with notice or the passage of time or both, would be an Event of Default.

"**Distribution**" means (i) the retirement, redemption, retraction, purchase, repayment or other acquisition of any Equity Securities of any Person; (ii) the declaration or payment of any dividend, return of capital or other distribution of, on or in respect of Equity Securities of any Person; and (iii) any other payment or distribution (in cash, securities or other property or otherwise) of, on or in respect of any Equity Securities of any Person.

"**DMT**" has the meaning given to such term in the Offtake Agreement.

"**Effective Date**" means the date on which this Agreement becomes effective in accordance with Section 7.1.

"**Equity Securities**" means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person's capital, whether outstanding on the Original Agreement Date or issued after the Original Agreement Date, including any interest in a partnership, limited partnership or

other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

"**Excluded Taxes**" means Taxes that satisfy both of the following criteria:

(a) the Tax is calculated or based upon or measured by the Buyer's overall net income, capital, net receipts or net profits or franchise taxes imposed in lieu thereof; and

(b) the Tax is imposed by a Governmental Entity in a jurisdiction in which the Buyer is organized, or its principal office is located or is carrying on business otherwise than as a result of entering into this Agreement,

provided that, for greater certainty and notwithstanding the foregoing, any Tax calculated or based upon or measured by the gross amount of income earned or payment received by the Buyer or that is imposed under Part XIII of the Income Tax Act (Canada) is not an Excluded Tax.

"**Existing Notes**" means the 8.250% Senior Secured Notes due 2026 in an aggregate principal amount of $225,000,000 issued on May 11, 2021, pursuant to the Indenture.

"**Financial Statements**" means (a) the most recent audited consolidated balance sheet of the Seller and the related audited consolidated statement of operations and comprehensive loss, consolidated statement of cash flows for each of the fiscal years then ended, together with the report thereon of independent certified public accountants, each prepared in accordance with GAAP consistently applied throughout the periods covered, and (b) the most recent unaudited consolidated balance sheet of the Seller, and the related unaudited consolidated statement of operations and comprehensive loss and consolidated statement of cash flows for such period, each prepared in accordance with GAAP consistently applied throughout the periods covered.

"**Financing Documents**" means this Agreement, the Security Documents, the Pari Passu Intercreditor Agreement, the Senior Priority Intercreditor Agreement and all other documents or instruments delivered pursuant to the terms thereof or in connection therewith, including all agreements of the Buyer with, and consents provided to the Buyer from, third parties.

"**Financing Transaction**" means any transaction involving the incurrence of Indebtedness in excess of $100,000 or otherwise amending, restating, extending, refinancing or replacing any existing Indebtedness of the Seller, other than Lease Obligations in the ordinary course of business.

"**First Noteholder Side Letter**" means the side letter agreement dated May 29, 2023 between the Seller, the Buyer, Cargill and certain holders of Initial 2023 Notes or other notes issued under the Indenture,

"**Floor Price**" has the meaning given to such term in the Offtake January Amendment.

"**FPM Payable Amount**" has the meaning given to such term in the Offtake May Side Letter.

"**GAAP**" means International Financial Reporting Standards as in effect from time to time.

"**Governmental Entity**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Guarantee**" of or by any Person (in this definition, the "**guarantor**") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (in this definition, the "primary credit party") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital solvency, or any other balance sheet, income statement or other financial statement condition or liquidity of the primary credit party so as to enable the primary credit party to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or other obligation, or (e) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss.

"**Indebtedness**" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (k) all negative marked-to-market exposure of such Person under Swap Agreements, (l) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Securities) any Equity Securities in the capital of such Person, valued, in the case of redeemable Equity Securities, at the greater of voluntary or involuntary liquidation preference, plus accrued and unpaid dividends and (m) all obligations of such Person under any streaming agreements, royalties or other similar transactions, including any obligations under prepaid purchase and sale agreements.

"**Indenture**" means, collectively, the Amended and Restated Base Indenture dated as of May 11, 2023, by and among the Seller, as issuer, the guarantors from time to time party thereto and the Notes Collateral Agent, as trustee and collateral agent, as supplemented by a first supplemental indenture dated as of May 11, 2023, ~~and~~ a second supplemental indenture dated as of May 11, 2023, and a third supplemental indenture dated as of June 23, 2023, as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**Initial 2023 Notes**" means the 9.00% Cash / 4.00% PIK Senior Secured First Lien Notes due 2023 in an aggregate principal amount of $27,000,000 issued on May 11, 2023, pursuant to the Indenture.

"**Initial Advance**" has the meaning given to such term in the Existing Facility Agreement.

"**Investment**" means, as applied to any Person (the "investor"), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for Indebtedness, or any direct or indirect loan, advance (other than advances to employees for moving and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all Indebtedness and accounts owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person.

"**Lease**" means, at the time any determination is made, a lease of real or personal property that would at that time be required to be classified as a "lease" in accordance with GAAP.

"**Lease Obligations**" of any Person means, at the time any determination is to be made, the amount of the liability in respect of a Lease that would at that time be required to be accounted for as a lease liability on a balance sheet in accordance with GAAP.

"**Liability**" or "**Liabilities**" means any direct or indirect liability, indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any type, whether accrued, absolute, contingent, matured, unmatured liquidated, unliquidated, known or unknown.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, hypothec, debenture, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA (or equivalent statutes) of any jurisdiction.

"**Liquidity Event**" means a Financing Transaction, a Sale Transaction, a Restructuring or Recapitalization Transaction or a Change of Control.

"**Liquidity Management Plan**" means the liquidity management plan in form and substance satisfactory to the Buyer.

"**Margin Amount**" has the meaning given to such term in the Offtake Agreement.

"**Material**" means material, or reasonably expected to be material, to the business, affairs, results of operations or financial condition of the Seller or the operation of the Mine.

"**Material Adverse Effect**" individually or in the aggregate, any event, change or effect that could reasonably be expected to have a materially adverse effect on (i) the business, operations, assets, liabilities (including contingent liabilities), condition (financial or otherwise) of the Seller (ii) the operation of the Mine, (iii) any material impairment of the Seller's ability to consummate the transactions contemplated by this Agreement and the other Financing Documents or to perform their respective obligations thereunder or (iv) the rights and remedies of the Buyer under this Agreement and the other Financing Documents.

"**Material Contract**" means (a) the contracts, licences and agreements listed and described on Schedule E hereto, and (b) any other contract, licence or agreement (i) to which the Seller is a party or by which it is bound, (ii) which is Material to, or necessary in, the operation of the Mine or otherwise in the operation of the business of the Seller, and (iii) which the Seller cannot promptly replace by an alternative and comparable contract with comparable commercial terms.

"**Maximum ~~Margin~~ Senior Priority Advance Amount**" means $25,000,000 (including any amount on account of the Margin Advance Fee).

"**Mine**" means the Wabush Scully mine and processing plant in Newfoundland and Labrador, Canada and related facilities and infrastructure necessary to ship any ore extracted thereof.

~~"**Noteholder Side Letter**" means the side letter agreement dated on or about the date hereof between the Seller, the Buyer, Cargill and certain holders of Initial 2023 Notes or other notes issued under the Indenture,~~

"**Noteholder Side Letters**" means the First Noteholder Side Letter and the Second Noteholder Side Letter.

"**Notes Collateral Agent**" means Computershare Trust Company, N.A. (as successor to Wells Fargo Bank, National Association), as trustee and collateral agent under the Indenture, the Pari Passu Intercreditor Agreement and the Senior Priority Intercreditor Agreement.

"**Obligations**" means all obligations of the Seller under or in connection with this Agreement and the other Financing Documents, including all fees and expenses payable or reimbursable pursuant to Section 12, the amounts deemed to be advanced on account of the Floor Price Premium, the Additional Prepay Advances, the Margin Advances, the Margin Advance Fee and, if applicable, any Excess Amount. Notwithstanding anything herein to the contrary, solely for purposes of the Pari Passu Intercreditor Agreement, the Senior Priority Obligations shall not constitute "Obligations".

"**Offtake Agreement**" means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended by the amendment dated March 2, 2020, emails dated June 10 through June 16, 2021 between representatives of the Buyer and the Seller, Offtake

January Amendment, the Offtake May Side Letter, Section 2.2(a)(i) of this Agreement, and as further amended from time to time.

"**Offtake January Amendment**" means the amendment to the Offtake Agreement dated on or about the Initial Advance Date in form and substance satisfactory to the Buyer.

"**Offtake May Side Letter**" means the Fixed Price Side Letter 5 dated on or about the Effective Date in form and substance satisfactory to the Buyer.

"**Operational Turnaround Plan**" means the operational turnaround plan in form and substance satisfactory to the Buyer.

"**Ore**" has the meaning given to such term in the Offtake Agreement.

"**Original Advances**" means advances made under the Existing Facility Agreement in the aggregate amount of $30,000,000, including the deemed advance of the Floor Price Premium.

"**Original Agreement Date**" means January 3, 2023.

"**Orion**" means OMF Fund II (Be) Ltd. and its Affiliates.

"**Pari Passu Indebtedness**" has the meaning given to such term in the Indenture.

"**Pari Passu Intercreditor Agreement**" means the pari passu intercreditor agreement dated as of January 9, 2023 by and among, the Buyer, the Seller and the Notes Collateral Agent.

"Permitted Issuances" means the issuance by the Seller of (a) the Cargill Initial Warrants; (b) the Cargill Extension Warrants; (c) the 2023 Notes Warrants; (d) any stock options, performance share units, warrants or other instrument or consideration (including, without limitation, stock appreciation, phantom stock, or other similar rights) to the directors, officers, employees or consultants of the Seller; and (e) penny warrants issued to certain suppliers of the Seller in connection with amendments to Material Contracts to improve the liquidity of the Seller, as approved by the Buyer or the Advisors, acting reasonably, provided that the instruments issued pursuant to the foregoing clauses (e) and (e) shall be exercisable into common shares of the Seller and shall in the aggregate be exercisable for no more than 10% equity ownership in the Seller on a fully-diluted basis, and shall be issued pursuant to warrant certificates or other instruments in form and substance satisfactory to Buyer, acting reasonably.

"**Permitted Liens**" means (a) Liens in favour of the Notes Collateral Agent as in existence on the date of this Agreement and which are subject to the Pari Passu Intercreditor Agreement and the Senior Priority Intercreditor Agreement, (b) Liens arising by operation of law in the ordinary course of business without any contractual grant of security and (b) as have been previously disclosed in lien searches conducted by Buyer's counsel prior to the Initial Advance Date, and which are set out on Schedule D hereto, together with any other lien set out on Schedule D hereto.

"**Person**" means any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, Governmental Entity or other entity.

"**Preferred Share Amendments**" means the amendments to the terms of the existing preferred shares held by Buyer to, among other things, provided that the conversion price protection thereunder shall be extended to December 31, 2024, all in form and substance satisfactory to the Buyer.

"**Product**" means the Ore to be delivered as stipulated in clause 9 of the Offtake Agreement.

"**Purchase Price**" has the meaning given to such term in the Offtake Agreement.

"**Restructuring or Recapitalization Transaction**" means the consummation of any restructuring, reorganization or recapitalization of the Existing Notes, the Initial 2023 Notes and other Indebtedness of the Seller pursuant to a plan of arrangement, plan of compromise or similar restructuring plan pursuant to the CBCA, the Business Corporations Act (Ontario), the CCAA, the BIA or any similar law of another jurisdiction, including provisions of corporate statutes providing for a stay of proceedings or the compromise of claims.

"**Restructuring Plan**" means a plan prepared by the Seller, in consultation with the Buyer in respect of opportunities related to a Financing Transaction, a Sale Transaction, a Restructuring or Recapitalization Transaction and/or other transaction in respect of the capital structure of the Seller.

"**Retention Plan**" means the retention plan prepared by the Seller ~~in respect of key management, directors and/or employees, on terms and conditions, including as to identification of individuals and compensation arrangements, satisfactory to the Buyer.~~and approved in accordance with the First Noteholder Side Letter.

"**Sale Transaction**" means the direct or indirect sale, lease, transfer, conveyance or other disposition in one or a series of related transactions, of all or substantially all of the properties or assets of the Seller and its subsidiaries taken as a whole.

"**Second Noteholder Side Letter**" means the side letter agreement dated June **[●]**, the Buyer, Cargill and certain holders of Initial 2023 Notes or other notes issued under the Indenture,

"**Security Documents**" means each of the documents set out on Schedule A hereto and all other security agreements, pledge agreements, debentures, mortgages, control agreements, intellectual property security agreements, collateral assignments, or other grants or transfers for security executed and delivered by the Seller or any guarantor creating (or purporting to create) a Lien upon Collateral in favour of the Buyer, in each case, as amended, modified, restated or replaced, in whole or in part, from time to time, in accordance with the Pari Passu Intercreditor Agreement

"**Senior Priority Intercreditor Agreement**" means the collateral agency and priority agreement dated as of May 11, 2023 by and among, the Buyer, the Seller and the Notes Collateral Agent.

"**Senior Priority Obligations**" means all Obligations under or in respect of the Margin Advances (including the Margin Advance Fee) and the Additional Prepay Advances.

"**Shareholders**" means each of the shareholders of the Seller as of the Initial Advance Date.

"**Swap Agreement**" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"**Tacora Orion Letter**" means the letter between OMF Fund II (Be) Ltd., OMF FUND II H Ltd, the Seller, Tacora Norway AS and Sydvaranger Mining AS, dated on or about the date of this Amendment Agreement and this Agreement.

"**WMT**" has the meaning given to such term in the Offtake Agreement.

13

A1509

Ontario

Ministry of Public and
Business Service Delivery

Profile Report

TACORA RESOURCES INC. as of September 05, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	TACORA RESOURCES INC.
Ontario Corporation Number (OCN)	1000413859
Governing Jurisdiction	Canada - Ontario
Former Jurisdiction	Canada - British Columbia
Status	Active
Date of Incorporation/Amalgamation	January 12, 2017
Date of Continuance	January 13, 2023
Registered or Head Office Address	199 Bay Street, 5300 Commerce Court West, Toronto, Ontario, Canada, M5L 1B9

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

A256

Active Director(s)

Minimum Number of Directors	1
Maximum Number of Directors	10

Name	JOE BROKING
Address for Service	102 Ne 3rd Street, 120, Grand Rapids, Minnesota, United States, 55744
Resident Canadian	No
Date Began	January 13, 2023

Name	LEON DAVIES
Address for Service	77 Queen Victoria Street, London, United Kingdom, EC4V 4AY
Resident Canadian	No
Date Began	July 03, 2023

Name	TREY JACKSON
Address for Service	403 Westbury Drive, Chapel Hill, North Carolina, United States, 27516
Resident Canadian	No
Date Began	June 08, 2023

14

why Cargill withdrew from submitting a binding DIP proposal?

A. No, I do not.

109 Q. And I assume at the time that the Greenhill DIP solicitation process was designed and operated through August and September, you did not foresee that there would ever be a second DIP process, did you?

A. Well, it -- it is difficult to -- to see into the future. I don't -- I don't know that anybody can do that. But what I would say is that at the time we had one option and, therefore, because that was our only option, we did execute the DIP term loan agreement in September.

110 Q. With the Ad Hoc Group.

A. With the Ad Hoc Group, correct.

111 Q. And -- but the DIP solicitation process that was designed by Greenhill and run by Greenhill, it certainly did not contemplate a second round, did it?

A. No, at the time it did not contemplate a second round. It did not also contemplate that on September 11th, while we were at the Scully Mine preparing to communicate a

CCAA filing, that we would be made aware that there was a consensual deal reached by Cargill and the Ad Hoc Group and RCF.

MR. SWAN: Mr. Kolers, just for the sake of the record, the last entity that was mentioned by the witness is that to be confidential for the public record?

MR. KOLERS: I don't -- oh, yes.

MR. SWAN: It is?

MR. KOLERS: Yes. Thank you.

MR. SWAN: Thank you.

MR. KOLERS: Thanks for asking, Mr. Swan.

THE WITNESS: I should not refer to them as --

MR. KOLERS: Sorry, Mr. Swan, the witness has just asked if he should not refer to them, and I'm just instructing him that he can speak freely but we are treating it as confidential in terms of how the transcript is...

THE WITNESS: Thank you.

BY MR. SWAN:

112 Q. Thank you. And when the Ad Hoc Group's group DIP was approved by the board, it was approved unanimously?

A. That's correct.

directors meeting and need confirmation that Cargill will pay for ten trains. There are current -- I'm now reading from your e-mail:

"There are currently 10 trains that have been delivered to the port which we are requiring payment for first thing tomorrow morning. Please confirm by replying to this e-mail that Cargill will pay for train deliveries tomorrow morning."

And indeed you sent this e-mail, Mr. Broking?

A. Yes, I did.

137 Q. And you sent this e-mail because Cargill was once again withholding payment on iron-ore deliveries from Tacora?

A. Yes, I sent the e-mail because Cargill was withholding payment regarding train deliveries. In addition to that, on October 5th I was made aware for the first time that Cargill wanted to submit a DIP proposal and that DIP proposal was forwarded to the advisors and management by Stikeman Elliott on October 5th as well.

So this e-mail exchange really is working to accomplish two things; the e-mail exchange is

about trying to improve the liquidity of the company before we file for CCAA because, at this time, it was apparent or at least likely that we were going to be filing for CCAA. But with that being said, we -- we received a DIP term sheet that we were working through with our advisors from Cargill and, at the same time, we were using this as an opportunity to meaningfully improve the cash position of the company by collecting revenue for train shipments.

At the time, we were expecting to file on October 6th with approximately 5.5 million in cash and, again, we saw this as an opportunity to improve the cash position for the benefit of all stakeholders of the company by collecting trains while we evaluated and the advisors evaluated the DIP term sheet as well as the board of directors.

138 Q. So let's -- let's break that piece -- that answer down because it was quite a long answer. You -- you said you learned on October 5th that Cargill might be or would be submitting a DIP proposal.

Is it not the case and were you aware that Mr. Bhandari, on behalf of Tacora, reached out to Cargill on September 29th to ask whether they

seven-tenths of this amount for these trains if you agree not to file for CCAA for another four or five days -- four days.

A. Yes. Cargill was agreeing to pay for seven trains versus the ten. To be clear, and for the record, the invoice that was due and payable on this date was for seven trains because we were trying to improve the cash flow position of the company for the benefit of all stakeholders. We initially asked for Cargill to pay for ten trains which would have been the estimated shipments through the point that this conversation was happening.

We felt like this was an opportunity for Tacora to -- to take advantage of some leverage that Tacora had to try and maximize the liquidity and increase this liquidity before we filed for CCAA. So this was the result of a negotiation and, again, that materially improved the cash balance of the company on a pro forma basis October 10th, 2023.

151 Q. But to be clear, the invoice for seven trains was due and payable on October 5th; correct?

A. Yes, that's correct.

October 5th, yes. There were phone calls happening between Mr. Lehtinen and myself and Heng Vuong, our CFO, and the proposed monitor was present for some of those calls as well.

But beyond October -- you know, once the process started -- once the process started regarding the competitive DIP solicitation, I don't believe I spoke to Mr. Lehtinen.

172 Q. On the phone call with Mr. Lehtinen and Mr. Vuong on October 5, you did discuss a DIP or a potential DIP?

A. The question that was posed to the company was what would it take for -- well, first of all, he informed us that Cargill was considering soliciting a DIP and then the question was, you know, what would it take for that DIP to be considered. The only element of detailed terms regarding the DIP that we discussed -- and I made the crystal clear -- was that as it relates to the company's ability to run an open and unrestricted solicitation process in no way could a Cargill DIP prejudice any of the other stakeholders.

We would have to be able to run an open solicitation process completely in order to

176 Q. These are the seven trains that we saw referenced in your e-mail exchange of October 5?

A. That's correct.

177 Q. Initially ten, but then seven.

A. Yes. We ultimately received payment for seven trains.

178 Q. And it -- you knew that Cargill had seen the noteholders' DIP from September 11th? You knew that?

A. I was aware, yes, that Cargill's attorneys had seen the noteholders' DIP.

179 Q. And when you got a DIP proposal from Cargill on October the 7th, that was not shared with the noteholders, was it?

A. I'm not aware. I was not -- as I stated, I was not part of the process to evaluate the DIP loans. And in my capacity as CEO and board -- a board member, I didn't see the DIP term sheets until they were provided to the board of directors on October 8th.

180 Q. All right. But -- and I appreciate that answer, but you're -- put it this way, you're not aware that the Cargill DIP was provided to the noteholders before the court

Let's get ink on paper. You now Cargill will be good." Do you see that?

A. I do.

216 Q. And what ink on paper was Mr. Davies referring to?

A. I believe he's referring to a consensual deal, but I don't know for certain.

MR. SWAN: All right. Well, we asked Mr. Davies this question, but I will ask you as well to try to identify the date or dates on which this communication took place, please?

U/T MR. KOLERS: Yes.

BY MR. SWAN:

217 Q. And after Mr. Davies says, "Yep. Let's get ink on paper. You now Cargill will be good." You say, "I love Cargill." Do you see that?

A. I do.

218 Q. And why did you say that, sir?

A. The context of that comment is Cargill has been a good partner to Tacora going all the way back to 2017 and 2018.

219 Q. And this is the partner under whose agreement ultimately Tacora has run losses for the last several years.

U/T MR. KOLERS: Yes, you have that undertaking --

MR. KOLLA: Thank you.

MR. KOLERS: -- on the same basis as I gave Mr. Swan.

MR. SWAN: And -- and for clarity on that last question, because there was evidence about this, the -- and it's not a matter of any dispute that the noteholders were speaking to Greenhill about the existing DIP that had been approved on September 11th and updating it; so Mr. Vuong's answer to that should specify whether any such discussions on or about September 29th related to updating the September 11th DIP or something else.

U/T MR. KOLERS: I'm provide -- I'm prepared to ask that question as part of that question as well.

CROSS-EXAMINATION BY MR. KOLLA:

235 Q. Mr. Broking, my name is Peter Kolla; I'm -- I'm a lawyer for Cargill in this matter and I just have a couple of questions for you as well.

Do you recall that you were asked by Mr. Swan about Tacora entering a DIP proposal

line for Tacora Resources Inc. Is that your electronic signature on it?

A. Yes, it is.

249 Q. Okay. And is this a document that you signed around May 19th, 2023?

A. Yes, it is.

250 Q. And is this that --

MR. SWAN: Can we -- Mr. Kolla, can we see what the document is?

MR. KOLLA: Well, you certainly can, but I think the witness has already identified it. But I'm --

MR. SWAN: Well, I'd like to know.

MR. KOLLA: -- happy for you to look at it, but...

MR. SWAN: Yes, thank you.

BY MR. KOLLA:

251 Q. And so if we can just scroll that back down, just because I think maybe just keep all the confidential stuff off, is this that document that you had been asked about previously, Mr. Broking?

A. Yes, it is.

MR. KOLLA: Thank you. I'd like to mark that, please, as a confidential exhibit to this

-- to this examination, please?

COURT REPORTER: Yes.

MR. KOLLA: Thank you. I don't remember which number it is, but...

MR. SWAN: Maybe three.

COURT REPORTER: It is three.

MR. KOLLA: Thank you.

MR. PAYNE: Confidential Exhibit 3.

COURT REPORTER: Yes.

EXHIBIT NO. 3 CONFIDENTIAL:

Tacora Resources Inc. Acquisition & Structuring Transaction Indicative Term Sheet" dated May 19, 2023

MR. KOLLA: We can -- I note that the confidential stuff is over now, and those are my questions. Thank you.

MR. KOLERS: Thank you. I'm presuming no one else has any questions for Mr. Broking? Okay. If we could take ten minutes, I expect to have a couple of questions in re-examination, I'd just like to organize them.

COURT REPORTER: Off the record.

--- OFF THE RECORD (4:25 P.M.)

--- UPON RESUMING (4:40 P.M.)

RE-EXAMINATION BY MR. KOLERS:

15

UNDERTAKING CHARTS OF JOE BROKING, CHETAN BHANDARI, AND LEON DAVIES

CROSS-EXAMINATION OF JOE BROKING
TAKEN OCTOBER 19, 2023

UNDERTAKINGS

No.	Quest. #	Page #	Undertaking	Answer
1.	19	10-11	To advise if any further documents relating to paragraph 5 of the Notice of Examination are found during the ongoing review.	No further documents relating to paragraph 5 were identified.
2.	216	75	To advise of the date of the text messages between Mr. Davies and Mr. Broking marked as Exhibit 5 to Mr. Davies' examination.	The date of the text messages between Mr. Davies and Mr. Broking is September 12, 2023.
3.	234	82-83	To ask Mr. Vuong whether he was aware on September 29 or shortly thereafter, that Mr. Bhandari and Greenhill had reached out to Cargill about a DIP on or about September 29, 2023.	Mr. Vuong was not aware that Greenhill had reached out to Cargill on September 29, 2023 regarding a DIP. When Cargill submitted its DIP proposal on October 5, Mr. Vuong advises that he believed someone must have solicited it but he does not recall knowing who or when.
4.	234	84	To ask Mr. Vuong whether he was aware of any communications between Tacora or its advisors with the noteholder group around September 29, 2023 relating to a DIP, and specifically whether any such discussions on or around September 29 related to updating the September 11 DIP or something else.	Mr. Vuong was aware on September 28, 2023 that counsel for the Ad Hoc Group provided a new DIP agreement to Stikeman. He recalls being surprised that it was sent because he believed everyone was focused at that time on getting a consensual deal done and so he was uneasy that the noteholders were seeking to re-engage on a DIP at that time. Mr. Vuong believes the September 28 DIP agreement was an update of the September AHG DIP as that agreement was no longer actionable. The revised DIP agreement was based on the form entered into on September 11.

16

communications between you and Tacora or its advisors regarding Tacora's restructuring" -- and by that I mean going back to at least when Greenhill was engaged -- "including without limitation the approval of either the Ad Hoc Group's DIP or Cargill DIP."

So, Mr. Carrelo, presumably you had communications with Tacora or its advisors, being Greenhill and FTI, in respect of its restructuring over the course of 2023.

A. Yes.

45 Q. Is that correct?

A. That's correct.

46 Q. And I presume you would have had many such communications.

A. I mean, it's -- it's ebbed and flowed. But yes, I have had communications with -- with Tacora and its -- and its advisors.

47 Q. And you've had more than two or three such communications.

A. I -- I -- I mean, it -- what -- what timeframe are you looking at here?

48 Q. Well, since January of 2023.

A. I believe there's been more than two or three communications. I mean, some of those

refusing to produce them?

MR. KOLLA: I'm not going to go over and repeat my answer and my position, Mr. Swan.

MR. SWAN: You haven't actually told me whether you're refusing to produce them. Are you?

MR. KOLLA: I have.

MR. SWAN: You have what?

MR. KOLLA: The answer is yes, we will not be producing any of those documents because they are not relevant.

MR. SWAN: So I should take that as a refusal?

MR. KOLLA: You keep on asking the same question and I keep on answering.

MR. SWAN: Well, you seem to be allergic to the word "refusal."

69 Q. Let's move to paragraph eight:

"Any and all Documents you have in your possession power or control in connection with the potential disclaimer of the Off-Take Agreement and the impact of such a disclaimer on Tacora."

Has Cargill done any such analysis? Mr. Carrelo?

A. Yeah, I'm -- I -- I'm just reading -- reading the point here. I -- I -- I don't -- I don't know.

70 Q. Did you look for any such documents?

A. I -- I -- I don't know -- I don't know if I have them. I don't know if we've done this work.

71 Q. Well, I'm asking you if you have done that work, to produce it.

R/F MR. KOLLA: This witness does not know if it exists or not, so I'm not ask -- I'm not sure what you're asking him to produce. In any event, this is also a category of documents previously discussed that is not relevant on these motions. So if -- even if it exists, and it's not clear that it does, it would be not relevant.

MR. SWAN: Well, there's two points to that. First of all, if the witness hasn't looked for the document, it cannot be said that it does or doesn't exist. So that's irrelevant. He's obliged to look for it. Second, I take it you're refusing to produce these documents under paragraph eight if they exist?

MR. KOLLA: The first point is is you've asked him and he said that he does not know if

they exist.

MR. SWAN: Because he didn't look.

MR. KOLLA: Well, I -- I don't believe that that is correct, but I also do not believe that he -- you're treating this again like a discovery. Things like "disclaimer" are as a legal process under the CCAA, and so I don't really understand why you think this witness should have documents about that.

You haven't established whether they even exist; this witness doesn't know about them. So I'm not sure what you want then to be produced. I think if they were, if there was analysis, it would likely be privileged. But, in any event, it's not relevant.

MR. SWAN: Well, how could you possibly know if it's privileged if you haven't seen it?

72 Q. Moreover, let me ask you this, Mr. Carrelo. Just to confirm, you did not look to see whether such analysis existed. You did not look for that, did you?

A. I -- I -- I'm still -- I'm trying to understand what document this is referring to.

73 Q. All right. Let me -- let me be clear. This concerns -- the disclaimer of the

74 Q. Now that you've got quite a hand from your counsel who's trying to help you to the greatest extent possible, Mr. Carrelo, did you actually --

MR. KOLLA: I did not --

BY MR. SWAN:

75 Q. -- go and look to see whether such documents existed?

(Simultaneous crosstalk - indiscernible)

MR. KOLLA: I would ask you, Mr. Swan, to stop that kind of commentary on the record.

BY MR. SWAN:

76 Q. Mr. Carrelo, did you go and look to see whether any such documents existed?

A. I -- I -- I -- now that you've defined what these documents are, I do not have these documents in -- in my possession.

77 Q. In your possession. But did you look to see whether Cargill had such documents?

R/F MR. KOLLA: Mr. Swan, I do not believe that that is an obligation that this witness would have. Again, you're treating this like a discovery as if Mr. Carrelo is a Cargill representative that has to go and inform himself on all the topics that you think might be

whole hierarchy of the structure at Cargill, but I -- that would be my assumption. But I -- I don't -- I don't know the -- the exact structure.

95 Q. And are you familiar with the terms of the Off-Take Agreement, Mr. Carrelo?

A. Some -- some of the terms.

96 Q. It's a complex agreement.

A. I -- I -- I don't -- I'm not in the off-take business historically, so I -- I wouldn't know what definition of "complex" is in -- in that regard.

97 Q. Well, have you reviewed the Off-Take Agreement at some point?

A. I've reviewed piece -- pieces of it as it pertains to information that's necessary for me.

98 Q. And do you have an understanding of how the Off-Take Agreement works and its various elements?

A. Piece -- pieces of it, yes.

99 Q. Pieces of it, but not all of it?

A. That is -- I mean, we're -- we're a broad team at Cargill. There's others focussed on the off-take and the -- the -- the daily interaction as part of that agreement.

A. I was aware of that, yes.

139 Q. And Cargill, for a time, participated in that process and put forward a term sheet?

A. Yes.

140 Q. And were you involved in that process?

A. I was not involved in the -- in the -- in the DIP term sheet process.

141 Q. Well, were you involved in any part of that process in August 2023?

A. I mean, August 2023, I was -- my focus was trying to reach a consensual deal with the bondholders.

142 Q. And in terms of the DIP process in August/September -- August and the beginning of September 2023, did you have any involvement?

A. I was a -- I was party to some discussions, but the -- the DIP process was -- the term sheet itself was led by -- by Goodmans and with some involvement of other -- other members of Cargill.

143 Q. And ultimately, Cargill did not put forward a DIP proposal that was available for acceptance to the company in the August/September process; correct? I don't think that's a matter

of any dispute.

A. You're referring to a binding DIP proposal?

144 Q. Right.

A. Yeah. No, we -- we did not put one forward.

145 Q. And why was that?

A. Well, I think we were -- we were still working hard to reach a consensual deal with -- with the bondholders and -- and -- and RCF, which was another investor that we'd brought into the mold and, you know, it was clear that -- it was clear at times that -- that the company was quite conservative around cash flow forecasts.

We also saw -- again, as I mentioned earlier, iron-ore prices have been quite volatile over the past -- the past year and there was -- there was some additional relief in the liquidity situation around that time.

146 Q. So do you remember what my question was?

A. If I -- have I been involved in -- in those discussions.

147 Q. No, that wasn't my -- I -- I did ask

is a letter that was sent by the Stikeman Elliott firm on behalf of Tacora to the Goodmans firm on behalf of Cargill concerning -- if we could scroll up, please -- stop, thank you -- concerning unpaid amounts under the off-take and related agreements.

Were you aware that Cargill was withholding payment to Tacora in the early September 2023 period?

A. Yeah, I'm -- I'm aware that we -- we withheld payments, yes.

152 Q. And withholding payments that were owing to Tacora would not help Tacora's liquidity situation, would it?

A. No. These -- these -- these payments were withheld when there was a -- when there was a filing for CCAA.

153 Q. Well, there was no CCAA filing in September of 2023.

A. Then there was a -- there was a -- there -- there were -- there were dates -- court dates set, I believe, within this -- within this timeframe.

154 Q. And so why did Cargill withhold payment?

A. I mean, we -- there was a -- at the end of the day, we had to -- you know, we're protecting our interests here as well and -- and the company was -- was filing for CCAA.

155 Q. Were you part of the decision to withhold payments?

A. No.

156 Q. Who made that decision?

A. I -- I don't -- I don't know ultimately who made that decision. I --

157 Q. But you knew about it.

A. I did. As I said just now, I did know about it, yes.

158 Q. And is it fair to say that in withholding these payments, Cargill was looking out for its own interests?

A. No. I think -- I mean, I -- I -- of course we were looking after our interests here, and I think at the same time we've also provided additional funding to the business here in times of need. So we -- we've -- we've always had the interests of the business as -- as a key -- you know, I mean, we're a key counterpart to the business; we've tried very hard to keep this business -- we tried very hard to keep this

business out of CCAA and to -- to reach a consensual deal outside of CCAA as we believed that was best for the business.

But these -- these withholding of payments happened in conjunction with -- with -- with the warning to us that -- well, with a threat to us of CCAA filing. So...

159 Q. So you were using this as a bit of leverage.

A. No. I -- I -- I think, as you said just now, protecting interests going into CCAA.

160 Q. You also said a minute ago you had the interests of the Tacora business at heart. You'll agree with me that withholding payments that were due for shipments of iron-ore did not help Tacora, did it?

A. No. Tacora had made the decision to file for CCAA.

161 Q. And in answer to my question, withholding the payments did not help Tacora, did it?

A. I don't -- I don't think it makes a difference at that point going into CCAA --

162 Q. Well --

A. -- if you believe --

168 Q. I see. All right. Well, we have your evidence on that, thank you, and we'll let others assess its impact.

(Reporter appeals)

--- OFF THE RECORD (11:34 A.M.)

--- UPON RESUMING (11:45 A.M.)

BY MR. SWAN:

169 Q. Mr. Carrelo, we know from the evidence of other witnesses that on or about the 29th of September you were contacted and became engaged in respect of Cargill providing DIP financing for Tacora; is that correct?

A. Yeah, I -- I was contacted around then by -- by Chetan -- Chetan, actually, Bhandari from -- from Greenhill, reached out to me via phone call to -- to ask -- ask us to consider -- well, the phone call was -- was -- yeah, it was mainly focussed on -- on the -- preparing for the worst.

He knew that we were -- and he was a part of some of these discussions try -- trying to still drive a consensual deal and he -- he -- he asked me if -- if Cargill would consider putting in a DIP proposal. And -- and he'd indicated that the company, if a consensual deal was not

reached, would -- would have to step preparation for another court hearing.

170 Q. And what did you say to him?

A. I -- I -- I said him I was still very optimistic that we would reach a -- a consensual deal and that we had not been focussed on -- on -- on another CCAA. That we -- I mean, we'd had a -- we'd had some good discussions. Well, we had -- we were -- we had some good discussions with GLC on the Friday.

I forget what -- if I had a calendar in front of me, I would give you the date, but I -- it seemed like there was good -- good positive momentum in terms of trying to reach a consensual deal at that point; so that was really the rationale for kind of saying to Chetan, well, look, let's -- I'm optimistic we're going -- we're going to get there. I was preparing to -- to go to New York for -- for meetings in New York with the -- some of the bondholders and -- and RCF.

171 Q. However, the question of a DIP was raised, and obviously you spoke to others within Cargill about the prospect of providing a DIP.

A. I -- I perhaps mentioned it in

passing, but we were all as a team focussed on -- on the -- on -- on the consensual deal.

172 Q. Well, it is the case that over the next several days Cargill did put forward a DIP proposal; correct?

A. That -- that is correct, yes.

173 Q. And that's my question, that didn't happen out of the blue. Did you begin that process for Cargill?

A. Did I begin it personally --

174 Q. Well, did you --

A. -- for Cargill?

175 Q. -- did you contact others in Cargill -- following your conversation with Mr. Bhandari on the 29th of September, did you speak to others within Cargill about turning attention to making a DIP proposal?

A. I mean, I -- I did several days later on what -- October the 4th, if that's the Wednesday, the following week. That's -- that's when -- that's -- that's when -- when we changed gear and -- and started driving -- driving the -- the -- the DIP process from our point of view.

176 Q. And you were part of that process within Cargill?

A. I was not part of the -- part of -- I was not part of the team that was working on it -- on that. I had some -- I had some involvement on -- on the sort of periphery. But I -- I was the -- I guess I brought the -- the negative news following the New York meetings that we were -- we -- we were clearly heading towards CCAA.

And -- and -- and, you know, a lot of that process was -- a lot of process in actually putting a DIP together and negotiating it was led by -- led by Goodmans.

177 Q. And this sort of intense period of time when Cargill was following the September 29th phone call with Mr. Bhandari about the prospect of a DIP, the October 4/5 period -- the Wednesday, Thursday -- was an intense period of assembling a potential DIP proposal.

A. I -- I -- I mean, it -- it was -- we had to act fast to get a DIP proposal in, but that -- a lot of those discussions were led by Goodmans and -- and, you know, we -- we also had a -- we had a DIP term sheet from -- from the prior process as well.

So, I mean, I -- I personally that day flew back from New York to -- to Portugal. It

Do you agree that Cargill took the position as stated in this e-mail that it would pay for seven trains tomorrow -- being October 6th -- on the basis that Tacora would not file for CCAA prior to October 10? Do you agree that was the position that Cargill took?

A. I mean, I -- I -- we -- we made the train payments to -- to create more liquidity in the business. That's -- that's what the e-mail --

192 Q. Is that seriously --

A. -- that's what the e-mail is telling you.

193 Q. Is seriously your answer, sir, that you made the train payments to create liquidity in the business for ten --

A. Well, to -- to --

194 Q. -- train payments?

A. Yeah, we -- we'd -- we'd been --

195 Q. Mr. --

A. -- asked to submit a -- a DIP proposal. We -- you know, we -- we -- we needed -- I mean, the business clearly had an opportunity for more time to enable a process here, and this is -- this is clearly as stated in

with my examination, Mr. Swan.

MR. SWAN: You've got to be kidding, Mr. Kolla. What's your question? Say your question again so that I can hear it.

BY MR. KOLLA:

232 Q. The question was, Mr. Carrelo, without getting into the substance of it, what was the purpose of the meetings in New York?

MR. SWAN: All right. The question itself is not improper, but I will immediately object if the witness starts to give evidence about what was discussed in the meeting.

BY MR. KOLLA:

233 Q. Mr. Carrelo, with that objection on the record, you can answer the question.

A. Yeah, as --

234 Q. The --

MR. SWAN: Well, he can answer the question as asked, but he cannot reveal what was said during the without-prejudice discussions.

THE WITNESS: Yeah. As -- as -- as I've mentioned, it was -- the meetings in New York were -- I went there on the premise that there was a consensual deal and met face to face with a number of the Ad Hoc Group as I've mentioned, and

was also given -- given a viewpoint that we had an agreed term sheet and I was moving ahead -- we were moving ahead to discuss the sort of shareholder agreement and corporate governance matters that RCF had brought to the table in terms of working out how we -- how we move the transaction forward into a detailed documentation and a bridge -- bridge financing. That was the intent of the meetings.

MR. SHAW: All right. Well, stop right there if he's about to give evidence of what happened in the meeting because he can't do that.

MR. KOLLA: Well, we'll take it question by question. Sorry, go ahead.

THE WITNESS: Yeah. But it -- it -- it -- I'm sorry, can I continue?

MR. KOLLA: Yes.

THE WITNESS: Yeah, the -- so that was the intent of the meeting. I -- I -- I had even reconfirmed that that was the intent of the meeting going into it with -- with GLC, with Michael Sellinger, he agreed. And then it became very evident in the meeting --

MR. SWAN: No. Stop, stop. All right. We cannot --

MR. SWAN: -- in a without-prejudice meeting is so obviously improper, nothing more need be said.

MR. KOLLA: Mr. Swan, you're the one that asked this witness for every single document about all these topics, so I find it surprising that now you want to slice very thinly what can and cannot be discussed. That being said, none of these questions are improper.

235 Q. But in any event, how did the meetings end, Mr. Carrelo. And what -- and when did --

MR. SWAN: The same -- the same objection.

BY MR. KOLLA:

236 Q. -- they end?

MR. SWAN: I don't mind the answer that there was no deal, but anything beyond that gets into without privileged settlement discussions.

MR. KOLLA: Which settlement are you talking about, sir?

MR. SWAN: Whatever was being discussed between the parties.

MR. KOLLA: But -- but can you please explain to me the base for claiming settlement privilege? What was the contemplated litigation

that you're referring to? Because there was none, correct?

MR. SWAN: Come on. Let's not -- let's not be -- let's not joke here.

MR. KOLLA: I --

MR. SWAN: These were without privileged settlement discussions, without privilege discussions to get a deal. I have no idea what you're trying to do. It is so obviously improper, there's not much more to be said and I don't think I can say it any more clearly. It was clearly understood by the parties that these were without-prejudice discussions. Without-prejudice discussions are not admissible in court.

MR. KOLLA: Just to be clear, are they without prejudice or are they privileged? I don't really understand your position.

MR. SWAN: Without prejudice.

MR. KOLLA: Not privileged?

MR. SWAN: Not privileged.

MR. KOLLA: Okay, thank you.

237 Q. When did the discussions end, Mr. Carrelo?

A. The -- the first discussions ended --

well, the discussions ended on -- on Wednesday at a -- at sort of the -- the latter part of the morning.

238 Q. Okay. And coming out of those discussions, what was your understanding about what would then happen with Tacora?

A. My understanding was that the -- the bondholders were driving aggressively towards -- towards a CCAA; that there was no intent to do a consensual deal.

MR. KOLLA: Thank you. Those are all my questions.

COURT REPORTER: Off the record?

MR. KOLLA: Well, unless Mr. Swan has any re-examination?

MR. SWAN: I don't. The last answer was entirely improper, but I have no re-examination.

MR. KOLLA: Well, I disagree with that. But thank you, Mr. Carrelo, for your time.

(DISCUSSION HELD OFF THE RECORD)

-- Whereupon proceedings adjourned at 12:28 p.m.

17

were faced with the CCAA filing.

242. Q. We partly covered this earlier in your examination but I want to understand exactly what happened. How did Cargill get approached in this context?

A. When discussions were breaking down between Cargill and the Ad Hoc Group towards the end of September, we were essentially going to be faced if there was no agreement, with the prospect of having to file CCAA. Given the fact that we had a DIP agreement signed in early September with the Ad Hoc Group and there had been a passage of time, things had moved around with the company's cash flows with timing, et cetera, we felt that we needed to make sure that we had the best DIP possible to go and file for CCAA. And so around the end of September is when we determined that we needed to seek an alternative DIP.

243. Q. Did you design a DIP process?

A. The -- we did not design a DIP process given things were moving extremely rapidly and the company was essentially running out of liquidity -- it stretched payables and we were frankly, almost out of time.

244. Q. You'd run a full DIP process previously and that DIP process voluntary as it was, generated

ultimately only the Ad Hoc Group's DIP.

A. It generated two actionable DIPs but at the end, only one DIP, the Ad Hoc Group DIP came in at the submission deadline.

245. Q. Did Cargill -- no, that's not correct, sir. Cargill dropped out of the process. It wasn't that they gave you their proposal too late in September. They dropped out.

A. They didn't give the proposal at all in September. That's what I said. I said we received a proposal -- actionable proposal from Cargill and the Ad Hoc Group towards the end of August.

246. Q. Cargill then ultimately dropped out of that process, didn't it?

A. They ultimately did not submit a final DIP term sheet.

247. Q. In early October, did you take steps to confirm that the Ad Hoc Group's DIP agreement or proposal that was actually signed in the form of an agreement, was still available in those material respects?

A. I believe Stikeman's was having discussions with Bennett Jones. There were some items in the Ad Hoc Group DIP from September 11th that didn't work. For example, milestones and the like.

And so based on that, my understanding is that there were discussions ongoing in early October between Stikeman's and Bennett Jones on the Ad Hoc Group DIP.

248. Q. As you told me earlier, Cargill was re-approached at this point?

A. Cargill was re-approached. I had re-approached Cargill at the end of September.

249. Q. At that point, Cargill had seen the terms of the Ad Hoc Group's DIP, hadn't they? The September DIP.

A. That is correct.

250. Q. So they knew what they were bidding against, didn't they?

A. They had the Ad Hoc Group DIP agreement, yes.

251. Q. In the August, September process that you designed, you were very careful to not let the parties see other parties' DIP proposal, right?

A. Correct.

252. Q. The reason for that is you create better deal tension by not disclosing the other bidder's potential bids, correct?

A. Correct.

253. Q. In fact, in the August, September process, Greenhill went back to the Ad Hoc Group very

265. Q. That was the first notice to the Ad Hoc Group that they had to submit a new DIP proposal?

MR. KOLERS: I just want to make sure there's no confusion here about submit a new DIP proposal. There had been ongoing discussions I think all week with the noteholder group, about amending the terms of the DIP that had been done in September. So it's to the extent, Mr. Swan, you're suggesting or your question suggests that the first time the Ad Hoc Group was notified or that Bennett Jones was notified that changes were necessary, it's not correct to suggest that was at this time.

BY MR. SWAN:

266. Q. What you've just said is of course, not evidence, Mr. Kolers, but what the witness might say is evidence. Let me ask the witness. In the run-up to October the 5th, the company advised that there would be a court hearing potentially, on October the 6th and my proposition to you, Mr. Bhandari, is that Tacora, through its solicitors and the Ad Hoc Group, through its solicitors and directly, were working on updating the dates of the September 11th DIP agreement for the new court filing, correct?

A. They were working on updating the milestones. They had been working on updating the

draw schedules so all that was in process.

267. Q. But you did not until the evening of October 5th, tell the Ad Hoc Group that they needed to come in with a new and potentially better DIP in order to be selected by the company. You did not tell them that until October the 5th, right?

A. I believe on October the 5th, they were informed that there was a competing DIP.

268. Q. The deadline of October the 7th, 2023, at 5:00 p.m., you'll acknowledge that was the Saturday of a long holiday weekend?

A. That is correct.

MR. SWAN: If we look at your second affidavit, your October 15th affidavit -- let's mark that e-mail from Mr. Nicholson as the next numbered exhibit, Exhibit 4.

--- EXHIBIT NO. 4: E-mail from Mr. Nicholson.

BY MR. SWAN:

269. Q. Let's look at Paragraph 6 of your October 15th affidavit. In Paragraph 6, you say that "The second Ad Hoc Group DIP proposal did not take into consideration the increased funding needs requested by the company advisors from the Ad Hoc Group for items such as an increased capital expenditure requirement for key equipment." Do you

274. Q. That had been under discussion with Cargill since September 29th?

A. The DIP discussion with Cargill would have commenced once we received the Cargill DIP on October 5th. On September 29th, it was a phone call to inquire if they wanted to provide a DIP to which there was a non-committal response.

275. Q. You'd agree with me though, it's inarguable that Cargill was given more advance notice than the Ad Hoc Group was that a new DIP proposal was required?

A. We reached out to Cargill on the 29th and then again, on the 4th of October. Yes.

276. Q. The noteholders for the first time on the evening of the 5th?

A. The noteholders were in discussions with respect to their existing DIP agreement being modified. They were informed there was an alternative DIP on the 5th.

277. Q. Why didn't you tell them on September 29th that there might be another DIP?

A. We're running the best process for the company. I did not know who were going to have another DIP. We didn't have another DIP and so there was no reason to raise it with the Ad Hoc Group at the

time.

278. Q. Wouldn’t it have created deal tension to tell the noteholders that there might be another proposal?

A. Again, there might not have been another proposal.

279. Q. There might have been. Would you agree with me on this point, sir: this process as it relates to the Ad Hoc Group from a timing perspective, was exceptionally compressed compared to what happened in August and September, wasn’t it?

A. The Ad Hoc Group had through their advisors -- had been communicating with the company. They were up to date on cash flows, on the business. They knew what our concerns were with the September 11th DIP. So this should not have been a new item for them. They should have not -- again, while it was a compressed timeline, they were aware of the issues.

280. Q. Just a moment. Let’s take that in pieces. First of all, you do agree with me that this was a compressed timeline, wasn’t it?

A. They were informed on the 5th and we asked for final proposals on the 7th which is compressed but given the circumstances and given their knowledge of the company, it was something they were

familiar with the operations and the liquidity profile of the company.

281. Q. Sir, you yourself, just said a moment ago that it was a compressed timeline. Are you sticking with that answer?

A. It is a short timeline. Yes.

282. Q. Thank you. You did not -- and I don't want to review this again -- but you did not tell the Ad Hoc Group until the evening of October 5th that they needed to put in a new DIP proposal and that there was a competitive DIP. You've already agreed with that, haven't you?

MR. KOLERS: No, he's already explained this. Going back, he's explained it in respect of the time frames. You're re-characterizing it in the way you're trying to ask that question.

MR. SWAN: I'm ---

MR. KOLERS: His answer stands.

MR. SWAN: I'm summarizing his evidence.

MR. KOLERS: You're summarizing his evidence with a spin on it that you like.

MR. SWAN: We have his evidence.

MR. KOLERS: Exactly.

BY MR. SWAN:

283. Q. Let me just ask you a couple of

the following week, that we needed to ensure that the company had a DIP in place that was the best DIP for the company. And so based on that and the fact that Cargill had previously provided a DIP during the August timeline, we determined that they would be the one party that could turn around quickest and given the fact that time had elapsed between the September 11th DIP and September 29th, we felt it made sense to get the best DIP available.

337. Q. Someone had to suggest going to Cargill in the first instance here. Was it Mr. Broking or was it someone else?

A. It was not Mr. Broking. It would have been the advisors collectively, caucused (ph) and Cargill was the obvious candidate to go to.

338. Q. You called Mr. Carrelo on the 29th of September and what did you say to him?

A. I said, “Paulo, would Cargill be interested in providing a DIP?”

339. Q. Mr. Carrelo said what?

A. He said, “I am focussed on the settlement discussions.” He was -- he had been I believe invited to fly to New York for meetings at the time, was scheduled for Monday the 2nd but got moved to Tuesday the 3rd. And he indicated to me that he

was more focussed on trying to get to a resolution.

340. Q. What did you then do next with respect to Cargill?

A. That was it.

341. Q. Then magically, a Cargill term sheet appeared?

A. I believe Stikeman’s had reached out to Goodman’s on I believe October 4th to see if their client was interested in a DIP.

342. Q. You were kept apprised of what was going on in those discussions between the lawyers?

A. We were aware of those discussions.

343. Q. You were aware I assume in advance of October the 5th, that Cargill might be submitting a DIP proposal?

A. I was not aware -- I was aware that Goodman’s was going to reach out to Cargill given time zones. The Cargill team is in Singapore. And so I was aware that Goodman’s was going to reach out on the 5th I guess at -- was going to reach out to Cargill in Singapore during the evening of the 4th in the US I guess, morning of the 5th in Singapore.

344. Q. All right. Let’s call up the October 5th e-mail. I am showing you an e-mail from Mr. Broking of Tacora to Mr. Kirk of Cargill, copied to

MR. KOLERS: He is asking for your belief.

THE DEPONENT: My belief is that they -- the company was scheduled to file for CCAA on Friday the 6th. I believe this was to give the company some more time to October 10th. Now, during that time, yes, the company would have had more time to negotiate a Cargill DIP, but again, the company also would have -- would be filing CCAA with more cash on hand.

359. Q. If in fact, the company filed on October the 6th rather than October the 10th, Friday, October the 6th, the only DIP that had been approved by the board of Tacora prior to or by October the 6th, was the September 11th Ad Hoc Group DIP, correct?

A. Which DIP was not workable given some of the milestones that it had in it which wouldn’t have been able to -- which we couldn’t achieve.

360. Q. Let me ask my question again because you answered a different question than I asked. My question was, up to and including October the 6th, 2023, the only DIP that had been approved by the board of Tacora at any time, was the Ad Hoc Group DIP of September 11th, right?

A. That is correct.

361. Q. Is it not fairly obvious, sir, that this was not to help -- that Cargill was not

witness but I need to consult with my colleagues. Okay. What was going to be the last question I was going to ask you but now probably will not be, Mr. Swan asked you a question about whether Cargill was able to or that Cargill was able to see or was aware of the noteholders' September 11th DIP terms by the time they came back in October. Do you remember that?

A. I do.

393. Q. You'd indicated that they had been or they'd learned the terms at some point after September 11th, right? Did you provide any details about your subsequent discussions with the noteholders about their DIP terms after September, to Cargill?

A. No.

394. Q. Are you aware of whether any of the other advisors or the company provided any of that information about subsequent discussions with the noteholders to Cargill?

A. Not that I'm aware of.

MR. KOLERS: Okay. Those were going to be my questions but, Mr. Swan, I just need to consult someone on your objection. If you'd just bear with me for a minute, again, obviously, have not spoken to the witness about his evidence and will not now. I may speak to my colleague and I'll be right back.

18

Exhibit 5 to the Cross-Examination of Chetan Bhandari, Transcript Brief, Tab 2.F, p. 360

From: Lee Kirk
To: Broking, Joe
Cc: Paul Carrelo; Matthew Lehtinen; Chadwick, Robert; Vuong, Heng; alanna_weifenbach@cargill.com
Subject: RE: Payment for 10 trains
Date: Thursday, October 5, 2023 7:15:11 PM
Attachments: image001.jpg

Joe,

I can confirm we can extend the APF and OPA until 10th of October 2023, for the sake of clarity this is also on the basis that Tacora will not file for CCAA prior to the 10th of October 2023.

Rgds

Lee

From: Broking, Joe <joe.broking@tacoraresources.com>
Sent: Friday, October 6, 2023 1:07 AM
To: Lee Kirk <Lee_Kirk@cargill.com>
Cc: Paul Carrelo <Paul_Carrelo@cargill.com>; Matthew Lehtinen <Matthew_Lehtinen@cargill.com>; Chadwick, Robert <rchadwick@goodmans.ca>; Vuong, Heng <Heng.Vuong@tacoraresources.com>; Alanna Weifenbach <Alanna_Weifenbach@cargill.com>
Subject: RE: Payment for 10 trains

We agree subject to Cargill agreeing to extend the APF and OPA.

Please confirm.

Regards,

Joe Broking
President and Chief Executive Officer

Mobile: (218) 398-0079
Email: joe.broking@tacoraresources.com

Website: www.tacoraresources.com

From: Lee Kirk <Lee_Kirk@cargill.com>
Sent: Thursday, October 5, 2023 7:41 PM
To: Broking, Joe <joe.broking@tacoraresources.com>
Cc: Paul Carrelo <Paul_Carrelo@cargill.com>; Matthew Lehtinen <Matthew_Lehtinen@cargill.com>; Chadwick, Robert <rchadwick@goodmans.ca>; Vuong, Heng <Heng.Vuong@tacoraresources.com>; alanna_weifenbach@cargill.com
Subject: RE: Payment for 10 trains

Joe,

I confirm we will pay for 7 trains tomorrow on the basis that Tacora will not file for CCAA prior to the 10th of October 2023.

Please confirm by return.

Lee

From: Broking, Joe <joe.broking@tacoraresources.com>
Sent: Thursday, October 5, 2023 10:48 PM
To: Lee Kirk <Lee_Kirk@cargill.com>
Cc: Paul Carrelo <Paul_Carrelo@cargill.com>; Matthew Lehtinen <Matthew_Lehtinen@cargill.com>; Vuong, Heng <Heng.Vuong@tacoraresources.com>
Subject: Payment for 10 trains

Dear Lee,

I am about to step into a BOD meeting and really need a confirmation that Cargill will pay for 10 trains.

There are currently 10 trains that have been delivered to the Port which we are requiring payment

for first thing tomorrow morning.

Please confirm by replying to this email that Cargill will pay for train deliveries tomorrow morning.

Regards,

Joe Broking
President and Chief Executive Officer

Mobile: (218) 398-0079
Email: joe.broking@tacoraresources.com
Website: www.tacoraresources.com

19

Court File No.

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 TACORA RESOURCES INC.

(Applicant)

AFFIDAVIT OF CHETAN BHANDARI
(Sworn October 9, 2023)

I, **CHETAN BHANDARI**, of the City of Greenwich, in the State of Connecticut, United States of America, MAKE OATH AND SAY:

1. I am a Managing Director of Greenhill & Co. Inc. ("**Greenhill**") and Co-Head of Greenhill's Financial Advisory & Restructuring Group. I have been working with Tacora Resources Inc. ("**Tacora**" or the "**Company**") and assisting with its liquidity management and restructuring efforts since Greenhill's engagement in January 2023. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is sworn in support of the Company's application to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and particularly approval of the DIP Loan Agreement (the "**DIP Agreement**") entered into on October 9, 2023 with Cargill, Incorporated ("**Cargill**"[1], and in its capacity as the DIP lender, the "**DIP Lender**"), pursuant to which the DIP Lender has agreed to advance to Tacora a total amount of up to $75,000,000 (the "**DIP Facility**").

3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated. Capitalized terms not otherwise defined in this Affidavit have the meaning ascribed to them in the Affidavit of Joe Broking sworn October 9, 2023 (the "**Broking Affidavit**").

[1] Note: Cargill, Incorporated is an affiliate of Cargill International Trading Pte Ltd. References to "Cargill" throughout this affidavit refer to either Cargill International Trading Pte Ltd., in its capacity as an equity holder and secured creditor of Tacora, as well as Cargill, Incorporated, in its capacity as the DIP Lender.

15. However, despite efforts from the Company to encourage a consensual resolution between the stakeholders, the parties were ultimately unable to reach a binding agreement on an actionable consensual recapitalization transaction. As a result, the Company, in consultation with FTI, Greenhill, and Stikeman, reengaged in discussions with the Company's two main secured creditors, the Ad Hoc Group and Cargill regarding a DIP (the "**Second DIP Process**").

16. On October 5, 2023, Cargill submitted a proposal for DIP financing to the Company. As a result of receiving competing DIP proposals, the Company engaged in negotiations with both parties in an effort to secure the best DIP proposal available in the circumstances. Stikeman communicated to both the Ad Hoc Group and Cargill that they were required to submit committed, final, and best proposals by October 7, 2023, at 5:00 p.m. EST for consideration by the Company (the "**Second DIP Proposal Deadline**").

17. The Company received an executed DIP term sheet from Cargill by the Second DIP Proposal Deadline. Following receipt of the executed DIP term sheet from Cargill, certain amendments were made to Cargill's proposal.

18. On the Second DIP Proposal Deadline, the Ad Hoc Group stated that they were committed to provide DIP financing to the Company on the terms of the Original AHG DIP Agreement, with amendments to accommodate the new proposed date of Tacora filing for protection under the CCAA and certain other minor amendments requested by the Company. On October 8, 2023, the Ad Hoc Group submitted a DIP proposal which reflected the amendments they were willing to make to the Original AHG DIP Agreement.

C. Selection of DIP Lender

19. Throughout the Second DIP Process, Stikeman and Greenhill, in consultation with FTI, as Proposed Monitor, communicated key issues in each party's DIP proposal and negotiated with both parties to secure the best possible terms for the Company. Following these negotiations, the final DIP proposals from each of Cargill and the Ad Hoc Group were provided to the Company's board of directors (the "**Board**") and management. Following receipt of the advice and recommendations from Greenhill, Stikeman and FTI, the Board exercised their good faith business judgment and determined that the Cargill DIP proposal received during the Second DIP Process was the superior DIP facility available for the Company.

20. The Cargill DIP term sheet is superior in the following manner, among others:

(a) *Cost.* Cargill's DIP proposal has a lower cash cost to the Company and cost of capital on a blended basis, considering the extension of certain operational agreements during the CCAA Proceedings.

(b) *Benefit of existing arrangements*. As described in the Broking Affidavit, Tacora benefits from a variety of existing agreements with Cargill, including the Offtake Agreement, Stockpile Agreement, and Senior Secured Hedging Facility. Cargill's offer results in the Company continuing to have the benefit of these agreements throughout the CCAA Proceedings (subject to an event of default occurring under the DIP facility). I understand from management of the Company that continuing these existing arrangements is expected to result in less operational disruption during the CCAA Proceedings.

(c) *Mark-to-market payments*. Cargill's DIP proposal provides the Company with more capacity to address mark-to-market payments in the event of falling iron-ore prices, via its ability to utilize $20 million of Margin Advance capacity under the Company's existing arrangements with Cargill.

(d) *Less risk of default*. The Cargill proposal provided more favourable covenants to the Company lessening the risk of default under the DIP facility, including providing for cumulative variance testing in respect of cash flow and no production related covenants.

21. Importantly for the Company, the Cargill DIP proposal also permits the Company to complete a solicitation process in respect of potential restructuring transactions for the Company which could involve assumption of the offtake agreement, a new offtake agreement, or no offtake agreement (subject to any rights or arguments Cargill may have in respect of approval of such transaction), if necessary to secure a value-maximizing transaction in the interest of all stakeholders. It should be noted that if the Company entered into an agreement in respect of a restructuring transaction, prior to the bid deadline contemplated by the solicitation process (i.e. a stalking horse agreement), which involved the termination, suspension or disclaimer of the Offtake Agreement, that would cause an event of default under the Cargill DIP proposal and require either Cargill's consent or a refinancing of the Cargill DIP facility. The Company's advisors understood that the Ad Hoc Group was potentially interested in acting as a stalking horse, but given there have not been any advanced discussions regarding a stalking horse agreement and the Ad Hoc

Group will be able to fully participate in any solicitation process, the Company, in consultation with Greenhill, Stikeman and FTI, determined the benefits provided by the Cargill DIP proposal outweighed this potential negative.

22. Accordingly, on October 9, 2023, the Tacora, as borrower, and Cargill, as the DIP Lender, entered into the DIP Agreement.

23. A comparison of the Cargill DIP proposal and Ad Hoc Group DIP proposal is attached hereto as **Confidential Exhibit "A"**.

II. DIP Facility

24. The DIP Agreement is subject to customary covenants, events of default, conditions precedent, and representations and warranties. These include, among other things, the requirement that the Court grant a DIP Charge in favour of the DIP Lender securing all obligations of the Applicant under or in connection with the DIP Agreement.

25. The primary terms of the DIP Agreement are summarized in the Broking Affidavit. Pursuant to the DIP Agreement, the DIP Lender has committed to providing Tacora with $75,000,000, of which an Initial Advance of $15,500,000 will be made available to Tacora during the initial 10-day Stay Period. The quantum of the Initial Advance was sized by management of the Company, in consultation with FTI, based on the expected potential funding need during the initial 10-day stay period, considering the volatile nature of iron ore prices and potential contingencies that arise in large high-fixed cost mining operations. Subsequent advances to Tacora, which are made on a bi-weekly basis, are subject to certain conditions precedent.

26. Interest is payable on all amounts drawn under the DIP Facility at a rate of 10% per annum in cash and payable monthly in arrears. Interest on all advances under the DIP Facility are calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid.

27. In connection with the DIP Facility, the DIP Lender also earns an Exit Fee in an amount equal to 3% of the maximum availability of $75,000,000, being equal to $2,250,000, as compensation for the DIP Lender's commitment to provide DIP financing to the Company. The Exit Fee is not earned until the Court grants an amended and restated Initial Order approving the DIP Facility following the initial 10-day stay period and the Exit Fee is payable upon the completion of a successful restructuring transaction or the indefeasible repayment in full of the DIP Facility.

20

Court File No. CV-23-00707394-00CL

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 TACORA RESOURCES INC.

Applicant

AFFIDAVIT OF JOE BROKING
(Sworn October 15, 2023)

I, **JOE BROKING**, of the City of Grand Rapids, in the State of Minnesota, United States of America, MAKE OATH AND SAY:

1. I am the President and Chief Executive Officer of Tacora Resources Inc. ("**Tacora**" or the "**Company**" or the "**Applicant**"). I have been the President and Chief Executive Officer of Tacora since October 2021. Prior to becoming President and Chief Executive Officer, I was Executive Vice President and Chief Financial Officer of Tacora from July 2017 to October 2021. I have also been a member of the Company's board of directors (the "**Board**") since October 2021.

2. Together with other members of management, I am responsible for overseeing the Company's operations, liquidity management and restructuring efforts. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of the Company and have spoken with certain of the directors, officers and/or employees of the Company, as necessary. Where I have relied upon such information, I believe such information to be true.

3. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in my affidavit sworn on October 9, 2023 (the "**First Broking Affidavit**"), a copy of which is attached (without Exhibits) hereto as **Exhibit "A"**. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. The First Broking Affidavit was sworn in support of, among other things, Tacora's initial application for protection under the CCAA, the amended and restated Initial Order ("**ARIO**") and an order approving a sale and investment solicitation process (the "**Solicitation Order**"), both to

knowledge of Tacora's business.

28. The maximum aggregate amount payable under the KERP is $3,035,000. The proposed ARIO contemplates that Tacora will be authorized to pay the KERP Funds to the Monitor and the KERP Charge will rank first on such KERP Funds.

29. Attached hereto as **Confidential Exhibit "C"** is a copy of an overview of the KERP which provides, among other things, the maximum aggregate amount payable under the KERP, number of participating Key Employees, average payout per Key Employee, minimum payment, maximum payment, the general roles of different Key Employees, and percentages of the maximum amount that each Key Employee can receive under the KERP relative to their salary.

30. Tacora is seeking an order sealing the Confidential Appendix "C", as the KERP contains sensitive personal and compensation information, which I believe may cause harm to the Key Employees and could lead to disruption to Tacora if such information became public.

31. A copy of the substantially final form of letter sent to employees regarding their KERP is attached hereto as **Exhibit "D"**.

32. The Monitor and the DIP Lender are both supportive of the proposed KERP, payment of the KERP Funds to the Monitor, and the first-ranking KERP Charge on such KERP Funds in favour of the Key Employees.

III. DIP PROCESS

33. I understand that the Ad Hoc Group has raised process concerns related to Tacora's selection of the DIP Agreement, including potential conflicts of interest of members of Tacora's Board with respect to the DIP Agreement. I attended the Board meeting held on October 8, 2023, to consider the two DIP proposals available to the Company. At the meeting, following the receipt of advice and recommendations from Greenhill and Stikeman and input from the proposed monitor, robust discussion regarding the proposals received and consideration of the alternatives available to the Company, the Board unanimously approved the DIP Agreement. Mr. Leon Davies, Cargill's nominee on Tacora's Board, abstained from voting on the motion to approve the DIP Agreement.

21

2016 ONSC 3174
Ontario Superior Court of Justice

Magnotta Winery Corp. v. Ontario (Alcohol and Gaming Commission)

2016 CarswellOnt 8403, 2016 ONSC 3174, 132 O.R. (3d) 153, 267 A.C.W.S. (3d) 298, 2 C.P.C. (8th) 387

Magnotta Winery Corporation, Magnotta Vintners Ltd., Magnotta Vineyards Ltd., Magnotta Wines Ltd., Magnotta Winery Estates Ltd. and Magnotta Cellars Corporation v. The Alcohol and Gaming Commission of Ontario, The Liquor Control Board of Ontario and Her Majesty the Queen in Right of Ontario

Master B. McAfee

Heard: April 26, 2016
Judgment: May 25, 2016 *
Docket: CV-08-361217

Counsel: I. Roher, J. Pocock for Moving Parties, Plaintiffs
T.D. Barclay for Responding Parties, Defendants, Alcohol and Gaming Commission of Ontario and Her Majesty the Queen in Right of Ontario
M.J. Dougherty for Responding Party, Defendant, Liquor Control Board of Ontario

***Master B. McAfee*:**

Nature of the Motion

1 This is an interim motion brought by the plaintiffs (collectively Magnotta) for directions in accordance with leave granted by Justice Myers on March 9, 2016.

2 There are three pending main motions: the defendant the Alcohol and Gaming Commission of Ontario (AGCO) and the defendant Her Majesty the Queen in Right of Ontario (HMQ) (collectively the Crown) have brought a motion to strike portions of the statement of claim or in the alternative for summary judgment dismissing the action; the defendant the Liquor Control Board of Ontario (LCBO) has brought a motion to stay the action, to dismiss the action and/or to strike portions of the statement of claim; and, Magnotta has brought a cross-motion for partial summary judgment against the Crown.

Mr. Hackbush will be examined. There are affiants with knowledge who may be cross-examined. Having regard to all of the circumstances of the motions and the general principle that the *Rules* should be construed to secure the just, most expeditious and least expensive determination, the directions below provide the parties with a fair opportunity to put forward all relevant evidence for a fair hearing.

Directions and Order

21 For the above reasons, the answers to the questions concerning the proper scope of questioning when examining a witness on a pending motion pursuant to Rule 39.03 are as follows:

1. Is such scope limited solely to the personal knowledge of the witness? Yes.

2. Is such witness required to take reasonable steps to inform himself or herself prior to being examined? No.

3. Is such witness obliged to undertake to make enquiries of others if he or she cannot answer otherwise proper questions by reason of lack of knowledge or recollection? No.

22 While the answer to question 2 is "no", Ms. Klas did take reasonable steps to inform herself prior to being examined in any event.

23 In light of the answers to the questions, the motion for relief requested at paragraphs 2 and 3 of the notice of motion is dismissed. The parties agree that the relief at paragraph 1 of the notice of motion is not at issue.

24 If any party seeks costs and if after reasonable attempts to agree on costs the parties are unable to agree, the parties may make arrangements to attend before me to speak to the issue of costs.

Motion granted in part.

Footnotes

* A corrigendum issued by the court on February 2, 2017 has been incorporated herein.

22

Alberta Court of Queen's Bench
Ed Miller Sales & Rentals Ltd. v. Caterpillar Tractor Co.
Date: 1990-12-11

D.R. Pahl, Q.C., J. Laskin, H. Rubin and M.M. Maisonville, for plaintiff.

M.H. Dale, Q.C., G.J. Draper, B. Zalmonowitz, D.W. Stepaniuk and L.M. Ziola, for Caterpillar defendants.

I.H. Baker and P. Purdon, for R. Angus Ltd.

C.J. Meagher, for Hitachi Construction Machinery Canada Ltd. and Wajax Industries Limited, Reid and Kataoka.

L.C. Fontaine, for Blackwood Hodge Equipment Limited and Whitman.

B.B. Norton, for Fiatallis (Canada) Ltd. and Fiatallis North America Ltd.

R.J. Gilborn, for Vulcan Machinery & Equipment and Knight.

K.H. Davidson, for Komatsu Canada Limited.

C.L. Bodner, for Pardee Equipment Limited, Pardee, Erickson, and Case Power and Equipment Limited.

F.S. Kozak, for Rivtow Equipment Ltd.

K. Cherniawsky, for Rust and Zimmerling.

L.T. Callaghan, for Challenger Resources Ltd. and Jorgensen.

(Edmonton No. 8003-12393)

December 11, 1990.

[1] BERGER J.:– The issue here is the validity of a number of notices to attend in the form of subpoenas duces tecum served by the Caterpillar defendants upon the applicants, none of whom is a party to the action. The applicants have applied to have the subpoenas quashed as oppressive and an abuse of the court's process.

[2] A subpoena duces tecum (to produce documents) or a writ ad testificandum (to appear and testify) may be issued by a party to proceedings to a witness who is not a party. In *Amey v. Long* (1808), 9 East 473, 103 E.R. 653, the nature of a subpoena duces tecum was described as follows:

> The writ of subpoena duces tecum is of compulsory obligation on a witness to produce papers thereby demanded which he has in his possession, and which he has no lawful or reasonable excuse for withholding; of the validity of which excuse the Court, and not the witness, is to judge.

[3] In Alberta the procedure is set out in R. 293 of the Rules of Court:

> Whenever a party desires to call any person as a witness at the hearing or trial of any action or proceeding he may serve him with a notice requiring him to attend thereon, stating the time and place at which he is required to attend and the documents, if any, which he is required to produce, but the notice is not effective unless at the time of service or prior thereto or within a reasonable time prior to the time at which he is required to attend, he is paid the proper amount of conduct money.

[4] A witness served with a subpoena who is not a party to the cause of action has, however, the status to move to have the subpoena quashed: *Steele v. Savoury* (1891), 8 T.L.R. 94 at 95:

> In a position like the present a witness was entitled to come to the Court at once, and was not bound to stand by and wait till some motion for attachment was made or other proceeding taken against him for non-compliance with the subpoena.

[5] A subpoena, properly served and correct in form, may be quashed where it is held to be either irrelevant, oppressive, or an abuse of the process of the court: *Senior v. Holdsworth; Ex parte Independent T. V. News,* [1976] Q.B. 23, [1975] 2 W.L.R. 987, [1975] 2 All E.R. 1009 (C.A.). In proceedings to quash a subpoena duces tecum, the onus is on the attacker of the subpoena in moving to set it aside: *Fort Norman Explor. Inc. v. McLaughlin* (1982), 36 O.R. (2d) 787, 28 C.P.C. 218, 14 A.C.W.S. (2d) 243 (H.C.). Reid J. stated in *Fort Norman* at p. 790:

> Since *Canada Metal* makes it clear that the mere attack itself casts no onus upon the issuer of the subpoena to justify its issue, the onus lies upon the attacker. If the ground is abuse it is not for the issuer of the subpoena to show no abuse: it is for the attacker to show an abuse.

Are the subpoenas oppressive?

[6] The applicants argue that the lists of requested documents are so vague in their nature and scope that the subpoenas should be quashed on the ground that they are oppressive. Wigmore on Evidence, McNaughton rev. (Boston: Little, Brown & Co., 1961), states this requirement of a subpoena duces tecum at p. 126:

> A peculiarity of the subpoena duces tecum is that, in the nature of things, it must specify, with as much precision as is fair and feasible, the particular documents desired. This is because the witness ought not to be required to bring what is not needed, and he cannot know what is needed unless he is informed beforehand. It is at this point that most disputes arise, for the specification is often so broad and indefinite that the demand is oppressive and exceeds the demandant's necessities.

The applicants cite numerous instances of subpoenas which have not been enforced because the scope of requested documents was too wide, or not sufficiently specific to allow the prospective witness to ascertain those documents which must be produced. The classic statement of this position is in *A.G. v. Wilson* (1839), 9 Sim. 526, 59 E.R. 461,

where the documents requested included all "books and books of account" of the bank, including payment of interest, dividends, investment spending, and annuities for specified accounts. Sir L. Shadwell V.C. refused to order production of documents because, inter alia, the subpoena was too vague. He stated at p. 462:

> … this *subpoena* is much too large and vague to enable the Court to act upon it: for it extends, not by any particular description but by a general description, to all books and accounts in the possession or power of Mr. Blayds which relate to the matters in question in the cause.

[7] In *Senior,* supra, the terms of the summons required the production of a film "of the events of the … Festival," which festival had lasted for three days. Orr L.J. ruled at pp. 1017-18 that it was incumbent upon the applicant to give "clear information … as to the time and nature of the incident in question," and that while it may have been an oversight to have stated the request in such wide terms, "in my judgment it was in that respect oppressive and on that ground alone … [the appeal must succeed and the summons quashed]." Similarly, in *Lee v. Angas* (1866), L.R. 2 Eq. 59, the subpoena duces tecum was served upon a solicitor who was not a party to the action to produce all papers and documents related to a particular piece of farm property, including correspondence between the law firm and either of the plaintiff or the defendant for a period of over 30 years, without specifying the particular documents required. In obiter, Sir W. Page Wood V.C. stated at p. 63:

> A subpoena in this general form, not for production of any document in particular, but calling upon the witness to ransack his papers for a period of thirty-three years, is too wide, being in effect a bill of discovery against a witness. There is no case to shew that Courts, either of common law or equity, will act upon a subpoena so general in form …
>
> No person is to be subjected to the performance of duties not incumbent upon him by any legal or moral obligation, nor to penalties for noncompliance … Such a search as would be required would be very onerous even upon a Defendant, but in the case of a solicitor, who is not a party to the suit, he is not bound to expose himself, without receiving any reward or compensation, to the trouble and expense of searching for particulars of everything that has happened in his office for the last thirty-three years. He must speak the truth within his knowledge, but he is not bound to make this burdensome search for evidence at his own expense.

[8] *Dalgleish v. Basu,* [1975] 2 W.W.R. 326, 51 D.L.R. (3d) 309 (Sask. Q.B.), identifies at p. 312 the following principles in determining whether the description of the documents in a subpoena duces tecum is too broad:

> First: The Specification must be fair to the witness in the sense that he ought not to be required to produce what is not needed and he cannot know what is needed unless he is informed beforehand … It is to be borne in mind that a subpoena by its

[15] In fact, this distinction operated in an implied fashion in the earlier arguments advanced with respect to the scope of the requested documents: though not determinative of the result, the larger the breadth of content and time in the required documents, the more likely it is that the request is a form of discovery and not a request for specific documents to prove a fact in issue. Lord Halsbury L.C. discusses the relationship in *Burchard v. Macfarlane; Ex parte Tindall,* [1891] 2 Q.B. 241 at 245 (C.A.):

> I do not know what documents are asked for. I do not know that the parties have ever condescended upon any particular document, or intimated that they have any knowledge of any document existing at all, and I am led to the conclusion that it is inspection and discovery that is sought, and not proof. The meaning of the order is, as I construe the language of this instrument, that the witness is to be examined if he has got in his possession documents which may become part of the necessary evidence in the cause. If that is the meaning of it, it is quite clear that such a roving order for discovery is not rendered valid because it is limited to a particular ship and the particular years over which these transactions are spread. The order of the Scotch Court has been obtained, not adversely by one of the parties against the other, but by both of them against a third person who has not been consulted, and who has never been heard as to whether or not such an order ought to be made. I am of opinion that to enforce such an order would be a serious invasion of private rights.

[16] In the case at bar, the applicants point to the following factors which, it is suggested, support the view that the issuance of subpoenas duces tecum by the Caterpillar defendants is a disguised form of discovery against non-parties:

(1) the documents are generically listed;

(2) similar lists requesting similar documents were served on a number of third parties;

(3) it was indicated in conversations between counsel that oral testimony of the individuals served is not likely required, and will be required, if at all, only if relevant documentation is found; and

(4) none of the documentation involved any of the parties to the cause of action, but instead relates solely to the affairs of the third parties.

[17] In addition, the applicants cite an earlier interlocutory motion in the same cause of action in which the defendants were partially successful in obtaining discovery of documents under R. 209: *Ed Miller Sales & Rentals Ltd. v. Caterpillar Tractor Co.* (1988), 63 Alta. L.R. (2d) 189, 94 A.R. 17 (Q.B.). Wachowich J. accepted the reasoning of the British Columbia Court of Appeal in *Rhoades v. Occidental Life Ins. Co. of California,* [1973] 3 W.W.R. 625, which had stated the test for production (subject to certain caveats) to be that of "probable relevance." One of the expressed caveats is that the rule should not

and compete with others, including Caterpillar, and that these vertical arrangements are pro-competitive rather than anti-competitive practices …

But that – that is – that is a reason for having asked for these dealership agreements, for example, is because Caterpillar's dealership agreements are going to get a very critical examination, My Lord, and it will be our submission that – that, from what we expect to find in the other dealership agreements, they will not be dissimilar …

… *the defence request at this stage, which is obviously the start of the trial, for the documents is made because we want to be able to review them in preparation* for our cross-examination of the plaintiffs witnesses, particularly the plaintiff's expert witnesses.

With respect to the dealership agreements, for example, that we seek to have produced, we expect to find evidence of the competitors in agreements and policies which we submit will be useful to our cross-examination of some of the plaintiff's witnesses …

Clearly, if the documents are produced in response to this subpoena, they do not become evidence in the cause. Witness will have to be called to introduce any such introductory evidence. If, in fact, such witnesses are called, clearly the matters which you address which is the company's strategies, what happened, are going to be the subject of direct examination, cross-examination, and then any necessary clarification by the Court which, I would submit, will deal with those issues but *those issues are issues that will depend upon our assessment, the defence assessment, after we see the documents, whether we think we can make the case that we hope we can now in that the people that could be called in respect of that evidence will be able to – such of the material,* [my emphasis]

[20] I listened with care to the very able submission of counsel for the Caterpillar defendants. Although I am here dealing with the validity of subpoenas duces tecum and not with an application pursuant to R. 209, the facts of this case are not dissimilar from those in *Esso Resources Can. Ltd.,* supra: the document request lists are generic, not specific; the Caterpillar defendants request enormous numbers of documents spanning lengthy time periods; the Caterpillar defendants have not pointed to any specific documents in possession of the applicants; the same lists or very similar lists have been served on each applicant; the defendants would appear to be seeking everything in the hope that some of the material is relevant.

[21] I am persuaded that the Caterpillar defendants have caused the subpoenas duces tecum to be issued as a substitute for the normal discovery-of-documents procedure contemplated by R. 209. I am led to the conclusion that it is inspection and discovery that is sought and not proof. The subpoenas duces tecum here are properly characterized as a disguised form of discovery against non-parties. For all of these reasons, the notices to attend shall be quashed.

[22] It is, accordingly, unnecessary for the court to adjudicate upon the remaining issues raised by counsel for the applicants. I consider it my duty, however, to make the

23

1994 CarswellOnt 1065
Ontario Court of Justice (General Division) [Divisional Court]

Elfe Juvenile Products Inc. v. Bern

1994 CarswellOnt 1065, [1994] O.J. No. 2840, 35 C.P.C. (3d) 117, 52 A.C.W.S. (3d) 25, 6 W.D.C.P. (2d) 41, 76 O.A.C. 54

ELFE JUVENILE PRODUCTS INC. v. ROSLYN BERN

White J.

Heard: September 19, 1994
Judgment: December 12, 1994
Docket: Doc. RE 2745/93

Counsel: *J.R. Sproat* , for appellant (nonparty) Sam Bern.
M.L. Solmon , for respondent Elfe Juvenile Products Inc.
C. Coulter , for respondent Roslyn Bern.

***White J.*:**

1 This is an appeal by Sam Bern ("Sam") from an order of Master Peppiatt dated May 20, 1994.

2 The operative parts of Master Peppiatt's order dated May 20, 1994, are as follows:

> 1. THIS COURT ORDERS that Sam Bern reattend in the City of Montreal at his own expense to provide answers to his undertakings and questions arising from answers to undertakings as set out in Schedule "A" hereto given on his examination of December 17th, 1993.
>
> 2. THIS COURT ORDERS that Sam Bern reattend in the City of Montreal at his own expense to provide answers to those questions objected and questions arising from those answers to refusals as set out in Schedule "B" hereto objected on his examination of December 17th, 1993.
>
> 3. THIS COURT ORDERS that the Respondent and Sam Bern are jointly and severally liable to pay the costs of this motion in the amount of $1,000.00 but are equally liable for the costs as between themselves.
>
> 4. THIS COURT ORDERS that the issue as to the costs of the reattendance is reserved to the Judge hearing the motion to stay proceedings.

24 Since r. 39.03 does not help us in trying to identify the scope of questions permitted on an examination or cross-examination under r. 39.03, perhaps some guidance may be found in the case law.

25 A leading case is *Canada Metal Co. v. Heap* (1975), 7 O.R. (2d) 185 , a decision of the Ontario Court of Appeal. The court was giving consideration to who might be examined under old R. 230 and 231, and the extent of the examinations. Old R.230 is the predecessor of r. 39.03 and it stated:

> *230.* Any party may by subpoena require the attendance of a witness to be examined, before any officer having jurisdiction in the county in which the witness resides, for the purpose of using his evidence upon any motion.

26 In deciding who could be examined, the court set out what it thought was the scope of allowable questions under R. 230. The court, at p. 192, stated:

> *The evidence sought to be elicited must be relevant to the issue on the motion* . If it is, there is a *prima facie* right to resort to Rule 230. *That right must not be so exercised as to be an abuse of the process of the Court. There will be such an abuse* if the main motion is itself an abuse, as by being frivolous and vexatious, or *if the process under Rule 230, while ostensibly for the purpose of eliciting relevant evidence, is in fact being used ... in such a way as to be in itself an abuse* (as for example, by issuing subpoenas to every member of the House of Commons to prove a defamatory statement shouted out by a spectator in the gallery). The list is not exhaustive. [Emphasis added.]

27 This principle was followed by Cory J. (as he then was) in *Hamilton Harbour Commissioners v. J.P. Porter Co. Ltd.* (1976), 13 O.R. (2d) 199 (H.C.) . I observe that this case was not mentioned by counsel on the argument of the appeal herein.

28 The case before Cory J. was an appeal from the order of a master requiring the reattendance of the defendants to answer questions on their examinations as witnesses pursuant to R. 230. At p. 201, Cory J. stated:

> The basis for any questions asked of those persons subpoenaed pursuant to the provisions of Rule 230, depends on their relevancy to the issues.

29 Cory J. obviously meant issues in the motion as opposed to issues in the substantive action, since he relied on the above-cited passage in *Canada Metal* . In considering what issues were relevant to the motion, Cory J. went on to consider the grounds for the motion, as a guide to what was relevant.

30 I adopt the principle of *Canada Metal Co.* , as being of assistance in determining what questions are relevant where a non-party is being examined in aid of a motion, pursuant to r. 39.03.

One should limit oneself to questions that deal with the issues that are relevant on the motion. That can be done, in part, by considering the nature of the motion and also the grounds for the motion.

31 In the case in appeal, we are dealing with a motion to stay the Ontario application based on the ground that, having regard to the two Quebec actions, the Ontario court is forum non conveniens.

32 I will discuss briefly the principle stated in the cases of *Lubotta* , supra, and *Wojick* , supra. All relevant matters are permissible for questioning, and what is and is not ultimately relevant should be left to be decided by the trier of fact. There is, however, a limit that I think should be put on the semblance of relevancy test, and that is, where questions are asked of a non-party on an examination of that party conducted under r. 39.03, while semblance of relevancy should be the guide, the court should impose a limit if the questions go into issues that are so blatantly irrelevant that to allow the examining party to pursue those issues amounts to an abuse of the process of the court. The court should not permit its order to be used so as to authorize what amounts to a "fishing expedition": see *France (Republic) v. DeHavilland Aircraft of Canada Ltd.* (1991), 3 O.R. (3d) 705 , at p. 717 (C.A.).

The Test on a Motion to Stay

33 Without in any way attempting to be comprehensive with respect to the test on a motion to stay, and merely for the purpose of identifying the nature of such a motion for the purpose of ruling on the relevancy of the questions and undertakings at issue in the appeal, it appears that a good number of factors are taken into account when a motion to stay is based upon forum non conveniens. Among these factors are:

1. The residences of the parties.

2. The residences of needed witnesses.

3. The locations of documents that are relevant.

4. The locations of public records that are relevant.

See *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)* (1993), 102 D.L.R. (4th) 96 (S.C.C.) .

34 In *Westminer Canada Holdings Ltd. v. Coughlan* (1989), 33 C.P.C. (2d) 27 (Ont. Master) , at pp. 27 and 28, the above elements were reviewed. While that case dealt with questions arising out of the cross-examination of a party on that party's affidavit, the comments of Master Garfield pertaining to the scope of proper questions of a witness on a motion to stay are of help. Master Garfield, at p. 29, stated:

that Sam's testimony would help him to determine whether he would order a stay of the Ontario application, what he said about that subject may indicate the latitude that he contemplated would govern relevancy when Sam was examined in Montreal.

38 Fortunately, the reasons for decision of Farley J. are now reported at (1993), 19 C.P.C. (3d) 355 (Ont. Gen. Div.) . I now reproduce from the report of Farley J.'s reasons, at pp. 360-361, the segment that I consider to reflect his thoughts on the scope of relevancy of questions to be put to Sam:

> It does not appear that there is duplication in the Quebec action which does not directly involve Elfe, the moving party in this situation, since it appears that in [sic] April 16, 1993 the brothers of the respondent in this motion filed a partial desistment discontinuing the only part of the Quebec action dealing with Elfe, being claim E3 in the originating Quebec notice. (E3 "declares that Sam Bern does not, directly or indirectly, own the shares of Elfe".)
>
> It appears to me that Sam Bern would be able to shed considerable light on the facts and circumstances of this messy family situation, wherein sister is pitted against her brothers relating to shares of Elfe which it appears that at least in the beginning of the tale Sam Bern, the father, is involved. It would appear to me such information would form the underlying knowledge as to whether it would be appropriate to grant a stay of proceedings. Certainly it appears that the court should not be asked to exercise its discretion in a vacuum or a partial vacuum.
>
> *There is in my view in light of the material referred to in para. 88 of Elfe's factum a reasonable basis to conclude that it would be desirable to have first-hand evidence relating to these questions* . [Emphasis added.]

39 Paragraph 88 of Elfe's factum (before Farley J.) is as follows:

> *88.* These certain particular facts include, but are not limited to, *the circumstances surrounding the placement by Sam Bern [sic] Sheldon Bern's signature on a public document* [Aff. of Roslyn Bern, para. 18, p. 126; Aff. of Sheldon Bern, para. 9, 6, p. 370, 373], *whether Sam Bern is acting in concert with the Respondent* [Aff. of Roslyn Bern, para. 22, 25, 27, 33, p. 128-131; Aff. of Sheldon Bern, para. 16, p. 374] *and other information that Sam Bern has given the Respondent with respect to the issues between the parties* [Aff. of Roslyn Bern, para. 27, p. 129]. [Emphasis added.]

The Test of Relevancy on Sam's Examination under rule 39.03

40 Therefore, the principles which I think should govern the examination of Sam on his examination and cross-examination under r. 39.03 are the following:

> *1.* The questions should relate to the issues in the motion to stay the Ontario application.

2. So long as the questions (and answers in response to them) have a semblance of relevancy to those issues they are permissible, subject to the condition that if any questions are so wide off the mark of semblance of relevancy as to amount to an abuse of the court's process, they need not be answered.

3. Guidance to the boundaries of the semblance of relevancy may be found in the reasons given by Farley J. supporting his decision that Sam be examined in relation to the motion before him to stay the Ontario application.

Application of Above Test to the Specific Questions

The Undertakings

41 Under the reasons of Master Peppiatt there are but two undertakings still in dispute.

42 *Page 88, line 12* : Sam undertook to look in his book to determine whether a cheque dated October 25, 1990, was the one given to Sam by Ivan for the redemption of shares. This undertaking is not answered. I can see no reason why Sam should not answer it. So Sam should answer this undertaking.

43 *Page 115, line 7* : Exhibit F to the affidavit of Nancy J. Tourgis, sworn March 2, 1994, contained at Tab 5(F) of the appeal record, is a letter from Solmon, Rothbart, Goodman, solicitors for Elfe, to McMaster Meighen, solicitors for Sam. This letter is dated March 1, 1994, and deals with undertakings given at p. 115, line 7. In the letter Mr. Solman, counsel for Elfe, expressed the concern that the answer provided by Sam is insufficient. He sets out a number of additional questions, which, in his judgment, arose from this undertaking. It is my opinion that the letter dated March 3, 1994, from Mr. Torralbo, counsel for Sam, to Mr. Solmon, which is annexed as Exhibit "A" to the affidavit of Nancy J. Tourgis, sworn March 2, 1994, does adequately answer this undertaking.

The Refusals

44 It is best to deal with the refusals by category as they are set out in Schedule "B" to the order of Master Peppiatt (that schedule has hitherto been copied in these reasons). I make reference to specific questions as is necessary.

Category 1 — Sam Bern's Involvement with Roslyn Bern

45 Mr. Justice Farley stated in his reasons, in the excerpts thereof that I have above set out, that it would be helpful to have the evidence of Sam firsthand in the light of the material referred to in para. 88 of Elfe's factum (before him). One of those "matters" is whether Sam was acting in concert with his daughter Roslyn, who was the respondent in the proceedings in Ontario. Normally, one

24

2000 CarswellOnt 2717
Ontario Court of Appeal

Payne v. Ontario (Human Rights Commission)

2000 CarswellOnt 2717, [2000] O.J. No. 2987, 100 A.C.W.S. (3d) 634, 136 O.A.C. 357, 192 D.L.R. (4th) 315, 2000 C.L.L.C. 230-039, 25 Admin. L.R. (3d) 255, 2 C.C.E.L. (3d) 171, 38 C.H.R.R. D/367

Stephnie Payne, Applicant/Appellant and Ontario Human Rights Commission, Respondent

Abella, O'Connor, Sharpe JJ.A.

Heard: September 8, 1999
Judgment: May 9, 2000
Docket: CA C31619

Proceedings: reversing in part (January 4, 1999), Doc. Toronto 419/98 (Ont. Div. Ct.)

Counsel: *Geri Sanson* and *Mark Hart*, for Appellant.
Anthony D. Griffin, for Respondent.

Abella J.A. **(dissenting):**

1 During a television interview about her opposition to the musical Show Boat, Stephnie Payne made what she subsequently acknowledged to be an anti-Semitic remark. She apologized publicly for this statement, but refused to do so to her co-workers, creating tension in the workplace.

2 Eleven months after she made the remark, Ms. Payne was dismissed from her employment. As a result, she complained to the Human Rights Commission alleging discrimination on the grounds, among others, that she was a Black woman.

3 The Commission investigated her complaint and decided not to refer it to a Board of Inquiry for a full hearing. Ms. Payne initiated judicial review proceedings of the Commission's decision. In addition, she sought to examine the Registrar of the Commission extensively about all aspects of her complaint. This is an appeal by Ms. Payne from a decision of the Divisional Court upholding a decision of the motions judge that prevented her from undertaking a wide-ranging examination of the Commission's Registrar.

Background

> The evidence sought to be elicited must be relevant to the issue on the motion. If it is, there is a *prima facie* right to resort to Rule 230. That right must not be so exercised as to be an abuse of the process of the Court. There will be such an abuse if the main motion is itself an abuse, as by being frivolous and vexatious, or if the process under rule 230, while ostensibly for the purpose of eliciting relevant evidence, is in fact being used for an ulterior or improper purpose, or if the process is being used in such a way as to be in itself an abuse (as for example, by issuing subpoenas to every member of the House of Commons to prove a defamatory statement shouted out by a spectator in the gallery). The list is not exhaustive.

164 Accordingly, *Canada Metal* establishes that there is a *prima facie* right to conduct a Rule 39.03 examination in relation to an issue relevant to the application for judicial review, but that the right is subject to certain limits, to which I now turn.

(f) Limits on the Right to Examine Witnesses in an Application for Judicial Review

(i) No right of discovery

165 The first limit applicable to the circumstances of the present case is implicit in the fact that neither the *Rules of Civil Procedure* nor the *Judicial Review Procedure Act* provide for examination for discovery on an application for judicial review: *Ellis-Don Ltd. v. Ontario (Labour Relations Board)* (1992), 95 D.L.R. (4th) 56 (Ont. Div. Ct.), at 59, varied on another point (1994), 110 D.L.R. (4th) 731 (Ont. Div. Ct.). It follows, in my view, that a Rule 39.03 examination may not be used where the purpose is simply to conduct a general discovery. That would amount to an "ulterior or improper purpose" contemplated by *Canada Metal* and should not be allowed.

166 I agree with the submission of the Commission that the proposed scope of the examination in the present case runs afoul of this principle. The list of documents to be produced appended to the notice of examination is set out in full in the reasons of Abella J.A. and I will not repeat it here. It is so sweeping and unfocused that it is apparent that the appellant is, in effect, insisting upon a general discovery of the Commission through its registrar, hoping to uncover something that will help her case. The proposed scope of the examination is simply too broad. Subject to what follows with respect to documents or facts that were actually put before the Commissioners when they decided the fate of her compliant, the appellant has no general right to rummage through the Commission's files in the hope of uncovering something helpful to her case. For reasons I will explain, however, this is not fatal to the appeal as it seems to me that a more focussed examination should be permitted.

(ii) Deliberative secrecy

167 A second limit on the right to resort to a Rule 39.03 examination arises from the doctrine of deliberative secrecy. Several cases subsequent to *Canada Metal*, *supra*, have dealt with the

25


07:58
4G
74
Paulo Carrelo
last seen today at 07:51
Thu 5 Oct
Have you been able to connect with Lee? 17:41
Yes and now on a legal Call with him. 17:42
Yes we are discussing now 17:57
Lee coming round. Mitch seems supportive. 17:59
Cool, let me know if I can help 18:00
Make any more progress? 18:36
Mitch seems bought in 18:40
Lee still on a fence 18:40
Still in the call. 18:40
Do we know where Ross is at on this? 18:41
We are aligned to submit the term sheet subject to our approval. Lee and Mitch going to have a call with Joanna today and Ross in the am.


07:58
4G
74
Paulo Carrelo
last seen today at 07:51
Has somebody already given Joe a heads up? 19:00
Matt has been 19:00
Ok, how did he react? 19:00
Fri 6 Oct
Hey, done with Martin? 12:52
Yes 12:52
Can hop on a call 12:52
Ok 12:52
Missed voice call at 13:58
Just on with Joe 13:58
Will call you back 13:58
Ok 13:58
Friday
Missed voice call at 20:26


07:58
4G
74
Paulo Carrelo
last seen today at 07:51
Missed voice call at 20:26
Sorry missed a call from you.
20:26
Sorry trying to get little one to sleep before 9pm call
20:38
Monday
Im on a call
12:33
Will call after
12:33
Ok
12:33
Yesterday
Morning
08:28
You have a few mins re Ronne?
08:28
I had to do school run last minute as wife not feeling great. I should be home at 9am
08:31
Sorry to hear that, wishing her a speedy recovery. I'll be on train but give me a try pls
08:31

26

Friday, October 6

Leon Davies 10/6 12:35 AM

Can you add me back?

laptop died

Leon Davies 10/6 8:29 AM

Anything from Ross?

10/6 8:30 AM

I am suppose to speak to him now

He is in transits to Europe

Leon Davies 10/6 9:20 AM

Good luck. let me know if he is supportive pls

10/6 9:20 AM

he is

Leon Davies 10/6 9:20 AM

Good to hear

10/6 9:20 AM

Ok

10/6 9:23 AM

this is all going to be a bit tricky as I will be on the move to paris this afternoon. So I will need someone working with me who can step in if I am not available. Phil is on a flight ?

Leon Davies 10/6 9:23 AM

Phil is. Happy to help however I can

10/6 9:24 AM

either you or Paolo will need to be on standby I would suggest you as you are more crisp

which is what is needed right now

or matt

Leon Davies 10/6 9:25 AM

I am available whenever needed

I haven't been party to call the calls obviously, so will ideally have Matt too

10/6 1:16 PM

Hi

Leon Davies 10/6 1:16 PM

Ni hao

10/6 1:17 PM

I see freight has jump to almost USD30 spot

Not sure where the 62/65 spread is on the forward curve

Leon Davies 10/6 1:17 PM

I know C3 trended up to mid 20's

let me check 65/62

10/6 1:18 PM

Could you take a look at the DIP model and stress test with Alanna and ensure they are reasonable

Leon Davies 10/6 1:18 PM

Will do

10/6 1:19 PM

Our stress case is already $115m and that is basis a downside of 105 for p62

If this is the downside case that plausible the selling this is going to start to look pretty tough

Also puts the Bonds downside north of 200MIL on the dip in my opinion

May be there is some excess conservatism in Alanna model

Can you run through it please

10/6 1:26 PM Call ended **20s**

Leon Davies 10/6 1:27 PM

Not sure if issue is my signal or yours. Just tried you from my phone

10/6 1:52 PM

Tunnel

Tuesday

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 TACORA RESOURCES INC.

Court File No. CV-23-00707394-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

Compendium of Cargill, Incorporated and Cargill International Trading Pte Ltd.

(Comeback Motion of Tacora Resources Inc. for an Amended and Restated Initial Order, and Cross-Motion of the Ad Hoc Group of Noteholders, returnable October 24, 2023)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick (LSO No. 35165K)
rchadwick@goodmans.ca

Caroline Descours (LSO No. 58251A)
cdescours@goodmans.ca

Peter Kolla (LSO No. 54608K)
pkolla@goodmans.ca

Carlie Fox (LSO No. 68414W)
cfox@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.