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)**

# AIDE MEMOIRE OF TACORA RESOURCES INC.

March 4, 2024

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Counsel for the Applicant

**TO: SERVICE LIST**

1. Tacora Resources Inc. ("**Tacora**" or the "**Applicant**") respectfully requests that the Court schedule a motion to hear a claim dispute between Tacora and 1128349 B.C. Ltd. ("**MFC**"). The dispute relates to certain claims asserted against Tacora by MFC, as holder of a certain royalty (the "**Royalty**") reserved and granted under the Amendment and Restatement of the Consolidation of Mining Leases – 2017 (the "**Wabush Lease**").

2. Tacora owes MFC Royalty payments for Q2 and Q3 of 2023 (the "**Q2/Q3 Payments**"), which constitute pre-filing obligations stayed by the CCAA filing. MFC alleges that Tacora incorrectly calculated all Royalty amounts payable to MFC since its inception on the basis that the Offtake Agreement with Cargill is not "an arm's length bona fide contract of sale", which requires a different calculation of the Royalty payments under the Wabush Lease (the "**Interpretation Dispute**"). The parties previously exchanged pleadings on the Interpretation Dispute within an arbitration proceeding. The Q2/Q3 Payments were also the subject of the arbitration. The arbitration has not progressed beyond pleadings.

3. Pursuant to the Subscription Agreement dated as of January 29, 2024 (the "**Subscription Agreement**"), Tacora is proposing to pay the Q2/Q3 Payments to MFC at closing. In addition, without prejudice to Tacora's position on whether any amount is payable in connection with the Interpretation Dispute, it was contemplated that a reserve of US$3,727,378 would be created at closing and the Interpretation Dispute and MFC's entitlement thereto would be resolved following closing of the transaction. The amount of the proposed reserve was based on previous quantifications provided by MFC regarding the size of their claim.[1] On February 15, 2024, following execution of the Subscription Agreement, MFC wrote to the Monitor and asserted that the claim at issue in the Interpretation Dispute is CDN$7,295,253.73.

4. MFC has informed Tacora that it may oppose approval of the Subscription Agreement on the basis that it does not provide for payment in full of their pre-filing claim. If that issue cannot be resolved before the sale approval motion or MFC's position prevails at the sale approval hearing scheduled for April 10 – 12, 2024, Tacora will need to resolve the Interpretation Dispute in an expedited manner. The "Outside Date" under the Subscription Agreement is May 14, 2024.

5. Tacora intends to serve a motion seeking declaratory relief that it has properly calculated the Royalty in accordance with the Wabush Lease and is requesting that the Court schedule

[1] MFC's prior quantifications were qualified as the "minimum" amount that may be owing.

that motion for a date following the sale approval hearing but before the Outside Date. Tacora believes the Interpretation Dispute is solely a matter of contractual interpretation (with certain related factual matters regarding the relationship of Cargill and Tacora) and can be heard on a half day motion. Tacora will work with counsel for MFC to determine a schedule for the motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4th day of March, 2024.

Stikeman Elliott LLP

**STIKEMAN ELLIOTT LLP**
Counsel for the Applicant

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PROCEEDING COMMENCED AT TORONTO

**AIDE MEMOIRE OF THE APPLICANT**
**(Case Conference dated March 5, 2024)**

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