

**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.**

**RESPONDING FACTUM OF CARGILL, INCORPORATED AND
CARGILL INTERNATIONAL TRADING PTE LTD.
RE: TACORA SALE PROCESS AND STAY EXTENSION MOTION**

(returnable June 5, 2024)

June 4, 2024

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PART I – OVERVIEW

1. Cargill International Trade PTE Ltd. and Cargill, Incorporated (together, “**Cargill**”) deliver this factum in response to the motion brought by Tacora Resources Inc. (“**Tacora**”) for a Sale Process Order and Stay Extension Order pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the “**CCAA**”).

2. Cargill objects to the currently proposed form of Sale Process Order. Cargill provided Tacora with reasonable and constructive comments on its proposed sale procedures, which would afford Tacora a greater opportunity to maximize value in the sale process. In particular, Cargill believes that Tacora’s sale process should be more flexible so as to encourage and provide the best opportunity for equity providers and potential purchasers to participate and bid. There is no downside to additional optionality in the process that can account for facts-on-the-ground as the sale process proceeds.

3. This sale process motion should have proceeded on consent after taking into account stakeholder input (like most CCAA sale process procedures). Instead, Tacora rejected almost all of Cargill’s suggested comments on the proposed sale procedures without explanation, either at the time of rejection or that can be gleaned from review of their materials on this motion.

4. Attached as Schedule “C” to this factum is a comparison showing Tacora’s proposed Sale Process Order served on Friday, May 31, 2024, with Cargill’s proposed changes set out in underline and strikethrough. Cargill believes that the Sale Process Order should only be granted after making the modifications proposed by Cargill.

PART II – SUMMARY OF THE FACTS¹

5. As the Court is well aware, Tacora has already conducted a sale process in this CCAA proceeding that it designed and ran in late 2023 and early 2024 (the “**First Sale Process**”). In Cargill’s view, having been a first-hand participant in that process, the First Sale Process was characterized by a rigidity that failed to use all the tools available to Tacora to maximize value for all of its stakeholders. That months-long process culminated in Tacora accepting one single bid – a reverse vesting transaction with the AHG Consortium (the “**AHG Reverse Vesting Transaction**”) – that was ultimately abandoned the day before this Court was scheduled to hear Tacora’s approval motion.

6. As Cargill noted in its Aide Memoire dated May 24, 2024 for the case conference heard that day, Cargill had reviewed and provided comments on the draft sale procedures proposed by Tacora, and hoped that this motion would proceed on consent. Cargill noted, however, that if Tacora did not address Cargill’s comments, then Cargill would oppose the Sale Process Order.

7. On May 29, 2024, Cargill again provided to Tacora comments on the draft sale procedures. On the evening of May 30, 2024, Tacora provided Cargill with a draft of its materials on this motion, including updated sale procedures, which ignored almost all of the comments that had been provided by Cargill. The following morning, Cargill provided Tacora with additional comments on the Sale Process Order – many of which had previously been provided, and all of which sought to improve the draft order. In particular, Cargill’s proposed changes seek to encourage equity providers and potential purchasers to participate and bid in the process, provide

¹ The facts Cargill relies on for its opposition to this motion are uncontentious and well-known to the parties and the Court.

potential bidders with flexibility as to the form of transaction they may seek to pursue, and maximize value for Tacora and its stakeholders, so that the outcome of the proposed sale process does not parallel that of the First Sale Process.

8. Tacora again rejected nearly all of Cargill's proposed changes, and seeks a form of the Sale Process Order in its motion served on the afternoon of May 31, 2024 that it knew that Cargill would oppose. However, Tacora's evidence and factum on this motion do not acknowledge or address the feedback that Tacora has received from Cargill on the Sale Process Order.

9. Cargill is a significant Tacora stakeholder, and has been an important partner of Tacora for years. Cargill is a secured creditor, the DIP lender, and the purchaser of all of Tacora's iron ore concentrate by way of the Offtake Agreement and Stockpile Agreement (among other contractual arrangements). Through the DIP and the Offtake Agreement, Cargill is Tacora's only source of funding and revenue. Cargill is also a prospective bidder in the upcoming sale process whom Tacora should want to encourage to participate for the interests of all stakeholders. Yet Tacora is taking an increasingly aggressive approach to Cargill's good faith concerns as a major creditor and stakeholder.

10. Instead of engaging with and responding to Cargill's suggestions on a reasoned basis, Tacora has rejected them out of hand. Tacora seeks to pass the buck about the obstacles it faces in this restructuring onto Cargill and have the Court approve a process that is predisposed to similar flaws to the First Sale Process. Tacora's position materially affects and prejudices the interests of Cargill and other stakeholders.

11. Repeatedly, Tacora blames the Offtake Agreement and its capital structure, or Cargill more generally, for the fact that it has not achieved a restructuring, when in fact, Tacora's stewardship

of these CCAA proceedings has led to significant obstacles of its own making and resulted in a contentious process that, at virtually every turn, has created conflict between Tacora and its stakeholders.

12. This Court has heard three contested DIP approval motions and approximately eight contested case conferences. Tacora knew, as reflected in its correspondence and board materials, that its proposed AHG Reverse Vesting Transaction would necessitate litigation. Tacora knew this because it proposed to assign a long-term agreement for no consideration using an exceptional remedy, thereby depriving Cargill of its contractual entitlements, and because litigation is the foreseeable and reasonable consequence of violating legitimate and valuable contractual obligations.

13. Tacora pursued the AHG Reverse Vesting Transaction nonetheless to the exclusion of other viable options (even while declaring a back-up bid was expressly available to Tacora within the First Sale Process), only to ultimately have it pulled by the AHG Consortium the night before the approval hearing, leaving Tacora without a plan B and wasting months of precious time. Moreover, Tacora shut down the First Sale Process in late January 2024 and did not allow any contingency planning, notwithstanding the AHG Reverse Vesting Transaction had a net debt covenant and was subject to other material conditions that needed to be satisfied by Tacora. These are, in Cargill's view, Tacora's own fundamental errors in the First Sale Process, which (among various other issues) it repeatedly encouraged Tacora to address at the time.

14. Tacora's CEO has recently resigned, and only one of the three original members of Tacora's board of directors when it filed for CCAA protection remain.

15. In these circumstances, it does not lie in Tacora's mouth to seek to unilaterally propose a flawed process for how to conduct the remaining steps in this CCAA proceeding (including regarding its proposed form of Sale Process Order), seek to excuse those flaws on the basis of urgency and prior litigation, and ignore the good faith feedback of significant stakeholders.

PART III – ISSUES AND THE LAW

A. Legal Principles

16. The issue on this motion is whether the Sale Process Order is fair and reasonable.

17. The *Soundair* criteria are well-known and uncontentious:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been an unfairness in the working out of the process.²

18. As further explained in *CCM Master Qualified Fund v. blutip Power Technologies*, the approval of a particular form of sale procedures must keep the *Soundair* principles in mind and assess:

- (a) the fairness, transparency and integrity of the proposed process;

² *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (Ont. C.A.)

- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.³

19. Consistent with these factors, courts have often endorsed sale procedures that provide wide exposure and flexibility to a variety of transaction structures.⁴

20. As set out below and as shown on the comparison at Schedule “C” to this factum, Cargill respectfully submits that only the Sale Process Order as modified by Cargill’s proposed changes will accord with these principles and optimize the chances to secure the best transaction.

B. Cargill’s Comments on the Sale Process Order

21. As an overarching comment on Tacora’s proposed sale procedures that are set out as Schedule A to the Sale Process Order (the “**Sale Procedures**”), Cargill believes that proposed bidders should not be restricted to submit only one of an RVO share sale or asset sale, in either case as directed by Tacora. While Tacora asserts that it “expects” more value to be generated in connection with an RVO transaction than an asset sale⁵, it is premature to conclude which form or structure of transaction, whether an RVO, an asset sale, or a CCAA plan, will result in the best and most value maximizing transaction for Tacora and its stakeholders. Proposed bidders should have flexibility to structure and advance their preferred form of transaction, including the ability to

³ *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 (S.C.J.) at [para. 6](#).

⁴ *Bron Media Corp. (Re)*, [2023 BCSC 1563](#); *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#)

⁵ Affidavit of Heng Vuong sworn May 31, 2024, para. 48, Tacora Motion Record, Tab 2, [CL A6074](#).

submit a transaction pursuant to a plan of arrangement structure. This overarching comment tracks through to a number of sections of Sale Procedures, as set out below.

22. Neither Tacora nor the Monitor has identified any downside to the flexibility Cargill proposes. To the contrary, Tacora brought, and the Monitor supported, a motion to obtain a Claims Procedure Order that was granted April 23, 2024. Tacora developed a comprehensive procedure to solicit, identify and quantify claims in order to be in a position to potentially seek approval of a plan of compromise or arrangement and to assist with the development of its restructuring strategy. The claims process has advanced and parties have filed claims as part of it. Instead of casting aside that investment and work a mere five weeks later, Tacora should keep open an option to advance a CCAA plan as a possible route to resolve these proceedings and to maximize value as part of a transaction. At present, Cargill may want to present its transaction with a CCAA plan. The Sale Process Order, including the Sale Procedures, should ensure it contemplates that potential path and not limit any party from advancing a CCAA plan structure if such bidder believes it maximizes value and is the preferred route of such bidder.

23. Cargill's recommendation for flexibility is particularly apt if the restriction is, as proposed by Tacora, that parties be limited to submitting transactions only in the form of an RVO. An RVO is, at law, an exceptional remedy that is only available as a last resort in the absence of any viable alternative.⁶ Restricting the submission of alternative types of bids preemptively *forecloses* the availability of viable alternatives.

⁶ *Harte Gold Corp. (Re)*, 2022 ONSC 653 at [paras. 32, 38](#).

24. As a further overarching comment, Cargill believes certain language in the Tacora proposed Sale Process Order, including its underlying premise that it will demand only RVO transactions in the event the Court makes certain orders on June 26, 2024, is misleading to bidders as to the effect of the motions to be heard on that date. The motions to be heard on June 26, 2024 relate to the possibility of transferring an agreement without previously disclaiming it pursuant to section 32 of the CCAA, and to whether the Offtake Agreement and Stockpile Agreement can be disclaimed. Neither motion will determine whether an RVO is available as a matter of law when applied to the specific facts and circumstances before the Court. Nor can they, since these require an exercise of the Court's discretion, as counsel to Tacora acknowledged at the case conference on May 22, 2024. This residual discretion and uncertainty underlying any bid that is submitted in the form of an RVO underscores the flexibility Cargill recommends be incorporated into the Sale Process Order and Sale Procedures.

25. Cargill believes the changes to the Sale Process Order as set out in Schedule "C" should be made. For ease of analysis, Cargill has reproduced below material section of the Sale Procedures showing Cargill's proposed changes from Schedule "C" to this factum, followed by Cargill's specific explanation for why the change should be made.

(a) Fourth recital

~~On June 26, 2024, the Court will hear motions (the "**Preliminary Motions**") by Tacora and Cargill to determine: (a) whether or not the Offtake Agreement and/or the Note Indentures can be transferred and 'vested' into Residual Co. pursuant to a reverse vesting order (an "**RVO**") without the consent of the counterparties to such contracts; (b) whether as a point of law, an RVO transaction structure is available where unsecured creditors hold a veto on a CCAA plan of arrangement and those unsecured creditors do not support an RVO; and (c) whether the Offtake Agreement is disclaimed. Based upon the decision of the Court, Tacora will determine whether all Bidders will be required to submit their Bid~~

~~in the form of a subscription agreement (“Subscription Agreement”) for all the shares of Tacora (the “Shares”) to be implemented pursuant to an RVO or in the form of an asset purchase agreement (“APA”) for all or substantially all of the Property and the Business.~~

Cargill Explanation: This recital assumes that the Court’s decision on the motions scheduled for June 26, 2024 (including one – Cargill’s initially contemplated Global Process Motion – which will no longer proceed) will determine a single path forward for Tacora’s sale process from one of two choices – an RVO share sale or an asset sale. As discussed above, the outcome of these motions may not provide the certainty Tacora is suggesting they will, and bidders should not be precluded from advancing what they believe would be a value maximizing transaction structure. This language is limiting and not needed as a recital.

(b) Section 2

The Sale Process is intended to identify the highest and/or best offer for (a) the sale of (a) all the Shares shares of Tacora pursuant to an RVO, or (the “Shares”), (b) the sale of all or substantially all of the Property and the Business pursuant to an APA, or (c) a restructuring of Tacora (the “Opportunity”). Tacora reserves the right to terminate the Sale Process at any time. Each bidder shall be entitled to submit their Bid in the form of a subscription agreement (a “Subscription Agreement”) for the Shares of Tacora, in the form of an asset purchase agreement (an “APA”) for all or substantially all of the Property and the Business, and/or in the form of a CCAA plan of compromise and arrangement (a “CCAA Plan”) for the Shares of Tacora and/or for all or substantially all of the Property and the Business.

Cargill Explanation: As stated above, potential bidders should have the flexibility to submit their preferred form of transaction, not restricted to an RVO or asset sale as directed by Tacora. Potential bidders should have the flexibility to submit a

transaction that they believe will maximize value, including a transaction pursuant to a CCAA plan of arrangement.

(c) Section 5

Event	Timing
<p>1. Access to VDR and Template Subscription Agreement or and Template APA, as applicable</p> <p>Bidders provided access to the VDR, subject to execution of an appropriate NDA and provided with a copy of the Template Subscription Agreement or and Template APA, as applicable.</p>	<p>Access to the VDR has been and will be provided to parties on a rolling basis following request for access and execution of an appropriate NDA. Parties will be provided with a Template Subscription Agreement or and Template APA three days following the Court's decision on the Preliminary Motions by <u>June 21, 2024</u>.</p>
<p>4. Approval Motion</p> <p>Hearing of Approval Motion in respect of Successful Bid (subject to Court availability).</p>	<p>July 26, 2024, or such earlier <u>other</u> date set by the Court.⁷</p>

Cargill Explanation: The sale approval motion should be heard on July 26, 2024 or as otherwise set by the Court. If there is a dispute and the sale approval does not proceed on consent of all the parties, a proper litigation schedule will be required.

(d) Section 7

Tacora, in consultation with the Financial Advisor and the Monitor, will prepare the form of a template Subscription Agreement (the “**Template Subscription Agreement**”) ~~or~~ and the form of a template APA (the “**Template APA**”) to be used by Bidders in submitting a Bid in the form of a Subscription Agreement or APA, as applicable. The Template Subscription Agreement ~~or~~ and the

⁷ Tacora’s position is not clear or consistent, as it sometimes says the approval motion will take place on July 26, and other times uses this language that it will be July 26 or earlier.

Template APA, ~~as applicable~~, will be provided to Bidders ~~within three (3) days following the Court's decision on the Preliminary Motion~~ by June 21, 2024.

Cargill Explanation: Same explanation as for Fourth recital and Section 2, above.

(e) Sections 10(e)(vii) and (g)

A Bidder that wishes to make a definitive transaction proposal (a “**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 5:00 p.m. (Eastern Time) on July 12, 2024, or such later date as determined by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor (the “**Bid Deadline**”). Such Bid shall be a “**Qualified Bid**” if it meets all of the following criteria:

[...]

(e) the Bid includes:

[...]

(vii) it provides for the payment in full of all amounts and obligations under the Cargill DIP Agreement dated April 21, 2024 unless otherwise agreed in writing by the DIP Lender;

[...]

~~(g) it contains no conditions other than as contemplated by the Template Subscription Agreement or Template APA, as applicable;~~

Cargill Explanation: Regarding Section 10(e)(vii), all bids should be required to repay the DIP in full. Regarding Section 10(g), a bid should not be excluded from being considered a Qualified Bid simply because a potential bidder adds in different or additional required conditions to their transaction documents. This is too stringent a threshold, and may discourage potential bidders from participating in this second sale process. Tacora should have the flexibility to evaluate any

conditions, but such conditions should not automatically result in the bid not being qualified.

(f) Section 12

Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, ~~shall~~ may reject any Bid if it is determined that such Bid does not constitute a Qualified Bid, provided that, Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, may:

(a) waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bid to be a Qualified Bid; or

(b) seek to combine separate Bids to create a Qualified Bid. [...]

Cargill Explanation: Tacora should have the flexibility to evaluate all bids and determine whether to waive any sale process requirements to accept a Bid as a Qualified Bid.

(g) Section 15

If Tacora, in consultation with the Financial Advisor and the Monitor, determines that an Auction should be held, Tacora shall conduct an Auction ~~commencing at 9:00 a.m. (Eastern time) on July 16, 2024 on such date as determined by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor,~~ at the offices of Stikeman Elliott LLP located at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario M5L 1B9.

Cargill Explanation: Cargill believes that a date for any auction should not be fixed now. Flexibility and time may be required to maximize value. Tacora should have the scope to evaluate with the benefit of facts and to make the best decision at the time.

(h) Section 16

Except as otherwise permitted in Tacora's discretion, in consultation with the Financial Advisor and the Monitor, only Tacora, the Monitor, the Auction Bidders, [the DIP Lender](#) and, in each case, their respective advisors, counsel and other representatives, will be entitled to attend the Auction. Only Bidders who submitted a Qualified Bid are eligible to participate in the Auction. Each Auction Bidder shall identify to the Financial Advisor and the Monitor at least 24 hours in advance of the Auction who will attend the Auction on their behalf. The identity of each Bidder participating in the Auction (each Bidder participating in the Auction being an "Auction Bidder") will be disclosed to all other Auction Bidders. Each Auction Bidder shall keep the identities of each other Auction Bidder confidential.

Cargill Explanation: Cargill believes that the DIP Lender, as a significant stakeholder, should be permitted to attend the auction.

(i) Sections 18-22

~~18. Tacora will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Auction Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction. The Auction shall be conducted on an open basis, such that all material terms of each Auction Bid at the Auction will be fully disclosed to all other Auction Bidders throughout the entire Auction.~~

~~19. Each Auction Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with Tacora, another Bidder or any other person, without the consent of the Financial Advisor and the Monitor, regarding the Sale Process. Further, each Auction Bidder shall disclose all co-bidding or team bidding arrangements, whether formal or informal, among the Auction Bidder and any third party or financing source. The identity of any and all co-bidders or team bidders involved in submitting any Auction Bid shall be disclosed on the record at the Auction.~~

~~20. Bidding at the Auction will continue in minimum increments in excess of the Opening Bid determined from time to time by Tacora, in consultation with the Financial Advisor and the Monitor. Each~~

~~overbid (an “Auction Bid”) announced on the record at the Auction shall be deemed to be an irrevocable offer capable of acceptance by Tacora and may not be withdrawn or amended by the Auction Bidder without the consent of Tacora, in consultation with the Financial Advisor and the Monitor.~~

~~21. For the purposes of facilitating bidding, Tacora, in consultation with the Financial Advisor and the Monitor, may (but is not required to) ascribe a monetary value to any non-cash considerations of any of the Auction Bids, including by way of example, to different levels of conditionality to closing. If requested by Tacora, in consultation with the Financial Advisor and the Monitor, each Auction Bidder will provide evidence of its financial wherewithal and ability to consummate the transaction at an increased purchase price.~~

~~22. The Auction will continue until the bidding has concluded and Tacora, in consultation with the Financial Advisor and the Monitor, determine the Successful Bid. Tacora, in consultation with the Financial Advisor and the Monitor shall determine which Auction Bidder has submitted the highest and/or best Auction Bid of the Auction. At the conclusion of bidding, the Auction will be closed, and the highest and/or best Auction Bid, as determined by Tacora, in consultation with the Financial Advisor and the Monitor, will be Successful Bid and the next highest and otherwise best Auction Bid will be the Back-Up Bid, as applicable. Any Auction Bids submitted after the conclusion of the Auction will not be considered.~~

Cargill Explanation: Cargill believes that these specific details about an auction are not required to be set at this time. They can be addressed, if needed, with the Monitor’s consent once it is determined that an auction is required so as to tailor the process to maximize value. These procedures may cause certain bidders to not want to participate in the sale process. Tacora should evaluate the situation at the time and make its decisions with the benefit of better on-the-ground information.

(j) Section 25

If the 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 Bid. Any Back-Up Bid shall

remain open for acceptance until the earlier of completion of the transaction with the Successful Bidder or the Outside Date.

Cargill Explanation: Section 10(c) of Tacora’s Sale Procedures already includes the requirement that, in order to be a Qualified Bid, “it is binding and includes a letter confirming that the Bid is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, if any, provided that if such Bidder is selected as the Successful Bidder or the Back- Up Bidder, **its offer shall remain irrevocable until the earlier of (i) completion of the transaction, and (ii) the Outside Date**, subject to such further extensions as may be agreed to under the applicable Subscription Agreement or APA, with the consent of the Monitor.”⁸ Cargill’s proposed change is consistent with the foregoing criteria already set out in Tacora’s Sale Procedures. Cargill believes that if a Successful Bid is not completed, then a Back-up Bid should not be open forever. The Back-up Bid should terminate with a reasonable trigger.

C. Response to Global Process (RVO Declaration) Motion Issues

26. Both Tacora and the Monitor take issue with Cargill’s decision not to pursue a motion relating to the availability of an RVO in lieu of a plan as a matter of law at this time, and suggest Cargill should be prejudiced from raising legal issues on future motions.

27. The Monitor has not accurately characterized matters when it states at paragraph 17 of its Ninth Report that “[o]n May 30, 2024 Cargill advised the Monitor that it would no longer be

⁸ Draft Sale Process Order, Schedule “A”, para. 10(c) (emphasis added), MR, p. 37, [CL A6090](#).

proceeding with the Global Process (RVO Declaration) Motion on June 26, 2024 but sought to reserve its rights to raise such matters on any opposed future RVO application in the future.”

28. In fact, after Cargill advised on May 30, 2024 that it would not proceed on June 26, 2024 with its Global Process Motion, it was Tacora that asserted this would somehow prevent Cargill from raising legal issues in future motions, including any eventual RVO application that may be brought by Tacora. Cargill disagreed, and the Monitor and Tacora then stated in the schedule delivered to the Court on May 31, 2024 that: “Tacora and the Monitor believe that such motion can only be withdrawn with prejudice and cannot be raised again in future given the schedule that was set by the Court. Tacora and the Monitor intend to address the Court on this point on June 5.”

29. The legal basis for the position asserted by the Monitor and Tacora is not clear, and is not addressed in the Monitor’s Ninth Report or Tacora’s factum both served on Monday, June 3, 2024. Tacora has not sought any relief from the Court in respect of this issue, and absent proper notice, it should not receive any on June 5, 2024.

30. Cargill did not serve materials in respect of its proposed Global Process Motion, and it was perfectly appropriate for Cargill, in light of this Court’s scheduling endorsement of May 24, 2024, to consider its position and decide not to bring the Global Process Motion at this time and in light of the Court’s decision to schedule the disclaimer motion for June 26, 2024. It certainly cannot be that Cargill can be prevented now from raising legal arguments in response to future motions that have not yet been brought based on future facts that are not currently known.

31. Cargill’s legal arguments on any future RVO motion are already on the record and have been consistent throughout this proceeding (including in its factum filed in connection with approval of the AHG Reverse Vesting Transaction). Subject to any necessary updates based on

the facts and circumstances of the outcome of the proposed sale process, Cargill's position on the availability of an RVO has not changed.

PART IV – ORDER REQUESTED

32. Cargill respectfully requests that this Honourable Court grant the Sale Process Order in the form set out at Schedule "C".

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 4, 2024

/s/ Goodmans LLP

Goodmans LLP

SCHEDULE A

LIST OF AUTHORITIES

1. *Bron Media Corp. (Re)*, [2023 BCSC 1563](#)
2. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#)
3. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
4. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (Ont. CA)
5. *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#)

SCHEDULE B
EXCERPTS OF STATUTES AND REGULATIONS

n/a

SCHEDULE C

**COMPARISON SHOWING CARGILL'S PROPOSED CHANGES TO SALE PROCESS
ORDER AND SALE PROCEDURES**

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

THE HONOURABLE MADAM) WEDNESDAY, THE 5TH
)
JUSTICE KIMMEL) DAY OF JUNE, 2024

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

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

(Applicant)

**ORDER
(Sale Process Order)**

THIS MOTION, made by Tacora Resources Inc. (the “**Applicant**”), for an Order approving and ratifying the procedures for a sale process in respect of the Applicant attached hereto as Schedule “A” (the “**Sale Process**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicant dated May 31, 2024 (the “**Motion Record**”), the Affidavit of Heng Vuong sworn May 31, 2024 ([the “Vuong Affidavit”](#)), the Ninth Report of FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the “**Monitor**”) dated June [●], 2024 ([the “Ninth Report”](#)), and

ON HEARING the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Cargill, Incorporated and Cargill International Trading Pte Ltd., and counsel for the Ad Hoc Group of Senior Noteholders, and such other counsel and parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of Philip Yang, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of 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 Sale Process.

APPROVAL AND RATIFICATION OF THE SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process attached hereto as Schedule “A” is hereby approved and ratified.

4. **THIS COURT ORDERS** that any steps taken to date by the Applicant, the Financial Advisor, and the Monitor in the Sale Process [that are described in the Vuong Affidavit and the Ninth Report and that are consistent with the Sale Process](#) are hereby ratified.

5. **THIS COURT ORDERS** that the Applicant, the Financial Advisor, and the Monitor are hereby authorized and directed to immediately continue with ~~its~~[the](#) implementation of the Sale Process pursuant to the terms thereof, and to take any and all actions as may be necessary or desirable to implement and carry out the Sale Process in accordance with its terms and this Order.

6. **THIS COURT ORDERS** that each of the Applicant, the Financial Advisor, the 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 Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Applicant, the Financial Advisor, or the Monitor, as applicable, in performing their obligations under the Sale Process, as determined by this Court.

7. **THIS COURT ORDERS** that, pursuant to section 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS), the Applicant, the Financial Advisor and the Monitor were and are hereby 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 Sale Process in these proceedings.

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

PROTECTION OF PERSONAL INFORMATION

9. **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 Applicant, the Financial Advisor, the Monitor, and their respective advisors were and are hereby authorized and permitted to disclose and transfer to prospective Sale Process participants (each, an “**Sale 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 Sale Process (a “**Transaction**”). Each Sale 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 Applicant, the Financial Advisor, or the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if required by the Applicant, the Financial Advisor, or the Monitor. The Successful Bidder shall maintain and protect the privacy of such information and, upon closing of the Transaction contemplated in the Successful 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 Sale 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 Applicant, the Financial Advisor, or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicant, the Financial Advisor, or the Monitor.

GENERAL

10. **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 Sale Process.

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

12. **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, the Financial Advisor, the 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 Applicant, the Financial Advisor, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant, the Financial Advisor, the Monitor, and their respective agents in carrying out the terms of this Order.

13. **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.

14. **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 PROCESS

On October 10, 2023, Tacora Resources Inc. (“**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. 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 June 5, 2024, the Court granted an order (the “**Sale Process Order**”) authorizing Tacora to undertake a sale process (the “**Sale Process**”) to solicit offers or proposals for a sale transaction in respect of Tacora’s assets (the “**Property**”) and business operations (the “**Business**”) to be conducted by the Financial Advisor, and supervised by the Monitor, in the manner set forth in these procedures (the “**Sale Procedures**”).

~~On June 26, 2024, the Court will hear motions (the “**Preliminary Motions**”) by Tacora and Cargill to determine: (a) whether or not the Offtake Agreement and/or the Note Indentures can be transferred and ‘vested’ into Residual Co. pursuant to a reverse vesting order (an “**RVO**”) without the consent of the counterparties to such contracts; (b) whether as a point of law, an RVO transaction structure is available where unsecured creditors hold a veto on a CCAA plan of arrangement and those unsecured creditors do not support an RVO; and (c) whether the Offtake Agreement is disclaimed. Based upon the decision of the Court, Tacora will determine whether all Bidders will be required to submit their Bid in the form of a subscription agreement (“**Subscription Agreement**”) for all the shares of Tacora (the “**Shares**”) to be implemented pursuant to an RVO or in the form of an asset purchase agreement (“**APA**”) for all or substantially all of the Property and the Business.~~

Defined Terms

1. Capitalized terms used in the Sale Procedures and not otherwise defined herein have the meanings given to them in Appendix “A”.

Sale Procedures

Opportunity

2. The Sale Process is intended to identify the highest and/or best offer for (a) the sale of (a) all the ~~Shares~~ shares of Tacora pursuant to an RVO, or (the “**Shares**”), (b) the sale of all or substantially all of the Property and the Business pursuant to an APA, or (c) a restructuring of Tacora (the “**Opportunity**”). Tacora reserves the right to terminate the Sale Process at any time. Each bidder shall be entitled to submit their Bid in the form of a subscription agreement (a “**Subscription Agreement**”) for the Shares of Tacora, in the form of an asset purchase agreement (an “**APA**”) for all or substantially all of the Property and the Business, and/or in the form of a CCAA plan of compromise and

arrangement (a “CCAA Plan”) for the Shares of Tacora and/or for all or substantially all of the Property and the Business.

General

3. Except as set forth in these Sale Procedures, nothing in this Sale Process shall prohibit a secured creditor of Tacora (a) from participating as a Bidder in the Sale Process, or (b) committing to Bid its secured debt, including by way of a credit bid of some or all of its outstanding indebtedness under any loan facility (inclusive of interest and other amounts payable under such loan agreement to and including the date of closing of a definitive transaction) owing to such party (“**Credit Bid**”).
4. 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 Sale Process, provided that, no information regarding any Bids received shall be provided to any stakeholders of Tacora or their respective advisors other than in connection with a motion to approve the Successful Bid or Back-Up Bid, if applicable.

Timeline

5. The following table sets out the key milestones under the Sale 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 Sale Process.

Event	Timing
1. Access to VDR and Template Subscription Agreement orand Template APA, as applicable Bidders provided access to the VDR, subject to execution of an appropriate NDA and provided with a copy of the Template Subscription Agreement or and Template APA, as applicable .	Access to the VDR has been and will be provided to parties on a rolling basis following request for access and execution of an appropriate NDA. Parties will be provided with a Template Subscription Agreement or and Template APA three days following the Court's decision on the Preliminary Motions by <u>June 21, 2024</u> .
2. Bid Deadline Deadline for Bidders to submit binding definitive offers in accordance with the requirements of Section 10.	July 12, 2024
3. Auction (if applicable)	July 16, 2024
4. Approval Motion Hearing of Approval Motion in respect of Successful Bid (subject to Court availability).	July 26, 2024, or such earlier other date set by the Court.
5. Outside Date – Closing	To be determined by Tacora, in consultation

Event	Timing
Outside Date by which the Successful Bid must close.	with the Financial Advisor and the Monitor. Tacora will announce such date to Bidders in advance of the Bid Deadline (the “ Outside Date ”).

Solicitation of Interest

6. The following steps have been taken by Tacora, the Financial Advisor or the Monitor, as applicable:
 - (a) a notice of the Sale Process and any other relevant information that the Monitor, in consultation with Tacora and the Financial Advisor, considered appropriate regarding the Sale Process was posted by the Monitor on the Monitor’s Website; and
 - (b) the Financial Advisor, in consultation with Tacora and the Monitor, (i) contacted financial and strategic parties that the Financial Advisor, believed may be able to submit or participate in a Qualified Bid in connection with the Sale Process (each a “**Potential Bidder**”); and (ii) provided each Potential Bidder with a form of non-disclosure agreement satisfactory to the Financial Advisor, Tacora, the Monitor, and their respective counsel (an “**NDA**”).

7. Tacora, in consultation with the Financial Advisor and the Monitor, will prepare the form of a template Subscription Agreement (the “**Template Subscription Agreement**”) ~~or~~ and the form of a template APA (the “**Template APA**”) to be used by Bidders in submitting a Bid in the form of a Subscription Agreement or APA, as applicable. The Template Subscription Agreement ~~or~~ and the Template APA, ~~as applicable,~~ will be provided to Bidders ~~within three (3) days following the Court’s decision on the Preliminary Motion~~ by June 21, 2024.

Communication Protocol

8. Each Potential Bidder and Bidder is prohibited from communicating with any other Potential Bidder or Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Sale Process, without the consent of the Financial Advisor and the Monitor except as provided in these Sale Procedures (and for certainty, such consent granted prior to the date of approval of these Sale Procedures shall continue to apply without requirement for additional consent). Notwithstanding the terms of any NDA entered into by a Bidder, all Bidders shall comply with these Sale Procedures.

9. Notwithstanding the terms of any NDA entered into by a Bidder, the Financial Advisor may introduce any Bidder who expresses an interest in submitting a consortium or joint Bid, to one or more other Bidders. Any Bidder who is interested in submitting a

consortium or joint Bid must confirm to the Financial Advisor that it will act exclusively with another Bidder or consortium of Bidders submitting a single Bid.

Bids

10. A Bidder that wishes to make a definitive transaction proposal (a “**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 5:00 p.m. (Eastern Time) on July 12, 2024, or such later date as determined by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor (the “**Bid Deadline**”). Such Bid shall be a “**Qualified Bid**” if it meets all of the following criteria:
 - (a) it has been duly executed by all required parties;
 - (b) it is received by the Bid Deadline;
 - (c) it is binding and includes a letter confirming that the Bid is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, if any, provided that if such Bidder is selected as the Successful Bidder or the Back- Up Bidder, its offer shall remain irrevocable until the earlier of (i) completion of the transaction, and (ii) the Outside Date, subject to such further extensions as may be agreed to under the applicable Subscription Agreement ~~or~~, [APA](#) or CCAA Plan, with the consent of the Monitor;
 - (d) it is in the form of a duly authorized and executed Subscription Agreement ~~or~~, [APA](#) and/or CCAA Plan, as applicable, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a redline to the Template Subscription Agreement or Template APA, as applicable;
 - (e) the Bid includes:
 - (i) the purchase price 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, including to the extent applicable, appropriate documentation supporting a Credit Bid;
 - (iii) any contemplated purchase price adjustment;
 - (iv) 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;
 - (v) a description of the Shares or Property, as applicable, 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 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;
- (i) it provides for the payment in full of all amounts and obligations under the Cargill DIP Agreement dated April 21, 2024 unless otherwise agreed in writing by the DIP Lender;
- (ii) ~~(vii)~~ it identifies whether the Bidder intends to assume or exclude the Offtake Agreement (with or without amendment) and if the Bidder intends to exclude the Offtake Agreement, the alternative offtake terms required to complete the transaction contemplated by the Bid;
- (iii) ~~(viii)~~ information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Bidder has sufficient financial ability to complete the transaction contemplated by the Bid;
- (iv) ~~(ix)~~ a description of the Bidder's intentions for the Business, including any plans or conditions related to Tacora's management and employees; and
- (v) ~~(x)~~ any other terms or conditions of the Bid that the Bidder believes are material to the transaction;
- (f) it is not subject to the outcome of unperformed due diligence, internal approval(s) or contingency financing;
- ~~(g) it contains no conditions other than as contemplated by the Template Subscription Agreement or Template APA, as applicable;~~
- (g) ~~(h)~~ it fully discloses the identity of each entity that will be entering into the transaction, or that is sponsoring, participating in or benefiting from such Bid, and such disclosure shall include, without limitation: (i) in the case of a Bidder formed for the purpose of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such 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 Bidder or any of its equity holders and the terms of such benefit;
- (h) ~~(i)~~ it is accompanied by a non-refundable good faith cash deposit (the "**Deposit**") equal to 10% of the total cash component of the purchase price contemplated under the Bid which shall be paid to the Monitor and held in trust pursuant to Section 28 hereof until the earlier of (i) closing of the Successful Bid or Back- Up Bid, as applicable; and (ii) rejection of the Bid pursuant to Section 26;
- (i) ~~(j)~~ it includes acknowledgements and representations of the 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;

(j) ~~(k)~~ it includes an acknowledgement that the Bid is made on an “as-is, where-is” basis; and

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

Assessment of Bids

11. Bids may not be modified, amended, or withdrawn after the 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 Bid for Tacora, its creditors and other stakeholders.
12. Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, ~~shall~~may reject any Bid if it is determined that such Bid does not constitute a Qualified Bid, provided that, Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, may:
 - (a) waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bid to be a Qualified Bid; or
 - (b) seek to combine separate Bids to create a Qualified Bid.

No Bidder shall have any expectation that Tacora will (i) waive strict compliance with any one or more of the requirements; or (ii) seek to combine separate Bids to create a Qualified Bid.

13. If Tacora receives two (2) or more Qualified Bids, Tacora may, in consultation with the Financial Advisor and the Monitor, undertake one or more of the following steps:
 - (a) request or negotiate one or more amendments to any Qualified Bids;
 - (b) accept one of the 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 and select the next highest or otherwise best Qualified Bid 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; or

- (c) identify the highest and/or best of the Qualified Bids received and such Qualified Bid will constitute the opening bid for the purposes of the Auction (the “**Opening Bid**”).
14. If Tacora receives only one (1) Qualified Bid, such Qualified Bid shall be declared the Successful Bid and an Approval Motion shall be brought forthwith.

Auction

15. If Tacora, in consultation with the Financial Advisor and the Monitor, determines that an Auction should be held, Tacora shall conduct an Auction ~~commencing at 9:00 a.m. (Eastern time) on July 16, 2024~~ on such date as determined by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, at the offices of Stikeman Elliott LLP located at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario M5L 1B9.
16. Except as otherwise permitted in Tacora’s discretion, in consultation with the Financial Advisor and the Monitor, only Tacora, the Monitor, the Auction Bidders, the DIP Lender and, in each case, their respective advisors, counsel and other representatives, will be entitled to attend the Auction. Only Bidders who submitted a Qualified Bid are eligible to participate in the Auction. Each Auction Bidder shall identify to the Financial Advisor and the Monitor at least 24 hours in advance of the Auction who will attend the Auction on their behalf. The identity of each Bidder participating in the Auction (each Bidder participating in the Auction being an “**Auction Bidder**”) will be disclosed to all other Auction Bidders. Each Auction Bidder shall keep the identities of each other Auction Bidder confidential.
17. Except as otherwise set forth herein, Tacora, in consultation with the Financial Advisor and the Monitor, may waive and/or employ and announce at the Auction additional rules that it considers reasonable under the circumstances for conducting the Auction, provided that such rules are: (a) disclosed to each Auction Bidder; and (b) designed, in Tacora’s business judgement, to result in the highest and/or best offer.
- ~~18. Tacora will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Auction Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction. The Auction shall be conducted on an open basis, such that all material terms of each Auction Bid at the Auction will be fully disclosed to all other Auction Bidders throughout the entire Auction.~~
- ~~19. Each Auction Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with Tacora, another Bidder or any other person, without the consent of the Financial Advisor and the Monitor, regarding the Sale Process. Further, each Auction Bidder shall disclose all co-bidding or team bidding arrangements, whether formal or informal, among the Auction Bidder and any third party or financing source. The identity of any and all co-bidders or team bidders involved in submitting any Auction Bid shall be disclosed on the record at the Auction.~~

~~20. Bidding at the Auction will continue in minimum increments in excess of the Opening Bid determined from time to time by Tacora, in consultation with the Financial Advisor and the Monitor. Each overbid (an "Auction Bid") announced on the record at the Auction shall be deemed to be an irrevocable offer capable of acceptance by Tacora and may not be withdrawn or amended by the Auction Bidder without the consent of Tacora, in consultation with the Financial Advisor and the Monitor.~~

~~21. For the purposes of facilitating bidding, Tacora, in consultation with the Financial Advisor and the Monitor, may (but is not required to) ascribe a monetary value to any non-cash considerations of any of the Auction Bids, including by way of example, to different levels of conditionality to closing. If requested by Tacora, in consultation with the Financial Advisor and the Monitor, each Auction Bidder will provide evidence of its financial wherewithal and ability to consummate the transaction at an increased purchase price.~~

~~22. The Auction will continue until the bidding has concluded and Tacora, in consultation with the Financial Advisor and the Monitor, determine the Successful Bid. Tacora, in consultation with the Financial Advisor and the Monitor shall determine which Auction Bidder has submitted the highest and/or best Auction Bid of the Auction. At the conclusion of bidding, the Auction will be closed, and the highest and/or best Auction Bid, as determined by Tacora, in consultation with the Financial Advisor and the Monitor, will be Successful Bid and the next highest and otherwise best Auction Bid will be the Back Up Bid, as applicable. Any Auction Bids submitted after the conclusion of the Auction will not be considered.~~

18. ~~23.~~ In determining the Successful Bid at the Auction, 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 Auction Bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the claims likely to be created by such Auction Bid in relation to other Auction 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 Auction Bid; (i) any restructuring costs that would arise from the Auction 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 reasonable discretion.

19. ~~24.~~ Upon selection of the Successful Bidder and a Back-Up Bidder, if any, Tacora will require the Successful Bidder and the Back-Up Bidder, if any, to execute, as soon as practicable, an amended Subscription Agreement ~~or~~, APA or CCAA Plan, as applicable, that reflects its final Bid and any other modifications submitted and agreed to during the Auction.

20. ~~25.~~ If the 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 Bid. Any Back-Up Bid shall remain open for acceptance until the earlier of completion of the transaction with the Successful Bidder or the Outside Date.

21. ~~26.~~ All Qualified Bids (other than the Successful Bid and the Back-Up Bid, if any) 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.
22. ~~27.~~ The Monitor shall supervise the Sale Process as outlined herein. Any disputes relating to a disagreement regarding or clarification required as to the interpretation or application of these Sale Procedures, the construction and enforcement of an Auction Bidder's Auction Bid and/or executed transaction documents, the responsibilities of the Monitor, the Financial Advisor or Tacora hereunder, shall be determined by the Court and each Auction Bidder shall be deemed to have consented to the jurisdiction of the Court in connection with any such disputes. The Court will have jurisdiction to hear such matters 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.

Deposits

23. ~~28.~~ All Deposits will be retained by the Monitor and deposited in an interest bearing trust account. The Deposit paid by the Successful Bidder and Back-Up Bidder whose Bid(s) is/are approved at the Approval Motion will be dealt with in accordance with the definitive documents for the transaction contemplated by the Successful Bid or the Back-Up Bid, as applicable, and will be non-refundable, other than in the circumstances set out in the Successful Bid or Back-Up Bid, as applicable. The Deposits (and any interest thereon) of Qualified Bidders not selected as the Successful Bidder or Back-Up Bidder will be returned to such Qualified Bidders within five (5) Business Days after the selection of the Successful Bidder or such 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 the Back-Up Bidder no later than five (5) Business Days after closing of the transaction contemplated by the Successful Bid.

Approval Motion

24. ~~29.~~ The Approval Motion shall be heard on July 26, 2024, or such ~~earlier available~~ other date as set by the Court. At the Approval Motion, Tacora shall seek the Approval Order.
25. ~~30.~~ Prior to the Approval Motion, the Monitor shall provide the Court with a report providing information on the process and including its recommendation in connection with the relief sought at the Approval Motion.

“As Is, Where Is”

26. ~~31.~~ Any sale of the Shares, Business, and/or Property, as applicable, will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by Tacora, the Financial Advisor or the Monitor, or their advisors or

agents, except to the extent otherwise provided under any definitive sale agreement with the Successful Bidder or Back-Up Bidder, if any, executed by Tacora. None of Tacora, the Financial Advisor or the Monitor, or their advisors or agents, including the Financial Advisor, make any representation or warranty as to the information contained in any teaser letter, any management presentation or the VDR, except to the extent otherwise provided under any definitive sale agreement with the Successful Bidder or Back-Up Bidder, if any, executed by Tacora. Each 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 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 agreement executed by Tacora.

No Entitlement to Expense Reimbursement or Other Amounts

27. ~~32.~~ Bidders shall not be entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.

Jurisdiction

28. ~~33.~~ Upon submitting a Bid, the Bidder shall be deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters relating to the Sale Process and the terms and conditions of these Sale Procedures and any Bid.

29. ~~34.~~ None of Tacora, the Financial Advisor or 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 Sale Process arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid and Back-Up Bid.

**APPENDIX “A”
DEFINED TERMS**

- (a) “**APA**” shall have the meaning attributed to it in the preamble;
- (b) “**Approval Motion**” means the motion seeking approval by the Court of the Successful Bid, provided, for clarity, that in the event the Successful Bid is in the form of a CCAA Plan, a Meeting Order shall be obtained in advance of the Approval Motion;
- (c) “**Approval Order**” means an order of the Court approving, among other things, if applicable, the Successful Bid and the consummation thereof;
- (d) “**Auction Bid**” shall have the meaning attributed to it in Section 20;
- (e) “**Auction Bidder**” shall have the meaning attributed to it in Section 16;
- (f) “**Back-Up Bid**” shall have the meaning attributed to it in Section 13(a);
- (g) “**Back-Up Bidder**” shall have the meaning attributed to it in Section 13(a);
- (h) “**Bid**” shall have the meaning attributed to it in Section 10;
- (i) “**Bidder**” means a Potential Bidder interested in the Opportunity who has executed an NDA with Tacora;
- (j) “**Bid Deadline**” shall have the meaning attributed to it in Section 10;
- (k) “**Business**” shall have the meaning attributed to it in the preamble;
- (l) “**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;
- (m) “**CCAA**” shall have the meaning attributed to it in the preamble;
- (n) “**CCAA Proceedings**” shall have the meaning attributed to it in the preamble;
- (o) “**Court**” shall have the meaning attributed to it in the preamble;
- (p) “**Credit Bid**” shall have the meaning attributed to it in Section 3;
- (q) “**Deposit**” shall have the meaning attributed to it in Section 10(i);
- (r) “**Financial Advisor**” shall have the meaning attributed to it in the preamble;
- (s) “**Initial Order**” shall have the meaning attributed to it in the preamble;
- (t) “**Monitor**” shall have the meaning attributed to it in the preamble;

- (u) “**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/Tacora>;
- (v) “**NDA**” shall have the meaning attributed to it in Section 6(b);
- (w) “**Note Indentures**” means collectively, (a) the indenture dated as of May 11, 2021, and second supplemental indenture dated February 16, 2022, among Tacora and Computershare Trust Company, N.A., as successor to the initial trustee and collateral agent, pursuant to which Tacora issued \$225,000,000 of senior notes bearing interest at a rate of 8.25%; (b) the amended and restated base indenture dated May 11, 2023, as supplemented by the first supplemental indenture dated May 11, 2023, and the second supplemental indenture dated May 11, 2023, pursuant to which Tacora issued \$27,000,000 of senior priority notes bearing interest at a rate of 13.00%, with 9.00% being paid via cash and 4.00% being paid via payment-in-kind; (c) the third supplemental indenture dated June 23, 2023; and (d) the fourth supplemental indenture dated September 8, 2023.
- (x) “**Offtake Agreement**” means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended;
- (y) “**Opening Bid**” shall have the meaning attributed to it in Section 13;
- (z) “**Opportunity**” shall have the meaning attributed to it in Section 2;
- (aa) “**Outside Date**” shall have the meaning attributed to it in Section 5;
- (bb) “**Potential Bidder**” shall have the meaning attributed to it in Section 6(b);
- ~~(cc) “**Preliminary Motions**” shall have the meaning attributed to it in the preamble;~~
- (cc) ~~(dd)~~ “**Property**” shall have the meaning attributed to it in the preamble;
- (dd) ~~(ee)~~ “**Qualified Bid**” shall have the meaning attributed to it in Section 10;
- (ee) ~~(ff)~~ “**Residual Co.**” means a corporation to be incorporated by Tacora in advance of closing the transaction contemplated by the Successful Bid, to which any excluded Property or liabilities will be transferred to, which shall have no issued and outstanding shares;
- (ff) ~~(gg) “**RVO**” shall have the meaning attributed to it in the preamble~~ means a reverse vesting order;
- (gg) ~~(hh)~~ “**Sale Process Order**” shall have the meaning attributed to it in the preamble;
- (hh) ~~(ii)~~ “**Sale Process**” shall have the meaning attributed to it in the preamble;
- (ii) ~~(jj)~~ “**Sale Procedures**” shall have the meaning attributed to it in the preamble;
- (jj) ~~(kk)~~ “**Shares**” shall have the meaning attributed to it in the preamble;

- (kk) ~~(ll)~~ “**Subscription Agreement**” shall have the meaning attributed to it in the preamble;
- (ll) ~~(mm)~~ “**Successful Bid**” shall have the meaning attributed to it in Section 13(a);
- (mm) ~~(nn)~~ “**Successful Bidder**” shall have the meaning attributed to it in Section 13(a);
- (nn) ~~(oo)~~ “**Template APA**” shall have the meaning attributed to it in Section 7;
- (oo) ~~(pp)~~ “**Template Subscription Agreement**” shall have the meaning attributed to it in Section 7; and
- (pp) ~~(qq)~~ “**VDR**” means a confidential virtual data room in relation to the Opportunity that will be made available by Tacora to Bidders that have executed an NDA.

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

Court File

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA
RESOURCES INC.
(Applicant)**

ON
SUPERIOR COURT OF JUSTICE
(COMMERCIAL DIVISION)
PROCEEDINGS COMING ON FOR

O
(SALE PROCEEDINGS)

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

**RESPONDING FACTUM OF CARGILL, INCORPORATED
AND CARGILL INTERNATIONAL TRADING PTE LTD.
RE: TACORA SALE PROCESS AND STAY EXTENSION
MOTION
(returnable June 5, 2024)**

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