

**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)

**FACTUM OF THE APPLICANT
(Re: Reconstituted Preliminary Threshold Motion)
(Returnable June 26, 2024)**

June 20, 2024

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TO: SERVICE LIST

PART I - OVERVIEW¹

1. Tacora previously filed its Preliminary Motion Factum in response to Cargill's "preliminary threshold motion". That motion sought a declaration that Tacora is prohibited from transferring the Offtake Agreement to ResidualCo pursuant to an RVO absent a valid disclaimer pursuant to section 32 of the CCAA. This supplementary factum is filed pursuant to the Endorsement of Justice Kimmel dated May 22 & 24, 2024.
2. Tacora has reconstituted Cargill's "preliminary threshold motion" in order to provide potential bidders in the Sale Process with certainty regarding the legal permissibility of an RVO transaction structure and to avoid protracted back-end litigation following selection of a successful bid in the Sale Process. Tacora seeks a declaration that the Offtake Agreement and the Debt Documents may, as a matter of law, be transferred to and vested in a Residual Co. pursuant to an RVO.
3. As set out in the Preliminary Motion Factum, the recent Supreme Court of Canada authorities of *Callidus* and *Canada North*² clearly confirmed the Court's broad discretionary powers under section 11 of the CCAA and the Court's well accepted jurisdiction to approve an RVO transaction.
4. A hallmark of these RVO transactions is that unwanted contracts, including those with assignment restrictions (in the case of Tacora, the Offtake Agreement and the Debt Documents) can be transferred to a Residual Co. without reliance on the assignment provisions of section 11.3 or the disclaimer provisions of section 32 – all with the expectation that Residual Co. will not perform any of the obligations under the excluded contracts.

¹ Capitalized terms used and not defined herein have the meanings ascribed to them in the Responding Factum of Tacora Resources Inc. dated April 6, 2024 (the "**Preliminary Motion Factum**"), the Affidavit of Natasha Rambaran sworn June 12, 2024, and the Affidavit of Heng Vuong sworn May 31, 2024.

² 9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 [*Callidus*]; Canada v. Canada North Group Inc., 2021 SCC 30 [*Canada North*].

5. At the time that Tacora filed its Preliminary Motion Factum, it noted that sophisticated commercial courts across the country had applied the Court's broad jurisdiction by approving RVOs in 55 cases.

6. Courts have continued to order the transfer of various agreements with assignment restrictions to Residual Cos. in connection with RVO transactions, including financing agreements where the debtor company was the borrower. In the first half of 2024, RVOs have been approved in 14 additional cases³ by commercial courts across the country. Recently, Justice Osborne in *Fresh City Farms* approved an RVO transaction and found that all "Excluded Contracts and Excluded Liabilities will be vested in Residual Co. and include all financing agreements to which the Applicants are borrowers or guarantors", relying on the Court's broad jurisdiction under section 11 of the CCAA.⁴ As financing agreements where the company is the borrower, these agreements could not be disclaimed pursuant to Section 32(9) of the CCAA.

7. If the Offtake Agreement and the Debt Documents cannot, as a matter of law, be transferred to ResidualCo without first being disclaimed, nearly every judge who approved an RVO transaction, including the transfer of such contracts, did so in excess of the Courts' jurisdiction. From a practical perspective, it would also mean that RVO transactions are unavailable for restructuring purposes in all but the rarest of cases, as: (a) every secured and unsecured creditor that has loaned money to the debtor; and (b) every counterparty to a contract with the debtor containing an assignment restriction, would effectively have a veto over any RVO transaction. Each of these outcomes, and therefore Cargill's assertions, is untenable.

³ Attached as Appendix "A" is a list of RVOs approved by courts across the country.

⁴ Endorsement of Justice Osborne dated April 3, 2024 (*Fresh City Farms Inc. et al.*, Court File No. CV-24-00713029-00CL) at paras. 14 and 35. [*Fresh City Farms*]

PART II – ISSUE

8. The sole issue to be determined on this motion is whether this Court has jurisdiction to vest out and transfer the Offtake Agreement and the Debt Documents to ResidualCo pursuant to an RVO without Tacora having first complied with the assignment⁵ or disclaimer⁶ provisions of the CCAA.

PART III – LAW & ARGUMENT

A. This Court has Jurisdiction to Vest Out and Transfer the Offtake Agreement and the Debt Documents to ResidualCo

9. Tacora made detailed submissions in its Preliminary Motion Factum as to why the Court clearly has the broad discretionary authority to vest out and transfer the Offtake Agreement to ResidualCo. For the same reasons, the Court also clearly has the broad discretionary authority to vest out and transfer the Debt Documents to ResidualCo.

10. At the time that Tacora filed its Preliminary Motion Factum, it provided 55 examples of RVOs approved by CCAA courts across the country. Appendix “A” to this Factum provides an additional twelve examples of RVOs approved by CCAA courts across the country (for a total of 67). In 2024, fourteen RVOs have been approved by CCAA courts across Canada (two of which were included in the Preliminary Motion Factum). The Court’s jurisdiction to approve an RVO and vest unwanted contracts in a Residual Co. is without doubt.

11. Appendix “B” to this Factum sets out twelve examples of RVOs granted by CCAA courts where agreements with assignment restrictions were transferred to a Residual Co. The three additional examples since the Preliminary Motion Factum are the RVOs recently granted by this Court in *Fresh City Farms*, *Contract Pharmaceuticals*, and *Athabasca Minerals*.⁷ As seen in Appendix “B”, not only did the contracts being transferred to Residual Co. in these cases contain assignment restrictions, but they were also clearly “financing agreements where the company is the borrower” as contemplated by section 32(9)(c) of the CCAA.

⁵ CCAA, s. 11.3.

⁶ CCAA, s. 32.

⁷ Tacora’s Supplementary Book of Authorities, Tabs A-7, B-5 and C-3.

12. Justice Osborne in *Fresh City Farms*⁸ and Justice Black in *Contract Pharmaceuticals*⁹ did not apply, or even consider the assignment provisions of section 11.3 or the disclaimer provision of section 32. The Court's Endorsement approving the RVO in *Athabasca Minerals* is not publicly available online.

13. In *Fresh City Farms*, Justice Osborne explicitly recognized that the excluded contracts and excluded liabilities that were vested in Residual Co. included "all financing agreements to which the Applicants are borrowers or guarantors."¹⁰ In approving the RVO and the transfer of these financing agreements to a Residual Co., Justice Osborne held that the Court has broad jurisdiction pursuant to section 11 of the CCAA, and that broad jurisdiction has been held to include the jurisdiction to approve an RVO. The Court must only be satisfied that the structure is appropriate, and that analysis is informed by a consideration of the factors enumerated in *Harte Gold*¹¹, the *Soundair*¹² principles, and the statutory factors listed in section 36(3) of the CCAA.¹³

PART IV – ORDER REQUESTED

14. Tacora respectfully requests that this Court should declare that, as a matter of law, the Offtake Agreement and the Debt Documents are capable of being transferred to a ResidualCo pursuant to an RVO transaction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of June, 2024.

/s/ 

STIKEMAN ELLIOTT LLP

⁸ *Fresh City Farms*.

⁹ Endorsement of Justice Black dated April 17, 2024 (*Contract Pharmaceuticals Limited et al.*, Court File No. CV-23-711401-00CL)

¹⁰ *Fresh City Farms* at para. 14.

¹¹ *Harte Gold Corp. (Re)*, 2022 ONSC 653.

¹² *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (Ont. CA).

¹³ *Fresh City Farms* at para. 35.

Appendix "A"

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
1.	Garibaldi At Squamish Limited Partnership And Garibaldi At Squamish Inc. ("GAS")	3-May-2024	<u>Filed Reverse Vesting Order Dated May 3, 2024 - 03 May 2024</u>	Supreme Court of British Columbia
2.	Athabasca Minerals Inc. (TSXV:AMI)	19-Apr-2024	<u>Transaction Approval Reverse Vesting Order Dated April 19, 2024</u>	Court of King's Bench of Alberta
3.	Contract Pharmaceuticals Limited Et Al.	17-Apr-2024	<u>Approval and Reverse Vesting Order Dated April 17, 2024</u> <u>Endorsement of Justice Black Dated April 17, 2024</u>	Ontario Superior Court of Justice (Commercial List)
4.	Free Rein Resources Ltd	17-Apr-2024	<u>Transaction Approval and Reverse Vesting Order</u>	Court of King's Bench of Alberta
5.	CanWest Aerospace Inc. And Can West Global Airparts Inc	10-Apr-2024	<u>Sale Approval And Reverse Vesting Order - Made April 10, 2024</u>	Supreme Court of British Columbia
6.	Griffon Partners Operation Corp. Et Al.	10-Apr-2024	<u>Approval and Reverse Vesting Order, Filed April 12, 2024</u>	Court of King's Bench of Alberta
7.	Goli Nutrition Inc.	9-Apr-2024	<u>Approval and Reverse Vesting Order - April 9, 2024</u>	Quebec Superior Court (Commercial Division)
8.	Fresh City Farm Inc. and Mama Earth Organics Inc.	3-Apr-2024	<u>Approval And Reverse Vesting Order (PDF)</u> <u>Endorsement of Osborne J. Dated April 3, 2024</u>	Ontario Superior Court of Justice (Commercial List)
9.	Phoena Holdings Inc. Et Al.	21-Mar-2024	<u>Approval and Reverse Vesting Order, Dated - 21 Mar 2024</u> <u>Endorsement of Cavanagh,J., Dated - 21 Mar 2024</u>	Ontario Superior Court of Justice (Commercial List)

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
10.	The Black Press Group of Companies	11-Mar-2024	<u>Approval and Vesting Order Dated March 11, 2024</u>	Supreme Court of British Columbia
11.	Humble & Fume Inc. (CSE:HMBL) Et Al.	7-Mar-2024	<u>Approval and Vesting Order Re: BOBHQ, Dated March 7, 2024</u> <u>Approval and Vesting Order Re: Humble Parent Et Al, Dated March 7, 2024</u> <u>Endorsement of Justice Cavanagh, Dated March 7 2024</u>	Ontario Superior Court of Justice (Commercial List)
12.	Independent Energy Corp.	1-Mar-2024	<u>Reverse Vesting Order - 01 Mar 2024</u>	Court of King's Bench Alberta
13.	13517985 Canada Inc. O/A Wholesale Express	12-Jan-2024	<u>Approval and Reverse Vesting Order - 2024-01-12</u>	Quebec Superior Court (Commercial Division)
14.	Validius Power Corp et al	4-Jan-2024	<u>Vesting Order dated January 4, 2024</u> <u>Endorsement of Justice Osborne dated January 4, 2024</u>	Ontario Superior Court of Justice (Commercial List)
15.	Ignite Holdings Inc. et al	9-Nov-23	<u>Approval and Reverse Vesting Order - 2023-11-09</u> <u>ARIO and ARVO Endorsement - 2023-11-09</u>	Ontario Superior Court of Justice (Commercial List)
16.	Next Point Financial, Inc. et al	31-Oct-23	<u>Reverse Vesting Order dated October 31, 2023</u>	Supreme Court of British Columbia
17.	Aleafia Health Inc. et al	30-Oct-23	<u>Approval and Reverse Vesting Order dated October 30, 2023</u> <u>Endorsement of Justice Conway dated October 27, 2023</u>	Ontario Superior Court of Justice (Commercial List)
18.	Woodlore International Inc. and Ébénisterie St-Urbain Ltée	27-Oct-23	<u>EBSU Group – Approval and Reverse Vesting Order – 27-10-2023</u>	Quebec Superior Court (Commercial Division)

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
19.	Rambler Metals and Mining Canada Inc. and 1948565 Ontario Inc.	11-Sep-23	<u>Approval and Reverse Vesting Order dated September 11, 2023</u> <u>Reasons for Decisions dated September 11, 2023</u>	Supreme Court of Newfoundland and Labrador
20.	Fire & Flower Holdings Corp.	29-Aug-23	<u>Approval and Reverse Vesting Order dated August 29, 2023</u> <u>Endorsement of Justice P. Osborne dated August 30, 2023</u>	Ontario Superior Court of Justice (Commercial List)
21.	Swarmio Media Holdings Inc. et al	25-Aug-23	<u>Approval and Vesting Order dated August 25, 2023</u> <u>Endorsement of Justice Cavanagh dated August 25, 2023</u>	Ontario Superior Court of Justice
22.	Southview Gardens BT Ltd. et al	25-Aug-23	<u>Approval and Reverse Vesting Order dated August 25, 2023</u>	Supreme Court of British Columbia
23.	Groupe Selection Inc. et al	5-July-23	<u>Approval and Vesting Order dated July 5, 2023</u>	Quebec Superior Court (Commercial Division)
24.	Dynamic Technologies Group Inc. et al	23-Jun-23	<u>Approval and Reverse Vesting Order dated June 23, 2023</u>	Court of King's Bench of Alberta
25.	Lightbox Enterprises Ltd.	22-Jun-23	<u>Approval and Vesting Order – 22 Jun 2023</u>	Supreme Court of British Columbia
26.	Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc.	7-Jun-23	<u>Approval and Reverse Vesting Order dated June 7, 2023</u>	Supreme Court of Newfoundland and Labrador
27.	Acerus Pharmaceuticals Corporation et al	30-May-23	<u>Approval and Reverse Vesting Order and Extension of Stay of Proceedings dated May 30, 2023</u> <u>Endorsement of Justice Penny re Reverse Vesting Order and Extension of Stay of Proceedings - 30 May 2023</u>	Ontario Superior Court of Justice (Commercial List)

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
28.	Trichome Financial Corp. et al	6-Apr-23	<u>Approval and Vesting Order dated April 6, 2023</u> <u>Endorsement of Justice Conway dated April 6, 2023</u>	Ontario Superior Court of Justice (Commercial List)
29.	MJardin Group, Inc. et al	3-Apr-23	<u>Approval and Reverse Vesting Order dated April 3, 2023</u> <u>Endorsement of Justice Kimmel dated April 3, 2023</u>	Ontario Superior Court of Justice (Commercial List)
30.	Enterra Feed Corporation et al	16-Mar-23	<u>Approval and Reverse Vesting Order dated March 16, 2023</u>	Court of King's Bench of Alberta
31.	Cannapiece Group Inc. et al	10-Feb-23	<u>Approval and Vesting Order dated February 10, 2023</u>	Ontario Superior Court of Justice (Commercial List)
32.	Speakeasy Cannabis Club Ltd. and 10161233 Canada Ltd.	1-Feb-23	<u>Approval and Reverse Vesting Order dated February 1, 2023</u>	Supreme Court of British Columbia
33.	The Flowr Canada Holdings ULC et al	16-Dec-22	<u>Approval and Vesting Order dated December 16, 2023</u> <u>Endorsement of Justice Cavanagh dated December 16, 2022</u>	Ontario Superior Court of Justice (Commercial List)
34.	MPX International Corporation et al	15-Dec-22	<u>Approval and Vesting Order dated December 22, 2022</u> <u>Endorsement of Justice Penny dated December 15, 2022</u>	Ontario Superior Court of Justice (Commercial List)
35.	Just Energy Group Inc.	3-Nov-22	<u>Approval and Vesting Order dated November 3, 2022</u> <u>Endorsement of Justice McEwen dated November 14, 2022</u>	Ontario Superior Court of Justice (Commercial List)
36.	Eve & Co International Holdings Ltd. Et al	7-Oct-22	<u>Approval and Vesting Order dated October 7, 2023</u> <u>Endorsement of Justice Osborne dated October 7, 2023</u>	Ontario Superior Court of Justice (Commercial List)

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
37.	Genesis Integration Inc. and 965591 Alberta Ltd.	14-Sep-22	<u>Approval and Reverse Vesting Order dated September 14, 2022</u>	Court of King's Bench of Alberta
38.	Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership	22-Jul-22	<u>Approval and Vesting Order dated July 22, 2022</u>	Supreme Court of British Columbia
39.	BlackRock Metals Inc. et al	8-Jul-22	<u>Rectified Judgment on the Amended Shareholder Bidder's Application to the extend the Phase 2 Bid Deadline and on the Debtors' Application to Approve a Vesting Order dated July 8, 2022 (rectified July 13, 2022)</u>	Quebec Superior Court (Commercial Division)
40.	Pulse RX Inc. and Family Pharmacy Clinic Inc.	24-May-22	<u>Restructuring Transaction Order dated May 24, 2022</u> <u>Endorsement of Maximum Financial Services v/s Pulse Rx Inc. et al. dated May 24, 2022</u>	Ontario Superior Court of Justice (Commercial List)
41.	Glenogle Energy Inc. and Glenogle Energy LP	12-May-22	<u>Approval and Reverse Vesting Order dated May 12, 2022</u>	Court of Queen's Bench of Alberta
42.	Jam Hospitality Inc. et al	10-May-22	<u>Approval and Reverse Vesting Order dated May 10, 2022</u>	Court of Queen's Bench of Alberta
43.	Balanced Energy Oilfield Services Inc. et al.	30-Mar-22	<u>Approval and Reverse Vesting Order dated March 30, 2022</u>	Court of Queen's Bench of Alberta
44.	Ontario Graphite, Ltd.	14-Mar-22	<u>Approval and Vesting Order dated March 14, 2022</u> <u>Endorsement of Justice Cavanagh dated March 14, 2022</u>	Ontario Superior Court of Justice (Commercial List)
45.	Elcano Exploration Inc. et al	11-Mar-22	<u>Transaction Approval and Reverse Vesting Order dated March 11, 2022</u>	Court of Queen's Bench of Alberta

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
46.	Ayanda Cannabis Corporation	1-Mar-22	<u>Approval and Vesting Order dated March 1, 2022</u>	Ontario Superior Court of Justice (Commercial List)
47.	Medifocus Inc.	8-Feb-22	<u>Reverse Vesting Order dated February 8, 2022</u> <u>Endorsement of Justice Conway dated February 8, 2022</u>	Ontario Superior Court of Justice (Commercial List)
48.	Harte Gold Corp.	28-Jan-22	<u>Approval and Reverse Vesting Order dated January 28, 2022</u> <u>Endorsement of Justice Penny dated February 4, 2022</u>	Ontario Superior Court of Justice (Commercial List)
49.	Junction Craft Brewing Inc.	17-Dec-21	<u>Approval and Vesting Order dated December 17, 2021</u> <u>Endorsement of Justice Penny dated December 20, 2021</u>	Ontario Superior Court of Justice (Commercial List)
50.	Dominion Diamond Mines ULC et al	16-Nov-21	<u>Approval and Reverse Vesting Order dated November 16, 2021</u>	Court of Queen's Bench of Alberta
51.	Clearbeach Resources Inc.	14-Jul-21	<u>Approval and Vesting Order dated July 14, 2021</u> <u>Court Endorsement dated August 16, 2021</u>	Ontario Superior Court of Justice (Commercial List)
52.	North American Lithium Inc.	29-Jun-21	<u>Approval and Vesting Order dated June 29, 2021</u>	Quebec Superior Court (Commercial Division)
53.	Bellatrix Exploration Ltd.	22-Jun-21	<u>Approval and Vesting Order dated June 22, 2011</u>	Court of Queen's Bench of Alberta
54.	Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership	15-Jun-21	<u>Approval and Vesting Order dated June 15, 2021</u>	Supreme Court of British Columbia

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
55.	Salt Bush Energy Ltd.	19-May-21	<u>Reverse Vesting Order dated May 21, 2021</u>	Court of Queen's Bench of Alberta
56.	JMX Contracting Inc. et al	2-Feb-21	<u>Approval and Reverse Vesting Order dated February 2, 2021</u>	Ontario Superior Court of Justice (Commercial List)
57.	TribalScale Inc.	11-Jan-21	<u>Sanction Order dated January 11, 2021</u>	Ontario Superior Court of Justice (Commercial List)
58.	Tidal Health Solutions Ltd.	20-Nov-20	<u>Approval and Vesting Order dated November 20, 2020</u>	Quebec Superior Court (Commercial Division)
59.	Quest University Canada	16-Nov-20	<u>Approval and Vesting Order dated November 16, 2020</u> <u>Reasons for Judgment (Sale Approval) dated December 2, 2020</u>	Supreme Court of British Columbia
60.	Green Relief Inc.	9-Nov-20	<u>Approval and Vesting Order dated November 9, 2020</u>	Ontario Superior Court of Justice (Commercial List)
61.	Cirque du Soleil Canada Inc.	26-Oct-20	<u>Approval and Vesting Order dated October 26, 2020</u>	Quebec Superior Court (Commercial Division)
62.	JMB Crushing Systems Inc. and 2161889 Alberta Ltd.	20-Oct-20	<u>Reverse Vesting Order dated October 20, 2020</u>	Court of Queen's Bench of Alberta
63.	Nemaska Lithium Inc. et al	15-Oct-20	<u>Reverse Vesting Order dated October 15, 2020 (only available in French)</u>	Quebec Superior Court (Commercial Division)

	Debtor	RVO Date	Reverse Vesting Order/Endorsement	Court
64.	Beleave Inc. et al	18-Sep-20	<u>Approval and Vesting Order dated September 18, 2020</u> <u>Endorsement dated September 18, 2020</u>	Ontario Superior Court of Justice (Commercial List)
65.	Comark Holdings Inc. et al	13-Jul-20	<u>Approval and Vesting and CCAA Termination Order dated July 13, 2020</u>	Ontario Superior Court of Justice (Commercial List)
66.	Wayland Group Corp. et al	21-Apr-20	<u>Approval and Vesting Order dated April 21, 2020</u>	Ontario Superior Court of Justice (Commercial List)
67.	Stornoway Diamond Corporation	7-Oct-19	<u>Approval and Vesting Order dated October 7, 2019</u>	Quebec Superior Court (Commercial Division)

Appendix "B"

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned¹⁴ or Disclaimed¹⁵?
TribalScale	January 11, 2021	Professional Services Agreement dated April 26, 2019	20.6 Assignment or Delegation. Contractor may not assign or delegate this Agreement or any of its rights, duties or obligations thereunder to any other person without prior written consent of SXMCV.	All rights and benefits of TribalScale relating to the Agreement were vested in Newco pursuant to paragraph 32 of the RVO	No
FIGR Group	June 10, 2021	Contribution Agreement effective June 10, 2019	25.1 The Recipient shall not assign the Agreement or any part thereof without the prior written consent of the Agency.	The Agreement was transferred to, assumed by and vested absolutely and exclusively in, Residual Co. pursuant to paragraph 5(e) of the RVO	No
Harte Gold	January 28, 2022	Facility Agreement dated August 28, 2020	11.05 Assignment Neither Party may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations, except with the prior written consent of the other Party, provided, however, that the Lender may assign this Agreement to an Affiliate without the requirement to obtain the prior written consent of the Borrower.	The Agreement was transferred to Residual Co. pursuant to paragraph 7(b) of the RVO	No

¹⁴ Pursuant to CCAA, s. 11.3.

¹⁵ Pursuant to CCAA, s. 32.

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
BlackRock Metals	June 1, 2022	Offtake Agreement dated June 22, 2015	14.6 Assignment: This Agreement shall be binding upon and enure for the benefit of the estates, personal representatives or successors of the parties. This Agreement is not assignable by the Seller. The Purchaser may assign the benefit of this Agreement to its lenders and their agents.	Agreements vested absolutely and exclusively in ResidualCo pursuant to paragraph 31(b) of the RVO	No
		Subscription Agreement for Flow-Through Shares dated June 30, 2015	13. Assignment The terms and provisions of this Subscription Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns; provided that, except for the assignment by a Subscriber who is acting as nominee or agent to the beneficial owner and as otherwise herein provided, this Subscription Agreement shall not be assignable by either party without prior written consent of the other party.		No
Trichome	April 6, 2023	Credit Agreement dated May 14, 2021	30. Assignment. No Obligor may assign or transfer its interests or rights hereunder without the Agent's prior written consent.	The Agreement was transferred to, assumed by and vested absolutely and exclusively in certain Residual Cos pursuant to	No

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
				paragraph 7(b)(ii) of the RVO	
Pure Gold	May 29, 2023	Procurement Agreement dated March 27, 2020	24.1 The Owner will have the right, upon written notice to the Supplier and without prejudicing or limiting any other rights or remedies which the Owner may have, to terminate the Contract in whole or in part by reason of any of the following: [...] (c) if the Supplier has made an assignment or subcontracted any part of the Contract without the consent required under Section 11.0.	Agreements were transferred to, assumed by and vested absolutely and exclusively in Residual Co. pursuant to paragraph 26(a) of the RVO	No
		Demand Debenture dated August 6, 2019	4.10 Successors and Assigns: The provisions of this Debenture shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns. The Chargor may not assign or otherwise transfer any of its rights under this Debenture except in accordance with the provisions of the Credit Agreement.		No
		Master Services Agreement dated May 1, 2022	42.1 Assignment. Neither <i>Party</i> may assign the <i>Master Services Agreement</i> or any <i>Contract</i> without the prior written consent of the other <i>Party</i> , which consent		No

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
			<p>may be arbitrarily withheld. Notwithstanding the foregoing, <i>Owner</i> may assign the <i>Master Services Agreement</i> and any <i>Contract</i> to (a) any of its <i>Affiliates</i>, (b) to any third party which amalgamates or merges with <i>Owner</i> or which acquires the <i>Project</i>, or (c) any party which acquires all or substantially all of the assets of <i>Owner</i>, conditional upon the successor covenanting and agreeing to be bound to the <i>Contractor</i> by the provisions of the <i>Master Services Agreement</i> and any applicable <i>Contract</i>. Subject to the foregoing, the <i>Master Services Agreement</i> and any <i>Contract</i> shall enure to the benefit of and be binding upon the <i>Parties</i> and their respective successors and, in the case of <i>Owner</i>, its assigns.</p>		
			<p>17. General. [...] (f) Neither Parent nor Contractor may assign this Guarantee in whole or in part without the prior written consent of Owner. In connection with the assignment of the Master Services Agreement, Owner may assign this Guarantee in whole or in part</p>		No

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
			without the prior written consent of Parent and Contractor. This Guarantee enures to the benefit of and binds the Parties and their respective successors and permitted assigns.		
Acerus	May 30, 2023	Amended and Restated Promissory Note dated June 6, 2022	7. Assignments. This Note may not be sold, assigned or transferred by Maker, or, without the consent of Maker, by any Securityholder.	The Agreement was channelled to, assumed by and vested absolutely and exclusively in Residual Co. pursuant to paragraph 6(b) of the RVO	No
Rambler Metals	September 11, 2023	Notes Purchase Agreement dated October 29, 2021	11.3 [...] the Administrative Agent [...] (ii) may assume that there has been no assignment or transfer by any means by the Noteholders of their rights hereunder, unless and until the Administrative Agent has received a duly completed and executed assignment in form satisfactory to it [...]	The Agreements were transferred to NewCo pursuant to paragraph 7(A)(b) of the RVO	No
		Amended and Restated Purchase Agreement dated July 6, 2022	22. Successors and Assigns This Agreement and all its provisions shall be binding upon and ensure to the benefit of the successors and assignees of the respective parties hereto. Neither party shall assign this agreement without the written consent of the other party, such consent not to be unreasonably withheld.		No

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
Aleafia	October 30, 2023	Unsecured Promissory Note dated December 16, 2022	Neither the Lender nor the Borrower may assign this Note or any of its respective rights or obligations under this Note without the prior written consent of the other party, which consent may be withheld in the sole discretion of such party. Any such assignment of this Note must be made in accordance with applicable securities laws.	The Agreements were channeled to, assumed by and vested absolutely and exclusively in Residual Co. pursuant to paragraph 5(c) of the RVO	No
		Unsecured Promissory Note dated January 24, 2023	Neither the Lender nor the Borrower may assign this Note or any of its respective rights or obligations under this Note without the prior written consent of the other party, which consent may be withheld in the sole discretion of such party. Any such assignment of this Note must be made in accordance with applicable securities laws.		No
		Unsecured Promissory Note dated February 28, 2023	Neither the Lender nor the Borrower may assign this Note or any of its respective rights or obligations under this Note without the prior written consent of the other party, which consent may be withheld in the sole discretion of such party. Any such assignment of this Note must be made in accordance with applicable securities laws.		No

Debtor		RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
Fresh Farms	City	April 3, 2024	Loan and Security Agreement dated August 1, 2022	We may assign all or a part of Our rights and obligations under this Agreement. You may not assign any of Your rights or obligations under this Agreement without Our prior written consent. This Agreement shall be binding upon and enure to the benefit of You and Your successors and permitted assigns.	The Agreements were channeled to, assumed by and vested absolutely and exclusively in Residual Co. pursuant to paragraph 6(c) of the RVO	No
			Finance Loan Agreement dated April 14, 2023	The Borrower hereby covenants to the Lender that it shall do the following: Refrain from any reorganization, assignment, or change of control without the prior written consent of the Lender.		No
			Credit Agreement dated December 16, 2022	This Agreement shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. The Borrower shall not be entitled to assign or transfer any rights or obligations hereunder, without the consent in writing of the Bank.		No
			Promissory Note dated April 14, 2023	This Note shall be binding upon the Borrower and its successors and assigns. This Note is non-negotiable and is assignable only by the Holder. This Note shall not be assignable by the Borrower.		No

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
		DIP Term Sheet dated January 16, 2024	The DIP Lender may assign all or part of its rights and obligations under this Term Sheet without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Term Sheet, any such transfer or assignment being null and void and of no force or effect. This Term Sheet shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.		No
Contract Pharmaceuticals	April 17, 2024	Loan Agreement dated November 22, 2017	This Agreement shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. The Borrower shall not be entitled to assign or transfer any rights or obligations hereunder, without the consent in writing of the Bank. The Bank may assign or transfer all or any part of its rights and obligations under this Agreement to any Person. The Bank may disclose to potential or actual assignees or transferees confidential information regarding the	The Agreements were channeled to, assumed by and vested absolutely and exclusively in Residual Co. pursuant to paragraph 8(c) of the RVO	No

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
			Borrower and any Guarantor if applicable, (including, any such information provided by the Borrower, and any Guarantor if applicable, to the Bank) and shall not be liable for any such disclosure.		
		Loan Agreement dated March 6, 2018	This Agreement will be binding upon and enure to the benefit of the parties and their respective successors and assigns. Neither the Borrower nor any Guarantor may assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of EDC.		No
		Loan Facility Agreement dated December 6, 2018	This Agreement shall bind and inure to the respective successors and assigns of the Parties, except that no Loan Party may assign or otherwise transfer all or any part of their rights or obligations (including the Obligations and the CVR Obligations) under the Loan Documents or the Contingent Value Right without the prior written consent of all of the Lenders, and any prohibited assignment by the Loan Parties shall be absolutely void ab initio.		No

Debtor	RVO Date	Agreement(s)	Assignment Restriction Provision	Outcome	Assigned ¹⁴ or Disclaimed ¹⁵ ?
Athabasca Minerals	April 19, 2024	Term Loan Agreement dated February 16, 2023	The Borrower may not assign or otherwise encumber its rights or obligations hereunder. Until April 30, 2023, the Lender may not assign or otherwise encumber its rights or obligations hereunder, provided that, at any time following April 30, 2023, the Lender may assign the Loan and the Loan Documents, or any matter related thereto upon providing the Borrower with five (5) Business Days prior written notice.	The Agreements were channeled to, assumed by and vested absolutely and exclusively in Residual Co. pursuant to paragraph 11(b) of the RVO	No

**SCHEDULE “A”
LIST OF AUTHORITIES**

Cases

1. 9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 (CanLII), [2020] 1 SCR 521
2. Canada v. Canada North Group Inc., 2021 SCC 30
3. Harte Gold Corp. (Re), 2022 ONSC 653
4. Royal Bank of Canada v Soundair Corp., 1991 CanLII 2727 (Ont. CA)

**SCHEDULE “B”
RELEVANT LEGISLATION**

Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36

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.

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.

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.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company’s insolvency, the commencement of proceedings under this Act or the company’s failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order

(5) The applicant is to send a copy of the order to every party to the agreement.

Disclaimer or rescission of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or rescind any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or rescission.

Court may prohibit disclaimer or resiliation

(2) Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

Court-ordered disclaimer or resiliation

(3) If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

Factors to be considered

- (4) In deciding whether to make the order, the court is to consider, among other things,
- (a) whether the monitor approved the proposed disclaimer or resiliation;
 - (b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
 - (c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

Date of disclaimer or resiliation

- (5) An agreement is disclaimed or resiliated
- (a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);
 - (b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or
 - (c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

Intellectual property

(6) If the company has granted a right to use intellectual property to a party to an agreement, the disclaimer or resiliation does not affect the party's right to use the intellectual property — including the party's right to enforce an exclusive use — during the term of the agreement, including any period for which the party extends the agreement as of right, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

Loss related to disclaimer or resiliation

(7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

Reasons for disclaimer or resiliation

(8) A company shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer or resiliation within five days after the day on which the party requests them.

Exceptions

(9) This section does not apply in respect of

- (a) an eligible financial contract;
- (b) a collective agreement;
- (c) a financing agreement if the company is the borrower; or
- (d) a lease of real property or of an immovable if the company is the lessor.

Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act), SOR/2007-257

1 The following definitions apply in these Regulations.

derivatives agreement means a financial agreement whose obligations are derived from, referenced to, or based on, one or more underlying reference items such as interest rates, indices, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, climatic variables, bandwidth, freight rates, emission rights, real property indices and inflation or other macroeconomic data and includes

- (a) a contract for differences or a swap, including a total return swap, price return swap, default swap or basis swap;
- (b) a futures agreement;
- (c) a cap, collar, floor or spread;
- (d) an option; and
- (e) a spot or forward. (*contrat dérivé*)

financial intermediary means

- (a) a clearing agency; or
- (b) a person, including a broker, bank or trust company, that in the ordinary course of business maintains securities accounts or futures accounts for others. (*intermédiaire financier*)

2 The following kinds of financial agreements are prescribed for the purpose of the definition **eligible financial contract** in subsection 2(1) of the [Companies' Creditors Arrangement Act](#):

- (a) a derivatives agreement, whether settled by payment or delivery, that
 - (i) trades on a futures or options exchange or board, or other regulated market, or

- (ii)** is the subject of recurrent dealings in the derivatives markets or in the over-the-counter securities or commodities markets;
- (b)** an agreement to
 - (i)** borrow or lend securities or commodities, including an agreement to transfer securities or commodities under which the borrower may repay the loan with other securities or commodities, cash or cash equivalents,
 - (ii)** clear or settle securities, futures, options or derivatives transactions, or
 - (iii)** act as a depository for securities;
- (c)** a repurchase, reverse repurchase or buy-sellback agreement with respect to securities or commodities;
- (d)** a margin loan in so far as it is in respect of a securities account or futures account maintained by a financial intermediary;
- (e)** any combination of agreements referred to in any of paragraphs (a) to (d);
- (f)** a master agreement in so far as it is in respect of an agreement referred to in any of paragraphs (a) to (e);
- (g)** a master agreement in so far as it is in respect of a master agreement referred to in paragraph (f);
- (h)** a guarantee of, or an indemnity or reimbursement obligation with respect to, the liabilities under an agreement referred to in any of paragraphs (a) to (g); and
- (i)** an agreement relating to financial collateral, including any form of security or security interest in collateral and a title transfer credit support agreement, with respect to an agreement referred to in any of paragraphs (a) to (h).

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

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT
(RECONSTITUTED PRELIMINARY
THRESHOLD MOTION)**

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