

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

BETWEEN:

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

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

Applicants

**MOTION RECORD OF THE APPLICANTS
(Returnable February 9, 2023)**

February 8, 2023

AIRD & BERLIS LLP

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

Steven Graff (LSO# 31871V)

Tel: 416-865-7726
Email: sgraff@airdberlis.com

Miranda Spence (LSO# 60621M)

Tel: 416-865-3414
Email: mspence@airdberlis.com

Tamie Dolny (LSO# 77958U)

Tel: 647-426-2306
Email: tdolny@airdberlis.com

Samantha Hans (LSO# 84737H)

Tel: 437-880-6105
Email: shans@airdberlis.com

Lawyers for the OTE Group

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
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AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL
TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

Applicants

**SERVICE LIST
(FEBRUARY 8, 2023)**

<u>PARTY</u>	<u>CONTACT</u>
AIRD & BERLIS LLP Brookfield Place 181 Bay Street , Suite 1800 Toronto, ON M5J 2T9 Lawyers for the Applicants	Steven Graff Tel: 416-865-7726 Email: sgraff@airdberlis.com Miranda Spence Tel: 416-865-3414 Email: mspence@airdberlis.com Tamie Dolny Tel: 647-426-2306 Email: tdolny@airdberlis.com Samantha Hans Tel: 437-880-6105 Email: shans@airdberlis.com

<p>KPMG INC. Bay Adelaide Centre 333 Bay Street, Suite 4600 Toronto, ON M5H 2S5</p> <p>The Monitor</p>	<p>Duncan Lau Tel: 416-476-2184 Email: duncanlau@kpmg.ca</p> <p>Paul Van Eyk Tel: 647-622-6586 Email: pvaneyk@kpmg.ca</p> <p>Tahreem Fatima Tel: 647-777-5283 Email: tahreemfatima@kpmg.ca</p> <p>Chris Gard Tel: 416-777-8214 Email: cgard@kpmg.ca</p>
<p>BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, ON M5X 1A4</p> <p>Lawyers for the Monitor</p>	<p>Raj S. Sahni Tel: 416-777-4804 Email: sahnir@bennettjones.com</p>
<p>ATTORNEY GENERAL OF CANADA Department of Justice of Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p>	<p>Diane Winters Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p>
<p>ONTARIO MINISTRY OF FINANCE INSOLVENCY UNIT 6th Floor, 33 King Street West, Oshawa, ON L1H 8H5</p>	<p>Email: Insolvency.Unit@ontario.ca</p>

<p>MINISTRY OF FINANCE Account Management and Collections Branch 33 King Street West, 4th floor Oshawa ON L1H 8H5</p>	<p>Ron Hester Tel: 905-441-5871 Email: Ron.Hester@Ontario.ca</p> <p>Enzo Sorgente Tel: 905-243-5314 Email: Enzo.Sorgente@ontario.ca</p> <p>Dave Gerald Tel: 289-928-0976 Email: Dave.Gerald@ontario.ca</p> <p>Steven Groeneveld Tel: 905-431-8380 Email: Steven.Groeneveld@ontario.ca</p>
<p>MINISTRY OF THE ATTORNEY GENERAL Crown Law Office (Civil) 720 Bay Street, 8th Floor Toronto, ON M7A 2S9</p>	<p>D. Brent McPherson Tel: 647-467 7743 Email: brent.mcpherson@ontario.ca</p> <p>Adam Mortimer Tel: 416-559-0216 Email: adam.mortimer@ontario.ca</p>
<p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide St. W Toronto ON M5H 4E3</p> <p>Lawyers for the Royal Bank of Canada</p>	<p>Roger Jaipargas Tel: 416-367-6266 Email: rjaipargas@blg.com</p>
<p>KIMBERLY THOMAS PROFESSIONAL CORPORATION Barrister & Solicitor Six Nations of the Grand River Territory 1786 Chiefswood Road Ohsweken, ON N0A 1M0</p>	<p>Kimberly Thomas Tel: 519-445-2788 Email: kthomas@kimberlythomas.com</p>

<p>TRANCOURT INC. 2010 Winston Park Drive, Suite 200, Oakville, ON L6H 5R7</p> <p>and</p> <p>2421 Bristol Circle, Suite 206 Oakville ON L6H 5S9</p>	<p>Carlos Duarte Tel: 416-723-6699 Email: cduarte@trancourt.com</p>
<p>ESSEX LEASE FINANCIAL CORPORATION 10768 74th Street SE Calgary AB T2C 5N6</p>	<p>Tel: 403-693-4060 Email: info@elfc.ca</p>
<p>WILSON VUKELICH LLP 60 Columbia Way, 7th Floor, Markham ON L3R 0C9</p> <p>Lawyers to Essex Lease Financial Corporation</p>	<p>Christopher A.L. Caruana Tel: 905-944-2952 Email: ccaruana@wvllp.ca</p>
<p>VFS CANADA INC. 238 Wellington St. E, 3rd Floor Aurora ON L4G 1J5</p>	<p>Jason Cowley Tel: 905-726-5568 Email: Jason.Cowley@volvo.com</p> <p>Aarin Welch Email: aarin.welch@volvo.com</p> <p>Marie Hassen Email: marie.hassen.2@consultant.volvo.com</p>
<p>CWB NATIONAL LEASING INC. 1525 Buffalo Place Winnipeg MB R3T 1L9</p>	<p>Tel: 1-800-882-0560 Email: customerservice@cwbnationalleasing.com</p>
<p>MERIDIAN ONECAP CREDIT CORP. 4710 Kingsway, Suite 1500 Burnaby BC V5H 4M2</p>	<p>Tel: 604-646-2200 Email: client.service@meridianonecap.ca</p>

<p>ZURICH INSURANCE COMPANY LTD. Surety Department First Canadian Place 100 King Street West, Suite 5500 Toronto ON M5X 1C9</p>	<p>David Saltmarsh Tel: 416-586-2974 Email: david.saltmarsh1@zurich.com</p> <p>Jordan Walker Email: jordan.walker@zurich.com</p> <p>Brent McAllister Email: brent.mcallister@zurich.com</p>
<p>TOM MARACLE 728 Ridge Road Tyendinaga Territory ON K0K 1X0</p>	
<p>JASON MARACLE 373 Wyman Road Tyendinaga Territory ON K0K 1X0</p>	
<p>CHI-ZHIINGWAAK BUSINESS PARK INC. 25 Reserve Road Naughton ON P0M 2M0</p>	
<p>GLENN PAGE 118 Main Street North P O Box 1063 Hamilton ON L0R 2H0</p>	
<p>STOCKWOODS LLP BARRISTERS TD North Tower 77 King Street W, Suite 4130 P.O. Box 140 Toronto ON M5K 1H1</p> <p>Lawyers for Glenn Page</p>	<p>Fredrick Schumann Tel: 416-593-2490 Email: fredricks@stockwoods.ca</p>

<p>MANDY COX 118 Main Street North P O Box 1063 Hamilton ON L0R 2H0</p>	
<p>GOLDBLATT PARTNERS LLP Barristers & Solicitors 1039-20 Dundas Street West Toronto, ON M5G 2C2</p> <p>Lawyers for Mandy Cox, 2745384 Ontario Inc., Alderville Gas Ltd., Kellie Hodgins and Gen 7 Brands International Inc.</p>	<p>Jessica Orkin Tel: 416-979-4381 Email: jorkin@goldblattpartners.com</p> <p>Natai Shelsen Tel: 416-979-4384 Email: nshelsen@goldblattpartners.com</p>
<p>BRIAN PAGE 420 Cambridge Street Winnipeg MB R3M 3G7</p>	
<p>MCCAGUE BORLACK LLP Barristers & Solicitors Suite 2700, Box 136 The Exchange Tower 130 King Street West Toronto ON M5X 1C7</p> <p>Lawyers for Brian Page and 11222074 Canada Ltd.</p>	<p>Jana Smith Tel: 416-860-0001 Email: jsmith@mccagueborlack.com</p>
<p>KELLIE HODGINS 2010 Cleaver Avenue #112 Burlington ON L7M 4C1</p>	
<p>2658658 ONTARIO INC. c.o.b.a. GPMC HOLDINGS 118 Main Street North Waterdown ON L0R 2H0</p>	

<p>2745384 ONTARIO INC. c.o.b.a. GPMC MANAGEMENT SERVICES and PICASSOFISH CREATIVE DESIGN 118 Main Street North Waterdown ON L0R 2H0</p>	
<p>GEN 7 BRANDS INTERNATIONAL INC. Bella Rosa Road Rodney Bay, Gros Islet St. Lucia c/o McNamara Corporate Services Inc.</p>	
<p>ALDERVILLE GAS LTD. 118 Main Street North Waterdown ON L0R 2H0</p>	
<p>2700287 ONTARIO INC. 118 Main Street North Waterdown ON L0R 2H0</p>	
<p>OTE USA LLC 40600 Ann Arbor Road East Suite 201 Plymouth Michigan USA c/o The Corporation Company 48170-465</p>	
<p>WARNER NORCROSS + JUDD LLP 45000 River Ridge Dr., Ste. 300 Clinton Twp., Michigan USA 48038-5582</p> <p>Lawyers for OTE USA LLC</p>	<p>David W. MacDonald Tel: 586-303-4190 Email: dmacdonald@wnj.com</p>
<p>OT ENERGY INC. 1504 East Grand River Avenue, Suite 200 East Lansing Michigan USA 48823</p>	

JOHN DOE G7 SARNIA 21 Indian Road South Sarnia ON N7T 7H5	
JOHN DOE G7 WALPOLE 1078 Snye Road Wallaceburg ON N8A 4K9	
JOHN DOE G7 ROSENEATH 8754 Highway 45 Roseneath ON K0K 2X0	
JOHN DOE G7 CURVE LAKE 1419 Mississauga Road Curve Lake ON K0L 1R0	
JOHN DOE G7 FRENCH RIVER 49 Beckanon Road Britt ON P0G 1A0	
JOHN DOE G7 NORTH BAY 1 Jocko Point Road North Bay ON P1B 8G5	
JOHN DOE G7 SAULT 482 Gran Street Sault St. Marie ON P6A 0C4	
7069847 CANADA LIMITED 1180 Fife Street Winnipeg MB R2X 2N6	
11222074 CANADA LTD. 1700 – 360 Main Street Winnipeg MB R3C 3Z3	

<p>CONSOLIDATED LOGISTICS INC. 2502 Elm Street Sudbury ON P3E 4R6</p>	
<p>MARATHON PETROLEUM COMPANY 539 South Main Street Findlay Ohio USA 45850</p>	
<p>GREENERGY USA 9 Greenway Plaza, Suite 1260 Houston Texas USA 77046</p>	
<p>WEAVER SIMMONS Brady Square 233 Brady Street, Suite 400 Sudbury ON P3B 4H5</p> <p>Lawyers for Consolidated Logistics Inc.</p>	<p>Rose Muscolino Tel: 705-671-3257 Email: RMuscolino@weaversimmons.com</p>
<p>GARDINER ROBERTS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3600 Toronto ON M5H 4E3</p> <p>Lawyers for Claybar Contracting Inc.</p>	<p>Chris Junior Tel: 416-865-4011 Email: cjunior@grllp.com</p>
<p>O'NEILL DELORENZI NANNE Barristers & Solicitors 116 Spring Street Sault Ste. Marie ON P6A 3A1</p> <p>Lawyers for McDougall Energy Inc.</p>	<p>Brian L. DeLorenzi Tel: 705-949-6901 Email: bdelorenzi@saultlawyers.com</p>

EXPORT DEVELOPMENT CANADA

150 Slater Street
Ottawa ON
K1A 1K3

Ana Beites

Tel: 613-597-7846

Email: abeites@edc.ca

Anna Piekarska

Email: apiekarska@edc.ca

Ryan Clark

Email: rclark2@edc.ca

Email List:

sgraff@airdberlis.com; mspence@airdberlis.com; tdolny@airdberlis.com;
shans@airdberlis.com; duncanlau@kpmg.ca; pvaneyk@kpmg.ca; tahreemfatima@kpmg.ca;
cgard@kpmg.ca; sahnir@bennettjones.com; diane.winters@justice.gc.ca;
Insolvency.Unit@ontario.ca; Ron.Hester@Ontario.ca; Enzo.Sorgente@ontario.ca;
Dave.Gerald@ontario.ca; Steven.Groeneveld@ontario.ca; Brent.McPherson@ontario.ca;
adam.mortimer@ontario.ca; rjaipargas@blg.com; kthomas@kimberlythomas.com;
cduarte@transcourt.com; info@elfc.ca; ccaruana@wvllp.ca; Jason.Cowley@volvo.com;
aarin.welch@volvo.com; marie.hassen.2@consultant.volvo.com;
customerservice@cwbnationalleasing.com; client.service@meridianonecap.ca;
david.saltmarsh1@zurich.com; jordan.walker@zurich.com; brent.mcallister@zurich.com;
fredricks@stockwoods.ca; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com;
jsmith@mccagueborlack.com; dmacdonald@wnj.com; RMuscolino@weaversimmons.com;
cjunior@grllp.com; bldelorenzi@saultlawyers.com; abeites@edc.ca; apiekarska@edc.ca;
rclark2@edc.ca

51911647.2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

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Applicants

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TAB 1

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

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
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Applicants

**NOTICE OF MOTION
(returnable February 9, 2023)**

The Applicants, Original Traders Energy Ltd. ("**OTE GP**"), 2496750 Ontario Inc. ("**249**"), OTE Logistics LP ("**OTE Logistics**") and Original Traders Energy LP ("**OTE LP**" and with OTE GP, 249 and OTE Logistics, collectively the "**Applicants**" and the "**OTE Group**", variously) will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Thursday, February 9, 2023 at 9:30 a.m. by videoconference.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1 (1);
- in writing as an opposed motion under subrule 37.12.1 (4);
- in person;
- by telephone conference;
- by video conference.

THIS MOTION IS FOR:

1. An amended and restated initial order substantially in the form included in the Motion Record which, *inter alia*:
 - (a) Extends the Initial Stay Period (as defined below) to April 28, 2023 (the “**Stay Extension**”); and
 - (b) Increases the Directors’ Charge (as defined below) to \$2,250,000.00.
2. Such further and other relief as this Court may deem just and equitable.

THE GROUNDS FOR THIS MOTION ARE:

3. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Affidavit of Scott Hill sworn January 27, 2022 (the “**First Hill Affidavit**”);

Background

4. The OTE Group functions as a wholesale fuel supplier which services mainly First Nations’ petroleum stations and First Nations’ communities across Ontario;
5. The OTE Group services a total of over 30 gas stations throughout Southern Ontario, with a majority of these gas stations situated on 9 different First Nations reserves in Southern Ontario;
6. The liabilities faced by the OTE Group were triggered by alarming executive misconduct which threatens the survival of the OTE Group, arising from the actions of the former president of OTE GP, Glenn Page (“**Page**”) among other of his associates and entities;
7. The OTE Group is missing significant portions of their books and records due to Page’s and others’ misconduct. Financial information and records of the OTE Group for the entire period from January of 2021 to August of 2022 are unreliable and incomplete;
8. On January 30, 2023, the Honourable Justice Osborne granted an initial order (the “**Initial Order**”) which, *inter alia*, provided protection to the OTE Group under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”);

9. The Applicants understand that the Monitor is likely to be supportive of the relief sought at the Comeback Hearing;

Extension of Stay of Proceedings

10. Pursuant to the Initial Order, a 10-day stay of proceedings was granted (the “**Initial Stay Period**”);
11. During the Initial Stay Period, the Applicants have acted, and continue to act, in good faith and with due diligence to, among other things, operate in the ordinary course and communicate with stakeholders;
12. The Stay Extension is required to provide stability for the Applicants and to enable their restructuring;
13. It is forecasted that the Applicants will have sufficient liquidity during the Stay Extension to fund obligations and the costs of the CCAA proceedings;
14. The Applicants understand that the Monitor is likely to support this relief, and no creditor will be materially prejudiced by the Stay Extension;

Increase to Directors’ Charge

15. The Initial Order provided for the following Priority Charges in the below order of priority, except that the Priority Charges shall not rank in priority to the existing RBC Security:
 - (a) Administration Charge of \$500,000; and
 - (b) Directors’ Charge of \$250,000;
16. The relief sought regarding the Priority Charges was limited to the amount reasonably necessary for the OTE Group to continue operations in the ordinary course of business during the initial 10-day stay;

17. The requested increase to the Directors' Charge reflects an amount reasonably necessary and recommended by the Monitor for the purposes of the Extended Stay Period;
18. The Directors' Charge is necessitated as the potential liability of the directors and officers of the Applicants for payroll source deductions and taxes, among other things, increases due to the extended period of time that the officers and directors will continue in their role respective roles. It is critical that the officers and directors remain in their roles during the Extended Stay Period, to ensure the ongoing operation of the business;
19. The Applicants are of the view that the proposed increase to the Directors' Charge is reasonably necessary at this time to address circumstances that could lead to potential directors' liability during the Stay Extension, and understands that the Monitor will provide further support and comment on the need for the increased amounts in their future report to this Honourable Court;
20. The Applicants seek to increase the Directors' Charge to \$2,250,000, which is comprised of (i) \$250,000 for payroll source deductions and (ii) \$2,000,000 for sales tax;

STATUTORY REGIME

21. The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;
22. Rules 1.04, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, along with any other relevant provisions therein;
23. Section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended, along with any other relevant provisions therein; and
24. Such further and other grounds as counsel may advise;

DOCUMENTARY EVIDENCE

25. The Affidavit of Scott Hill sworn February 7, 2023 and the exhibits attached thereto;
26. The First Hill Affidavit and the exhibits attached thereto;

27. The First Report of the Monitor dated February 8, 2023;
28. The Pre-Filing Report of the Monitor dated January 30, 2023; and
29. Such further and other material as counsel may advise.

Date: February 8, 2023

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

Steven Graff (LSO#: 31871V)
Email: sgraff@airdberlis.com

Miranda Spence (LSO#: 60621M)
Email: mspence@airdberlis.com

Tamie Dolny (LSO#: 77958U)
Email: tdolny@airdberlis.com

Samantha Hans (LSO# 84737H)
Email: shans@airdberlis.com

Lawyers for the OTE Group

TO: SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable February 9, 2023)**

AIRD & BERLIS LLP

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

Steven Graff (LSO# 31871V)
Miranda Spence (LSO# 60621M)
Tamie Dolny (LSO#77958U)
Samantha Hans (LSO# 84737H)

Tel: 416.863.1500
Fax: 416.863.1515

Lawyers for the OTE Group

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 9TH
)
JUSTICE OSBORNE) DAY OF FEBRUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**
AND 2496750 ONTARIO INC. (each, an “**Applicant**” and
collectively, the “**Applicants**”)

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order amending and restating the Initial Order (the “**Initial Order**”) dated January 30, 2023 (the “**Initial Filing Date**”) was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the “**Hill Affidavit**”), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the “**Second Hill Affidavit**”), the third affidavit of Scott Hill sworn February 7, 2023 and the Exhibits thereto (the “**Third Hill Affidavit**”) the pre-filing report of the proposed monitor, KPMG Inc. (“**KPMG**”) dated January 27, 2023 (the “**Pre-Filing Report**”), the first report of KPMG dated February 8, 2023 (the “**First Report**”) and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the “**Partnerships**” and collectively with the Applicants, the “**OTE Group**”), counsel for Royal Bank of Canada (“**RBC**”) and such other

counsel who were present, and on reading the consent of KPMG to act as the monitor (the “**Monitor**”),

SERVICE

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

DEFINED TERMS

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the OTE Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the OTE Group shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or

employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the OTE Group shall be entitled to continue to utilize the central cash management system currently in place as described in the Hill Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any future Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and

- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group; and
- (c) payment for goods or services actually supplied to the OTE Group following the date of this Order.

9. THIS COURT ORDERS that the OTE Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the OTE Group in connection with the sale of goods and services by the OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the OTE Group.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the OTE Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

CARVE-OUT

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

RESTRUCTURING

13. THIS COURT ORDERS that the OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the OTE Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. THIS COURT ORDERS that the OTE Group shall provide each of the relevant landlords with notice of the OTE Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the OTE Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the OTE Group, or by further Order of this Court upon application by the OTE Group on at least two (2) days notice to such landlord and any such secured creditors. If the OTE Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the OTE Group's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the OTE Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the OTE Group in respect of such lease or leased premises, provided that nothing

herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE OTE GROUP OR THE PROPERTY

16. THIS COURT ORDERS that until and including April 28, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court, tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

NO EXERCISE OF RIGHTS OR REMEDIES

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the OTE Group to carry on any business which the OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial and federal regulators and/or border authorities that have authority with respect to the importation and exportation of fuel, petroleum, diesel and/or gasoline against or in

respect of the OTE Group or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court on notice to the Service List, such that no licenses held by any of the OTE Group may be revoked or expire during the Stay Period and same are further extended during the course of these CCAA proceedings.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the OTE Group, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the OTE Group, and that the OTE Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the OTE Group in accordance with normal payment practices of the OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the OTE Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor

shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the OTE Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the OTE Group shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the OTE Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of the OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$2,250,000**, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. THIS COURT ORDERS that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the OTE Group in its development of the Plan and any amendments to the Plan;
- (d) assist the OTE Group, to the extent required by the OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**");

- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the OTE Group with information provided by the OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the OTE Group may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the OTE Group on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant, retainers in the approximate amount of **\$950,000** to be held by them as security for payment of their respective fees and disbursements outstanding for certain pre- and post-filing costs.

34. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000**, as

security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. THIS COURT ORDERS that the priorities of the existing security held by RBC (the “**RBC Security**”), the Directors’ Charge and the Administration Charge, as among them, shall be as follows:

First – RBC Security;

Second – Administration Charge; and

Third – Directors’ Charge.

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the RBC Security (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. THIS COURT ORDERS that each of the Directors’ Charge, the Administration Charge and the RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

39. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge or the RBC Security, unless the OTE Group also obtains the prior written

consent of the Monitor and the beneficiaries of the Directors' Charge, the RBC Security and the Administration Charge, or further Order of this Court.

40. THIS COURT ORDERS that the Directors' Charge, the Administration Charge and the RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the OTE Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the OTE Group entering into the creation of the Charges; and
- (c) the payments made by the OTE Group pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the OTE Group's interest in such real property leases.

SERVICE AND NOTICE

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>’.

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the OTE Group and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the OTE Group's creditors or other interested parties at their respective addresses as last shown on the records of the OTE Group and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. THIS COURT ORDERS that the OTE Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the OTE Group, the Business or the Property.

48. 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, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

49. THIS COURT ORDERS that each of the OTE Group and the Monitor be at liberty and is 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. THIS COURT ORDERS that any interested party (including the OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days

notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

SEALING RELIEF

53. THIS COURT ORDERS that the Second Hill Affidavit shall be and is hereby sealed, kept confidential, and shall not form part of the public record until the earlier of (a) the vacating of the sealing order appended as Exhibit B to the Second Hill Affidavit (the "**Foreign Sealing Order**"), without being replaced by another sealing order granted by a court of a foreign jurisdiction, (b) the vacating of any sealing order that may granted by a court of a foreign jurisdiction to replace the Foreign Sealing Order, or (c) further Order of this Court.

INITIAL ORDER AND INITIAL FILING DATE

54. THIS COURT ORDERS that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for above.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place

181 Bay Street

Suite 1800

Toronto, ON M5J 2T9

Steven Graff (LSO# 31871V)

Miranda Spence (LSO# 60621M)

Tamie Dolny (LSO#77958U)

Samantha Hans (LSO# 84373H)

Tel: 416.863.1500

Fax: 416.863.1515

Lawyers for the OTE Group

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) ~~MONDAY~~THURSDAY, THE ~~30~~
JUSTICE OSBORNE) 9TH
)
DAY OF ~~JANUARY~~FEBRUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**
AND 2496750 ONTARIO INC. (each, an “**Applicant**” and
collectively, the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

THIS ~~APPLICATION~~MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order amending and restating the Initial Order (the “Initial Order”) dated January 30, 2023 (the “Initial Filing Date”) was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the “**Hill Affidavit**”), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the “**Second Hill Affidavit**”), the third affidavit of Scott Hill sworn February 7, 2023 and the Exhibits thereto (the “Third Hill Affidavit”) the pre-filing report of the proposed monitor, KPMG Inc. (“**KPMG**”) dated January 27, 2023 (the “**Pre-Filing Report**”), the first report of KPMG dated February 8, 2023 (the “First Report”) and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the “**Partnerships**” and collectively with the Applicants, the

“**OTE Group**”), counsel for Royal Bank of Canada (“**RBC**”) and such other counsel who were present, and on reading the consent of KPMG to act as the monitor (the “**Monitor**”),

SERVICE

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

DEFINED TERMS

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the OTE Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the OTE Group shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or

employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the OTE Group shall be entitled to continue to utilize the central cash management system currently in place as described in the Hill Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any future Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and

- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group; and
- (c) payment for goods or services actually supplied to the OTE Group following the date of this Order.

9. THIS COURT ORDERS that the OTE Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the OTE Group in connection with the sale of goods and services by the OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the OTE Group.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the OTE Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

CARVE-OUT

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

RESTRUCTURING

13. THIS COURT ORDERS that the OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the OTE Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. THIS COURT ORDERS that the OTE Group shall provide each of the relevant landlords with notice of the OTE Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the OTE Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the OTE Group, or by further Order of this Court upon application by the OTE Group on at least two (2) days notice to such landlord and any such secured creditors. If the OTE Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the OTE Group's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the OTE Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the OTE Group in respect of such lease or leased premises, provided that nothing herein

shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE OTE GROUP OR THE PROPERTY

16. THIS COURT ORDERS that until and including ~~February 9~~April 28, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court, tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

NO EXERCISE OF RIGHTS OR REMEDIES

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the OTE Group to carry on any business which the OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial and federal regulators and/or border authorities that have authority with respect to the importation and exportation of fuel, petroleum, diesel and/or gasoline against or in respect of the OTE Group or their respective employees and representatives acting in such

capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court on notice to the Service List, such that no licenses held by any of the OTE Group may be revoked or expire during the Stay Period and same are further extended during the course of these CCAA proceedings.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the OTE Group, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the OTE Group, and that the OTE Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the OTE Group in accordance with normal payment practices of the OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the OTE Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any

monies or otherwise extend any credit to the OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the OTE Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the OTE Group shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the OTE Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of the OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of ~~\$250,000~~ \$250,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. THIS COURT ORDERS that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the OTE Group in its development of the Plan and any amendments to the Plan;
- (d) assist the OTE Group, to the extent required by the OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**");

- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the OTE Group with information provided by the OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the OTE Group may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the OTE Group on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant, retainers in the approximate amount of **\$950,000** to be held by them as security for payment of their respective fees and disbursements outstanding for certain pre- and post-filing costs.

34. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000**, as

security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. THIS COURT ORDERS that the priorities of the existing security held by RBC (the “**RBC Security**”), the Directors’ Charge and the Administration Charge, as among them, shall be as follows:

First – RBC Security;

Second – Administration Charge; and

Third – Directors’ Charge.

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the RBC Security (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. THIS COURT ORDERS that each of the Directors’ Charge, the Administration Charge and the RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

39. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge or the RBC Security, unless the OTE Group also obtains the prior written consent of the Monitor and the beneficiaries of the Directors’ Charge, the RBC Security and the Administration Charge, or further Order of this Court.

40. THIS COURT ORDERS that the Directors' Charge, the Administration Charge and the RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the OTE Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the OTE Group entering into the creation of the Charges; and
- (c) the payments made by the OTE Group pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the OTE Group's interest in such real property leases.

SERVICE AND NOTICE

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it

publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding.

Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at

<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>’.

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the OTE Group and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the OTE Group’s creditors or other interested parties at their respective addresses as last shown on the records of the OTE Group and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. THIS COURT ORDERS that the OTE Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the OTE Group, the Business or the Property.

48. 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, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

49. THIS COURT ORDERS that each of the OTE Group and the Monitor be at liberty and is 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. THIS COURT ORDERS that any interested party (including the OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

SEALING RELIEF

53. THIS COURT ORDERS that the Second Hill Affidavit shall be and is hereby sealed, kept confidential, and shall not form part of the public record until the earlier of (a) the vacating of the sealing order appended as Exhibit B to the Second Hill Affidavit (the "**Foreign Sealing Order**"), without being replaced by another sealing order granted by a court of a foreign jurisdiction, (b) the vacating of any sealing order that may granted by a court of a foreign jurisdiction to replace the Foreign Sealing Order, or (c) further Order of this Court.

INITIAL ORDER AND INITIAL FILING DATE

54. THIS COURT ORDERS that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for above.

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

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

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

Proceedings commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

AIRD & BERLIS LLP

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

Steven Graff (LSO# 31871V)

**Miranda Spence (LSO#
60621M)**

Tamie Dolny (LSO#77958U)

Samantha Hans (LSO# 84373H)

Tel: 416.863.1500

Fax: 416.863.1515

Lawyers for the OTE Group

TAB 4

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

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

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

Applicants

**AFFIDAVIT OF SCOTT HILL
(Sworn February 7, 2023)**

I, Scott Hill of the City of Wilsonville, in the Province of Ontario, MAKE OATH AND SAY AS
FOLLOWS:

I. INTRODUCTION

1. I am the president of Original Traders Energy Ltd. ("**OTE GP**"), the general partner of Original Traders Energy LP ("**OTE LP**"). I have been the president of OTE GP since August of 2022. From 2018 until that date, I was a vice-president of development of OTE LP. Since becoming president, I have become aware of the financial and other operational aspects of the Applicants' business. From the inception of the Applicants' business until his sudden resignation on July 14, 2022, Glenn Page was the president of OTE GP and exercised complete financial and operational control over OTE LP and OTE GP's business affairs.

2. While OTE Logistics LP ("**OTE Logistics**", and together with OTE LP, the "**Limited Partnerships**") are not Applicants in this proceeding, the initial order issued January 30, 2023 (the "**Initial Order**") extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry on operations that are integral to the business of the Applicants. The Applicants similarly seek to have the protections granted in the Amended and Restated Initial Order extend to the Limited Partnerships. The terms "**OTE Group**" and "**Applicants**" used throughout this affidavit refer to the Applicants and Limited Partnerships collectively.

3. I have previously sworn an affidavit on January 27, 2023 (the "**First Hill Affidavit**") in this CCAA proceeding, along with a second, confidential affidavit on January 27, 2023 (the "**Confidential**

Affidavit”). This affidavit is sworn in addition to the First Hill Affidavit and the Confidential Affidavit. Capitalized terms in this affidavit have the same meaning as in the First Hill Affidavit unless otherwise defined herein.

4. This affidavit is made in support of a motion by the Applicants for relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”), seeking:

- (a) An amended and restated initial order (the “**Amended and Restated Initial Order**”) substantially in the form attached at Tab 2 of the Motion Record which, *inter alia*:
 - (i) Extends the Initial Stay (as defined below) to April 28, 2023 (the “**Stay Extension**”); and
 - (ii) Increases the Directors’ Charge (as defined below) to \$2,250,000.00.

5. On the basis of the above, I have personal knowledge of the matters to which I depose in this Affidavit, including the business and financial affairs of the Applicants, except where I have obtained information from others or where the information is stated to be based on information and belief. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true. In some instances, the information is based on a reconstruction of the books and records from the best information currently available to the OTE Group, as a result of the removal and/or destruction of the OTE Group’s books and records. In such instances, I have identified where the information is the best reconstruction of the Applicants’ financial information and the source materials from which such information has been reconstructed.

6. In preparing this Affidavit, I consulted with the Applicants’ legal and financial advisors and reviewed relevant documents and information concerning the Applicants’ operations, financial affairs and marketing activities. I am authorized to swear this Affidavit as the corporate representative of the Applicants.

7. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.

II. BACKGROUND AND STATUS OF THE CCAA PROCEEDINGS

8. The OTE Group applied for urgent relief under the CCAA as a result of its balance sheet insolvency, and obtained the Initial Order on January 30, 2023. The Initial Order, a copy of which is attached hereto at **Exhibit “A”**, *inter alia*, granted the following relief:

- (a) an initial stay of proceedings (the “**Initial Stay**”) for 10 days (the “**Initial Stay Period**”), with a return date set for February 9, 2023 (the “**Comeback Hearing**”);
- (b) a declaration that the Applicants are entities to which the CCAA applies;
- (c) a declaration that the Limited Partnerships enjoy the benefit of the protections provided to the Applicants under the Initial Order;
- (d) an administration charge of \$500,000.00 (the “**Administration Charge**”);
- (e) a directors’ charge of \$250,000.00 (the “**Directors’ Charge**” and together with the Administration Charge, the “**Priority Charges**”);
- (f) the appointment of KPMG Inc. as an officer of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) to monitor the business and financial affairs of the Applicants (in such capacity, the “**Monitor**”) with the additional power to compel documents, evidence and witnesses;
- (g) the stay and suspension of all rights and remedies of any regulators which have authority in respect of regulations pertaining to the fuel and/or gasoline industry (“**Regulators**” and each a “**Regulator**”) against the OTE Group, or their respective employees and representatives acting in such capacities, or affecting their business or property, except with the written consent of the OTE Group, the Monitor, or leave of the Court on notice to the service list;
- (h) an order authorizing payments to certain critical suppliers for pre-filing expenses up to a maximum aggregate amount of \$6,375,000.00 any such payment to be made only with the consent of the Monitor and the Applicants, and as are necessary to facilitate the Applicants’ ongoing operations and preserve value during the CCAA proceedings; and
- (i) an order sealing the Confidential Affidavit, which contains information that has been sealed by court order in another jurisdiction.

9. Copies of materials filed in the CCAA proceedings are available on the website of the Monitor at: kpmg.com/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html.

10. Following the date of the Initial Order, the OTE Group has continued their business operations in the ordinary course. Since the Initial Order was granted, the OTE Group has been working with the Monitor to stabilize operations and begin restructuring. The Applicants' activities during the Initial Stay Period, with the assistance of its advisors and the Monitor, include:

- (a) Creating and implementing a communication plan to advise key stakeholders of the CCAA proceeding, including preparing an advertisement announcing the issuance of the Initial Order;
- (b) Communicating with, providing information to and answering questions of various stakeholders, including among others, the Ministry of Finance (the "MOF") and employees, as they are critical to the ongoing operations of the OTE Group;
- (c) Meeting with employees and the Monitor to discuss expenditure and cash flow management; and
- (d) Arranging for the payment of cash security to the MOF.

11. The OTE Group continues to work with the Monitor in good faith to respond to numerous creditor and stakeholder inquiries on a daily basis.

III. RELIEF SOUGHT AT COMEBACK HEARING

12. The First Hill Affidavit provides the primary evidence in support of the vast majority of relief sought in the proposed Amended and Restated Initial Order. The sections below address issues that are not covered in the First Hill Affidavit.

A. Extension of the Stay of Proceedings

13. The Applicants have acted, and are acting, in good faith and with due diligence to communicate with stakeholders. The Applicants seek the Stay Extension to April 28, 2023 to provide stability and to allow sufficient time to continue to investigate the missing financial records and documents of the OTE Group without having to incur additional costs to return to Court to seek a further extension. It is anticipated that the Monitor and counsel to the Monitor will assume an investigative role in their efforts to

recover these missing documents in accordance with the Monitor's powers pursuant to the CCAA and the Initial Order.

14. The Cash Flow Forecast included at Exhibit “VV” to the First Hill Affidavit shows sufficient liquidity during the Stay Extension to fund obligations and costs of the CCAA proceedings.

15. In these circumstances, I do not believe any creditor will suffer material prejudice as a result of the Stay Extension.

B. Increase to Directors’ Charge

16. The Priority Charges granted in the Initial Order were limited to amounts reasonably necessary for the ordinary course continued operations of the OTE Group during the Initial Stay Period. The Applicants now seek to increase the Directors’ Charges to the amount reasonably necessary during the Stay Extension.

17. OTE LP currently holds an insurance policy for its directors with Liberty Mutual Insurance Company (“**Liberty**”). Attached hereto at **Exhibit “B”** is a copy of the Private Advantage Liability Policy by Liberty under policy no. B2BPAL112995004.

18. The Applicants seek to increase the Directors’ Charge to \$2,250,000, which is comprised of (i) \$250,000 for potential payroll related obligations of Directors and (ii) \$2,000,000 for potential sales tax related obligations of Directors.

19. The directors and officers have skills, knowledge and expertise as well as established relationships with various stakeholders that are critical to a successful restructuring. If approved by the Court, the Stay Extension will end on April 28, 2023. The potential liability of the directors and officers of the Applicants for payroll, source deductions and taxes, among other things, increases due to the extended period of time that the officers and directors will continue in their role. The Applicants are of the view that the proposed increase to the Directors’ Charge is reasonably necessary at this time to address circumstances that could lead to potential directors’ liability during the Stay Extension.

20. The Applicants understand that the Monitor will provide further comment on the need for the increase to the Directors’ Charge in their future report to this Honourable Court.

C. Anticipated Stay Amendment

21. The Applicants and Monitor have held urgent discussions with the MOF prior to and following the issuance of the Initial Order. The Applicants and the Monitor continue to address, on an exigent basis, comments by the MOF regarding minor amendments to the language contained in the proposed Amended and Restated Initial Order which stays the rights and remedies of Regulators. Any final agreed language that amends the Initial Order will be shared with this Honourable Court on an urgent basis.

22. The Applicants are of the opinion that the original language in the Initial Order strikes the appropriate balance amongst a Regulator's ability to act in respect of public safety, a Regulator's ability to take enforcement steps should there be a default in payment on a fuel/gasoline supply license, and the OTE Group's ability to operate as a going concern with a sense of security and stability. However, the Applicants continue to work with the MOF to address any remaining concerns that they have over the language.

D. Relief Sought

23. For the reasons set out herein, the OTE Group respectfully requests that this Court grant the Amended and Restated Initial Order.

24. I believe that the OTE Group has acted and is continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. As described above and in the First Hill Affidavit, the OTE Group has given notice of these CCAA proceedings to key stakeholders and in consultation with the Monitor and has engaged in discussions with creditors and other parties to begin the process of restructuring its affairs.

25. I swear this Affidavit in support of an application for the relief set out above, and for no improper purpose.

SWORN BEFORE ME over video teleconference this 7th day of February, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Wilsonville in the Province of Ontario, while the Commissioner was located in the City of Toronto in the Province of Ontario.

DocuSigned by:
Samantha Hans
402DBD39546546A...

A Commissioner for taking Affidavits (*or as may be*)

SAMANTHA HANS (LSO#: 84737H)

DocuSigned by:
Scott Hill
77F3D36A129C418...

SCOTT HILL

This is Exhibit "A" of
the Affidavit of Scott Hill
Sworn before me this 7th day of February, 2023

A Commissioner, etc.



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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) MONDAY, THE 30TH
JUSTICE OSBORNE) DAY OF JANUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**
AND 2496750 ONTARIO INC. (each, an "Applicant" and
collectively, the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Hill Affidavit**"), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Second Hill Affidavit**"), the pre-filing report of the proposed monitor, KPMG Inc. ("**KPMG**") dated January 27, 2023 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the "**Partnerships**" and collectively with the Applicants, the "**OTE Group**"), counsel for Royal Bank of Canada ("**RBC**") and such other counsel who were present, and on reading the consent of KPMG to act as the monitor (the "**Monitor**"),

SERVICE

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

DEFINED TERMS

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the OTE Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the OTE Group shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the OTE Group shall be entitled to continue to utilize the central cash management system currently in place as described in the Hill Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any future Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and
- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group; and
- (c) payment for goods or services actually supplied to the OTE Group following the date of this Order.

9. THIS COURT ORDERS that the OTE Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the OTE Group in connection with the sale of goods and services by the OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the OTE Group.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the OTE Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

CARVE-OUT

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

RESTRUCTURING

13. THIS COURT ORDERS that the OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the OTE Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. THIS COURT ORDERS that the OTE Group shall provide each of the relevant landlords with notice of the OTE Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the OTE Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the OTE Group, or by further Order of this Court upon application by the OTE Group on at least two (2) days notice to such landlord and any such secured creditors. If the OTE Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the OTE Group's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the OTE Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the OTE Group in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE OTE GROUP OR THE PROPERTY

16. THIS COURT ORDERS that until and including February 9, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court, tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

NO EXERCISE OF RIGHTS OR REMEDIES

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the OTE Group to carry on any business which the OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial and federal regulators and/or border authorities that have authority with respect to the importation and exportation of fuel, petroleum, diesel and/or gasoline against or in respect of the OTE Group or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the

Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court on notice to the Service List, such that no licenses held by any of the OTE Group may be revoked or expire during the Stay Period and same are further extended during the course of these CCAA proceedings.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the OTE Group, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the OTE Group, and that the OTE Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the OTE Group in accordance with normal payment practices of the OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the OTE Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-

advance any monies or otherwise extend any credit to the OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the OTE Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the OTE Group shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the OTE Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of the OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$250,000**, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. THIS COURT ORDERS that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the OTE Group in its development of the Plan and any amendments to the Plan;
- (d) assist the OTE Group, to the extent required by the OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**");

- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the OTE Group with information provided by the OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the OTE Group may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the OTE Group on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant, retainers in the approximate amount of **\$950,000** to be held by them as security for payment of their respective fees and disbursements outstanding for certain pre- and post-filing costs.

34. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000**, as

security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. THIS COURT ORDERS that the priorities of the existing security held by RBC (the “**RBC Security**”), the Directors’ Charge and the Administration Charge, as among them, shall be as follows:

First – RBC Security;

Second – Administration Charge; and

Third – Directors’ Charge.

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the RBC Security (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. THIS COURT ORDERS that each of the Directors’ Charge, the Administration Charge and the RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

39. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge or the RBC Security, unless the OTE Group also obtains the prior written

consent of the Monitor and the beneficiaries of the Directors' Charge, the RBC Security and the Administration Charge, or further Order of this Court.

40. THIS COURT ORDERS that the Directors' Charge, the Administration Charge and the RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the OTE Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the OTE Group entering into the creation of the Charges; and
- (c) the payments made by the OTE Group pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the OTE Group's interest in such real property leases.

SERVICE AND NOTICE

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>’.

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the OTE Group and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the OTE Group's creditors or other interested parties at their respective addresses as last shown on the records of the OTE Group and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. THIS COURT ORDERS that the OTE Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the OTE Group, the Business or the Property.

48. 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, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

49. THIS COURT ORDERS that each of the OTE Group and the Monitor be at liberty and is 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. THIS COURT ORDERS that any interested party (including the OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days

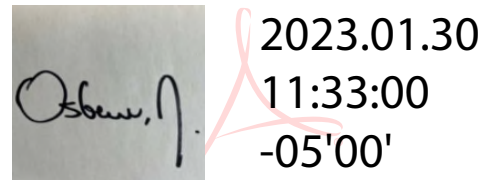
notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

SEALING RELIEF

53. THIS COURT ORDERS that the Second Hill Affidavit shall be and is hereby sealed, kept confidential, and shall not form part of the public record until the earlier of (a) the vacating of the sealing order appended as Exhibit B to the Second Hill Affidavit (the "**Foreign Sealing Order**"), without being replaced by another sealing order granted by a court of a foreign jurisdiction, (b) the vacating of any sealing order that may granted by a court of a foreign jurisdiction to replace the Foreign Sealing Order, or (c) further Order of this Court.



Osborne, J. 2023.01.30
11:33:00
-05'00'

OSBORNE, J.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

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

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

Proceedings commenced at Toronto

INITIAL ORDER

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place

181 Bay Street

Suite 1800

Toronto, ON M5J 2T9

Steven Graff (LSO# 31871V)

Miranda Spence (LSO# 60621M)

Tamie Dolny (LSO#77958U)

Samantha Hans (LSO# 84373H)

Tel: 416.863.1500

Fax: 416.863.1515

Lawyers for the OTE Group

This is Exhibit "B" of
the Affidavit of Scott Hill
Sworn before me this 7th day of February, 2023

A Commissioner, etc.

LIBERTY MUTUAL INSURANCE COMPANY

Private Advantage Liability Policy



Policy Number: B2BPAL112995004
 Renewal Reference Number: B2BPAL112995003

Liberty Private Advantage Liability (PAL) Policy Declarations

THIS IS A CLAIMS MADE POLICY. ALL ITEMS IN BOLD ARE DEFINED IN THE POLICY. Liberty Mutual Insurance Company (hereinafter referred to as "Liberty") agrees to cover any **loss** if the **claim** is first made against any **insured** during the **policy period** and reported to Liberty as soon as practicable. Please read the attached **policy** terms carefully.

Item I COMPANY:

Original Traders Energy LP

Item II ADDRESS:

3-1110 Hwy 54
 Caledonia, Ontario
 N3W 2G9 Canada

Item III POLICY PERIOD:

From 12:01 am October 01, 2021 To 12:01 am October 01, 2024

Instalment Terms

1 st Term	From	12:01 am	October 01, 2021	To	12:01 am	October 01, 2022
2 nd Term	From	12:01 am	October 01, 2022	To	12:01 am	October 01, 2023
3 rd Term	From	12:01 am	October 01, 2023	To	12:01 am	October 01, 2024

All times above at local time at the address shown in Item II

Item IV LIMITS OF LIABILITY:

Any **loss** payable under this **policy** for specific **claim** types is limited to the Limit of Liability for the applicable **claim** type as set forth below. All **loss** payable under this **policy** is further subject to the Total Limits of Liability noted below. If the **insured** has purchased a single combined aggregate Limit of Liability for all **claim** types then any **loss** paid under this **policy** for a specific **claim** type will reduce or potentially exhaust the remaining Limit of Liability for other **claim** types.

Executive / Insured Entity Wrongdoing:	Each loss and aggregate per policy period	\$ 2 000 000
Wrongful Employment Practices:	Each loss and aggregate per policy period	\$ 2 000 000
Fiduciary Wrongdoing:	Each loss and aggregate	\$ 2 000 000

Policy Number: B2BPAL112995004

Renewal Reference Number: B2BPAL112995003

		per policy period
		Total Limits of Liability: \$ 2 000 000
Item V	SUBLIMITS OF LIABILITY:	
	Public Relations Costs Coverage for Crises:	Each loss and aggregate per policy period \$100,000
	Investigation Costs for Derivative Demands:	Each loss and aggregate per policy period \$250,000
	Criminal or Penal Proceeding against insured entity :	Each loss and aggregate per policy period \$250,000
	Formal inquiry, investigation or commission against insured entity :	Each loss and aggregate per policy period \$250,000
Item VI	DEDUCTIBLE(S):	
	Executive / Insured Entity Wrongdoing:	\$ 10 000
	Wrongful Employment Practices:	\$ 10 000
	US Wrongful Employment Practices	\$ 35 000
	Fiduciary Wrongdoing:	\$ 2 500
Item VII	PENDING OR PRIOR LITIGATION DATE:	
	Executive / Insured Entity Wrongdoing:	October 01, 2018
	Wrongful Employment Practices:	October 01, 2018
	Fiduciary Wrongdoing:	October 01, 2018
Item VIII	UNILATERAL DISCOVERY PERCENTAGE:	100 %
	BILATERAL DISCOVERY PERCENTAGE:	125 %
Item IX	ENDORSEMENT(S):	2
Item X	POLICY PERIOD PREMIUM:	\$ 22 866
	ANNUALIZED PREMIUM:	\$ 7 622
	1 st Instalment term	\$ 7 622
	2 nd Instalment term	\$ 7 622
	3 rd Instalment term	\$ 7 622

Policy Number: B2BPAL112995004

Renewal Reference Number: B2BPAL112995003

This **policy** is valid only if, in addition to the facsimile signature of the President of Liberty Mutual Insurance Company, it is dated and signed below by a duly authorized representative of the Liberty Mutual Insurance Company.



Authorized Representative of Liberty Mutual Insurance Company

October 07, 2021

Date

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Liberty Mutual Insurance Company's insurance business in Canada.

1	INSURING AGREEMENTS		
1.1A	PERSONAL COVERAGE FOR INSURED INDIVIDUALS (SIDE A COVERAGE)	2.4	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS:
1.1B	COVERAGE FOR ENTITY INDEMNIFICATION (SIDE B COVER)	(a)	Written Employment Contract
1.1C	COVERAGE FOR ENTITY LIABILITY (SIDE C COVER)	(b)	Employee Benefits
1.1D	ADDITIONAL COVERAGE FOR EXECUTIVES (SIDE A COVER)	(c)	Front Pay
1.2	COVERAGE EXTENSIONS	(d)	Termination
(a)	Personal Coverage for Outside Directorships	(e)	Non-Monetary Claim
(b)	Public Relations Costs Coverage for Crises	(f)	Workplace Compliance Costs
(c)	Investigation Costs Coverage for Derivative Demands	(g)	Compensation
		2.5	EXCLUSIONS FOR FIDUCIARY WRONGDOING:
2	EXCLUSIONS	(a)	Liability of Others Assumed Under Contract
2.1	EXCLUSIONS APPLICABLE TO ALL INSURED	(b)	Intentional Breach of Government Benefits Legislation
(a)	Pending and Prior Litigation	(c)	Plan Funding/Deficit
(b)	Prior Claims, Facts, Circumstances	(d)	Employee Benefits
(c)	Dishonesty, Fraud, Criminal Intent	3	DEFINITIONS
(d)	Illegal Benefit	4	CLAIMS CONDITIONS
(e)	Insured Entity vs. Insured	4.1	NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED
(f)	Bodily Injury, Property Damage	4.2	DEFENCE AND SETTLEMENT
(g)	Pollution	4.3	ALLOCATION
(h)	Securities Claim	4.4	PRIORITY OF PAYMENTS
(i)	Employed Lawyers	4.5	OTHER INSURANCE
2.2	EXCLUSIONS FOR INSURED ENTITY ONLY:	4.6	SUBROGATION AND FURTHER ASSURANCES
(a)	Contract	5	GENERAL CONDITIONS
(b)	Trade Practices	5.1	LIMIT(S) OF LIABILITY
(c)	Government Benefits Legislation	5.2	DEDUCTIBLES
(d)	Services Liability	5.3	DISCOVERY PERIOD
(e)	Intellectual Property	5.4	SPOUSAL BENEFIT & ESTATE ENUREMENT
(f)	Product Liability	5.5	EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE
(g)	Dividend/Option	5.6	SEVERABILITY
2.3	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING	5.7	TERMINATION AND PREMIUM REFUND
(a)	Liability of Others Assumed Under Contract	5.8	TERRITORY AND CURRENCY
(b)	Labour Relations	5.9	ARBITRATION AND APPLICABLE LAW
(c)	Government Sponsored Benefits	5.10	AUTHORIZATION
(d)	Employee Benefits Administration	5.11	AMENDMENT OR ASSIGNMENT
(e)	Payroll	5.12	INTERPRETATION
(f)	Pay Equity	5.13	NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC
(g)	US Fair Labour Standards Act	5.14	NOTICE OF NON RENEWAL
		5.15	GLOBAL LIBERALIZATION

1. INSURING AGREEMENTS

The Insuring Agreements are part of this contract of insurance (“the **policy**”). This **policy** also includes the Exclusions, Definitions, Claims Conditions and General Conditions found in paragraphs 2 through 5.

Any headings and titles in this **policy** exist only to make the **policy** easier to read and do not create or affect coverage. Terms in **bold** used in this **policy** are defined in paragraph 3.

Liberty has agreed to issue this **policy**:

- i) in reliance on the **application**; and
- ii) on the condition that the **insured** must pay any premium(s) when due.

Liberty only agrees to cover any **loss** if the **claim** is first made against any **insured** during the **policy period** and reported to Liberty as soon as practicable.

1.1 A PERSONAL COVERAGE FOR INSURED INDIVIDUALS (“SIDE A COVER”)

Liberty agrees to pay on behalf of the **insured individuals** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured individual** during the **policy period**;
- ii) the **claim** is made against them in the capacity in which they are an **insured** under this **policy**; and
- iii) the **claim** is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices;

provided that:

- iv) the **insured individual** is not indemnified for the **loss** by an **insured entity**.

This coverage shall not be rescinded by Liberty in whole or in part for any reason.

1.1 B COVERAGE FOR ENTITY INDEMNIFICATION (“SIDE B COVER”)

Liberty agrees to pay on behalf of the **insured entity** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured individual** during the **policy period**;
- ii) the **claim** is made against the **insured individual** in the capacity in which they are an **insured** under this **policy**;
- iii) the **claim** is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices; and
- iv) the **insured entity** indemnifies the **insured individual**;

provided that:

- v) the **insured entity** is permitted or required by applicable law to indemnify the **insured individual**.

1.1 C COVERAGE FOR ENTITY LIABILITY (“SIDE C COVER”)

Liberty agrees to pay on behalf of the **insured entity** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured entity** during the **policy period**; and
- ii) the **claim** is based on executive wrongdoing, fiduciary wrongdoing, wrongful employment practices or insured entity wrongdoing.

1.1 D ADDITIONAL COVERAGE FOR EXECUTIVES (“SIDE A COVER”):

Liberty agrees to pay on behalf of any **executive** an additional Limit of Liability under this **policy** for any **loss** on the condition that:

- i) the **loss** results from a **claim** made against an **executive** during the **policy period**;
- ii) the additional Limit of Liability is equal to the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the **declarations** or \$1,000,000, whichever is less; and
- iii) the **claim** is based on **executive wrongdoing, wrongful employment practices** or **fiduciary wrongdoing**;

provided that:

- iv) the **executive** is not indemnified for the **loss** by an **insured entity**;
- v) the additional Limit of Liability provided by this paragraph shall be specifically excess of:
 - 1) the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the **declarations**; and
 - 2) the limit of liability under any other policy that is excess of this **policy** and such excess insurance must be completely exhausted before Liberty has any obligation to pay any **loss** under this paragraph.

1.2 COVERAGE EXTENSIONS

(a) PERSONAL COVERAGE FOR OUTSIDE DIRECTORSHIPS

Liberty agrees to pay on behalf of the **executives** and the **insured entity** under paragraphs 1.1 A and 1.1 B (“Side A & B Cover”) any **loss**:

- i) in their capacity as members of the board of directors, trustees or equivalent position of any not-for-profit or charitable organization;
- ii) which results from a **claim** first made against them during the **policy period**;
- iii) which results from **executive wrongdoing**; and
- iv) which is excess of any indemnification to which the **executive** is entitled from the not-for-profit or charitable organization, and also of any insurance coverage available under policies issued to such organization or to its **executives**;

provided that:

- v) at the time of the **executive wrongdoing**, which is the subject of the **claim**, the **executive** is or was serving on the board of directors, trustees or equivalent position of the not-for-profit or charitable organization at the request of the **company**.

However there is no coverage for the not-for-profit or charitable organization itself or for any other director, officer or employee of such organization.

(b) PUBLIC RELATIONS COSTS COVERAGE FOR CRISES

Liberty agrees to pay on behalf of the **insured entity** any **public relations costs** which it reasonably incurs in engaging public relations consultants to manage a **crisis**; provided that:

- i) the **crisis** is first reported to Liberty during the **policy period**;
- ii) Liberty has no duty to defend any **insured** against **crises**;

- iii) Liberty has no duty to indemnify any **insured** for any judgment, penalty, sentence, order or condemnation of any kind resulting from a **crises**; and
- iv) coverage under this paragraph is not considered **defence costs** and is subject to the sublimit of liability stated in Item V of the **declarations** and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the **declarations**.

(c) **INVESTIGATION COSTS COVERAGE FOR DERIVATIVE DEMANDS**

Liberty agrees to pay on behalf of the **insured entity** any **investigation costs** which it reasonably incurs solely in connection with a **derivative demand**; provided that:

- i) the **derivative demand** is first made during the **policy period**;
- ii) Liberty has no duty to defend any **insured** against a **derivative demand**; and
- iii) coverage under this paragraph is not considered **defence costs** and is subject to the sublimit of liability stated in Item V of the **declarations** and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the **declarations**.

2. EXCLUSIONS

2.1 EXCLUSIONS APPLICABLE TO ALL INSURED

There is no coverage for **public relations costs** or **investigation costs** under paragraph 1.2 of this **policy**; or for **loss** resulting from a **claim**:

- (a) **PENDING AND PRIOR LITIGATION: based on** any litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment against or involving any **insured**:
 - i) which was pending on the date stated in Item VII of the **declarations** or which happened prior to that date; and
 - ii) which any **insured** knew about on that date,
 or any subsequent **claim** or **loss based on** substantially the same matters as were alleged in such prior or pending litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment;
- (b) **PRIOR CLAIMS, FACTS, CIRCUMSTANCES: based on** a **claim** or facts or circumstances which could reasonably be expected to give rise to a **claim**, which has been notified to and accepted by Liberty or any other insurer under any prior policy of which this **policy** is a renewal or replacement and if such prior policy affords coverage or would afford coverage except for the exhaustion of the applicable Limit of Liability;
- (c) **DISHONESTY, FRAUD, CRIMINAL INTENT: based on wrongdoing** or violation of the law deliberately committed or attempted by an **insured** with dishonest, fraudulent or criminal purpose or intent if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in an action or proceeding initiated by Liberty to determine coverage under the **policy**) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (d) **ILLEGAL BENEFIT: based on** any profit, sum of money, advantage or benefit obtained by any **insured** to which they are not legally entitled if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in any action or proceeding initiated by Liberty to determine coverage under the **policy**) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (e) **INSURED ENTITY VS. INSURED: brought by or on behalf of any insured entity.** However, this exclusion does not apply to:
 - i) **defence costs** for a **claim** under paragraph 1.1 A;

- ii) a **claim** that is a **derivative action** and, for the purposes of this exception, the assistance, active participation or intervention for which “whistleblower” protection is afforded under section 425.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, United States Code Title 18 § 1514A or similar provisions of any applicable law or regulation anywhere in the world, shall not alone be considered to be brought with the assistance, active participation, or intervention of any **insured individual** or **insured entity**;
 - iii) a **claim** brought by or on behalf of the **company** by any receiver, trustee, liquidator, monitor or creditors’ committee appointed on behalf of any **insured entity** by a court or creditor when the **company** is **bankrupt or insolvent**;
 - iv) a **claim** brought or maintained outside the United States of America, Canada or any other common law jurisdiction, including any territories therein; or
 - v) a **claim** that is against an **insured individual** who has not acted in that capacity at any time in the past 2 years;
- (f) **BODILY INJURY, PROPERTY DAMAGE:** for bodily injury, sickness, disease or death of any individual, violation or invasion of any right of privacy or private occupancy, or damage or destruction to any property, whether tangible or intangible, including loss of use thereof. However, this exclusion does not apply to:
- i) a **claim** for emotional distress, humiliation or mental anguish or injury resulting from libel, slander, defamation or disparagement or from a violation of an individual’s right of privacy caused by **wrongful employment practices**; or
 - ii) **defence costs** on account of any **claim** which is brought pursuant to section 217.1 of the *Criminal Code*, R.S.C., 1985, c.C-46, Bill 168, the *Ontario Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*, the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, or any similar federal, provincial, territorial, state or other governmental statute, legislation, law, regulation or ordinance, against any **insured individual**;
- (g) **POLLUTION: based on pollution.** However this exclusion does not apply to:
- i) a **claim** under paragraph 1.1 A;
 - ii) a **retaliatory treatment claim**;
 - iii) a **derivative action**;
 - iv) a **claim** in connection with any private purchase or sale or any offer to privately purchase or sell, any shares of the **insured entity**; or
 - v) **defence costs** in which the **insured entity** under paragraph 1.1 B (“Side B Cover”) reasonably incurs to defend a **pollution claim** first brought and conducted against an **insured individual** in Canada;
- (h) **SECURITIES CLAIM:** which is or is **based on** a **securities claim**. However, this exclusion does not apply to:
- i) a **claim** for **executive wrongdoing** or **insured entity wrongdoing** which occurred during the **company’s initial public offering** roadshow activities; or
 - ii) a **securities claim** that is **based on** an **initial public offering** or any public debt securities offering which is subject to registration under applicable law anywhere in the world, provided that Liberty is given at least 30 days prior written notice of such offering along with a copy of the relevant prospectus or offering document and the **insured** agrees to any amendments to the terms and conditions of this **policy** and pays any additional premium which may be required by Liberty; or
- (i) **EMPLOYED LAWYER:** against any **employed lawyer based on** the performance of services as a licensed lawyer or attorney for the benefit of or on behalf of any person or entity other than the **insured**

entity, any **employee** or **executive**, in their capacity as such, even if such service is at the request of the **insured entity** or part of the regular assigned duties of the **employed lawyer**.

2.2 EXCLUSIONS FOR INSURED ENTITY ONLY

There is no coverage for the **insured entity** for **public relations costs** or **investigation costs** under paragraph 1.2 of this **policy**; or for **loss** resulting from a **claim**:

- (a) **CONTRACT: based on** any breach of or liability arising from any oral or written contract or agreement. However, this exclusion does not apply to **defence costs** for **wrongful employment practices**;
- (b) **TRADE PRACTICES: based on** violation of any applicable law anywhere in the world with respect to unfair trade practices, anti-trust, anti-competitive behavior, price fixing, bid-rigging, predatory pricing, restraint of trade or discrimination, including the *Competition Act*, R.S.C., 1985, c.C-34, or similar legislation anywhere in the world;
- (c) **GOVERNMENT BENEFITS LEGISLATION: based on** the violation of or failure to comply with any obligation imposed under legislation relating to **government sponsored benefit programs**;
- (d) **SERVICES LIABILITY: based on** any services rendered or which should have been rendered to any third party, whether for remuneration or not;
- (e) **INTELLECTUAL PROPERTY: based on** the infringement of any patent, copyright, trademark, trade secret, intellectual property rights and/or misappropriation of ideas, including “product dressing”;
- (f) **PRODUCT LIABILITY: based on** the conception, design, manufacture, advertisement, sale, distribution, use or consumption of any product which is defective, hazardous or unfit for its intended purpose, or **based on** the failure to warn that any product is defective, hazardous or unfit for its intended purpose; or
- (g) **DIVIDEND/ OPTIONS: for** any dividends or distributions of earnings or losses paid or not paid, or for share options or damages in lieu of share options.

2.3 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING

There is no coverage for any **insured** for **loss** resulting from a **claim based on wrongful employment practices**, or a **claim based on insured entity wrongdoing** which is:

- (a) **LIABILITY OF OTHERS ASSUMED UNDER A CONTRACT: based on** any liability of others that an **insured** has assumed under any contract, unless the **insured** would have been legally liable in the absence of such contract;
- (b) **LABOUR RELATIONS: based on** the negotiation or breach of a collective agreement involving the **company** or a violation of the collective bargaining rights of **employees** by any **insured**;
- (c) **GOVERNMENT SPONSORED BENEFITS: for** benefits under a **government sponsored benefits program**;
- (d) **EMPLOYEE BENEFITS ADMINISTRATION: based on** any actual or alleged wrongful interpretation, application, or administration of an **employee benefits program**;
- (e) **PAYROLL: based on** the failure or refusal of an **insured** to:
 - i) collect, retain, return, pay or remit employee taxes, deductions at source, pension or retirement savings contributions or other employee benefit contributions or union dues;
 - ii) pay, retain, reimburse or indemnify any salary, wages, overtime pay, vacation pay, commissions, bonuses, fees, benefits, expenses, or any remuneration of any kind owed to an **employee** of the **company**; or

- iii) grant, issue, give effect to, replace, honour, terminate, value, or in any manner whatsoever address stock or share options, whether or not such stock or share options are issued by the **company**;
- (f) **PAY EQUITY:** alleging a systemic differential in pay between **employees** who perform different work allegedly of equal or comparable value, including a **claim based on** a violation of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, s. 11, or similar legislation anywhere in the world, but does not include a **claim** for an actual or alleged differential in pay for the same work or substantially similar work. However, this exclusion does not apply to a **retaliatory treatment claim**; or
- (g) **US FAIR LABOUR STANDARDS ACT:** made in the territorial limits and jurisdiction of the United States of America for an actual or alleged violation of or obligation, responsibility, or duty imposed under or with respect to the Fair Labor Standards Act (except the Equal Pay Act). However, this exclusion does not apply to a **retaliatory treatment claim**.

2.4 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS

Other than for **defence costs**, there is no coverage for any **insured** for **loss** resulting from a **claim based on wrongful employment practices**, or a **claim based on insured entity wrongdoing** which is:

- (a) **WRITTEN EMPLOYMENT CONTRACT:** for an actual or alleged breach of any written employment contract unless the **insured** would have been liable for such **loss** in the absence of such written employment contract;
- (b) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit, other than salary, wages or commission, owed by the **company** to an **employee** or owed to an individual who is not an **employee** who is entitled to receive benefits as a result of the employment relationship, between the **company** and an **employee**, including under an **employee benefits program**;
- (c) **FRONT PAY:** alleging **loss** which constitutes front pay, future damages or other future economic relief or the equivalent thereof, if the **company** is ordered to reinstate the claimant as an **employee** by a judgment or other final adjudication and fails to do so;
- (d) **TERMINATION:** for any amount payable to an **employee** under any applicable statute or common law following dismissal, including severance, pay in lieu of notice and vacation pay. However, this exclusion does not apply to:
 - i) the portion of a **claim** amount which exceeds amounts equal to what the **insured** has reasonably and in good faith offered prior to arbitration or litigation as payment **based on** the **insured's** obligations to **employees** for termination of employment, including the minimum amount payable under the applicable statute;
 - ii) a **claim** for an actual or alleged differential in pay for the same work or substantially similar work; or
 - iii) a **retaliatory treatment claim**;
- (e) **NON-MONETARY CLAIM:** seeking only injunctive or other non-monetary relief;
- (f) **WORKPLACE COMPLIANCE COSTS:** alleging **loss** which constitutes:
 - i) the cost of compliance with or the satisfaction of obligations imposed under the *Employment Equity Act*, S.C. 1995, c.44 or any similar legislation anywhere in the world; or
 - ii) any costs or expenses associated with any accommodation or affirmative action program imposed under the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, the Americans with Disabilities Act, the United States Civil Rights Act of 1964, or similar legislation anywhere in the world, including without limitation any costs or expenses incurred by an **insured** to change, modify, alter, or improve a building, real estate, furniture, fixtures, or equipment of any kind to improve accessibility or usability; or

- (g) **COMPENSATION:** based on any dispute with respect to the valuation of salary, wages, commission, benefits, bonus, compensation or any other remuneration whatsoever provided for in a contract of employment.

2.5 EXCLUSIONS FOR FIDUCIARY WRONGDOING

There is no coverage for any **insured** for loss resulting from a **claim based on fiduciary wrongdoing** which is:

- (a) **LIABILITY OF OTHER ASSUMED UNDER A CONTRACT:** based on the liability of others assumed by an **insured** under any contract unless an **insured** would have been legally liable in the absence of such contract;
- (b) **INTENTIONAL BREACH OF GOVERNMENT BENEFITS LEGISLATION:** based on the intentional violation of or failure to comply with any obligation imposed under legislation relating to a **government sponsored benefits program**;
- (c) **PLAN FUNDING/DEFICIT:** based on the intentional failure to fund a **plan** in accordance with applicable law or a **plan** instrument; the failure to collect or pay contributions owed to a **plan**, unless the failure is because of the negligence of the **insured**; or the inability of a **plan** to meet any of its obligations because of the **bankruptcy and insolvency** of the **plan** or any deficit position of the **plan**. However, this exclusion does not apply to **defence costs**; or
- (d) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit other than salary, wages or commission owed by the **company** to an **employee** or an individual other than an **employee** who is entitled to receive **benefits** as a result of the employment relationship between the **company** and an **employee**, including under an **employee benefits program**. However, this exclusion does not apply to **defence costs**.

3. DEFINITIONS

“**administrator**” means an individual who at any time had, has or will have legal responsibility for the administration or management of a **plan**, but does not include any consultant or outside service provider.

“**application**” means collectively all applications, renewal applications or questionnaires which any **insured** has submitted to Liberty at any time for the purpose of obtaining initial or renewal coverage, and any other documentation or information provided to Liberty by any **insured** in support of an **application**.

“**bankrupt or insolvent/bankruptcy or insolvency**” means a situation where an **insured entity** is in the financial position as a debtor as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. R-3, and occurs when:

- a) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a federal, provincial, territorial, state or other governmental body or court or agency or by a creditor to take control of, supervise, manage or liquidate the **insured entity**;
- b) a reorganization proceeding relating to the **insured entity** is brought under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, or any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance; or
- c) the **insured entity** becomes a debtor-in-possession under Title 11 of the United States Bankruptcy Code or any similar federal, provincial, territorial, state or other governmental statute, law, act, rule, regulation or ordinance.

“**based on**” means “based on, arising from or attributable to”.

“**Canada’s Anti-Spam Legislation**” means An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, SC 2010, c.23.

“**claim**” means:

- a) any written demand for monetary or non-monetary relief;
- b) a civil action or other proceeding seeking damages or other non-monetary or injunctive relief before the civil courts and for the purposes of **wrongful employment practices**, includes an action or proceeding before any federal or provincial tribunal;
- c) a formal request for the extradition of an **executive**, but only where insurable by law;
- d) alternative dispute resolution (“ADR”), arbitration or mediation if the **insured** is obligated to participate in such ADR, arbitration or mediation;
- e) any formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document;
- f) any criminal or penal proceeding against an **insured** commenced by the laying of an information or a return of an indictment; provided however, any coverage provided to the **insured entity** under this paragraph is subject to the sublimit of liability stated in Item V of the **declarations**; or
- g) a formal inquiry, investigation or commission conducted or appointed pursuant to statute, including but not limited to legislation governing securities, occupational health and safety, pensions and competition, initiated in writing against an **insured** and which may reasonably be expected to result in findings relevant to the **insured’s** potential civil, penal or criminal liability for **wrongdoing**; provided however, any coverage provided to the **insured entity** under this paragraph is subject to the sublimit of liability stated in Item V of the **declarations**.

However, **claim** does not include any professional disciplinary investigation or proceeding, or any investigation, inquiry, commission or hearing relating to or in connection with labour relations, labour standards or collective bargaining.

“**company**” means the company or other entity stated in Item I of the **declarations** and any **subsidiary**.

“**crisis**” means one of the following events:

- a) an **employee** layoff or restructuring involving 20% or more of total staff;
- b) an unanticipated death, incapacity or resignation of the president, chief executive officer or chief financial officer; or
- c) **bankruptcy or insolvency**.

“**declarations**” means the most current applicable Policy Declarations.

“**defence costs**” means that part of the **loss** consisting of reasonable and necessary costs incurred by an **insured** with Liberty’s consent, such consent not to be unreasonably withheld, in investigating, defending, appealing or monitoring **claims**, but this does not include expenses incurred by, or, any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **claim**.

“**derivative action**” means an action or intervention in an action against an **insured individual** brought by a complainant in the name of and on behalf of a **company** within the meaning of and in accordance with the terms of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 or similar law or regulation anywhere in the world and that is brought without the assistance, active participation, or intervention of any **insured**.

“**derivative demand**” means any written notice, by one or more complainants, to the board of directors of an **insured entity**, of their intention to bring a **derivative action** against an **insured individual** for **wrongdoing**

“**discovery period**” means the period of time described in paragraph 5.3, but only if the requirements set out in that paragraph are met.

“**employed lawyer**” means a licensed lawyer or attorney, who is an **employee** of the **insured entity**, while performing legal services for the benefit of or on behalf of the **insured entity**.

“**employee**” means:

- a) any individual employed by the **company** at any time whether in the past, present or future, including any part-time, seasonal or temporary **employee(s)** and whom the **company** compensates by salary, wages and/or commission and has the right to govern and direct in the performance of such services; or
- b) any **independent contractor**.

“**employee benefits**” means any payment, consideration or benefit, other than salary, wages, or commission, owed by the **company** to an **employee** or a beneficiary as a result of the employment relationship, including benefits payable to an **employee** or a beneficiary under an **employee benefits program**.

“**employee benefits program**” means:

- a) any employee benefits plan, including but not limited to any registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit-sharing plan, employee profit-sharing plan, income maintenance insurance plan, vacation pay trust, employee trust, retirement compensation arrangements or salary deferral arrangements, all as defined in the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.);
- b) any plan, including any welfare benefit plan, as defined in the United States Employee Retirement Income Security Act of 1974; or
- c) any similar program, plan or arrangement as described in a) and b) above, anywhere in the world.

“**executive**” means any past, present or future:

- a) duly elected, appointed, “de facto” or “deemed” director, officer, trustee, advisory board member or board observer of the board, or equivalent governing body;
- b) senior management or equivalent positions for which the **company** has provided an indemnification agreement or has amended its applicable by-laws to provide indemnification no less broad than that provided to its directors, officers or trustees;
- c) management or executive committee member of any partnership, limited partnership or joint venture which is a **subsidiary**;
- d) member of a management board or equivalent position of a limited liability company which is a **subsidiary**;
- e) individuals who hold titles, positions or capabilities equivalent to the positions of an executive as defined in items a) through d) above for a **company** incorporated within Canada or the United States of America, operating in a **foreign jurisdiction**; or
- f) **employed lawyer**;

of the **company** or under paragraph 1.2 (a) of a not-for-profit or charitable organization.

“**executive wrongdoing**” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by any **executive** or **employee**, but only in their capacity as an **executive** or **employee**, or under paragraph 1.2 (a), of a not-for-profit or charitable organization, including any matter claimed against any **executive** solely due to their status as an **executive**.

“**fiduciary**” means any individual who at any time, whether past, present or future, has or exercises discretionary authority or control over the management of any **plan** or its assets, and who therefore is subject to fiduciary obligations under applicable law. However, **fiduciary** does not include any consultant or outside service provider.

“**fiduciary wrongdoing**” means any actual, alleged, attempted or allegedly attempted:

- a) breach of or failure on the part of a **fiduciary** to meet their fiduciary obligations to a **plan** or the beneficiaries of a **plan**;
- b) fault, error, omission, misstatement or breach of duty on the part of any **insured** in the interpretation, application and administration of a **plan**; or

- c) matter claimed against any **insured** solely with respect to a **plan** and solely by reason of their status as a **fiduciary** of a **plan**.

“**foreign jurisdiction**” means any jurisdiction other than Canada or the United States of America.

“**foreign policy**” means any standard executive liability policy (including any mandatory endorsements) approved by Liberty Mutual Insurance Company to be sold within a **foreign jurisdiction** that provides coverage substantially similar to the coverage afforded under this **policy**. If more than one such policy exists, then “**foreign policy**” means the standard policy most recently registered in the local language of the **foreign jurisdiction** or, if no such policy has been registered, then the policy most recently registered in that **foreign jurisdiction**. The term **foreign policy** shall not include any professional liability coverage.

“**government sponsored benefits program**” means any benefits or compensation program created by statute whereby funds are held or managed by a governmental body, including workmen’s compensation, unemployment insurance, pension and social security programs.

“**independent contractor**” means any individual who is contracted in writing to perform services for the **company** in the conduct or operation of the **company’s** business, provided that such individual shall be deemed an **employee** only to the extent that he or she renders services for the benefit of the **company’s** business.

“**initial public offering**” means any initial offering of voting securities of the **company** to the public, which is subject to registration under applicable law anywhere in the world.

“**insured**” means any **insured individual** or **insured entity**.

“**insured individual**” means an **executive**, a **fiduciary**, an **administrator**, or an **employee**.

“**insured entity**” means the **company** or a **plan**.

“**insured entity wrongdoing**” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by the **insured entity**.

“**investigation costs**” means any reasonable costs, charges, fees (including but not limited to lawyers’ fees and experts’ fees) and expenses (other than regular or overtime wages, salaries or fees of the **insured individual(s)** or **employee(s)** or expenses incurred by, or, any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **derivative demand**) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the **insured entity**, including its board of directors or any committee of the board of directors, in connection with the investigation or evaluation of any **derivative demand**.

“**loss**” means the total amount which the **insured** is legally obligated to pay for all **claims based on wrongdoing** which is covered under this **policy**, including:

- a) **defence costs**;
- b) damages, judgments, settlement amounts, **statutory liabilities**, pre-judgment and post-judgment interest, legal fees and costs awarded pursuant to judgments.

Loss does not include:

- i) any judgment, settlement, sentence, order or condemnation: (i) against an **insured entity**, resulting from a formal administrative or regulatory proceeding, formal investigative order, summons, or criminal or penal proceeding; or (ii) against an **insured entity** resulting from a formal inquiry, investigation, commission or hearing conducted or appointed pursuant to statute;
- ii) any unpaid taxes, duties or levies of the **company** or an **independent contractor** which are not **statutory liabilities**;
- iii) costs associated with the monitoring, clean up, removal, containment, treatment, detoxification or neutralization of pollutants;
- iv) punitive or exemplary damages, or the multiplied portion of any multiplied damage award, except where insurable by law; or
- v) fines and penalties; however, where insurable by law, the following are considered **loss**:

- (a) civil penalties for which an **executive** is found liable as a result of violations of the United States Foreign Corrupt Practices Act or similar legislation anywhere in the world; or
- (b) administrative fines and penalties for which an **executive** is found liable as a result of violations of **Canada's Anti-Spam Legislation**.

With respect to the insurability of iv) and v) above, of all the jurisdictions applicable to a **claim**, the jurisdiction with the most favourable laws to the **insured entity** concerning the insurability of such damages or penalties shall apply to determine whether coverage is available for such damages or penalties.

“**managerial control**” means the right pursuant to any written contract, by-laws, charter, shareholder agreement, trust indenture, joint venture agreement, limited liability company operating agreement, limited partnership agreement or similar documents of an entity to elect, appoint or designate a majority of the directors of a corporation, trustees of an income fund or trust, management committee members of a joint venture, management board members of a limited liability company, general partner of a limited partnership or any other equivalent body.

“**plan**” means

- a) any pension plan of the **company** which was on or prior to the inception date of this **policy** sponsored solely by the **company** or sponsored jointly by the **company** and a labour organization solely for the benefit of the **employees** of the **company**, including any pension plan merged into or consolidated with such pension plan prior to the inception date of this **policy**;
- b) any **employee benefits program** which was on or prior to the inception date of this **policy** sponsored solely by the **company** or sponsored jointly by the **company** and a labour organization, solely for the benefit of the **employees** of the **company**; or
- c) any **employee benefits program** which during the **policy period** becomes sponsored solely by the **company**, or jointly by the **company** and a labour organization, solely for the benefit of the **employees** of the **company**, but only on the condition that Liberty agrees by endorsement to cover it within 90 days of its becoming sponsored.

However, **plan** does not include any multi-employer plan as defined under applicable law.

“**policy**” means:

- a) the **application**;
- b) the **declarations**;
- c) policy paragraphs 1 through 5; and
- d) any endorsements, whether issued at inception or during the **policy period**.

“**policy period**” means the period from the date stated in Item III of the **declarations** to the date of termination of this **policy** pursuant to paragraph 5.7. The **discovery period** is deemed to be part of the most recent **policy period**.

“**pollution**” means:

- a) the actual, alleged or threatened seepage, discharge, dispersal, release or escape of pollutants in contravention of; or
- b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants under:

the *Canadian Environmental Protection Act*, 1999 (S.C. 1999, c.33) or any federal, provincial, territorial, state, municipal or other governmental statute, law, regulation or ordinance, common law (including but not limited to nuisance and trespass), civil law or equity, including but limited to a **claim** for financial loss to the **insured entity**, its security holders or its creditors **based on** the matters described in a. and b. above. Pollutants include, without limitation, solids, liquids, gasses, thermal or electromagnetic irritants or contaminants or emanations, nuclear radiation or radioactive substances, smoke, vapour, odour, soot, oil or oil products, asbestos or asbestos products, silica, mould, noise, fumes, acids, alkalis, chemicals,

or waste materials including without limitation waste water or infectious or medical waste, whether or not they are to be recycled, reconditioned, or reclaimed.

“**pollution claim**” means a **claim based on pollution**.

“**public relations costs**” means any reasonable costs, charges, fees and expenses (other than expenses incurred by, or any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **crisis**) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the **insured entity** in engaging the services of public relations consultants to advise the **insured entity** with respect to managing the public communication of and limiting disruption to the **insured entity’s** business following a **crisis**.

“**retaliatory treatment claim**” means a **claim based on** retaliatory treatment of the claimant by any **insured** resulting from the exercise by the claimant of any right under any applicable law.

“**securities claim**” means any **claim** (including a **claim** brought by any securities regulator or other government body) **based on:**

- a) a public offering of securities of the **company**, whether on the open market or arising from an **initial public offering**; or
- b) a violation of any statute governing securities including the failure to register securities issued in connection with a private placement which should have been registered with the appropriate securities regulator or other government body.

“**spouse**” means either of two persons, regardless of their gender, who i) are married to each other; ii) have cohabited continuously in a conjugal relationship outside marriage for a period of at least one year; or iii) have cohabited continuously in a conjugal relationship of some permanence outside marriage if they are the natural or adoptive parents of a child.

“**statutory liabilities**” means unpaid liabilities of the **company**, including unpaid tax liabilities and unpaid wages and deductions at source, for which any **executive** becomes personally liable in their capacity as an **executive** under any applicable statute if the **company** is **bankrupt or insolvent**.

“**subsidiary**” means any for-profit entity of which the **company** either directly or through one or more of its **subsidiaries:**

- a) owns or owned more than 50% of any issued and outstanding securities or other interest that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or
- b) holds or held **managerial control**.

Notwithstanding the above, coverage provided under this **policy** with respect to a **claim** made against any **insured entity** or any **insured individual** shall only apply to **wrongdoing** committed or allegedly committed after the effective date that the **insured entity** became a **subsidiary** and prior to the effective date that the **insured entity** ceased to be a **subsidiary**.

“**wrongdoing**” means any **executive wrongdoing, wrongful employment practices, fiduciary wrongdoing or insured entity wrongdoing**.

“**wrongful employment practices**” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty on the part of the **company** or by an **insured individual** acting in the performance of their duties for the **company**, in connection with one or more of the following:

- a) dismissal, including constructive dismissal, of an **employee** in breach of any employment relationship;
- b) sexual or other harassment of an **employee** at or related directly to:
 - i) the **company’s** workplace, and/or
 - ii) the **employee’s** employment;

- c) unlawful employment discrimination or violation of an **employee's** or prospective **employee's** employment-related civil rights based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status or characteristic protected under applicable law, including wrongful failure or refusal to hire or promote, wrongful discipline or demotion, wrongful deprivation of a career-opportunity, or failure to grant tenure;
- d) invasion of privacy, employment-related defamation, employment-related wrongful infliction of emotional distress, or negligent employment evaluation or any employment-related misrepresentation made to an **employee** or prospective **employee** with respect to the **company**;
- e) failure to create, apply or enforce employment-related policies or procedures at or with respect to the **company's** workplace;
- f) retaliatory treatment of an **employee** by the **company** resulting from the exercise by the claimant of any right under any applicable law; or
- g) unlawful discrimination, sexual harassment or violation of a natural person's civil rights based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status, or characteristic protected under applicable law only with respect to any customer, client or supplier or other individual or group of individuals other than an **employee** or prospective **employee** with the **company**.

4. CLAIMS CONDITIONS

4.1 NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED

- (a) It is a condition precedent to the **insured's** rights under this **policy** that after the chairperson, president, chief executive officer, chief financial officer or general counsel of any **company** becomes aware of any **claim**, the **insured** must give prompt written notice of such **claim** to Liberty as soon as practicable.
- (b) If the **insured** fails to notify Liberty of a **claim** promptly and Liberty substantially suffers prejudice as a result of that failure, Liberty may deny coverage in respect of that **claim** under the **policy**.
- (c) If during the **policy period**, any **insured** becomes aware of any facts, circumstances (including but not limited to a request to toll a statute of limitations) or **wrongdoing** that could reasonably give rise to a **claim** and if such facts, circumstances or **wrongdoing** are reported to Liberty during the **policy period** in writing with details as to the nature and date of such circumstances or **wrongdoing**, the identity of any potential claimant, the identity of any **insured persons(s)** involved in such circumstances or **wrongdoing**, and the manner in which the **insured** first became aware of such circumstances or **wrongdoing**, any **claim** subsequently arising from those facts or circumstances or **wrongdoing** will be deemed to be a **claim** made during the **policy period**, as long as the **insured** also gives notice of the **claim** as required by paragraph 4.1(a).
- (d) Notice of any **claim**, circumstances or **wrongdoing** as required by paragraph 4.1(a) and (c) shall be forwarded to: Liberty Mutual Insurance Company, 181 Bay St., Suite 900, Toronto, Ontario M5J 2T3, Attention: Specialty Casualty Claims, or to: LMCANADACLAIMS@libertymutual.com
- (e) All other notices required under any other paragraphs of this **policy** will be to the same address, but to the attention of: Specialty Casualty Underwriting Department.
- (f) Notice from Liberty to the **insured** will be given to the **company** at the address stated in Item II of the **declarations**.
- (g) All notices under this **policy** shall be sent in writing by mail, prepaid expense courier, or email and shall be effective upon receipt thereof by the addressee.
- (h) The **insured** agrees:
 - i) to cooperate fully and promptly with Liberty and its representatives when a **claim** is made;

- ii) to do nothing that may prejudice Liberty's position or its rights of recovery; and
- iii) that the **insured's** obligations under paragraphs 4.1 and 4.6 will survive any termination of this **policy**.

The failure of an **insured person(s)** to provide information and cooperate with Liberty under paragraph 4.1 (h) shall not impact the rights of any other **insured person(s)** under this **policy** in any manner.

4.2 DEFENCE AND SETTLEMENT

- (a) Liberty has the right and duty to defend the **insured** including, without limitation, the right to retain and instruct counsel against any **claim** for which coverage is available under the **policy**.
- (b) Liberty may, with the **insured's** consent, settle any **claim** for which coverage is available in whole or in part under this **policy**.
- (c) Liberty's duty to defend the **insured** ends as soon as the applicable Limits of Liability stated in Items IV of the **declarations** are exhausted. If the applicable Limits of Liability are exhausted prior to the conclusion of any **claim**, Liberty can withdraw from the defence of such **claim**, and thereafter Liberty will have no further obligations whatsoever with respect to such **claim** or under the **policy**.
- (d) **Defence costs** incurred by Liberty or by the **insured** with Liberty's consent are part of and not in addition to the applicable Limits of Liability stated in Item IV of the **declarations** and the payment by Liberty of **defence costs** reduces and may exhaust the Limits of Liability.

4.3 ALLOCATION

- (a) If a **claim** made against an **insured individual** involves a **loss** that is only partially covered by this **policy** because such **claim** includes both covered and uncovered matters, the **insured** and Liberty agree that:
 - i) with respect to **defence costs**, in order to create certainty in determining a fair and equitable allocation, 100% of all **defence costs** shall be allocated to covered **loss** and advanced by Liberty on a current basis and that this allocation shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other **loss**;
 - ii) with respect to **loss** other than **defence costs**, the **insured** and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered **loss** and uncovered loss based on relative legal liability; however, no uncovered loss will be allocated to **insured individuals** if the **company** is **bankrupt or insolvent**; and
 - iii) if the **insured** and Liberty cannot agree on allocation with respect to **loss** other than **defence costs** then Liberty shall, at the **insured's** request, submit the allocation dispute to arbitration pursuant to paragraph 5.9.
- (b) If a **claim** is made against an **insured entity** and involves a **loss** that is only partly covered by this **policy** because such **claim** includes both covered and uncovered matters or covered and uncovered parties, the **insured** and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered **loss** and uncovered loss based on relative legal liability; however, if a **claim** solely for **wrongful employment practices** or **fiduciary wrongdoing** is made against an **insured entity**, the allocation described in paragraph 4.3 (a)(i) shall apply.

4.4 PRIORITY OF PAYMENTS

If **losses** arising from **claim(s)** which are covered under this **policy**, taken in the aggregate, exceed the available or remaining Limits of Liability, then, at the written request of the chairperson, the president, chief executive officer or chief financial officer of the **company**, Liberty will make payments according to the following priorities:

- (a) first, pay under paragraph 1.1 A the **loss** for which any **insured individual** is not indemnified by an **insured entity**;

- (b) second, pay any remainder of the Limits of Liability under paragraph 1.1 B for **loss** for which an **insured entity** has indemnified an **insured individual**; and
- (c) third, pay any remainder of the Limits of Liability under paragraph 1.1 C for **loss** which an **insured entity** is legally obliged to pay.

In the event Liberty withholds payment pursuant to (b) above, then Liberty shall, at such time and in such manner set forth in written instructions of the chairperson, the president, chief executive officer or chief financial officer of the **company**, remit such payment to the **company** or directly to or on behalf of the **insured individuals**.

The **bankruptcy or insolvency** of any **insured** does not change Liberty's obligations to prioritize payment of covered **loss** pursuant to this paragraph.

4.5 OTHER INSURANCE

If a **loss** or part of a **loss** which would, but for this paragraph, be covered by this **policy**, is covered under any other valid and collectible insurance policy, then this **policy** is excess to the other insurance policy and covers the **loss** only to that extent, unless the other insurance policy expressly refers to this **policy** and is specifically underwritten as excess to the limits of this **policy**.

4.6 SUBROGATION AND FURTHER ASSURANCES

Liberty is subrogated to the extent of any payment under this **policy** to all the **insureds'** rights of recovery against anyone, and is entitled to the **insureds'** cooperation and to sue for recovery in the **insured's** name. However, Liberty shall not subrogate against an **insured individual** except as it relates to paragraph 2.1 (c) and (d).

5. GENERAL CONDITIONS

5.1 LIMIT(S) OF LIABILITY

- (a) Liberty's obligation to pay any one **loss** and all **loss** under this **policy** during the **policy period**, including **defence costs**, is limited to the sum of the Total Limits of Liability stated in Item IV of the **declarations** and the additional Limit of Liability provided in paragraph 1.1D. The sublimits of liability stated in Item V of the **declarations** are part of and not in addition to the Total Limits of Liability stated in Item IV of the **declarations**.
- (b) Any one **loss** resulting from one of the **claim** types stated in Item IV of the **declarations** is subject to the Limits of Liability specified for that **claim** type stated in Item IV of the **declarations**.
- (c) If a **loss** results from more than one **claim** type stated in Item IV of the **declarations** the **claim** type limits specified in Item IV apply separately to each part of the **loss**.
- (d) All **claims** arising from the same **wrongdoing** or **wrongdoing** which is causally connected or which has as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of causally connected facts, circumstances, situations, events, transactions or causes, shall be deemed one **claim** and shall be deemed first made on the date the earliest of such **claims** is first made, regardless of whether such date is before or during the **policy period**.

5.2 DEDUCTIBLES

- (a) No deductible applies to **loss** resulting from:
 - i) a **claim** covered under paragraph 1.1 A;
 - ii) **defence costs** resulting from a **claim** covered under paragraph 1.1 B or 1.1 C occurring in Canada; however, a deductible will apply to any **loss** resulting from a **claim based on wrongful employment practices** covered under paragraph 1.1 B or 1.1 C; and
 - iii) **investigation costs** or **public relations costs** covered under 1.2 b) and c).

- (b) With respect to any other **loss** covered under this **policy**, Liberty's obligation is only to pay the amount which is excess of the applicable deductible stated in Item VI of the **declarations**. The **insured entity** must bear the deductible uninsured and at its own risk.
- (c) If a **loss** results from more than one **claim** type stated in Item IV of the **declarations**, the deductibles applicable to each **claim** type stated in in Item VI of the **declarations** apply separately to each part of the **loss**. However, the largest deductible is the maximum deductible applicable for all **loss** arising from such **claim**.
- (d) The **insured entities** must indemnify the **insured individuals** to the full extent permitted or required by applicable law and with respect to any advisory board member or board observer, the **insured entities** will be expected to indemnify such individuals in the same manner and Liberty will apply the deductible in the same manner as outlined in paragraph 5.2 (b) to any advisory board member or board observer. However, if the **insured entities** are financially unable to pay the deductible under this **policy** due to **bankruptcy or insolvency** or any **insured entity** refuses to indemnify the **insured individuals**, Liberty will advance the deductible to the **insured individuals** on behalf of the **insured entities**, with a full right of recovery against the **insured entities**, no later than 60 days after Liberty has received in writing details of such refusal or failure.

5.3 DISCOVERY PERIOD

- (a) If Liberty terminates or refuses to renew this **policy** other than for non-payment of premium or if the **insured** terminates or fails to renew this **policy**, coverage under this **policy** is automatically extended for 60 days following the effective date of termination, but only for any **wrongdoing** which happens before the effective date of termination of this **policy** and only if there is no replacement policy obtained providing coverage anytime during this 60 day period.
- (b) If Liberty terminates or refuses to renew this **policy**, other than for non-payment of premium, the **insured** can extend coverage under the **policy** for 12 months following the effective date of termination by written notice to Liberty and by paying an additional premium equal to the Unilateral Discovery Percentage amount stated in Item VIII of the **declarations** of the annual premium stated in Item X of the **declarations**, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to **wrongdoing** that occurred before the effective date of termination. If the **insured** chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(b).

- (c) If the **insured** terminates or refuses to renew this **policy**, the **insured** can extend coverage under the **policy** for 12 months following the effective date of termination by giving written notice to Liberty, and paying an additional premium equal to the Bilateral Discovery Percentage amount stated in Item VIII of the **declarations** of the annual premium stated in Item X of the **declarations**, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to **wrongdoing** that happened before the effective date of termination. If the **insured** chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(c).

- (d) The **discovery period** is part of the last **policy period** and does not increase the limits under paragraph 5.1.
- (e) An offer by Liberty of renewal terms and conditions or premiums different from those in effect prior to renewal is not a "refusal to renew" by Liberty under paragraphs 5.3 (a) or (b).

5.4 SPOUSAL BENEFIT & ESTATE ENUREMENT

- (a) If a **claim** against the **insured** for **wrongdoing** includes a **claim** against an **executive's spouse** solely because he/she is the **executive's spouse**, or to recover the **spouse's** assets, anything which the **spouse** is legally obliged to pay as a result of the **claim** (including **defence costs**) is a **loss** attributed to the

insured under this **policy**. However, there is no coverage for the **spouse** if the **claim** alleges a wrongful act on the part of the **spouse**.

- (b) This **policy** is binding upon and applies to the benefit of the **insured's** estate, heirs, executors, administrators and legal representatives, but only in respect of **wrongdoing** on the **insured's** part.

5.5 EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE

- (a) If during the **policy period** the **company** merges or amalgamates with another entity, the **company** must give prompt notice of the merger or amalgamation to Liberty.
- (b) If during the **policy period** the **company** acquires or creates a new entity which becomes its **subsidiary**, and the new entity's assets at the date of acquisition or creation are less than 35% of the assets of the **company** on a consolidated basis, coverage under this **policy** extends to the new entity and to any **plan** connected with the new entity but only with respect to any **wrongdoing** occurring after such acquisition or creation.
- (c) If during the **policy period** the **company** acquires or creates a new entity which becomes its **subsidiary** and the new entity's assets at the date of acquisition or creation are more than 35% of the assets of the **company** on a consolidated basis, then:
- i) coverage under this **policy** extends to the new entity and to any **plan** connected with the new entity for 90 days but only with respect to any **wrongdoing** occurring after such acquisition or creation;
 - ii) the coverage for the new entity and for any **plan** connected with the new entity terminates at the end of the 90 day period unless, before the end of the 90 day period:
 - a) the **company** has given written notice of the acquisition or creation of the new entity to Liberty,
 - b) Liberty has agreed to cover it by endorsement, and
 - c) the **company** has paid any additional premium required by Liberty.
- (d) If the **company** or any **subsidiary** is sold or dissolved during the **policy period** this **policy** will continue to apply to **claims** involving:

the sold or dissolved entity and/or its **executives**, and any **plan** sponsored by or connected with the sold or dissolved entity, and any **fiduciary** or **administrator** of that **plan** until the termination date of this **policy** or any renewal policy, but only for **wrongdoing** occurring before the sale or dissolution. Sale of the **company** means: a change in the control of the **company** within the meaning of subsection 2(3) of the *Canada Business Corporations Act* R.S.C. 1985 c. C-44. Sale of a **subsidiary** means: a sale of more than 50% of any issued and outstanding securities or other interest of the **subsidiary** that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or the loss of **managerial control** of the **subsidiary**.

5.6 SEVERABILITY

For the purpose of assessing:

- (a) whether or not there is a material misrepresentation or non-disclosure in the **application**; or
- (b) whether or not exclusions or limitations of coverage apply,
- no knowledge or statement by any **insured individual** will be imputed to any other **insured individual**. However, any knowledge or statement by the chairperson, president, chief executive officer or chief financial officer will be imputed to the **company** or **plan**.

5.7 TERMINATION AND PREMIUM REFUND

- (a) This **policy** terminates at the earliest of the following times:

- i) on the date stated in Item III (B) of the **declarations**;
 - ii) the later of the date of receipt or deemed receipt by Liberty of written notice of termination from the **company** or the date specified in such notice;
 - iii) for non-payment of premium, fifteen (15) days after receipt or deemed receipt by the **company** of Liberty's written notice of termination;
 - iv) on any other date mutually agreed upon by the **company** and Liberty.
- (b) If this **policy** is terminated under paragraph 5.7 (a) (ii) or (iii), Liberty will refund any unearned premium on a pro rata basis.

5.8 TERRITORY AND CURRENCY

- (a) Coverage under this **policy** applies to **wrongdoing** which takes place and to **claims** anywhere in the world.
- (b) Unless the **declarations** expressly state otherwise, all dollar amounts in this **policy** refer to Canadian currency and all **loss** is payable in Canadian currency. If any Items stated in the **declarations** stipulate a currency other than Canadian dollars, all monetary amounts in the **policy** shall refer to such stipulated currency and all **loss** is payable in that stipulated currency.

5.9 ARBITRATION AND APPLICABLE LAW

- (a) If requested by either party, any dispute about coverage under this **policy**, including any dispute as to allocation, will be submitted to mediation and/or arbitration. Except as regards the choice of arbitrator or arbitration panel, the mediation and/or arbitration will be governed by the law of the province or territory of the address of the **company** stated in Item II of the **declarations**, unless the **company** and Liberty expressly agree otherwise in writing. The arbitration panel shall consist of one arbitrator selected by the **company**, one arbitrator selected by Liberty and one arbitrator selected by the first two arbitrators. None of the arbitrators can be former or present **insureds** or shareholders, partners or principals of or otherwise affiliated in business with any **insureds** or Liberty.
- (b) This **policy** is governed by the law of the jurisdiction in which it was issued without giving effect to the choice of law rules of that jurisdiction.

5.10 AUTHORIZATION

The **company** stated in Item I of the **declarations** is appointed as the agent of all **insureds** for all purposes under this **policy**, and by accepting this **policy** the **company** represents and warrants to Liberty that it is authorized to act on behalf of all **insureds**. The **company** is not an agent of Liberty.

5.11 AMENDMENT OR ASSIGNMENT

No amendment or change to, or assignment in whole or in part of an interest in, this **policy** is effective unless made in writing and signed by an authorized representative of Liberty.

5.12 INTERPRETATION

In this **policy**:

- (a) words and expressions shall be read with such changes in gender or number as the context shall require.
- (b) the headings and titles to the table of contents and paragraphs are meant to make it easier to read, and do not create or affect coverage.
- (c) a reference to an act, statute or any applicable law is deemed to extend to and include any amendments and successor acts, statutes or applicable laws and any rules, regulations, orders or directives issued thereunder.

5.13 NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC.

While this **policy** is in effect, the **company** first named in Item I of the **declarations** is a member of Liberty Mutual Holding Company Inc. and is entitled to vote either in person or by proxy at any and all meetings of said company. The Annual Meeting of Liberty Mutual Holding Company Inc. is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The **company** first named in Item I of the **declarations** shall participate in the distribution of any dividends declared by Liberty Mutual Holding Company Inc. for this **policy**. The amount of such **company's** participation is determined by the decision of Liberty Mutual Holding Company Board of Directors in compliance with any laws that apply.

5.14 NOTICE OF NON RENEWAL

Liberty has no obligation to renew this **policy**. However, if Liberty refuses to renew this **policy**, Liberty shall provide written notice of non-renewal to the **company** no less than 90 days prior to the effective date of termination of this **policy**. This notice applies only if the **company** submits a completed **application** in advance of the prescribed notice date. An offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

5.15 GLOBAL LIBERALIZATION

Where legally permissible, this **policy** shall apply to any **claim** made against any **insured** anywhere in the world.

In regard to **claim(s)** brought and maintained solely in a **foreign jurisdiction** against an **insured entity** formed and operating in such **foreign jurisdiction** or **insured individual** thereof for any **wrongdoing** committed in such **foreign jurisdiction**, Liberty shall apply to such **claim(s)** those terms and conditions (and related provisions) of the **foreign policy** registered with the appropriate regulatory body in such **foreign jurisdiction** that are more favourable to such **insured** than the terms and conditions of this **policy**. However, this paragraph shall apply only to Paragraphs 1, 2, 3, 4.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.10 and 5.11 of this **policy** and the comparable provisions of the **foreign policy**. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of this **policy**.



President



Secretary

Endorsement No. 1

MULTI-YEAR POLICY ENDORSEMENT

(Claims Opt-out clause and No “Fresh” Limits in Bankruptcy clause)

Effective Date: October 01, 2021
Policy Number: B2BPAL112995004
Issued to: Original Traders Energy LP
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Wherever the term “**policy period**” appears in this **policy** (other than Item III and Item X of the **declarations**, and “**policy period**” in Paragraph 3. **DEFINITIONS**) it shall be replaced with the term “**policy instalment term**”.
2. Paragraph 3, **DEFINITIONS**, “**policy period**” is deleted in its entirety and replaced with the following:
“policy period” means the period from the date specified in Item III of the **declarations** to the date of termination of this **policy** under paragraph 5.7 and shall include up to three (3) **policy instalment terms** as specified in Item III of the **declarations** under the heading entitled, Instalment Terms.
3. Paragraph 3, **DEFINITIONS**, is amended by adding the following:
“policy instalment term” means the applicable period specified in Item III of the **declarations**. The **discovery period** is deemed to be part of the most recent **policy instalment term**.
4. Notwithstanding paragraph 5.7 of this **policy**, it is further understood and agreed that in the event Liberty is notified of a **claim**, pursuant to paragraph 4.1 of this **policy**, before the end of any **policy instalment term** specified in Item III of the **declarations**, Liberty shall have the right to terminate coverage under this **policy** for any subsequent **policy instalment term** specified in Item III of the **declarations** by giving written notice of termination to the **company** no less than 60 days prior to such termination. If such 60 day notice of termination period extends past the expiry of the applicable **policy instalment term** in which the **claim** was made, Liberty shall extend such **policy instalment term** to satisfy the 60 day notice of termination requirement but without increasing or reinstating the applicable Limits of Liability.
5. Notwithstanding paragraph 5.1 and Item IV of the **declarations**, it is further understood and agreed that if the **company** becomes **bankrupt or insolvent** before the end of any **policy instalment term** specified in Item III of the **declarations**, then coverage for any subsequent **policy instalment term** specified in Item III of the **declarations** shall be subject to the same Total Limits of Liability stated in Item IV of the **declarations** and the same additional Limit of Liability provided in paragraph 1.1D that are applicable to the **policy instalment term** in which the **company** became **bankrupt or insolvent**. For sake of further clarity, there shall be no new or “fresh” Limits of



Liability for any such subsequent **policy instalment term(s)** specified in Item III of the **declarations**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

A handwritten signature in cursive script that reads "J. Todd Armstrong".

Authorized Representative of Liberty Mutual Insurance Company

October 01, 2021

Date

Endorsement No. 2

EPL AMENDATORY ENDORSEMENT

(Worldwide Labour Code/FLSA Exclusion, Biometric Data Exclusion and 3rd Party Coverage to Exclude Violation on the part of the Company of the ACA, Title III of the ADA or similar legislation)

Effective Date: October 01, 2021
Policy Number: B2BPAL112995004
Issued to: Original Traders Energy LP
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraphs 2.3 (g), **EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING**, is deleted in its entirety and replaced with the following:

- (g) **LABOUR CODE/FAIR LABOUR STANDARDS ACT: based on** an actual or alleged violation of or obligation, responsibility, or duty imposed under or with respect to any federal, provincial, territorial, state, or local statutory law, civil law or common law anywhere in the world (including that part of the Canadian Labour Code Part III or the United States of America Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices, including but not limited to:
- (i) the calculation, recordkeeping, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation;
 - (ii) the classification of any organization or person for wage and hour purposes; and
 - (iii) child labour.

However, this exclusion does not apply to:

- (i) a **retaliatory treatment claim**.
- (ii) a **claim** for an actual or alleged differential in pay for the same work or substantially similar work.

2. Paragraph 2.3, **EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING**, is amended to include the following:

BIOMETRIC DATA: based on any biometric data.

3. Paragraphs 3, **DEFINITIONS**, “**wrongful employment practices**”, subparagraph d) is deleted in its entirety and replaced with the following:

d) invasion of privacy (except for the access to, retention of, disclosure of or failure to obtain consent to the capture, collection, obtainment, storage, conversion, transfer, sale or dissemination of **biometric data** by the **insured** or by any third-party acting on behalf of the **insured**), employment-related defamation, employment-related wrongful infliction of emotional distress, or negligent employment evaluation or any employment-related misrepresentation made to an **employee** or prospective **employee** with respect to the **company**;

4. Paragraph 3, **DEFINITIONS**, “**wrongful employment practices**”, subparagraph g) is deleted in its entirety and replaced with the following:

g) unlawful discrimination, sexual harassment or violation of a natural person’s civil rights based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status, or characteristic protected under applicable law only with respect to any customer, client or supplier or other individual or group of individuals other than an **employee** or prospective **employee** with the **company**.

However, subparagraph g) of **wrongful employment practices** shall not include any violation on the part of the **company** of the Accessible Canada Act, Title III of the American with Disabilities Act or any similar provisions of any federal, provincial, territorial, state or other governmental statute, legislation, law, regulation or ordinance anywhere in the world.

5. Paragraphs 3, **DEFINITIONS**, is amended to include the following:

“**biometric data**” means any physical, physiological, biological or behavioral characteristics of an individual, including retina or iris scan, fingerprint, voiceprint, DNA, finger scan, hand scan, face geometry or any other biometric algorithm or measurement which allows an individual to be identified.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



Authorized Representative of Liberty Mutual Insurance Company

October 01, 2021

Date

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

THIRD AFFIDAVIT OF SCOTT HILL

AIRD & BERLIS LLP

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

Steven Graff (LSO# 31871V)
Miranda Spence (LSO# 60621M)
Tamie Dolny (LSO#77958U)
Samantha Hans (LSO# 84737H)

Tel: 416.863.1500
Fax: 416.863.1515

Lawyers for the OTE Group

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO
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**MOTION RECORD OF THE APPLICANTS
(Returnable February 9, 2023)**

AIRD & BERLIS LLP

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

**Steven Graff (LSO# 31871V)
Miranda Spence (LSO# 60621M)
Tamie Dolny (LSO#77958U)
Samantha Hans (LSO# 84737H)**

Tel: 416.863.1500
Fax: 416.863.1515

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