

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**RECEIVER'S MOTION TO APPROVE PROPOSED
ASSET ASSIGNMENT AND RELEASE**

COMES NOW, Jonathan E. Perlman, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ by and through undersigned counsel hereby files this Motion to Approve Proposed Asset Assignment and Release (“Motion”) and accordingly states as follows:

1. On May 11, 2020, the Securities and Exchange Commission (“SEC”) filed its Complaint for Injunctive Relief against TCA Fund Management Group, Corp. (“FMGC”), TCA Global Credit Fund GP, LTD. (“GP”), (“Receivership Defendants”), and TCA Global Credit Fund, LP (“Feeder LP”), TCA Global Credit Fund, LTD. (“Feeder Ltd.”), and TCA Global Credit Master Fund, LP (“Master Fund”) (“Relief Defendants”) (collectively, “Defendants”). [ECF No. 1].

2. The SEC also filed an Expedited Motion for Appointment of Receiver. [ECF No. 3].

3. On the same day, the Court granted the motion and appointed Jonathan E. Perlman, Esq., of the law firm Genovese Joblove & Battista, P.A. (“GJB”), as permanent Receiver over the

¹ All terms not specifically defined herein have the meaning ascribed to them in the SEC’s Motion for Appointment of Receiver [ECF No. 3] and the Court’s Appointment Order [ECF No. 5], and the Court’s First Expansion Order [ECF No. 16].

Receivership Entities [ECF No. 5] (“Appointment Order”).

4. Pursuant to the Appointment Order, the Receiver “may, without further Order of the Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.” *Id.* at § IX ¶ 31.

5. In mid-late 2013, Master Fund entered into a series of revolving loans with Sofame Technologies, Inc. (“Sofame”) which were secured by the assets of Sofame and personal guarantees. The records of the Receivership Entities indicate that the loan defaulted, the personal guarantors were unable to make any payments and FMGC wrote down the total exposure to approximately CAD \$97,000.

6. Thereafter, Thermal Energy International, Inc. a Canadian company, (“Buyer” or “Thermal Energy”) negotiated a workout with the senior secured creditors, represented by BNY Trust Company of Canada, in order to for the Buyers to acquire certain Intellectual Property (“IP”) rights previously held by Sofame.

7. The Asset Assignment Agreement (“Assignment”) and the Discharge and Release Agreement (“Release”), attached as Exhibit A, outline the terms of the deal. Specifically, Thermal Energy agrees to pay as follows:

- a. CAD \$125,000, less 5/8 (62.5%) of the legal fees incurred, to BNY Trust Company of Canada, the superior lien holder; and
- b. CAD \$75,000, less 3/8 (37.5%) of the legal fees incurred, to Master Fund in full satisfaction of an outstanding lien held by Master Fund against Sofame and its personal guarantors, John Gocek and Luc Mandeville.

8. The total amount of legal fees is approximately CAD \$45,000, of which Master Fund would be responsible for 37.5% or CAD \$16,875, leaving a net benefit to the Receivership Estate of approximately CAD \$58,000.²

9. The Receiver has consulted with his professionals and evaluated the asset purchase agreement and the release proposed by the Buyer, and concluded that the Assignment and Release are in the best interests of the Receivership Estate. Particularly where, as here, Master Fund's lien rights are subordinated to the rights of other secured creditors, and but for this deal, Master Fund would be unlikely to recover any funds from a liquidation of its interests in Sofame.

10. Accordingly, the Receiver seeks confirmation of approval to enter into the attached Assignment and Release.

WHEREFORE, Receiver, Jonathan E. Perlman, by and through his undersigned counsel respectfully requests that this Honorable Court grant the Motion to confirm the Receiver's authority to enter into the Assignment and Release in order to recover the funds for the benefit of the Receivership Estate. A proposed order for the Court's consideration is attached as Exhibit B.

S.D. Fla. L.R. 7.1(A)(3) CERTIFICATE OF CONFERENCE

I, Irina Sadovnic, Esq., hereby certify that counsel for the Receiver conferred with counsel for the SEC on July 20, 2020, via email regarding the requested relief and they that the SEC does not oppose the relief sought.

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Jonathan E. Perlman, Receiver
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq., FBN 124502

² The amount in USD at the time of this filing was approximately \$43,000.

Isadovnic@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification and/or U.S. Mail to all parties and notification of such filing to all CM/ECF participants in this case on the 20th day of July, 2020.

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq.

EXHIBIT A

Asset Assignment Agreement

This Asset Assignment Agreement (the “**Agreement**”), having an effective date of _____, 2020, is agreed to by Thermal Energy International Inc. (the “**Buyer**”) and BNY Trust Company of Canada, in its capacity as trustee (the “**Trustee**” or the “**Seller**”) on behalf of itself in such capacity and on behalf of the Noteholders (as defined below).

1. Definitions.

- 1.1 **Assets** mean the assets which the Seller will acquire title to pursuant to a judgment of the Superior Court of Quebec, which has been requested by the Buyer to be obtained to the fullest extent possible with respect to the assets comprising the collateral securing the notes held by the Noteholders, including those Assets listed in Schedule B, in order to fully settle Sofame’s obligations to creditors including the Trustee and the Noteholders, which will be attached hereto for identification by the Parties, once obtained, as Schedule A (the “**Court Order**”).
- 1.2 **Noteholders** means those holders of secured notes pursuant to the Indenture dated March 31, 2010 among Sofame and BNY Trust Company of Canada in respect of the issuance of the notes by Sofame in a principal amount of \$250,000.
- 1.3 **Governmental Authority** means the government of Canada or any political subdivision thereof, whether provincial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.
- 1.4 **Legal Fees** means those fees of counsel to the Seller, Norton Rose Fulbright Canada LLP, relating to the transactions and court proceedings set forth herein.
- 1.5 **Other Secured Creditors** means all of Sofame’s secured creditors with rights in the Assets (other than the Noteholders) as of the date hereof, being those listed in Schedule C.
- 1.6 **Sofame** means Sofame Technologies Inc.
- 1.7 **Taxes** mean any and all taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use, consumption or sales taxes, assessments, fees or other charges, unpaid source deductions, personal property, customs, excise, stamp, transfer or similar taxes, duties or charges, imposed by any Governmental Authority, including any interest, additions to tax, fines or penalties applicable thereto.
- 1.8 **Taxes Owning** mean those taxes owing by Sofame, being those listed in Schedule D, as of the date indicated therein, plus any interest accrued thereon after the date hereof.

2. Conditions Precedent, Assignment of Assets and Monetary Compensation.

2.1 Seller Conditions.

- (a) As a condition precedent to the Seller entering into this Agreement, the Seller requires payment of \$10,000 to the Seller's legal counsel, Norton Rose Fulbright Canada LLP, receipt of which is hereby acknowledged by the Seller, in trust to be applied as payment of the Seller's costs and expenses up to said amount, including legal fees, related to obtaining the Court Order and the negotiation and preparation of this Agreement and all related documents.
- (b) As conditions precedent to the Assignment, the Seller requires delivery from the Buyer within 5 Business Days of the Seller acquiring title to the Assets pursuant to the Court Order of:
 - (i) (A) a Statement of Account from the Canada Revenue Agency and a *Relevé de compte* (Statement of Account) from Revenu Québec as of the most recently available date prior to the Assignment as of which those are available, showing that no amounts of Taxes are owing to the respective Governmental Authority as at the date thereof; and (B) confirmation by way of a certificate of an officer of the Buyer that other Taxes or other amounts owing by Sofame to any Governmental Authority as at the date of the Assignment (if any), in either case including but not limited to the Taxes Owing set forth in Schedule D (plus any interest accrued thereon), have been fully and finally paid and discharged and there are no other Taxes or other amounts owing by Sofame to Governmental Authorities; and
 - (ii) evidence of the delivery from each of the Other Secured Creditors of the full and final release and discharge of all obligations of Sofame to him, her or it,

in each case, in form and substance satisfactory to the Seller.

- 2.2 **Buyer Conditions.** As a condition precedent to the Assignment, the Buyer requires delivery from the Seller of the Court Order, which the Buyer hereby acknowledges shall be conclusive evidence that the Seller is the owner of the Assets.
- 2.3 **Obtaining Court Order.** Subject to the terms hereof, the Seller will use commercially reasonable efforts to obtain the Court Order within nine (9) months of the date hereof, provided that the parties acknowledge that as at the date hereof the Superior Court of Quebec is closed due to the COVID-19 pandemic and, therefore, the parties agree that such date may need to be extended by mutual agreement due to such continued closure. Notwithstanding the foregoing, the Seller covenants to prepare the complete drafts of the court proceedings to obtain the Court Order within thirty (30) days of the date hereof. The Seller covenants to file said proceedings within ten (10) days of sign-off on the drafts of the court proceedings by the Buyer and the Buyer's legal counsel, Spiegel Sohmer Inc., provided that the parties acknowledge that as at the date hereof the Superior Court of Quebec is closed due to the COVID-19 pandemic and, therefore, the parties agree that such date may need to be extended by mutual agreement due to such continued closure. The Buyer and the Seller shall cooperate and collaborate during the proceedings to ensure that the process proceeds without undue delay.
- 2.4 **Assignment of the Assets.** The Seller agrees that once it acquires title to the Assets pursuant to the Court Order, it will, subject to satisfaction of the conditions precedent

described in Section 2.1(b) hereof, sell, assign and transfer to the Buyer absolutely, and the Buyer agrees to purchase on the Closing Date, all of the Seller's right, title and interest in and to the Assets, the same to be held and enjoyed by the Buyer for its own use and enjoyment and the use and enjoyment of its successors, assigns or other legal representatives (the "**Assignment**"). The Assignment will take place on a date designated by the Seller, which shall be no earlier than the expiry of the thirty (30) day appeal period which commences upon the Court's issuance of the Court Order (the "**Appeal Period**") but no later than ten (10) days after the expiry of the Appeal Period (the "**Closing Date**"). The purchase price for the Assets shall be \$200,000.00 (the "**Purchase Price**"), which will be payable by the Buyer to the Seller in immediately available funds on the Closing Date. Effective as of the Closing Date, subject only to receipt by the Seller of the Purchase Price and satisfaction of the other conditions precedents set forth herein, the Seller will sell, transfer, assign, set over and otherwise convey the Assets to the Buyer.

- 2.5 **Allocation of the Purchase Price.** The Purchase Price shall be paid to the Seller in accordance with Section 2.4 and will be allocated by the Seller as follows:
- (a) \$125,000, less (i) 5/8 (62.5%) of the Legal Fees of the Seller, which shall be paid to Norton Rose Fulbright Canada LLP; and (ii) the Trustee fees of \$18,000, which shall be paid to BNY Trust Company of Canada, which shall be disbursed to the Noteholders; and
 - (b) \$75,000, less 3/8 (37.5%) of the Legal Fees of the Seller, which shall be disbursed to TCA Global Credit Master Fund, LP.
- 2.6 **Release.** Upon the consummation of the Assignment, the obligations of Sofame to the Trustee and the Noteholders pursuant to the Indenture shall be considered, without further action by any Party, to be released by the Trustee on behalf of itself and the Noteholders in accordance with the terms of the Indenture.
- 2.7 **Sales Tax.** In addition to the Purchase Price, the Buyer shall be liable for all applicable Taxes properly payable by a buyer upon and in connection with the Assignment of the Assets by the Seller to the Buyer.
- 2.8 **No Other Rights.** The rights that will be assigned under this Agreement are only as expressly set forth in such document. No other right will be deemed to be assigned or granted, whether by implication, estoppel, inference or otherwise, by or as a result of this Agreement or any conduct of either party under this Agreement.
- 2.9 **Risk as to Title to the Assets Listed in Schedule B.** The Buyer and the Seller acknowledge that an essential condition to the Buyer entering into this Agreement is the acquisition of the assets listed in Schedule B and the Buyer and the Seller further acknowledge that it is not a guaranteed result that the Court Order will provide for the transfer to the Seller of the assets listed in Schedule B. As such, the Seller and the Buyer agree that the Buyer may, (i) at any time prior to the issuance of the Court Order, instruct the Seller to discontinue the proceedings in which case the Seller shall discontinue the proceedings and (ii) within two (2) business days of the issuance of the Court Order, instruct the Seller to renounce the judgment issuing the Court Order in which case the Seller shall renounce to the judgment and in both such scenarios, this

Agreement shall be terminated and of no further force or effect and the Buyer shall pay the Legal Expenses of the Seller.

3. Representations and Warranties; Limitations; Indemnity.

3.1 Negation of Implications. Nothing in this Agreement shall be construed as:

- (a) requiring of either party the filing of any Asset application, the securing of any Asset or the prosecution or maintenance of any Asset in force;
- (b) a warranty or representation by the Seller, or admission by the Seller, as to the validity, scope or enforceability of any of the Assets or any other warranty or representation by the Seller with respect to the Assets (except for those warranties and representations provided for in Section 3.2);
- (c) an agreement to bring or prosecute actions or suits against third parties for infringement or alleged infringement (including, any contributory infringement, allegation of contributory infringement, inducement of infringement, or allegation of inducement of infringement) of any of the Assets;
- (d) an obligation to provide any manufacturing or technical information or assistance, or any information concerning any of the Assets;
- (e) conferring a right to use in advertising, publicity, or otherwise any trademark or trade name of the other party;
- (f) conferring by implication, estoppel or otherwise upon the Seller any license or other right under any Asset, except the rights expressly granted hereunder; or
- (g) an obligation upon the Seller to make any determination as to the applicability of any of the Assets to any products.

3.2 Seller Representations. The Seller hereby represents and warrants, as of the date hereof and as of the date of the Assignment (except for paragraph (c), which shall only be made as of the date of the Assignment), to the Buyer that:

- (a) the Seller has the requisite power and authority to enter into this Agreement and to consummate such agreement;
- (b) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Seller and by the Noteholders and no further action to execute and deliver this Agreement or to carry out the Assignment is required on the part of the Seller; and
- (c) the Seller has taken no action with regard to the Assets aside from entering into this Agreement.

3.3 Buyer Representations. The Buyer hereby represents and warrants, as of the date hereof and as of the date of the Assignment, to the Seller that:

- (a) the Buyer has the requisite power and authority to enter into this Agreement and to consummate such agreement;
- (b) the execution and delivery of this Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Buyer, and no further action to execute and deliver this Agreement or to carry out the Assignment is required on the part of the Buyer; and
- (c) all of the Taxes Owing have been fully and finally paid and discharged and, for greater certainty, there are no other Taxes or other amounts owing by Sofame to Governmental Authorities.

3.4 **No Other Representations or Warranties.** Except as expressly set forth in this Agreement, neither party makes any representations or gives any warranties or conditions except for the representations set forth in Sections 3.2 and 3.3. The Buyer will purchase the Assets on an "as is" basis and subject to any and all pre-existing rights and licences that may have been granted in respect to the Assets. Except as expressly provided in Section 3.2, the Seller makes no representations and provides no warranties or conditions of any kind, either express or implied, statutory, by usage of trade, custom of dealing, or otherwise, and except as expressly provided in Section 3.2, the Seller specifically disclaims any implied representations, warranties and/or conditions of merchantability, merchantable quality, non-infringement, satisfactory quality or fitness for a particular purpose, and assumes no responsibilities whatever with respect to the Seller's exploitation of the Assets.

3.5 **Indemnification.** Except with respect to the Seller's representations under Section 3.2, the Buyer shall indemnify the Seller and its officers, directors, employees and agents for, and to hold them harmless against any and all actual loss, damage, claim, liability or expense, arising out of or in connection with the acceptance and holding of the Assets, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or obligations hereunder, or in connection with enforcing the provisions of this Section, provided that: (i) the Seller provides the Buyer with prompt notice of any claim, action or proceeding that may give rise to an indemnification obligation hereunder; (ii) the Seller has not compromised or settled such claim, action or proceeding prior to such notice; (iii) the Seller provides the Buyer with reasonable cooperation and assistance in the defense of such claim, action or proceeding, at the Buyer's reasonable expense; (iv) the Buyer shall have exclusive control of the defense of such claim, action or proceeding and the settlement or compromise thereof; and (v) the Seller's representation set forth in Section 3.2(c) is true and accurate. Each party's obligations under this Section 3.5 shall survive the termination of this Agreement and the performance of the obligations of the parties hereunder and the release and discharge of Sofame's obligations pursuant to the Indenture.

4 **Miscellaneous.**

4.1 **Nature of Obligations Between Parties.** Nothing contained in this Agreement shall be deemed to constitute either party or any of its representatives the partner, agent, franchisee, or legal representative of the other party or to create any fiduciary relationship for any purpose whatsoever. Nothing in this Agreement shall confer on

either party or any of its representatives any authority to act for, bind, or create or assume any obligation or responsibility on behalf of the other party.

- 4.2 **Trustee Role.** BNY Trust Company of Canada is party to this Agreement only in its capacity as Trustee solely as a representative of itself in such capacity and of the Noteholders (and not in its personal capacity) and the rights and protections of the Trustee in the Indenture apply to its role as Seller under this Agreement. For the avoidance of doubt, the Trustee will perform the obligations and only the obligations of the Seller specifically stated in this Agreement and no implied obligations are to be read into this Agreement. The Trustee in its capacity as Seller hereunder shall not be required to exercise discretion with respect to the performance of its obligations in this Agreement. The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act, provision, directive or restriction of any present or future law or regulation or Governmental Authority, any act of God or war, civil unrest, local or national disturbance or disaster, any epidemic, pandemic, quarantine, disease, any act of terrorism, cyber terrorism, loss or malfunctions of utilities, computer (hardware or software) or communication services or the unavailability of any wire or facsimile or other wire or communication facility).
- 4.3 **Choice of Law and Venue.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Province of Quebec without reference to its provisions on conflict of laws. The Buyer shall only be entitled to bring any action or proceeding against the Seller arising out of or relating to this Agreement in a court in Montreal, Quebec, Canada.
- 4.4 **Currency.** All references to monetary amounts in this Agreement shall be deemed to be references to Canadian dollars unless otherwise stipulated.
- 4.5 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable by a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- 4.6 **Amendments; Waivers.** This Agreement may be amended in a writing duly executed by both parties. No waiver of any right or provision of this Agreement shall operate as a waiver of, or estoppel with respect to, any other action. No failure to exercise, and no delay in exercising, any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or at equity. The waiver of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself.

- 4.7 **Interpretation.** The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and any ambiguities shall not be interpreted against the party that drafted the relevant language. All dollar amounts denominated in this Agreement are in Canadian funds.
- 4.8 **Further Assurances.** Each party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and shall cause the doing of such acts and shall cause the execution of such further documents as are within its power as the other party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of this Agreement.
- 4.9 **Entire Agreement.** This Agreement, together with the schedules hereto, which are hereby incorporated herein by reference, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all previous communications, agreements, and understandings between the parties relating to the subject matter hereof. Neither party has entered into this Agreement in reliance upon any representation, warranty, condition or undertaking of the other party that is not set out or referred to in this Agreement.

(Remainder of page left intentionally blank; signature page to follow)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date and at the place first above-mentioned.

BNY TRUST COMPANY OF CANADA
in its capacity as Trustee on behalf of itself in
such capacity and on behalf of the
Noteholders under the Indenture

THERMAL ENERGY INTERNATIONAL INC.

Per: _____
Name:

Per: _____
Name:

Schedule A

Judgment of the Superior Court of Quebec

(to be attached for identification once obtained)

Schedule B

- (a) The **Books and Records** being all files, documents, instruments, papers, books and records, whether in written or electronic form, relating to development efforts, operations, affairs, prospects or assets, pricing guidelines, title policies, customer and marketing materials and information, product data sheets, performance benchmark reports, customer account histories and profiles, sales training and presentation materials, customer support materials, support bulletins, vendor lists, licenses, customer lists and permits and all computer files and programs, retrieval programs, operating data and plans, projections, forecasts and plans with respect to Intellectual Property.

- (b) The **Intellectual Property** being all intellectual property rights of every kind, including all: (i) patents, patent applications, patent disclosures and inventions; (ii) trademarks, service marks, trade dress, trade names, logos and corporate and product names and slogans (in each case, whether registered or unregistered) and registrations and applications for registration thereof; (iii) copyrights (registered or unregistered) and registrations and applications for registration thereof; (iv) computer software, data, data bases and documentation thereof; (v) trade secrets and other confidential or proprietary information (including ideas, formulas, compositions, invention (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information); (vi) URLs and domain name registrations, and social media accounts and registrations; (vii) works of authorship, including computer programs, source code, object code and executable code, whether embodied in software, firmware or otherwise, documentation, designs, files, records, data and mask works and any rights in semiconductor masks, layouts, architectures or topography; and (viii) goodwill associated with any of the foregoing.

Schedule C

Other Secured Creditors

1. TCA Global Credit Master Fund, LP
2. Comm. des normes, de l'équité, de la santé et de la sécurité du travail

Schedule D**Taxes Owing of Sofame**

Creditor	Amount	Amount Current As Of
CRA – Corporate Income Tax Account	\$0.00	March 17, 2020
CRA – GST	\$0.00	March 17, 2020
CRA – Deductions at Source (Payroll)	\$3857.72 (account RP0002) \$0.00 (account RP0001) \$0.00 (account RP0003)	March 17, 2020
Canada Border Services Agency	\$0.00	February 17, 2020
RQ – Corporate Income Tax Account	\$43,079.69	March 12, 2020
RQ – GST	\$0.00	March 12, 2020
RQ – QST	\$0.00	March 12, 2020
RQ – Deductions at Source (Payroll)	\$0.00	March 12, 2020
CNESST	\$16,398.49	February 14, 2020
Total:	\$63,335.90	

EXECUTION COPY

DISCHARGE AND RELEASE AGREEMENT

THIS DISCHARGE AND RELEASE AGREEMENT made and entered into on June ____, 2020.

BETWEEN: **SOFAME TECHNOLOGIES, INC.**, a corporation existing under the laws of Canada with a head office at 500 Alphonse-D.-Roy Street, Montréal (Québec) H1W 3Y8 (john.gocek@sofame.com), herein represented by John Gocek duly authorized as he so declares

("Sofame");

AND: **JOHN GOCEK**, a businessman residing and domiciled at 500 Alphonse-D.-Roy Street, Montréal (Québec) H1W 3Y8 (john.gocek@sofame.com)

("John");

AND: **LUC MANDEVILLE**, a businessman residing and domiciled at 7089 Boyer Street, Montréal (Québec) H2S 2J9 (lucmandeville2019@gmail.com)

("Luc");

AND: **STEAM PLANT AND CHX SYSTEMS LTD.**, a corporation existing under the laws of Canada with a head office at 57 Churchill Boulevard, Longueuil (Québec) J4V 2L8 (john.gocek@sofame.com), herein represented by John Gocek duly authorized as he so declares

("Steam Plant" and collectively with John and Luc, the "Guarantors" and the Guarantors, collectively with Sofame, the "Sofame Group");

AND: **THERMAL ENERGY INTERNATIONAL INC.**, a corporation existing under the laws of Canada with a head office at 850-36 Antares Drive, Ottawa, Ontario K2E 7W5 (bill.crossland@thermalenergy.com), herein represented by Bill Crossland duly authorized as he so declares

("TEI");

AND: Jonathan Perlman, as Receiver for **TCA GLOBAL CREDIT MASTER FUND, LP**, a limited partnership existing under the laws of the State of Florida c/o Genovese Joblove & Battista.PA (Greg Garno), 100 SE 2nd Ave. Suite 4400, Miami, FL 33131 (ggarno@gjb-law.com)

(the "Lender").

WHEREAS Sofame and the Lender entered into:

- (a) that certain Credit Agreement dated as of May 31, 2013, but made effective as of September 18, 2013 (the "**Credit Agreement**");
- (b) that certain Revolving Note dated as of May 31, 2013, but made effective as of September 18, 2013, evidencing revolving loans under the Credit Agreement (the "**Revolving Note**"); and
- (c) various ancillary documents referred to in the Credit Agreement as the "Loan Documents"

(collectively, and including any other documents or agreements between the Sofame and the Lender, the "**Sofame Documents**");

WHEREAS John, Luc and the Lender entered into:

- (a) that certain Promissory Note dated December 14, 2017; and
- (b) that certain Agreement dated August 2017

(collectively, and including any other documents or agreements between John, Luc and the Lender, the "**Personal Guarantees**");

WHEREAS Steam Plant and the Lender entered into that certain Guarantee Agreement dated September 29, 2015 (including any other documents or agreements between Steam Plant and the Lender, the "**Corporate Guarantee**" and collectively with the Sofame Documents and the Personal Guarantees, the "**Sofame Group Documents**");

WHEREAS the Lender and BNY Trust Company of Canada ("**BNY**") are secured creditors of Sofame;

WHEREAS the security granted by Sofame to BNY ranks ahead of the security granted by Sofame to the Lender;

WHEREAS on June 1, 2020, Thermal Energy International Inc. ("**TEI**") entered into an Asset Assignment Agreement with BNY (the "**Purchase Agreement**") pursuant to which BNY agreed to undertake a taking in payment process whereby it would become the owner of certain assets currently owned by Sofame and then assign those assets to TEI (the "**Asset Transfer**") for a purchase price of \$200,000 (the "**Purchase Price**");

WHEREAS pursuant to the Purchase Agreement, the Purchase Price is to be distributed as follows:

- (a) \$125,000, less (i) 5/8 (62.5%) of BNY's legal fees; and (ii) BNY's trustee fees of \$18,000, shall be disbursed to various noteholders that BNY represents; and
- (b) \$75,000, less 3/8 (37.5%) of BNY's legal fees, shall be disbursed by BNY to the Lender (the "**Lender's Portion**"); and

WHEREAS as a condition precedent to the conclusion of the Asset Transfer, the Lender is required to grant the Sofame Group a full and final release of all obligations owing under the Sofame Group Documents.

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Release

- 1.1. In consideration for the Lender's Portion and effective as of the Lender's receipt of the Lender's Portion (the "**Effective Date**"), the Lender grants:
 - 1.1.1. to the Sofame Group, their officers, directors, and shareholders (collectively, the "**Sofame Group Parties**") a full and final release and forever acquits and discharges the Sofame Group Parties of and from: (i) all claims, actions, causes of action, suits, proceedings and demands of whatsoever nature, character or kind which the Lender had, has as of the Effective Date or thereafter can, shall or may have against the Sofame Group Parties by virtue of the Sofame Group Documents; (ii) all liabilities, contingent or otherwise, dues, debts, sums of money, of whatsoever nature, character or kind which were, are as of the Effective Date or thereafter can, shall or may be owing as of the Effective Date by the Sofame Group Parties to the Lender under the Sofame Group Documents; and (iii) all undertakings, covenants and obligations owing by the Sofame Group Parties to the Lender, under or in connection with the Sofame Group Documents; and
 - 1.1.2. to TEI and its officers, directors, and shareholders (collectively, the "**TEI Parties**") a full and final release and forever acquits and discharges the TEI Parties of and from: (i) all claims, actions, causes of action, suits, proceedings and demands of whatsoever nature, character or kind which the Lender had, has as of the Effective Date or thereafter can, shall or may have against the TEI Parties; (ii) all liabilities, contingent or otherwise, dues, debts, sums of money, of whatsoever nature, character or kind which were, are as of the Effective Date or thereafter can, shall or may be owing as of the Effective Date by the TEI Parties to the Lender; and (iii) all undertakings, covenants and obligations owing by the TEI Parties to the Lender.
- 1.2. The Lender agrees not to join, assist, aid or act in concert in any manner whatsoever with any other person in the making of any claim or demand or in the bringing of any suit, proceeding or action in any manner whatsoever against the Sofame Group Parties in connection with the Sofame Group Documents or the TEI Parties and not to make any claim or demand nor bring any suit, proceeding or action in any manner whatsoever against any person who might claim contribution or indemnity from the Sofame Group Parties, in respect of or in connection with the Sofame Group Documents or the TEI Parties or any of the matters hereby released and discharged.
- 1.3. It is the intention of the Lender that this Agreement be effective as a full and final accord and satisfaction, and as a bar to all claims, actions, causes of actions, suits, proceedings and demands against the TEI Parties and the Sofame Group Parties, of whatsoever nature, character or kind, known or unknown, suspected or unsuspected, as of the Effective Date, arising from, in respect of, or in connection with the Sofame Group Documents or any of the matters hereby released and discharged.
- 1.4. The Lender shall do all such things and provide all such reasonable assurances as may be required to give effect to the provisions hereof, and shall provide such further documents or instruments required by the Sofame Group Parties or the TEI Parties as may be necessary or desirable to effect the purpose of this Agreement and carry out its

provisions, including but not limited to the radiation of various hypothec and lien registrations.

- 1.5. The Lender hereby confirms that aside from the Sofame Group Documents that no borrower obligations, guarantees or suretyships have been granted by the Sofame Group Parties in favour of the Lender.
- 1.6. In consideration for the Lender's Portion and effective as of the Effective Date, the Sofame Group Parties and the TEI Parties grant to the Lender and their officers, directors, and shareholders (collectively, the "**Lender Parties**") a full and final release and forever acquits and discharges the Lender Parties of and from: (i) all claims, actions, causes of action, suits, proceedings and demands of whatsoever nature, character or kind which the Sofame Group Parties and TEI Parties had, has as of the Effective Date or thereafter can, shall or may have against the Lender Parties by virtue of the Sofame Group Documents; (ii) all liabilities, contingent or otherwise, dues, debts, sums of money, of whatsoever nature, character or kind which were, are as of the Effective Date or thereafter can, shall or may be owing as of the Effective Date under the Sofame Group Documents; and (iii) all undertakings, covenants and obligations owing by the Lender, under or in connection with the Sofame Group Documents.

2. Miscellaneous

- 2.1. Severability. If any provisions of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other portions hereof, all of which provisions are hereby declared severable.
- 2.2. Notice. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand, (b) sent by email, or (c) when delivered to the addressee, by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate mail and email address set forth on the first page hereof.

A copy of any notice or demand given shall also be contemporaneously given (by the person giving such notice) to Spiegel Sohmer Inc., attention Seth Abbey, at 1255 Peel Street, Suite 1000, Montréal (Québec) H3B 2T9, email: sabbey@spiegelsohmer.com.
- 2.3. Preamble and Schedules. The schedules attached hereto are incorporated herein and the schedules and preamble shall form an integral part hereof as if recited herein at length.
- 2.4. Context. The words "he" or "him" shall read as "she" or "her" respectively (or vice versa), if the context so dictates and the word "it" shall be read as "he", "him", "she" or "her", if the context so dictates.
- 2.5. Remedies. All of the rights, remedies and benefits provided by this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law.
- 2.6. Governing Law. The parties agree that this Agreement shall be construed as to both validity and performance and shall be enforced in accordance with and governed by the laws of Québec and the laws of Canada applicable therein. The parties agree to submit to the exclusive jurisdiction of the courts of the province of Québec, in the judicial district of

Montréal any and all disputes and claims arising in connection with any action or proceeding related, directly or indirectly, to this Agreement.

- 2.7. Entire Agreement. All discussions, correspondence, understandings and agreements between the parties relating to the subject matter of this Agreement are superseded by and merged into this Agreement.
- 2.8. Amendments. No amendment shall be binding unless expressly provided in an instrument duly executed by the parties.
- 2.9. Assignment. No party may assign any of their respective rights or obligations hereunder without the prior written consent of the other parties.
- 2.10. Successors. This Agreement shall be binding upon and enure to the benefit of the successor and permitted assign of each party.
- 2.11. Waiver. No waiver, whether by conduct or otherwise, of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in an instrument duly executed by the parties to be bound thereby.
- 2.12. Currency. All references to monetary amounts in this Agreement shall be deemed to be references to Canadian currency unless otherwise stipulated.
- 2.13. Independent Legal Advice. Each party acknowledges that: he, she or it (i) has had sufficient time to review and consider this Agreement thoroughly; (ii) has read and understands the terms, the nature and the consequences of this Agreement and the obligations hereunder; and (iii) has been given an opportunity to obtain independent legal advice concerning the interpretation and effect of this Agreement.
- 2.14. Titles. The titles, captions or headings of the sections and subsections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
- 2.15. Counterparts and Facsimile/PDF. This Agreement may be executed in counterparts, and the counterparts when joined together shall constitute one and the same agreement. Delivery by facsimile or email of an executed copy of this Agreement by a party shall be legally effective to create valid and binding obligations of such party under the terms of this Agreement. Facsimile and PDF executed copies of this Agreement shall be as equally valid as originals.
- 2.16. Language. The parties have requested that this Agreement and all court proceedings thereto related be drafted in English. Les parties aux présentes ont exigé que ce contrat et toutes procédures judiciaires y afférentes soient rédigés en anglais.

(Remainder of page left intentionally blank; signature page to follow)

THE PARTIES HAVE EXECUTED THIS AGREEMENT AT THE DATE HEREINABOVE REFERRED TO.

SOFAME TECHNOLOGIES, INC.

Per: _____
John Gocek

JOHN GOCEK

LUC MANDEVILLE

STEAM PLANT AND CHX SYSTEMS LTD.

Per: _____
John Gocek

THERMAL ENERGY INTERNATIONAL INC.

Per: _____
William Crossland

**Jonathan Perlman, as Receiver for TCA
GLOBAL CREDIT MASTER FUND, LP**

Per: _____
Jonathan Perlman

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**[PROPOSED] ORDER GRANTING RECEIVER, JONATHAN E. PERLMAN'S,
MOTION TO APPROVE ASSET ASSIGNMENT AND RELEASE**

THIS CAUSE, having come before the Court upon Jonathan E. Perlman, as Court-Appointed Receiver's ("Receiver") Motion to Approve Asset Assignment and Release ("Motion") [ECF No. ___]. The Court having considered the Motion and being duly advised in the premises, it is ORDERED AND ADJUDGED that:

The Motion is GRANTED. The Receiver is authorized to engage in the transaction and agreements attached to the Motion relating to Sofame Technologies, Inc.

DONE AND ORDERED, in chambers at Miami, Florida, this ___ day of July, 2020.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA