

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

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

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

**MOTION RECORD OF THE AD HOC GROUP OF NOTEHOLDERS  
(Returnable October 24, 2023)**

October 16, 2023

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*Lawyers for the Ad Hoc Group of  
Noteholders*

**TO: THE SERVICE LIST**

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# **Tab 1**

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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TACORA RESOURCES INC.**

**NOTICE OF CROSS-MOTION  
(AHG ARIO)**

The ad-hoc group of holders (the “**Ad Hoc Group**”) of the 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023 (the “**SPNs**”) and 8.250% Senior Secured Notes (the “**SSNs**”) due 2026 of Tacora Resources Inc. (“**Tacora**” or the “**Company**”) will make a motion to the Court on Tuesday, October 24, 2023 at 10:00a.m.

**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 at 330 University Avenue, Toronto, Ontario;
- by telephone conference;
- by video conference.

**THIS CROSS-MOTION IS FOR:**

1. An Amended and Restated Initial Order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the “**AHG ARIO**”), among other things, approving debtor-

in-possession (“**DIP**”) financing to be provided by the Ad Hoc Group pursuant to a credit agreement in substantially the form appended to the Affidavit of Thomas Gray, to be sworn (the “**AHG DIP Agreement**”).

2. In the alternative, if the AHG ARIO is not granted, declarations or directions that any Amended and Restated Initial Order (“**ARIO**”) granted in respect of Tacora:

- (a) direct that any DIP financing proposal approved by the Court not prevent or in any way hinder the disclaimer of the Offtake Agreement (as defined in the affidavit of Joe Broking sworn October 9, 2023), including, but not limited to, by making such a disclaimer an “event of default”;
- (b) approve the appointment of a chief restructuring officer (a “**CRO**”), as an officer of the court, that is acceptable to Tacora and the Ad Hoc Group, including regarding identity, on terms acceptable to the Ad Hoc Group and Tacora, or as may otherwise be ordered by the Court;
- (c) provide that the terms of any key employee retention plan (“**KERP**”) must be acceptable to the Ad Hoc Group, or as may otherwise be ordered by the Court;
- (d) provide that any Ancillary Post-Filing Credit Extensions (as defined in the Cargill DIP) require the consent of the Ad Hoc Group or further Order of this Court;
- (e) provide that the transaction fee charge up to the amount of US\$5.6 million in favour of Tacora’s financial advisor, Greenhill & Co. Canada Ltd. (“**Greenhill**”) rank above the SPNs only to the maximum amount of the GLC Fees (as defined in the

AHG DIP Agreement), with such other amounts ranking *pari passu* with the SPNs;  
and

- (f) such further or other relief as may be advised and this Honourable Court may deem just.

**THE GROUNDS FOR THE CROSS-MOTION ARE:**

***Background***

3. The Ad Hoc Group previously entered into an agreement with Tacora, executed on September 11, 2023, to provide DIP financing in respect of a CCAA filing that was to take place on September 12, 2023 (the “**September 11 DIP Agreement**”). At the time, Cargill, Incorporated (“**Cargill**”) chose not to submit a final proposal pursuant to that DIP solicitation process despite being solicited to do so. Tacora ultimately did not file for CCAA protection on September 12 on the understanding that the status quo would be maintained during continuing good faith discussions in respect of a consensual recapitalization transaction between Tacora, the Ad Hoc Group, Cargill, and a potential investor.

4. Tacora’s application record dated September 12, 2023 in respect of the filing, including the September 11 DIP Agreement, was provided to Cargill on or about September 11, 2023.

5. When the parties were unable to reach a binding agreement in respect of a consensual recapitalization transaction, Tacora secured new Court time for an initial application to be heard on October 6, 2023, and the Ad Hoc Group worked with Tacora to temporally and contextually update the DIP financing as previously agreed upon in the September 11 DIP Agreement.

6. On the evening of October 5, 2023, Tacora's advisors (including FTI Consulting Canada Inc. ("**FTI**"), the now-CCAA monitor) informed the Ad Hoc Group's advisors that a DIP financing proposal had been received from an unnamed party. At 10:09 p.m. that evening, counsel to Tacora sent an email to counsel to the Ad Hoc Group calling for final DIP proposals by 5:00 p.m. on Saturday, October 7, 2023.

7. Given the short timeline and the number of members of the Ad Hoc Group, the Ad Hoc Group's counsel informed Tacora's advisors that the Ad Hoc Group could not meet the new deadline to submit a proposal, but would continue to stand behind the September 11 DIP Agreement (taking account of new timelines). The following morning, the Ad Hoc Group submitted a draft DIP agreement with minor revisions to the September 11 DIP Agreement (to temporally and contextually update that agreement) that it indicated the Ad Hoc Group would be prepared to agree to.

8. On October 9, 2023, the Ad Hoc Group was informed that Cargill had submitted a DIP financing proposal and that Tacora's board of directors had resolved to accept this proposal (the "**Cargill DIP**"). Application materials were served by the Company in the early hours of October 10, 2023 for a motion returnable at 11 a.m. that morning, and a pre-filing report from FTI followed shortly after.

9. Given the timing and Tacora's stated need for immediate court protection, the Ad Hoc Group on a without prejudice basis indicated that it did not oppose the relief sought at the hearing for that limited purpose, but advised the Court that it had significant concerns with, among other things, the process followed, governance issues, and important terms of the Cargill DIP, and that it intended to file materials in advance of a comeback hearing in opposition to significant aspects

of Tacora's requested ARIO. With that caveat, the Court granted the initial order sought by the Company and approved the Cargill DIP.

***AHG ARIO***

10. The Cargill DIP does not meet the factors for approval under the CCAA and this Court should not exercise its discretion to approve it. Among other things, the Ad Hoc Group have lost any faith in the current corporate governance and management of Tacora, and it would be materially prejudicial and unfair to the Ad Hoc Group and the holders of the SPNs and SSNs (together, the largest secured creditor group holding more than 7 times the quantum of secured claims held by Cargill) for this Court to approve the Cargill DIP.

11. The AHG DIP Agreement was executed by the parties in September and the temporally and contextually updated version remains open and available to Tacora and the Court for approval. The factors to be considered under section 11.2 of the CCAA weigh materially in favour of approving the AHG DIP Agreement.

***Alternative Relief***

12. In the alternative, if the AHG ARIO is not granted, Tacora must not be prevented from disclaiming the Offtake Agreement (as the Cargill DIP would require), which would prevent Tacora's ability to effect a successful restructuring.

13. Given the Ad Hoc Group's substantial concerns with the existing corporate governance and management of Tacora and the influence of Cargill, it would also be necessary and appropriate

to appoint a CRO to oversee the business and assist with the day-to-day restructuring if the AHG ARIO is not approved.

14. Further, the Ad Hoc Group has concerns that a significant portion of the KERP to be proposed by Tacora will go to executive management resident in Grand Rapids, Minnesota, rather than the non-executive and operation employees (primarily located in Wabush, Newfoundland) whose contributions will be crucial to keeping Tacora operating during the CCAA process and who should receive the benefit of such a KERP. The Ad Hoc Group reserves all rights to make submissions in respect of the appropriateness of any proposed KERP.

15. The Ad Hoc Group also expressly reserves its right to advance further grounds once it has had the opportunity to review any additional evidence or materials that may be filed by the Company in support of its proposed ARIO.

**OTHER GROUNDS FOR THE CROSS-MOTION ARE:**

16. Sections 11 and 11.2 of the CCAA;

17. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, 38 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;

18. The inherent and equitable jurisdiction of this Court; and

19. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the affidavit of Thomas Gray, to be filed;

- (b) the transcripts of cross-examinations of affiants and witnesses examined under Rule 39.03 of the Rules of Civil Procedure; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

October 13, 2023

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Lawyers for the Ad Hoc Group of Noteholders

**TO: THE 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 A PLAN OF COMPROMISE  
OR ARRANGEMENT OF TACORA RESOURCES INC.**

**(Applicant)**

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

**PROCEEDINGS COMMENCED AT  
TORONTO**

**Notice of Motion  
(AHG ARIO)**

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*Lawyers for the Ad Hoc Group of Noteholders*

# **Tab 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TACORA RESOURCES INC.**

Applicant

**AFFIDAVIT OF THOMAS GRAY  
(Sworn October 16, 2023)**

I, Thomas Gray, of the City of Toronto, in the province of Ontario, **MAKE OATH AND SAY:**

1. I am an associate in the insolvency and restructuring group at the law firm of Bennett Jones LLP ("**Bennett Jones**"). Bennett Jones is counsel to an ad-hoc group of holders (the "**Ad Hoc Group**") of the 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023 (the "**SPNs**") and 8.250% Senior Secured Notes due 2026 (the "**SSNs**") of Tacora Resources Inc. ("**Tacora**" or the "**Company**"). I understand that the Ad Hoc Group holds a substantial majority of both the SPNs and the SSNs. I have been staffed on Bennett Jones' mandate to represent the Ad Hoc Group, and as such, I have knowledge of the following matters, except where otherwise indicated.

**Service of the Applicant's Materials**

2. On Tuesday, October 10, 2023, at 1:22am, counsel to Tacora served a 623 page Application Record in respect of an application returnable at 11:00am that morning seeking an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), among other things, approving debtor-in-possession ("**DIP**") financing proposed to be provided by Cargill, Incorporated (the "**Initial Application Record**").

3. Also on Tuesday, October 10, 2023, at 1:35am, counsel to FTI Consulting Canada Inc. ("**FTI**") served a 26 page pre-filing report in respect of the initial application (the "**Pre-Filing**").

**Report**”, and together with the Initial Application Record, the “**Initial Application Materials**”).

4. On Sunday October 15, 2023 at 6:23 pm Tacora served a Supplementary Application Record in support its requested Amended and Restated Initial Order (“**ARIO**”), with three additional affidavits and a proposed draft Solicitation Order.

5. This Affidavit is sworn in response to Tacora’s application for an ARIO, and in support of the Ad Hoc Group’s motion for a distinct Amended and Restated Initial Order (the “**AHG ARIO**”), as set out in the Ad Hoc Group’s Notice of Motion.

### **Correspondence and Other Documents**

6. On March 30, 2023, Bennett Jones sent a letter to Tacora’s counsel, Stikeman Elliott LLP (“**Stikeman**”). That letter is attached hereto at **Exhibit “A”**.

7. On August 10, 2023, Bennett Jones sent a letter to Stikeman and the board of directors of Tacora (the “**Board**”). That letter is attached hereto as **Exhibit “B”**.

8. On August 14, 2023, Greenhill & Co. Canada Ltd., the financial advisor to the Company, provided a copy of a slide deck titled “DIP Financing Lender Presentation” to GLC Advisors & Co., LLC (“**GLC**”), the financial advisor to the Ad Hoc Group. Page 10 of the DIP Financing Lender Presentation provided a process timeline. The email from Greenhill to GLC (which is copied to FTI) is attached hereto at **Exhibit “C”**, and the slide deck, including the timeline concerning the solicitation and selection of a proposal is attached as **Exhibit “D”**.

9. On August 16, 2023, Bennett Jones sent a letter to Stikeman and the Board. That letter is attached hereto as **Exhibit “E”**.

10. As noted in an affidavit of Chetan Bhandari, sworn September 11, 2023 (the “**September Bhandari Affidavit**”), which was attached as part of a previous Application Record from Tacora, dated September 12, 2023, Tacora initially received proposals from the Ad Hoc Group and another party to provide DIP financing. After Tacora followed up with both parties, Tacora “received a revised proposal from the Ad Hoc Group by the deadline communicated to both parties”, which was inclusive of additional funding requests from the Company and also included “improved

economics and overall terms from their initial proposal”. Tacora “did not receive a revised proposal from the other Initial Party”. The September Bhandari Affidavit is attached hereto as **Exhibit “F”**.

11. The Ad Hoc Group and Tacora entered into an agreement dated September 11, 2023 pursuant to which the Ad Hoc Group agreed to provide DIP financing to Tacora (the “**September 11 DIP Agreement**”) in connection with proceedings that Tacora was to commence under the CCAA. I understand that Tacora’s Application Record, including the September 11 DIP Agreement, was provided to the Court, along with counsel to Cargill and Bennett Jones, on September 12, 2023. A redacted copy of the September 11 DIP Agreement is attached hereto at **Exhibit “G”**.

12. Despite signing the September 11 DIP Agreement with the Ad Hoc Group, Tacora ultimately did not request protection under the CCAA on September 12, 2023, or at any subsequent point in September.

13. In early October 2023 Tacora secured new Court time for an initial application on October 6, 2023, and the Ad Hoc Group, along with their advisors, worked in good faith to make minor changes to the still-binding September 11 DIP Agreement to update it for the passage of time since September 12, 2023.

14. On October 5, 2023, I understand that at approximately 7:00 p.m., Tacora’s advisors (including FTI) orally advised the Ad Hoc Group’s advisors for the first time that Tacora had received another DIP proposal from an unnamed party.

15. On October 5, 2023 at 10:09 p.m., Stikeman sent an email to Bennett Jones calling for final binding DIP proposals by 5:00 p.m. on Saturday October 7, 2023. A copy of that email is attached hereto at **Exhibit “H”**.

16. On October 6, 2023, Bennett Jones provided a letter to the Board of Tacora and Stikeman. A copy of that letter is attached hereto at **Exhibit “I”**. I understand that no response has been received to that letter.

17. On October 7, Bennett Jones sent an email to Stikeman informing it that the Ad Hoc Group

would not be able to make the revised deadline to submit a DIP proposal, but that it stood behind the signed September 11 DIP Agreement. On October 8, 2023, Bennett Jones sent an email to Stikeman informing it that the Ad Hoc Group was prepared to execute a new DIP financing agreement with minor amendments to the September 11 DIP Agreement (the “**October 8 DIP Agreement**”) to account for the passage of time and updated context. A copy of that email chain (including the October 7 email) is attached hereto at **Exhibit “J”**, and a redacted redline showing the changes that the Ad Hoc Group was prepared to agree to is attached hereto at **Exhibit “K”**. A clean, redacted copy of that agreement is attached hereto at **Exhibit “L”** – for avoidance of doubt, it is this form of agreement that the Ad Hoc Group now seeks approval of at this motion, subject to such minor amendments as are required to reflect an updated cash flow and further passage of time.

18. On October 9, 2023 (a recognized holiday in Canada and the United States), Stikeman informed Bennett Jones that the Board had resolved to accept DIP financing from Cargill, Incorporated. A copy of that email is attached hereto at **Exhibit “M”**. A copy of the Cargill DIP agreement was not provided to the Ad Hoc Group prior to service of the Initial Application Record on the morning of the Initial Order hearing.

19. Tacora’s October 15 Supplementary Application Record includes an affidavit from Chetan Bhandari that, among other things, identified purported issues with the Ad Hoc Group’s proposed October 8 DIP Agreement.

20. I understand that the Ad Hoc Group takes issue with the views presented in Mr. Bhandari’s affidavit. I further understand that issues regarding the relative merits of the competing DIP financing agreements will be addressed in the upcoming cross-examinations and submissions in this proceeding.

21. This affidavit is delivered for the purposes stated above, and for no other or improper purpose.

SWORN BEFORE ME over videoconference on this 16<sup>th</sup> day of October, 2023. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the City of Oakville, in the Province of Ontario. This Affidavit was commissioned remotely in accordance with Ontario Regulation 431/20.



*Joshua Foster*

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JOSHUA FOSTER

*Commissioner for Taking Affidavits*

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THOMAS GRAY

**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**



Bennett Jones

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March 30, 2023

**Sent via Email**

Ashley Taylor & Lee Nicholson  
Stikeman Elliott LLP  
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Toronto, ON M5L 1B9

Dear Messrs. Taylor & Nicholson:

**Re: Tacora Resources Inc. ("Tacora" or the "Company")**

We write to you in response to your letter dated March 27, 2023 (the "**March 27 Letter**"). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the March 27 Letter or our letter dated March 17, 2023 (the "**March 17 Letter**").

The purpose of the March 17 Letter was to obtain information from you in respect of: (i) the steps and process undertaken by the Company in connection with the Sydvaranger Transaction; and (ii) restructuring and recapitalization options (collectively, "**Restructuring Options**") currently under consideration by the Company and its board (the "**Board**"), and any contingency plans the Company may be considering in connection therewith.

While the March 27 Letter did provide certain details in respect of the Sydvaranger Transaction, it did not provide any meaningful insight into any Restructuring Options under consideration by the Company and the Board. Given the complete failure to provide any material details in respect of this issue, it appears to the Ad Hoc Group that the Company and the Board either: (i) do not understand or appreciate the gravity of the situation they currently face; or (ii) do not believe it is necessary to consult with the Company's most significant stakeholder group and senior secured creditor on Restructuring Options and contingency planning. Either scenario is deeply troubling.

**The Sydvaranger Transaction**

In the March 27 Letter, you briefly describe certain of the Board's considerations in determining to enter into the Sydvaranger Transaction. While we understand that the transfer may have resulted in short-term cost savings for Tacora, the Ad Hoc Group remains concerned by the hasty and non-transparent manner in which the Sydvaranger Transaction was implemented.



BennettJones.com/100Years

It should have become clear to the Board and management that the Company would not be in a position to make the capital investments necessary to operate Sydvaranger in October 2022 when the feasibility study was put on hold. Please advise why the Board did not take steps to market the Company's interest in Sydvaranger at that time.

Once the Company determined that it would not be in a position to make the capital investments necessary to operate Sydvaranger, what, if any, efforts were made to obtain additional financing to preserve value in the Company's interest in Sydvaranger? The Ad Hoc Group would like to understand why the Company did not contact the Ad Hoc Group or Cargill to determine whether there was any interest in funding certain costs related to Sydvaranger, including basic care and maintenance, that may have preserved value for the Company until a holistic solution to its liquidity issues could be implemented. The complete absence of communication by the Company is particularly concerning given that you have acknowledged that the Company is in the process of considering Restructuring Options, which will likely have a material impact on the Company's ability to pay amounts owing to the Ad Hoc Group.

With respect to the Sydvaranger Transaction, please also provide us with: (i) the Sydvaranger Transaction documents; (ii) a list of the parties that the Company contacted to try to secure funding for Sydvaranger before determining that it should be transferred; (iii) the date on which OMF H's sale process in respect of Sydvaranger will commence and details in respect of who will conduct such sales process; and (iv) confirmation of when the most recent appraisal in respect of Sydvaranger was obtained, if any, and a copy of such appraisal.

### **Restructuring Options**

The Advance Payments Facility matures in less than five weeks and the deadline by which the Company must take steps to determine a viable path forward is fast approaching. At this juncture, it is critical that the Company immediately provide the Ad Hoc Group with material details of all Restructuring Options under consideration and the proposed timeline for implementing all such options.

Notwithstanding the Company's complete failure to meaningfully engage with the Ad Hoc Group, we understand that one of the options currently being explored by Greenhill & Co is a sale of all or substantially all of the assets of Tacora. In that regard, please confirm: (i) who has been provided with access to the Company's data room for the purposes of exploring an acquisition of or investment in the Company; (ii) when interested parties have been asked to submit bids/proposals to the Company; (iii) if the Company believes it is possible to implement a sale prior to maturity of the Advanced Payment Facility; and (iv) whether the Company is considering implementing a sale under the *Companies' Creditors Arrangement Act* (the "CCAA"). We also understand that FTI Consulting Canada Inc. ("FTI") has been engaged by the Company. Assuming that is true, please provide details in respect of the scope of FTI's engagement and any contingency planning FTI has undertaken with the Company and/or the Board.

March 30, 2023

Page 3

To date, the Company's engagement with the Ad Hoc Group has been wholly inadequate. The Ad Hoc Group should not have to remind the Company and its advisors that they should be working actively with the Company's senior secured creditors to preserve all possible options and avoid a CCAA filing that destroys value. As we noted in the March 17 Letter, the Ad Hoc Group expects that the Company's management and advisors will meaningfully and transparently consult with it before taking any material step in respect of its business or assets, including any deliberations regarding Restructuring Options. We have made numerous requests to have a call to discuss these matters, all of which have been ignored. Please advise when the Company and its advisors are available to discuss Restructuring Options with the Ad Hoc Group.

Nothing in this letter shall constitute or be deemed to be a waiver by the Ad Hoc Group or the Noteholders of any rights or remedies they may have against any person in respect of the Company or the Notes, all of which are expressly reserved.

Yours truly,



Mike Shakra

MS

cc: Sean Zweig & Thomas Gray – Bennett Jones LLP  
John Ciardullo – Stikeman Elliott LLP  
J. Broking and H. Vuong - Tacora Resources Inc.  
M. Nessim, U. Masood & C. Bhandari - Greenhill & Co., LLC

**THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**



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August 10, 2023

**Sent via Email**

Joe Broking, Trey Jackson and Leon Davies

John Ciardullo, Ashley Taylor and Lee Nicholson

Tacora Resources Inc.  
Board of Directors (the "**Board**")  
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Stikeman Elliott LLP  
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Toronto, Ontario, Canada M5L 1B9

Dear Sirs:

**Re: Tacora Resources Inc. ("Tacora" or the "Company")**

As you know, we are counsel to an ad hoc group (the "**Ad Hoc Group**", and the steering committee of the Ad Hoc Group, the "**Steering Committee**") of holders of the 8.250% Senior Secured Notes due 2026 (the "**Original Notes**") and the 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023 (the "**New Notes**", and collectively with the Original Notes, the "**Notes**"), both issued by Tacora.

We write to you in connection with a recent update that we understand was provided to Tacora by Cargill International Trading PTE Ltd. and/or Cargill, Incorporated (together, "**Cargill**"). We are concerned that Cargill has misrepresented the status of discussions between the Steering Committee and Cargill regarding a consensual restructuring or recapitalization of the Company (a "**Restructuring Transaction**"), as well as the Steering Committee's views regarding a path forward for the Company and its potential restructuring. The purpose of this letter is to correct the record and inform the Board of the Steering Committee's views.

As you are aware, the Steering Committee and Cargill have been engaged in discussions regarding a Restructuring Transaction for many months. We understand that Cargill has recently represented to the Company and its advisors that these discussions have progressed significantly and that the parties are close to reaching an agreement, subject only to final negotiations regarding the quantum of existing debt held by holders of the Notes and Cargill to be equitized or compromised. Unfortunately, this is not the case.

For weeks, discussions between the Steering Committee and Cargill have not materially progressed due, in part, to Cargill's refusal to recognize that certain aspects of its Iron Ore Sale and Purchase Contract with Tacora dated November 11, 2018 (as amended pursuant to various side letters from time

August 10, 2023

Page 2

to time, the "**Offtake Agreement**") may need to be revisited in order to facilitate an economically rational solution for the Company.

Taken as a whole, the current terms of the Offtake Agreement are not commercial. It is and has been an impediment to potential buyers and investors in the Company, including most recently, [REDACTED]. The Steering Committee is concerned that in its current form, the Offtake Agreement will continue to destroy stakeholder value and will prevent the implementation of a Restructuring Transaction for the Company.

In short, if the Offtake Agreement is not renegotiated or replaced in the near term, the Steering Committee is of the view that a consensual Restructuring Transaction will not be achievable. These views have been communicated to Cargill, which makes it especially surprising to the Steering Committee that Cargill would represent to the Company that discussions between the parties are advancing and that a resolution in the near term is likely.

As you know, the Company has been in the zone of insolvency for months. To continue its operations, it has required multiple infusions of new debt financing, as well as extensions to pay its current debt obligations. The Ad Hoc Group has been working in good faith with the Company to achieve a result that preserves value for stakeholders, and it remains committed to doing so. We hope that Cargill shares this commitment and recognizes that a successful restructuring cannot take place without a willingness to discuss the terms of the Offtake Agreement. Absent confirmation from Cargill that it is open to negotiating the Offtake Agreement, continued discussions between Cargill and the Steering Committee in respect of a restructuring may not be productive.

Yours truly,



Mike Shakra

MS

cc: Sean Zweig & Thomas Gray – Bennett Jones LLP  
Michael Nessim, Usman Masood & Chetan Bhandari, Greenhill & Co., LLC  
Michael Sellinger & Michael Kizer, GLC  
Steering Committee



**THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

## Thomas Gray

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**Subject:** FW: Project Element: Request for Proposal  
**Attachments:** Project Element - DIP Lender Presentation (2023.08.14)\_vF.pdf  
**DocstoreMailItemId:** 1614db97-5057-44c8-9ad2-bba46d11207c

**From:** Chetan Bhandari <[chetan.bhandari@greenhill.com](mailto:chetan.bhandari@greenhill.com)>  
**Sent:** Monday, August 14, 2023 4:42 PM  
**To:** Michael Sellinger <[michael.sellinger@glca.com](mailto:michael.sellinger@glca.com)>; Michael Kizer <[michael.kizer@glca.com](mailto:michael.kizer@glca.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>; Nigel Meakin <[Nigel.Meakin@fticonsulting.com](mailto:Nigel.Meakin@fticonsulting.com)>; Porepa, Jodi <[Jodi.Porepa@fticonsulting.com](mailto:Jodi.Porepa@fticonsulting.com)>; Ashley Taylor <[ATAYLOR@stikeman.com](mailto:ATAYLOR@stikeman.com)>; Lee Nicholson ([leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)) <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>  
**Subject:** Project Element: Request for Proposal

GLC team

As you are aware, the Company has been undertaking a strategic review of its business and capital structure and has been in discussion with its stakeholders with respect to a recapitalization / restructuring or sale of the business (the "Strategic Review"). However, recent events such as stoppages caused by forest fires, unscheduled shutdowns and changes in iron ore prices have impacted the business and liquidity.

To strengthen its balance sheet and provide additional time to complete the Strategic Review, the Company is considering filing for protection under the *Companies' Creditors Arrangement Act* ("CCAA") and seeks to raise up to US\$100 million in senior secured debtor-in-possession (DIP) financing.

We believe the ad hoc group may have interest in providing the DIP financing and we are attaching an overview of the situation, timeline and cash flow forecast.

We assume that you will share this with the entire ad hoc group, but if that is not the case, please let us know.

Please let us know no later than **Thursday, August 17<sup>th</sup>** if this situation is of interest to members of the ad hoc group.

The Greenhill team is available to discuss at your convenience.

Regards,

**Chetan Bhandari**  
Managing Director  
Co-head of Financing Advisory & Restructuring – North America

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**Greenhill**

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**THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**



**DIP Financing Lender Presentation**  
*August 2023*

# Disclaimer

## GENERAL

In this presentation, all amounts are in United States Dollars, unless otherwise indicated. Any graphs, tables or other information in this presentation demonstrating the historical performance of Tacora Resources Inc. ("Tacora" or the "Company") or of any other entity are intended only to illustrate past performance and are not necessarily indicative of future performance of the Company or such entities.

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## FORWARD-LOOKING INFORMATION

This presentation contains "forward-looking information" within the meaning of the U.S. Private Securities Litigation Reform Act and applicable Canadian securities laws. Forward-looking information may relate to our future financial outlook and anticipated events or results and may include information regarding our business, financial position, results of operations, business strategy, growth plans and strategies, budgets, operations, financial results, taxes, plans and objectives. Particularly, information regarding our expectations of future results, performance, achievements, prospects or opportunities is forward-looking information. In certain cases, forward-looking information can be identified by the use of forward-looking terminology such as "plans", "targets", "expects" or "does not expect", "is expected", "an opportunity exists", "budget", "scheduled", "estimates", "outlook", "forecasts", "projection", "prospects", "strategy", "intends", "anticipates", "does not anticipate", "believes", or variations of such words and phrases or state that certain actions, events or results "may", "could", "would", "might", "will", "will be taken", "occur" or "be achieved". In addition, any statements that refer to expectations, intentions, projections or other characterizations of future events or circumstances contain forward-looking information. Statements containing forward-looking information are not facts but instead represent management's expectations, estimates and projections regarding future events or circumstances.

Forward-looking information contained in this presentation and other forward-looking information are based on our opinions, estimates and assumptions in light of our experience and perception of historical trends, current conditions and expected future developments, as well as other factors and assumptions that we currently believe are appropriate and reasonable in the circumstances. Such factors and assumptions include, but are not limited to: our ability to build our market share; our ability to retain key personnel; our ability to raise new capital, our ability to restructure our existing capital, our ability to continue as a going concern, our ability to implement and execute on the Management Business Plan, including the Company's three-pronged action plan, future prices of iron ore and other metals; our future production costs; our future performance under our long-term contracts; the accuracy of the mine production schedule in the feasibility study conducted in December 2017, as prepared by G Mining Services, Inc. and Ausenco, for the Scully mine located in Wabush, NL (the "Scully Mine") (the "Feasibility Study"); the accuracy of the economic analysis in the Feasibility Study; favourability of operating conditions, including the ability to operate in a safe, efficient and effective manner; the receipt of governmental and other third party approvals, licences and permits on favourable terms; obtaining required renewals for existing approvals, licences and permits and obtaining all other required approvals, licences and permits on favourable terms; sustained labour stability; stability in financial and capital goods markets; availability of equipment and the condition of existing equipment being as described in the Feasibility Study; our ability to continue investing in infrastructure to support our growth; our ability to obtain and maintain existing financing on acceptable terms; currency exchange and interest rates; the impact of competition; the changes and trends in our industry and the global economy; and changes in laws, rules, regulations, and global standards. Despite a careful process to prepare and review the forward-looking information, there can be no assurance that the underlying opinions, estimates and assumptions will prove to be correct.

Forward-looking information involves known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by the forward-looking information. Such factors include but are not limited to: risks relating to re-financing existing capital and the availability of new capital on acceptable terms, risks relating to our ability to operate our assets and finance our operations; risks related to changes in the market price of iron ore concentrate; risks related to the costs of ocean freight; uncertainty or weaknesses in global economic conditions and reduced economic growth in China; risks related to reduced global demand for steel or interruptions in steel production; risks related to the ramp-up of the Scully Mine; actual production, capital and operating costs may be different than those anticipated; reliance on the Cargill Offtake Agreement for 100% of expected iron ore sales; reliance on third party transportation; risks related to reliance on key infrastructure; and risks related to indebtedness.

Although we have attempted to identify important risk factors that could cause actual results or future events to differ materially from those contained in forward-looking information in this presentation, there may be other risk factors not presently known to us or that we presently believe are not material that could also cause actual results or future events to differ materially from those expressed in such forward-looking information in this presentation. Accordingly, readers should not place undue reliance on forward-looking information, which speaks only as of the date made. The forward-looking information contained in this presentation represents our expectations as of the date of this presentation or the date indicated, regardless of the time of delivery of the presentation. However, we disclaim any intention or obligation or undertaking to update or revise any forward-looking information whether as a result of new information, future events or otherwise, except as required under applicable securities laws in Canada.

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## FEASIBILITY STUDY METRICS

Certain metrics used in this presentation are non-GAAP measures and are derived from the Feasibility Study and may not have standardized meanings or be comparable to similar metrics used by other companies. These metrics are defined in the context where they are used in this presentation and include "Adjusted EBITDA", "all-in sustaining cost", "cash costs" and "cash flows".

# Process Overview and Key Contacts

## PROCESS OVERVIEW

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- Greenhill & Co. (“Greenhill”) is advising Tacora Resources (“Tacora” or the “Company”) in relation to an assessment of strategic alternatives
- In order to strengthen the Company’s balance sheet and facilitate the orderly implementation of a strategic transaction, the Company is considering filing for protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) and seeks to raise up to US\$100mm in senior secured debtor-in-possession (DIP) financing

***All communication regarding this opportunity should be made through the Greenhill team listed below.  
Under no circumstances should the management, employees, or affiliates of the Company be contacted directly***

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- 1** Transaction Overview
- 2** Company Overview
- 3** Financial Summary
- 4** Appendix



1 Transaction Overview

# Executive Summary

- Tacora Resources is an iron ore mining and mineral processing company incorporated under the laws of the Province of Ontario
- The Company operates the Scully Mine, which is located in Wabush, Newfoundland & Labrador and produces premium quality iron ore concentrate with high Fe grade (65.6% Fe) and low impurities
  - Scully Mine has nearly 60 years of operating history
  - The Scully Mine is in the process of ramping up to nameplate capacity of 6+ million tonnes per annum (“Mtpa”) of Tacora Premium Concentrate (“TPC”)
- The Company has been undertaking a strategic review of its business and capital structure and has been in discussion with its stakeholders with respect to a recapitalization / restructuring or sale of the business (the “Strategic Review”)
- Recent events such as stoppages caused by forest fires, unscheduled shutdowns and changes in iron ore prices have impacted the business and liquidity
- **To strengthen its balance sheet and provide additional time to complete the Strategic Review, the Company is considering filing for protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) and seeks to raise up to US\$100mm in senior secured debtor-in-possession (DIP) financing**

# Summary of Recent Financing Transactions

- Over the course of the last year, Tacora has undertaken a series of financing transactions to strengthen its liquidity position
- **November 2022:** On November 10, Cargill made a \$15 million preferred equity investment in Tacora
- **January 2023:** On January 9, the Company closed a financing with Cargill of \$30mm through an advanced payment facility (the “APF”), which provides for advance payments against future deliveries of Tacora Premium Concentrate per the Offtake Agreement
  - Maturity: May 1, 2023
  - Rate: 0%
  - \$25mm outstanding at closing
    - \$15mm funded to purchase a price floor struck at US\$105 per tonne on P62 iron ore for 250kt per month for January to May 2023 volume
    - \$10mm funded for working capital
  - Additional \$5mm funded for working capital in March 2023
  - APF can be repaid in cash or product at Cargill's option
    - Pari passu with Senior Secured Notes due 2026 (the “2026 Senior Secured Notes”)
  - In connection with the APF commitment, Cargill also received non-dilutive warrants for 10% of Tacora’s fully-diluted equity
- **April 2023:** On April 29, the Company entered into the first amendment to the APF, which extended the maturity of the facility to July 14, 2023
  - In exchange for agreeing to extend the maturity, Cargill received warrants representing an additional non-dilutive 25% equity ownership on a fully-diluted basis (bringing their total equity ownership on a fully-diluted basis to 35%)

# Summary of Recent Financing Transactions (cont'd)

- **May 2023:** On May 11, the Company amended its indenture for the 2026 Senior Secured Notes to allow for the issuance of up to \$77mm of super priority debt. Through the amendment, the existing indenture was eliminated and a Base Indenture, First Supplemental Indenture, and Second Supplemental Indenture became effective
  - The Base Indenture sets out general conditions for the issuance of one or more tranches of notes
  - The First Supplemental Indenture is the new indenture governing the 2026 Senior Secured Notes and permits the incurrence of up to \$77mm of super priority debt
    - The 30-day grace period for the interest payment due on May 15, 2023 was extended to 60 days in connection with the amendment
  - The Second Supplemental Indenture governs \$27mm of Senior Priority Notes due September 8, 2023 (the “Senior Priority Notes”) which were issued on May 11, 2023 to an ad hoc group of 2026 Senior Secured Noteholders (the “AHG”) and certain other existing noteholders
    - Maturity: September 8, 2023
    - Rate: 9% cash and 4% PIK payable monthly
    - Proceeds used for general corporate purposes
    - In connection with providing the Senior Priority Notes financing, the AHG received non-dilutive warrants for 31.67% of the Company’s fully-diluted equity
  - The APF was also modified to include a new \$25mm Senior Secured Hedging Facility (which ranks pari passu with the Senior Priority Notes) to be used for margining and hedging purposes
  - Additionally, in connection with the amendment, a Minimum Liquidity Covenant of \$5mm was put into place for both the Senior Priority Notes and APF, tested on a weekly basis

# Summary of Recent Financing Transactions (cont'd)

- **June 2023:** On June 23, Tacora entered into a Third Supplemental Indenture to modify the First and Second Supplemental Indentures. The Company also entered into an amendment to the APF. The Third Supplemental Indenture and APF amendment were effectuated in order to implement the following changes:
  - Permit the \$25mm Senior Secured Hedging Facility to be used as a working capital facility (previously only available for margining and hedging) as well as increase the potential capacity to \$35mm under the indentures
  - Extend the 2026 Senior Secured Notes grace period for interest payments and APF maturity to September 12, 2023 (120 days following the original interest payment date of May 15, 2023)
  - Provide \$10mm of incremental senior priority debt / APF debt and liens capacity
  - In the event the Minimum Liquidity Covenant in the Second Supplemental Indenture is breached, introduce the potential for a waiver of such default by GLC Advisors, the financial advisor to the AHG, if provided within ten days of such breach
- **July 2023:** During the week of July 10, the Company entered into a wet concentrate purchase agreement with Cargill. In exchange for a total consideration of \$7.3mm, Tacora sold Cargill a stockpile of 172,000 tonnes of wet concentrate
  - \$5.0mm Upfront Amount payable in cash to Tacora for 117,000 tonnes of wet concentrate
    - The initial \$5.0mm of proceeds was used to enhance the Company's liquidity position following the wildfires in Quebec impacting rail service
  - \$2.3mm Deferred Amount payable to Tacora upon conversion / shipment of the remaining 55,000 tonnes of wet concentrate
  - Option for Cargill to purchase an additional amount of wet concentrate up to 225,000 tonnes total (including the initial 172,000 tonnes) as Additional Deferred Amount
  - *NB:* Wet concentrate purchased by Cargill will not be part of the collateral package for any DIP financing

# Current Capitalization Structure

## CURRENT CAPITALIZATION (AS OF JUNE 30, 2023)

(\$'s in millions)

Description	Amount Outs.	Coupon	Maturity
Senior Secured Hedging Facility	\$20 <sup>(1)</sup>	-%	9/12/23
Senior Priority Notes	27 <sup>(2)</sup>	9% / 4%	<b>A</b> 9/8/23
<b>Total Senior Priority Obligations</b>	<b>\$47</b>		
Senior Secured Notes	234 <sup>(3)</sup>	8.25%	<b>B</b> 5/15/26
Cargill Advance Payments Facility	30	-%	9/12/23
Equipment Financing	36 <sup>(4)</sup>		
<b>Total Secured Debt</b>	<b>\$348</b>		
( - ) Cash & Equivalents	(11) <sup>(5)</sup>		
( + ) Preferred Equity	16	15.00%	<b>C</b> Perpetual
<b>Net Debt plus Preferred Equity</b>	<b>\$353</b>		

## COMMENTARY

- A** Senior Priority Notes coupon is 9.00% cash and 4.00% PIK annually (payable monthly)
- \$27.4mm outstanding reflects estimated balance including PIK'd and accrued interest through September 8, 2023
- B** Interest payment grace period on the 2026 Senior Secured Notes extended until September 12, 2023
- \$234mm outstanding includes deferred May 15, 2023 interest payment of \$9.3mm
- C** Preferred Equity receives 15% PIK dividend which accrues daily and compounds quarterly

# Process Timeline

August 2023						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September 2023						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Date	Milestone
Monday, August 14	<ul style="list-style-type: none"> <li>DIP process launch</li> </ul>
Thursday, August 17	<ul style="list-style-type: none"> <li>Confirm interest in providing DIP terms</li> </ul>
Monday, August 21	<ul style="list-style-type: none"> <li>Deadline for non-binding term sheets (5:00pm ET)</li> </ul>
Monday, August 21 – Monday, August 28	<ul style="list-style-type: none"> <li>Evaluate and determine DIP provider</li> </ul>
Friday, September 1	<ul style="list-style-type: none"> <li>Finalize DIP credit agreement and other documentation</li> </ul>
Tuesday, September 5	<ul style="list-style-type: none"> <li>Potential CCAA filing date and initial DIP draw</li> </ul>

# Summary Debtor-in-Possession Facility Terms

## Summary DIP Facility Terms

<b>Borrower</b>	<ul style="list-style-type: none"> <li>Tacora Resources Inc. (the “Borrower”)</li> </ul>
<b>DIP Lenders</b>	<ul style="list-style-type: none"> <li>[●]</li> </ul>
<b>DIP Facility</b>	<ul style="list-style-type: none"> <li>Super priority debtor-in-possession (DIP) multiple-draw term loan</li> </ul>
<b>Amount</b>	<ul style="list-style-type: none"> <li>Up to US\$100mm</li> </ul>
<b>Draw Mechanics</b>	<ul style="list-style-type: none"> <li>Based on DIP Budget</li> </ul>
<b>Interest</b>	<ul style="list-style-type: none"> <li>SOFR plus the Applicable Margin</li> <li>Standby Fee: [●]</li> </ul>
<b>Applicable Margin</b>	<ul style="list-style-type: none"> <li>[●]% p.a. payable [monthly] in arrears</li> </ul>
<b>Standby Fees</b>	<ul style="list-style-type: none"> <li>[●]% p.a. payable [monthly] in arrears</li> </ul>
<b>Maturity Date</b>	<ul style="list-style-type: none"> <li>Earlier of (i) an Event of Default; (ii) conversion of proceedings into a proceeding under the <i>Bankruptcy and Insolvency Act</i> (Canada); (iii) completion of (a) sale of the business; (b) implementation of plan of arrangement or (c) [12 months]</li> </ul>
<b>DIP Budget</b>	<ul style="list-style-type: none"> <li>See cash flow forecast on next page</li> </ul>
<b>Security</b>	<ul style="list-style-type: none"> <li>Super priority security interest in the Company’s property, subject to court approval</li> </ul>
<b>Use of Proceeds</b>	<ul style="list-style-type: none"> <li>As per DIP Budget</li> </ul>
<b>Governing Law</b>	<ul style="list-style-type: none"> <li>Province of Ontario and federal laws of Canada</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>Other terms and conditions to be reflective of Debtor-in-Possession financing</li> </ul>

# DIP Budget and Sizing Analysis

(\$'s in millions)

## Potential CCAA Filing

Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
Week Beginning	8/7/2023	8/14/2023	8/21/2023	8/28/2023	9/4/2023	9/11/2023	9/18/2023	9/25/2023	10/2/2023	10/9/2023	10/16/2023	10/23/2023	10/30/2023	11/6/2023	11/13/2023	11/20/2023	11/27/2023	12/4/2023	12/11/2023	12/18/2023	12/25/2023	
Week Ending	8/13/2023	8/20/2023	8/27/2023	9/3/2023	9/10/2023	9/17/2023	9/24/2023	10/1/2023	10/8/2023	10/15/2023	10/22/2023	10/29/2023	11/5/2023	11/12/2023	11/19/2023	11/26/2023	12/3/2023	12/10/2023	12/17/2023	12/24/2023	12/31/2023	
Actual / Forecast	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	
<b>Number of Trains Shipped</b>	<b>4</b>	<b>7</b>	<b>8</b>	<b>8</b>	<b>3</b>	<b>5</b>	<b>3</b>	<b>7</b>	<b>6</b>													
<b>P62 Price</b>	<b>\$103.2</b>	<b>\$103.2</b>	<b>\$103.2</b>	<b>\$100.3</b>	<b>\$100.3</b>	<b>\$100.3</b>	<b>\$100.3</b>	<b>\$100.3</b>	<b>\$98.6</b>	<b>\$98.6</b>	<b>\$98.6</b>	<b>\$98.6</b>	<b>\$97.2</b>	<b>\$97.2</b>	<b>\$97.2</b>	<b>\$97.2</b>	<b>\$95.9</b>	<b>\$95.9</b>	<b>\$95.9</b>	<b>\$95.9</b>	<b>\$95.9</b>	<b>\$95.9</b>
<b>Inflows</b>	<b>\$9.0</b>	<b>\$3.5</b>	<b>\$6.2</b>	<b>\$7.9</b>	<b>(\$0.6)</b>	<b>(\$0.1)</b>	<b>(\$0.1)</b>	<b>\$-</b>	<b>\$-</b>	<b>\$0.7</b>	<b>\$6.5</b>	<b>(\$0.1)</b>	<b>\$14.0</b>	<b>\$-</b>	<b>\$6.3</b>	<b>\$-</b>	<b>\$12.7</b>	<b>\$-</b>	<b>\$14.0</b>	<b>\$-</b>	<b>\$2.5</b>	
<b>Outflows</b>																						
Scully Costs (ex. MFC Payments)	(4.2)	(4.7)	(3.0)	(1.8)	(5.0)	(5.0)	(4.0)	(4.5)	(3.9)	(4.7)	(3.7)	(5.1)	(3.7)	(4.3)	(2.3)	(4.8)	(3.3)	(5.1)	(2.6)	(7.7)	(2.5)	
MFC Payments	-	-	-	-	-	-	-	-	-	-	-	0.1	-	-	-	0.0	-	-	-	-	-	-
Incremental FTE Payments	-	-	-	-	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)
QNS&L Payments	-	-	(1.1)	-	(1.0)	(1.0)	(1.1)	(2.3)	(1.2)	(0.7)	(1.2)	(1.3)	(1.3)	(0.5)	(0.8)	(0.5)	(1.1)	(1.0)	(1.1)	(1.0)	(1.1)	
SFPPN Payments	-	-	-	-	(3.5)	-	-	-	(3.2)	-	-	-	(3.0)	-	-	-	-	(3.2)	-	-	-	-
Other Logistics Costs	(0.5)	-	(0.1)	-	(0.7)	-	(0.1)	-	(0.7)	-	-	(0.1)	(0.7)	-	-	-	(0.8)	-	-	-	(0.1)	
Investment Costs	(0.7)	(0.5)	(0.8)	-	(0.3)	(0.5)	(2.7)	(0.7)	(1.7)	(1.0)	(1.0)	(1.0)	(1.7)	(1.2)	(1.2)	(1.2)	(1.2)	(1.8)	(1.1)	(1.1)	(1.1)	
Other Financing Costs	(0.2)	(0.1)	(0.2)	(0.3)	(0.3)	(0.2)	(0.3)	(0.1)	(0.5)	(0.2)	(0.9)	(0.2)	(0.2)	(0.3)	(0.2)	(0.3)	(0.3)	(0.3)	(0.3)	(0.2)	(0.3)	
Corporate Costs (ex. PIP Payments)	(0.5)	(0.3)	(0.1)	(0.5)	(0.6)	(0.6)	(0.5)	(1.2)	(1.0)	(0.4)	(0.4)	(0.7)	(0.3)	(0.4)	(1.1)	(0.4)	(0.5)	(0.4)	(0.3)	(0.4)	(0.7)	
PIP Payments	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)
<b>Outflows (ex. Financing Adj.)</b>	<b>(\$6.4)</b>	<b>(\$6.0)</b>	<b>(\$5.8)</b>	<b>(\$3.0)</b>	<b>(\$11.6)</b>	<b>(\$7.7)</b>	<b>(\$9.1)</b>	<b>(\$9.2)</b>	<b>(\$12.7)</b>	<b>(\$7.5)</b>	<b>(\$7.5)</b>	<b>(\$8.8)</b>	<b>(\$11.4)</b>	<b>(\$7.1)</b>	<b>(\$6.0)</b>	<b>(\$7.7)</b>	<b>(\$7.7)</b>	<b>(\$12.3)</b>	<b>(\$5.8)</b>	<b>(\$11.0)</b>	<b>(\$6.5)</b>	
<b>Change in Cash (ex. Financing Adj.)</b>	<b>\$2.6</b>	<b>(\$2.5)</b>	<b>\$0.4</b>	<b>\$4.9</b>	<b>(\$12.2)</b>	<b>(\$7.9)</b>	<b>(\$9.2)</b>	<b>(\$9.2)</b>	<b>(\$12.7)</b>	<b>(\$6.8)</b>	<b>(\$1.0)</b>	<b>(\$8.9)</b>	<b>\$2.6</b>	<b>(\$7.1)</b>	<b>\$0.3</b>	<b>(\$7.7)</b>	<b>\$5.0</b>	<b>(\$12.3)</b>	<b>\$8.2</b>	<b>(\$11.0)</b>	<b>(\$3.9)</b>	
<b>Beginning Cash (ex. Financing Adj.)</b>	<b>\$7.0</b>	<b>\$9.6</b>	<b>\$7.1</b>	<b>\$7.5</b>	<b>\$12.4</b>	<b>\$0.2</b>	<b>(\$7.7)</b>	<b>(\$16.9)</b>	<b>(\$26.1)</b>	<b>(\$38.8)</b>	<b>(\$45.6)</b>	<b>(\$46.6)</b>	<b>(\$55.5)</b>	<b>(\$52.9)</b>	<b>(\$60.0)</b>	<b>(\$59.7)</b>	<b>(\$67.4)</b>	<b>(\$62.4)</b>	<b>(\$74.7)</b>	<b>(\$66.5)</b>	<b>(\$77.5)</b>	
<b>Ending Cash (ex. Financing Adj.)</b>	<b>\$9.6</b>	<b>\$7.1</b>	<b>\$7.5</b>	<b>\$12.4</b>	<b>\$0.2</b>	<b>(\$7.7)</b>	<b>(\$16.9)</b>	<b>(\$26.1)</b>	<b>(\$38.8)</b>	<b>(\$45.6)</b>	<b>(\$46.6)</b>	<b>(\$55.5)</b>	<b>(\$52.9)</b>	<b>(\$60.0)</b>	<b>(\$59.7)</b>	<b>(\$67.4)</b>	<b>(\$62.4)</b>	<b>(\$74.7)</b>	<b>(\$66.5)</b>	<b>(\$77.5)</b>	<b>(\$81.4)</b>	
<b>Financing Adjustments</b>																						
SSN Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SPN Interest	-	-	-	(0.2)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Interest	-	-	-	-	-	-	-	(0.3)	-	-	-	-	(0.8)	-	-	-	(1.0)	-	-	-	(1.1)	
Cargill APF / SSHF Cashflows	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
SPN Payment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Change in Cash (inc. Financing Adj.)</b>	<b>\$2.6</b>	<b>(\$2.5)</b>	<b>\$0.4</b>	<b>\$4.7</b>	<b>(\$12.2)</b>	<b>(\$7.9)</b>	<b>(\$9.2)</b>	<b>(\$9.5)</b>	<b>(\$12.7)</b>	<b>(\$6.8)</b>	<b>(\$1.0)</b>	<b>(\$8.9)</b>	<b>\$1.8</b>	<b>(\$7.1)</b>	<b>\$0.3</b>	<b>(\$7.7)</b>	<b>\$4.1</b>	<b>(\$12.3)</b>	<b>\$8.2</b>	<b>(\$11.0)</b>	<b>(\$5.0)</b>	
<b>Beginning Cash (inc. Financing Adj.)</b>	<b>\$7.0</b>	<b>\$9.6</b>	<b>\$7.1</b>	<b>\$7.5</b>	<b>\$12.2</b>	<b>\$12.9</b>	<b>\$5.0</b>	<b>\$14.5</b>	<b>\$5.0</b>	<b>\$11.8</b>	<b>\$5.0</b>	<b>\$13.9</b>	<b>\$5.0</b>	<b>\$12.1</b>	<b>\$5.0</b>	<b>\$12.7</b>	<b>\$5.0</b>	<b>\$17.3</b>	<b>\$5.0</b>	<b>\$16.0</b>	<b>\$5.0</b>	
(+) DIP Draw	-	-	-	-	12.9	-	18.7	-	19.5	-	9.9	-	5.3	-	7.4	-	8.2	-	2.8	-	5.0	
<b>Ending Cash (inc. Financing Adj.)</b>	<b>\$9.6</b>	<b>\$7.1</b>	<b>\$7.5</b>	<b>\$12.2</b>	<b>\$12.9</b>	<b>\$5.0</b>	<b>\$14.5</b>	<b>\$5.0</b>	<b>\$11.8</b>	<b>\$5.0</b>	<b>\$13.9</b>	<b>\$5.0</b>	<b>\$12.1</b>	<b>\$5.0</b>	<b>\$12.7</b>	<b>\$5.0</b>	<b>\$17.3</b>	<b>\$5.0</b>	<b>\$16.0</b>	<b>\$5.0</b>	<b>\$5.0</b>	
<b>DIP Commitment</b>	<b>\$-</b>	<b>\$-</b>	<b>\$-</b>	<b>\$-</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>	<b>\$99.7</b>
<b>Ending DIP Balance</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(12.9)</b>	<b>(12.9)</b>	<b>(31.6)</b>	<b>(31.6)</b>	<b>(51.1)</b>	<b>(51.1)</b>	<b>(61.0)</b>	<b>(61.0)</b>	<b>(66.3)</b>	<b>(66.3)</b>	<b>(73.7)</b>	<b>(73.7)</b>	<b>(81.9)</b>	<b>(81.9)</b>	<b>(84.7)</b>	<b>(84.7)</b>	<b>(89.7)</b>	
<b>DIP Availability</b>	<b>\$86.9</b>	<b>\$86.9</b>	<b>\$68.2</b>	<b>\$68.2</b>	<b>\$48.7</b>	<b>\$48.7</b>	<b>\$38.8</b>	<b>\$38.8</b>	<b>\$33.5</b>	<b>\$33.5</b>	<b>\$26.1</b>	<b>\$26.1</b>	<b>\$17.8</b>	<b>\$17.8</b>	<b>\$15.0</b>	<b>\$15.0</b>	<b>\$10.0</b>	<b>\$10.0</b>	<b>\$10.0</b>	<b>\$10.0</b>	<b>\$10.0</b>	<b>\$10.0</b>

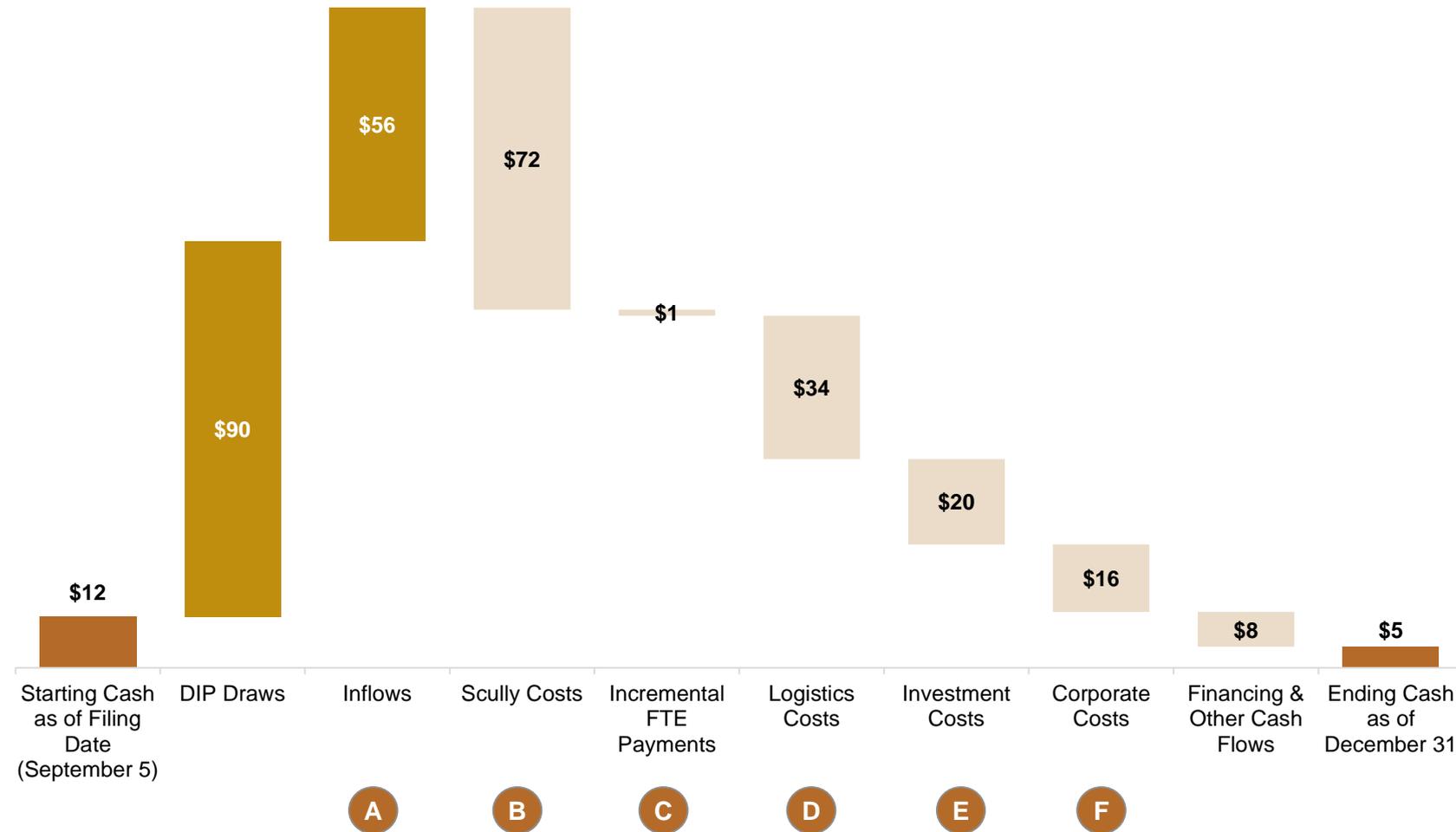
**Implied financing need of \$99.7mm (including \$10.0mm of contingencies) based on DIP Budget**

# DIP Budget and Sizing Analysis (cont'd)

## Detail by Line Item

### BRIDGE FROM SEPTEMBER 5 CASH TO DECEMBER 31 CASH

(\$'s in millions)



### Commentary

<b>A</b>	<b>Inflows</b>	<ul style="list-style-type: none"> <li>Based on P62 forward curve as of August 8, 2023</li> <li>Inflows negatively impacted by assumed expiration of Onshore Purchase Agreement after the filing date</li> </ul>
<b>B</b>	<b>Scully Costs</b>	<ul style="list-style-type: none"> <li>Scully Costs include mining, processing and mine G&amp;A costs</li> </ul>
<b>C</b>	<b>Incremental FTE Payments</b>	<ul style="list-style-type: none"> <li>Estimated incremental FTE costs incurred to replace Cargill operational support</li> </ul>
<b>D</b>	<b>Logistics Costs</b>	<ul style="list-style-type: none"> <li>Logistics Costs include QNS&amp;L and Western Rail transportation costs, SFPPN payments and port payments</li> </ul>
<b>E</b>	<b>Investment Costs</b>	<ul style="list-style-type: none"> <li>Investment Costs represents capex; limited to critical maintenance capex</li> </ul>
<b>F</b>	<b>Corporate Costs</b>	<ul style="list-style-type: none"> <li>Corporate Costs include salaried wages and benefits, travel costs and professional fees</li> </ul>
	<b>Illustrative DIP Assumptions</b>	<ul style="list-style-type: none"> <li>Up to \$100mm total facility size</li> </ul>

# Onshore Purchase Agreement Summary

## Onshore Purchase Agreement with Cargill scheduled to expire on September 12

- As a supplement to the Offtake Agreement between Tacora and Cargill, on December 17, 2019, Tacora and Cargill also entered into an Iron Ore Stockpile Purchase Agreement (the “Onshore Purchase Agreement” or “OPA”), which alters and is in addition to the Offtake Agreement
- The Onshore Purchase Agreement allows Tacora to receive payment from Cargill when iron ore is delivered by train to the stockpile at Point-Noire, rather than FOB an ocean vessel, and effectively “pull forward” Tacora’s revenues by ~four weeks (i.e., the time typically required to build sufficient iron ore inventory to be loaded onto a vessel)
  - Effectively works as a working capital facility
  - Limited to 400,000 dry metric tonnes of ore on the stockpile
- Tacora invoices Cargill weekly and is paid within three business days
  - Tacora invoices Cargill the Stockpile Provisional Price, which is based on:
    - Recently-observed values for the Platts 62% and Platts 65% indexes
    - Adjustments for weighing uncertainties at the stockpile (\$4 / tonne) and Cargill’s freight costs
- The Onshore Purchase Agreement expires on September 12, 2023, concurrently with the Cargill APF and Senior Secured Hedging Facility



2 Company Overview

# Tacora at a Glance – High-Quality and High-Grade Iron Ore Producer

## BUSINESS DESCRIPTION

- Tacora's main asset is the Scully Mine with **nearly 60 years of operating history**
- In 2019 the Company successfully re-commenced commercial production and completed its first seaborne shipment through its **long-term offtake agreement** with Cargill International Trading PTE Ltd (for **100% of iron ore concentrate produced**)
- The Scully Mine is in the process of ramping up to **nameplate capacity of 6+ million tonnes per annum of Tacora Premium Concentrate**
- **Significant manganese by-product** from the Scully Mine provides a unique opportunity to elevate the asset into potentially North America's **largest and lowest cost producer of High-Purity Manganese Sulfate Monohydrate ("HPMSM") for the growing global EV battery market**

## BUSINESS AT A GLANCE

<b>25+ Years</b> (Mine Life)	<b>~459Mt</b> (P&P Reserves <sup>(1)</sup> )	<b>~965Mt</b> (M&I / I Resources <sup>(1)</sup> )	<b>65.6%</b> (Fe Con. Grade)
<b>6Mtpa Fe Con.</b> (Nameplate Capacity)	<b>~\$325mm</b> (FY 2022 Revenue)	<b>~\$18mm</b> (FY 2022 Adj. EBITDA)	<b>~\$90/t</b> (FY 2022 Cash Costs <sup>(2)</sup> )

(1) Based on Technical Report dated February 15<sup>th</sup>, 2021, and prepared in accordance with National Instrument 43-101 guidelines. Includes incremental depletion of 20Mt for both P&P Reserves and M&I/I Resources.

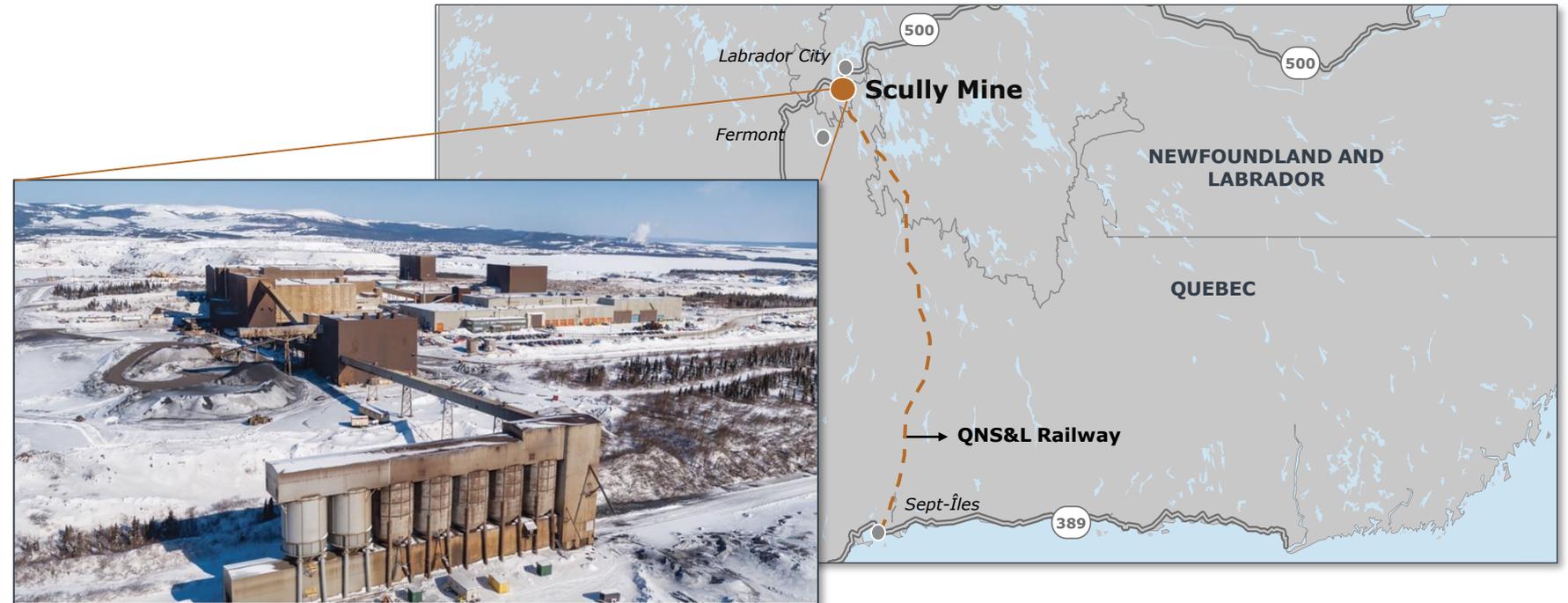
(2) Excludes corporate costs and royalties.

# Scully Mine – Established Producer in a Tier 1 Jurisdiction

## ASSET OVERVIEW

- Scully Mine restarted by Tacora in 2019 following over \$316m in private funding and the implementation of key changes to operating, product and marketing strategies
- Located in the Labrador Trough, a well-established mining jurisdiction
- Integrated and efficient logistics already in place, iron ore is railed to Pointe Noire where it has access to the global seaborne market via a deep-water port that is operational year round
- Tacora's iron ore has a life of mine offtake with Cargill, a leading independent iron ore trader

## ASSET LOCATION



## PUBLISHED RESERVES AND RESOURCES <sup>(1)</sup>

	Crude Ore Tonnage (mm dmt)	Crude Grade		Total Weight Recovery (%)	Concentrate Grade		
		Fe (%)	Mn (%)		Fe Conc. (%)	Mn Conc. (%)	SiO <sub>2</sub> Conc. (%)
Proven	137	35.0%	2.4%	33.3%	65.6%	1.5%	3.2%
Probable	341	34.9%	2.7%	33.3%	65.6%	1.6%	3.1%
<b>Total P&amp;P</b>	<b>479</b>	<b>34.9%</b>	<b>2.6%</b>	<b>33.3%</b>	<b>65.6%</b>	<b>1.6%</b>	<b>3.1%</b>
Measured	196	35.1%	2.3%				
Indicated	526	34.3%	2.4%				
<b>Total M&amp;I</b>	<b>722</b>	<b>34.6%</b>	<b>2.4%</b>				
Inferred	263	34.1%	2.1%				

Reserves and resources based on Technical Report dated May 2021

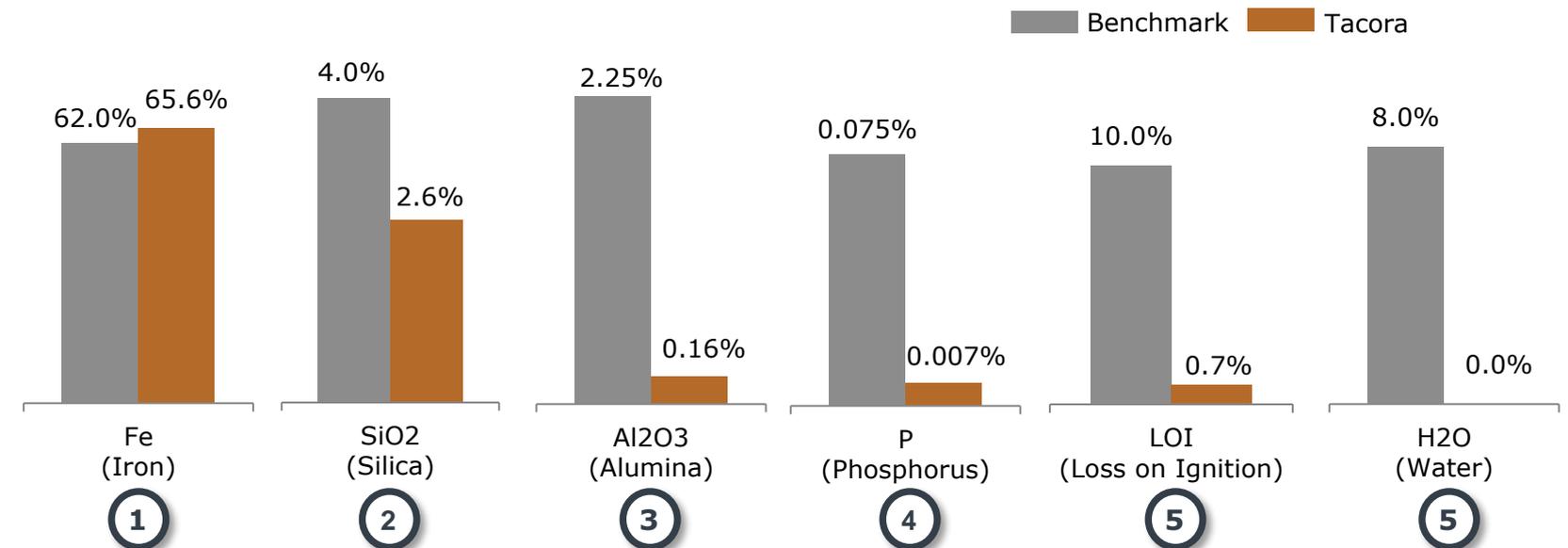
(1) Based on Technical Report dated May 2021, and prepared in accordance with National Instrument 43-101 guidelines.

# Producer of High Quality, High Premium Iron Ore Product

## TACORA PREMIUM CONCENTRATE ("TPC")

Iron ore found in the Labrador Trough is uniquely blessed in terms of its lack of trace elements which is very suitable for DR; TPC as a result is a highly desirable quality product that commands a premium price in the market relative to benchmarks due to its unique characteristics

- ✓ High Iron Content ①
- ✓ Low Silica ②
- ✓ Low Alumina ③
- ✓ Low Phosphorus ④
- ✓ Low Moisture ⑤



## IRON ORE SUPPLY – FAVOURABLE INDUSTRY DYNAMICS PROVIDING TAILWINDS FOR GROWTH AT THE SCULLY MINE

- Demand for low-carbon steel is expected to grow exponentially from ~15Mt in 2021 (1% of total) to ~200Mt in 2030 (~10% of total; and reaching ~25% by 2040)
- Within hot metal, the demand is shifting from lower grade iron ore (-23% growth) to high grade iron ore and higher-quality pellet grades (6% to 60%+ growth)
- Direct Reduction<sup>(1)</sup> ("DR") grade pellet feedstock such as TPC are the highest value iron ore product traded globally
- TPC serves as a valuable feedstock for DR iron manufacturing which has strict quality constraints
- TPC has exceptional quality characteristics (high Fe content and low impurities) and commands a premium to the benchmark iron ore price

(1) Direct Reduction Feedstocks are the most valuable iron ore product given the growing supply and demand imbalance driven by steel producers looking to reduce emissions.

# Efficient and Fully Integrated Logistics Model Located in an Established Mining Jurisdiction

**1 Scully Mine**



- Concentrate is transferred by a belt conveyor to the load-out silos where it is then loaded into a train for transport to the port

**2 QNS&L Railway**



- Life of mine agreement in place with QNS&L for rail transportation from Wabush to Sept Isle

**3 SFPPN**

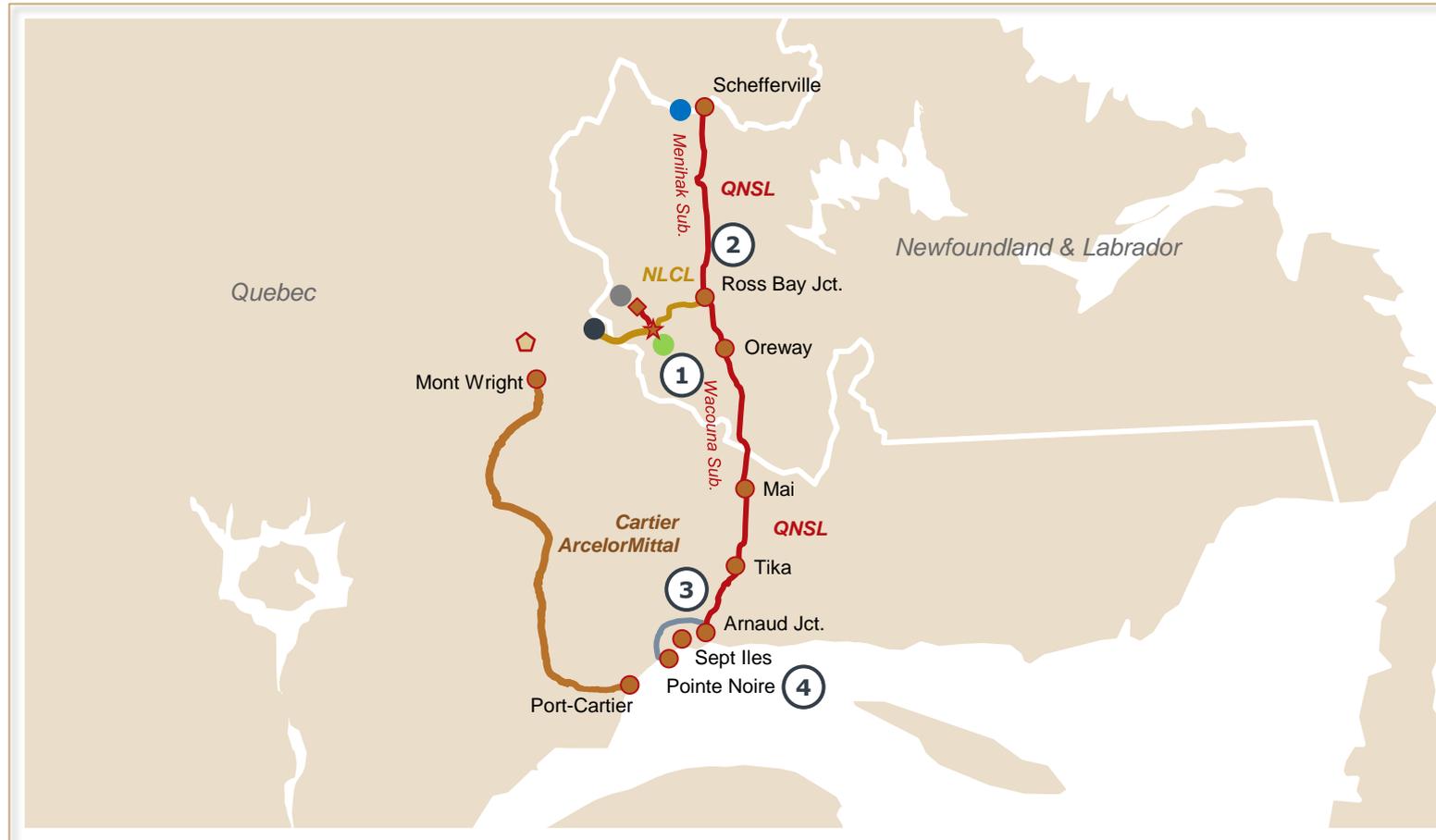


- Multi-user port which provides the Company with rail car unloading, concentrate handling and a conveyor connection to Dock 35 port of Sept-Îles

**4 Port of Sept-Îles Dock 35**



- Access to large bulk commodity carriers including up to VLOC bulk vessels
- The product is exported into the seaborne market through Pointe-Noire, near Sept-Îles, Quebec



**Legend**

- Scully Mine (Tacora)
- Bloom Lake (Champion)
- Iron Ore Company of Canada (IOC)
- DSO (Tata Steel)
- ◻ Arcelor Mittal Mining Company (AMMC)
- ◆ Labrador City
- ★ Wabush

**Located in Proximity to Established Mining Companies**







# Long-Term Offtake Agreement with Cargill

## ESTABLISHED CUSTOMER BASE IN EUROPE AND ASIA



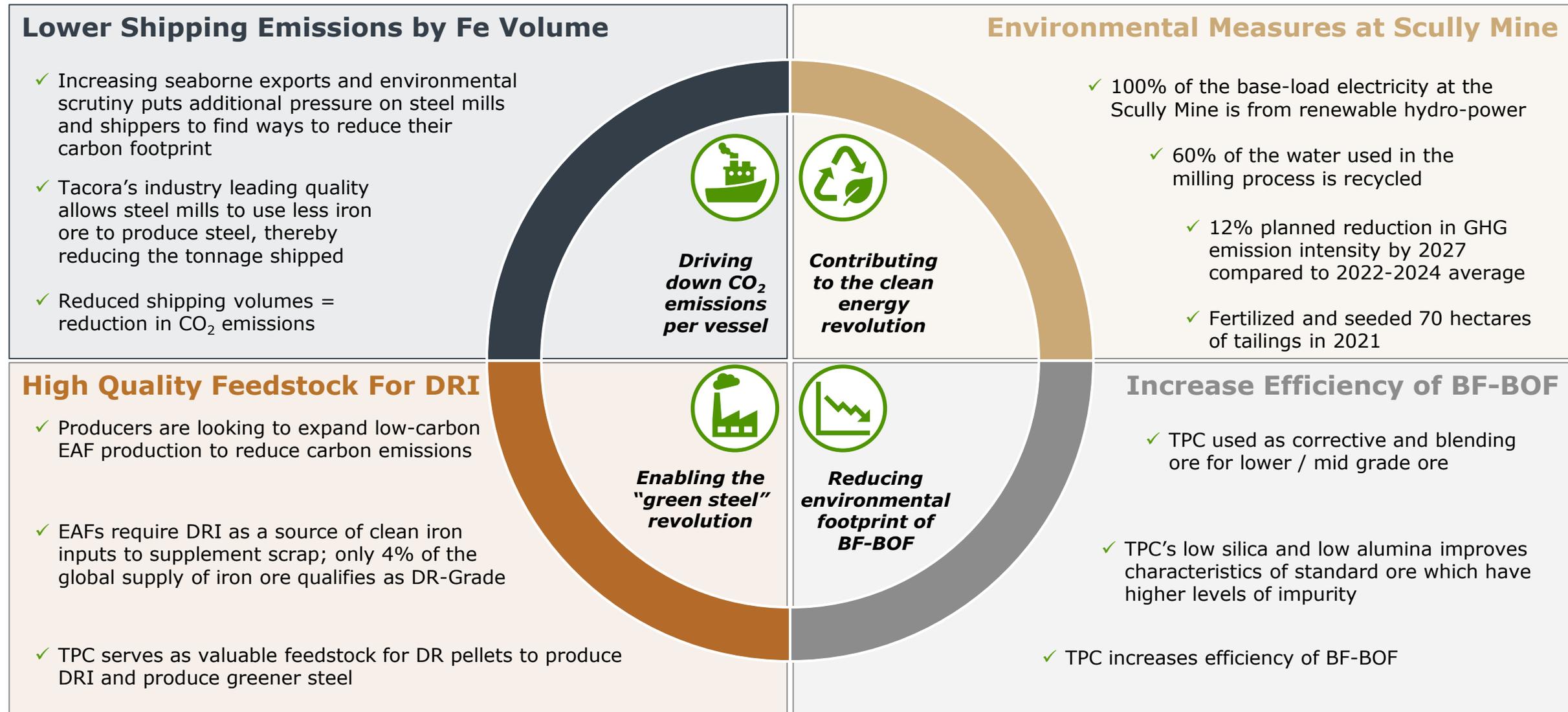
## COMMENTARY

- Cargill is one of the world’s largest commodity traders with over 155 years of experience, operations in 70 countries, and deep relationship with global steelmakers
- Tacora has executed an offtake contract whereby Cargill will purchase 100% of the iron ore concentrate produced from the Scully Mine for the entire life of mine
- TPC is marketed as a corrective and blending ore for lower / mid grade ore and as a high-grade, high-quality, low-impurity feedstock for DR pellets

## KEY TERMS

<b>Volume</b>	■ All tonnes produced from the Scully Mine, including from any and all expansions
<b>Term</b>	■ Life of Mine
<b>Price</b>	■ 100% of the 62% Index, minus freight cost, plus a % share in the premium achieved by Cargill above the 62% index
<b>Change of Control Provision</b>	■ None

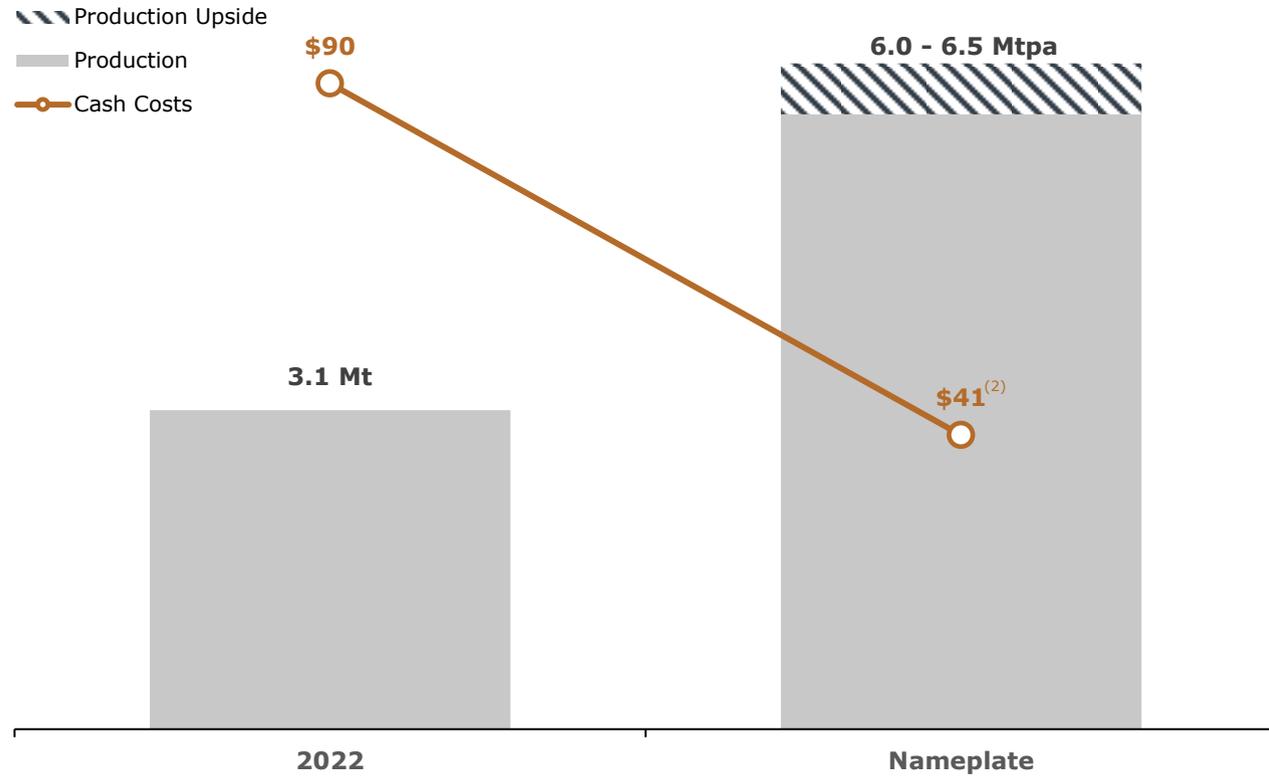
# Tacora's Green Products & Sustainable Supply Chain Support the ESG Revolution



**An Environmentally Friendly Alternative for Our Customers**

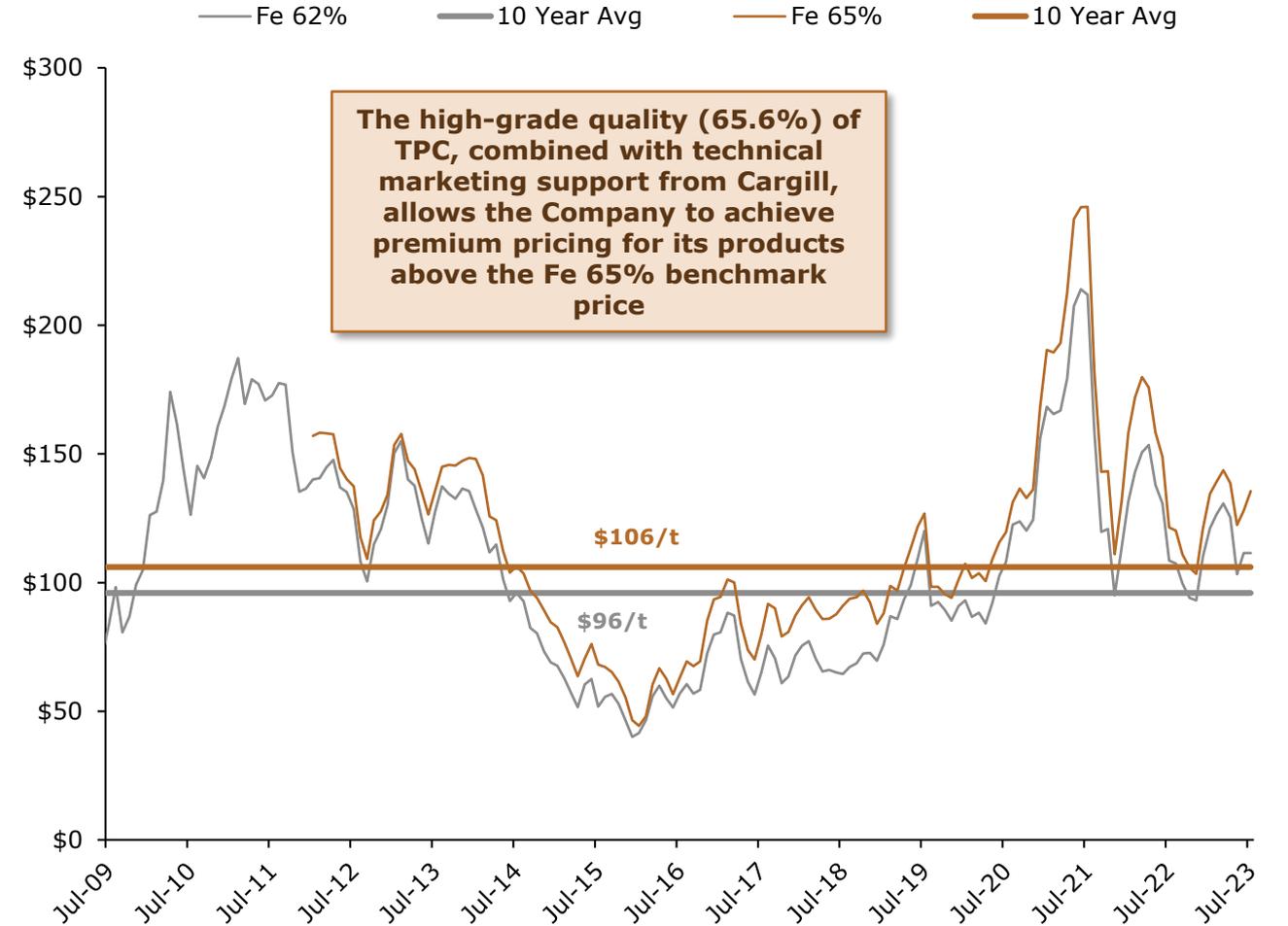
# Sustainable Economics Through Iron Ore Price Cycles

CASH COST<sup>(1)</sup> (\$/T) VS PRODUCTION (MT)



Tacora's cost structure is primarily comprised of fixed-costs which allows the Company to realize significant economies of scale as production reaches, and eventually exceeds, nameplate capacity

HISTORICAL IRON ORE PRICING (\$/T)



(1) Excludes corporate costs and royalties  
 (2) Based on Feasibility Study

# Key Credit Highlights



## Wholly Owned Scully Mine Producing High Grade & Quality Iron Ore

- ✓ Located in tier 1 iron ore mining jurisdiction in Canada, producing and ramping up to 6+Mtpa
- ✓ Produces a premium high grade iron ore (65.6% Fe) with low impurities (3.1% silica) that serves as a feedstock to the undersupplied DR market



## Long-Term Offtake Agreement

- ✓ The offtake partner is required to purchase 100% of the iron ore concentrate produced from the Scully Mine



## Efficient and Fully Integrated Logistics Model Located in an Established Mining Jurisdiction

- ✓ Long-term agreements in place with all key service providers at mine, rail and port
- ✓ +6 Mtpa capacity is secured and funded



## High Quality Products Enable Greener Steel Production and Facilitate Steel Industry Decarbonization

- ✓ Steel producers are increasing use of high-grade iron ore to reduce plant emissions and improve efficiencies
- ✓ Decarbonization requirements of the ferrous industry are driving a growing supply/demand imbalance of high-grade iron ore



## Robust Base Business Plan with Key Infrastructure and Assets in Place to Reach Nameplate Capacity

- ✓ Attractive sustainable cash costs at nameplate capacity
- ✓ Strong EBITDA generation at nameplate capacity with further growth potential from throughput expansion



## Opportunity to Evolve into North America's Largest and Lowest Cost Producer of HPMSM to Supply the Electric Vehicle Battery Value Chain

- ✓ Iron ore production process results in significant amounts of manganese by-product which has the potential to be refined into HPMSM
- ✓ Electric vehicle battery demand for HPMSM expected to increase significantly as batteries evolve into manganese dense chemistries



## Strong Iron Ore Focused Management Team

- ✓ Senior leadership team has over 100 years of industry experience

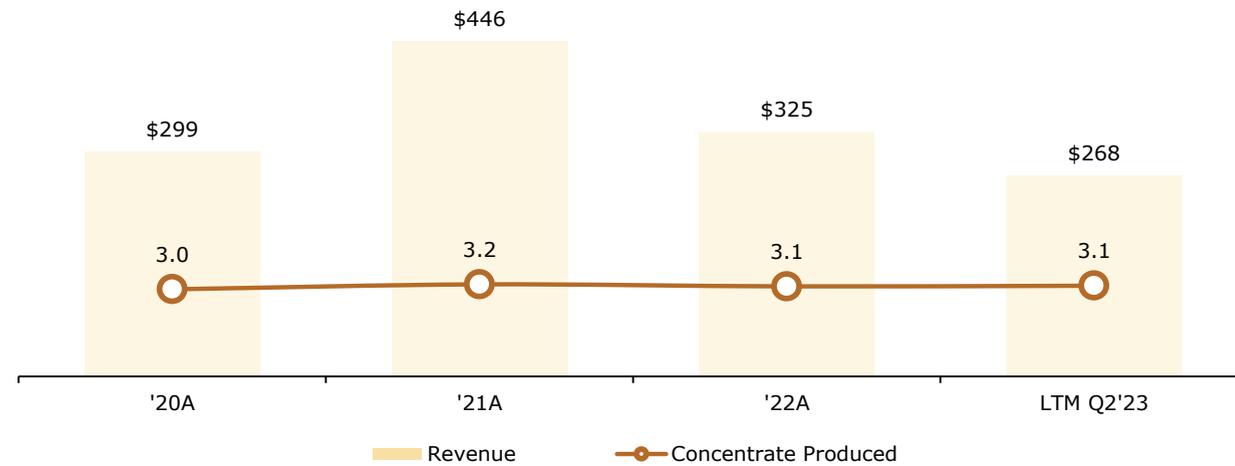


## Financial Summary

# Historical Financial Performance

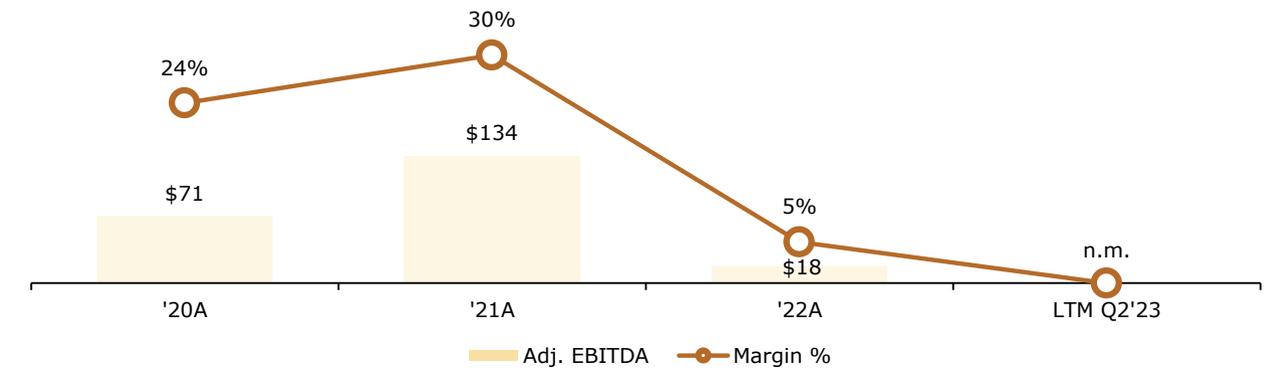
## REVENUE AND CONCENTRATE PRODUCED (MT)

(\$ in millions)

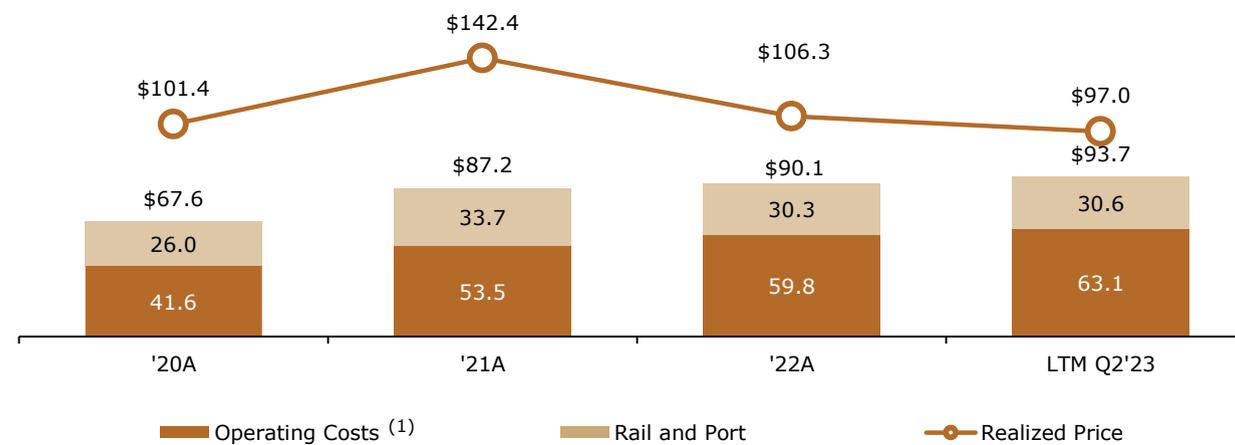


## ADJ. EBITDA AND MARGIN

(\$ in millions)

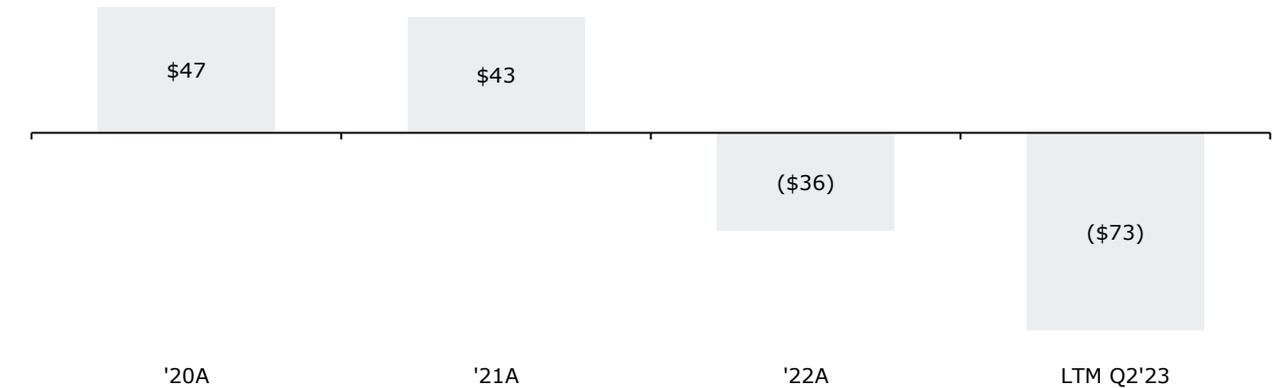


## REALIZED PRICE (\$/T) AND CASH COST (\$/T)



## FREE CASH FLOW (ADJ. EBITDA – CAPEX)

(\$ in millions)

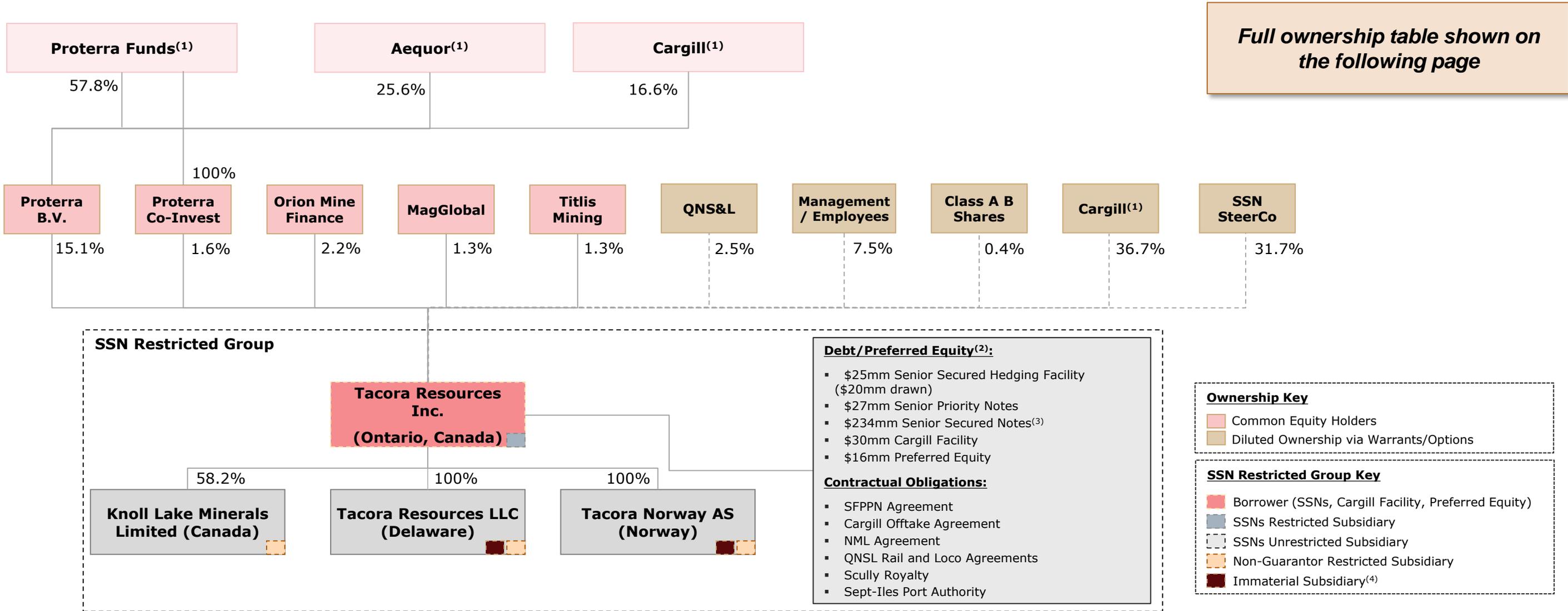


(1) Operating costs exclude corporate costs and royalties.



# Organizational Structure and Fully Diluted Ownership Summary

## LEGAL STRUCTURE AND FULLY DILUTED EQUITY OWNERSHIP<sup>(1)</sup>



(1) Pro forma ownership assuming the conversion of preferred shares and exercise of outstanding warrants and management options  
 (2) Balances as of 4/30/2023, with the exception of the Hedging Facility which is as of 8/14/2023  
 (3) Includes deferred May 15, 2023 interest payment of \$9.3mm  
 (4) An Immaterial Subsidiary is a Restricted Subsidiary whose assets are less than 5% of the Company's total assets and whose LTM revenues are less than 5% of the Company's total LTM revenues



# Organizational Structure and Fully Diluted Ownership Summary (cont'd)

## SUMMARY OF CURRENT AND FULLY DILUTED OWNERSHIP

	Current		Fully Diluted	
	Shares	% Ownership	Shares	% Ownership
Proterra M&M MGCA B.V.	165,770,379	69.2%	165,770,379	15.1%
Proterra M&M Co-Invest LLC	17,750,166	7.4%	17,750,166	1.6%
OMF Fund II	23,851,786	10.0%	23,851,786	2.2%
MagGlobal LLC	14,460,759	6.0%	14,460,759	1.3%
Titlis Mining AS	13,867,318	5.8%	13,867,318	1.3%
Class A B Shares	3,819,750	1.6%	3,819,750	0.3%
<b>Sub-Total</b>	<b>239,520,158</b>	<b>100.0%</b>	<b>239,520,158</b>	<b>21.9%</b>
Cargill Warrants	-		383,512,569	35.0%
AHG Warrants	-		346,987,562	31.7%
QNS&L Warrants	-		27,393,755	2.5%
Cargill Preferred C Shares	-		16,154,887	1.5%
Management Options	-		82,181,265	7.5%
<b>Total</b>	<b>239,520,158</b>	<b>100.0%</b>	<b>1,095,750,195</b>	<b>100.0%</b>



**Thank you!**



**Q&A**

**THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**



Bennett Jones

Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130  
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**Mike Shakra**  
**Partner**  
Direct Line: 416.777.6236  
e-mail: shakram@bennettjones.com

August 16, 2023

**Sent via Email**

Joe Broking, Trey Jackson and Leon Davies

John Ciardullo, Ashley Taylor and Lee Nicholson

Tacora Resources Inc.  
Board of Directors  
102 3rd St NE #120,  
Grand Rapids, MN 55744, United States

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario, Canada M5L 1B9

Dear Sirs:

**Re: Tacora Resources Inc. ("Tacora" or the "Company")**

Reference is made to our letter to you dated August 10, 2023.<sup>1</sup> As the Company approaches a critical inflection point, we write to underscore the Ad Hoc Group's deep concerns regarding the Company's financial distress and the conduct of Cargill, Inc., on its own behalf and acting through its affiliates and executives (collectively, "**Cargill**") with respect to the Company.

It is evident to the Ad Hoc Group that Cargill is exploiting its control over Tacora to pursue a self-interested agenda that is causing substantial harm to Tacora and its stakeholders. As previously communicated, the Offtake Agreement is not commercial, off-market, detrimental to the Company's financial health and an impediment to a potential sale of the Company or a Restructuring Transaction. With the Company careening toward an insolvency proceeding that it plans to commence in early September, it is imperative that the Company position itself, and preserve the ability to, disclaim the Offtake Agreement unless Cargill agrees to material modifications as to its duration, pricing and other terms that have, in their current form, discouraged potential buyers of the Company from moving forward with a transaction.

To date, the Ad Hoc Group is unaware of any attempt by the Company's Board or management to exert leverage over Cargill to consider revisions to the Offtake Agreement that conform with the terms that could be obtained if the opportunity were properly marketed. We attribute that failure in large part to our belief that Cargill's appointees to the Board have actively participated in prior deliberations and decisions where Cargill stood on both sides of the transaction, including those

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<sup>1</sup> Capitalized terms not defined herein have the meaning used in that letter.

August 16, 2023

Page 2

related to the Offtake Agreement, the Advance Payments Facility Agreement, dated January 3, 2023 (as amended from time to time, the “**APF Agreement**”), and the Company’s restructuring efforts.<sup>2</sup>

As you are aware, the directors on the Board have statutory and common law duties to act honestly, in good faith and in the best interests of the Company and to avoid conflicts of interest between the Company and any opposing interests, including their own. Given the clear conflict of interest and entanglement that exists between the interests of Cargill on the one hand, and those of the Company and its stakeholders on the other, Cargill Board appointees should not and cannot disinterestedly represent the Company in discussions and decisions regarding a restructuring or a transaction thereunder, including any deliberations and decisions concerning proposals for debtor-in-possession financing that could, among other consequences, further impede the Company’s ability to restructure the Offtake Agreement in any insolvency proceeding. Accordingly, the Ad Hoc Group demands that, to the extent he has not already done so, Cargill's Board appointee recuse from any deliberation and decision relating to a Restructuring Transaction.

The Ad Hoc Group further requests that the non-Cargill members of the Board engage in a robust and independent review of the Offtake Agreement and the APF Agreement and explore alternative options and providers that could offer more favorable terms to the Company. The Ad Hoc Group stands ready to assist in that process.

The Ad Hoc Group reserves all of its rights, remedies and claims with respect to all decisions made by Cargill Board appointees to date, including whether such appointees ought to have recused themselves from any such decisions and whether any fiduciary duties were breached by failing to do so.

We trust that the Board will govern itself in accordance with its well-established statutory and common law duties.

Yours truly,



Mike Shakra

MS

cc: Kevin Zych, Richard Swan, Sean Zweig & Thomas Gray – Bennett Jones LLP  
Michael Nessim, Usman Masood & Chetan Bhandari – Greenhill & Co., LLC  
Michael Sellinger & Michael Kizer – GLC  
Steering Committee

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<sup>2</sup> We previously wrote to the Board in March 2023 regarding the Company’s transfer of Sydvaranger Mining AS and its subsidiaries Orion Mine Finance. The Ad Hoc Group learned of this transaction after the fact, and expressed significant concern that the Company received nominal or no value in exchange for this asset and did not fully explore other options before pursuing this transaction.



**THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

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

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

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

Applicant

**AFFIDAVIT OF CHETAN BHANDARI  
(Sworn September 11, 2023)**

I, **CHETAN BHANDARI**, of the City of Greenwich, in the State of Connecticut, United States of America, MAKE OATH AND SAY:

1. I am a Managing Director of Greenhill & Co. Inc. ("**Greenhill**") and Co-Head of Greenhill's Financial Advisory & Restructuring Group. I have been working with Tacora Resources Inc. ("**Tacora**" or the "**Company**") and assisting with its liquidity management and restructuring efforts since Greenhill's engagement in January 2023. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is sworn in support of the Company's application to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and particularly approval of the DIP Loan Agreement (the "**DIP Agreement**") entered into on September 7, 2023 with the Ad Hoc Group (the "**DIP Lenders**"), pursuant to which the DIP Lenders have agreed to advance to Tacora a total amount of up to \$113,850,000 (the "**DIP Facility**").

3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated. Capitalized terms not otherwise defined in this Affidavit have the meaning ascribed to them in the Affidavit of Joe Broking sworn September 7, 2023 (the "**Broking Affidavit**").

**A. DIP Process**

4. Given the Company's challenging liquidity situation and upcoming debt maturities, on August 14, 2023, Greenhill commenced a solicitation process to obtain DIP financing proposals

on behalf of Tacora (the “**DIP Process**”). Greenhill, in consultation with the Company’s management and other advisors, and FTI Consulting Canada Inc. (“**FTI**”), in its capacity as proposed monitor, designed the contemplated DIP Process, which provided for the following initial milestones:

Date	Milestone
August 14, 2023	DIP Process launch to Initial Parties (as defined below)
August 18, 2023	Extend DIP Process outreach to Additional Parties (as defined below)
August 21, 2023	Deadline for initial DIP proposals from the Initial Parties
August 23, 2023	Deadline for initial DIP proposals from Additional Parties
September 1, 2023	Finalize DIP Agreement with selected DIP Lender(s)

5. The DIP Process originally involved contacting seven (7) existing stakeholders of the Company, including secured creditors and shareholders, and one (1) additional party that had been in active discussions with the Company and existing stakeholders regarding a potential investment in the Company (collectively, the “**Initial Parties**”). Greenhill contacted the Initial Parties between August 14<sup>th</sup> and 15<sup>th</sup>, 2023, and provided them with materials summarizing the Company’s funding requirements during possible CCAA Proceedings and other information regarding the Company. On August 18, 2023, Greenhill contacted four (4) additional financial parties and two (2) additional strategic parties (collectively, the “**Additional Parties**”) to solicit their interest in potentially providing DIP financing to the Company. The Additional Parties were selected, in consultation with the Company’s management and other advisors, and FTI as Proposed Monitor, based on their familiarity with the Company (including previous participation in the Strategic Process) and their ability to provide DIP financing to the Company in a timely manner. The Additional Parties were provided with the same materials as the Initial Parties. The Initial Parties and the Additional Parties had previously executed non-disclosure agreements with the Company.

6. In response to the outreach to the Initial Parties and the Additional Parties, the Company received four (4) proposals for DIP financing:

- (a) A \$100 million DIP financing proposal from the Ad Hoc Group (the “**Ad Hoc Group Proposal**”);
- (b) A \$50 - \$60 million DIP financing proposal from another Initial Party which included an offer to extend certain arrangements to the Company (the “**Other Proposal**”);
- (c) A \$60 million DIP financing proposal from an Additional Party (“**Third Party Proposal #1**”); and
- (d) A summary of basic conditions required for a restructuring of the Company’s debt and offtake agreement in connection with the DIP financing proposal (“**Third Party Proposal #2**”).

7. Third Party Proposal #1 contemplated interest and fees which were significantly more expensive than the Ad Hoc Group Proposal and the Other Proposal and also did not provide the Company with sufficient liquidity to operate under the CCAA through the contemplated time it would require to complete a strategic process and develop a viable sale or recapitalization transaction. This feedback was communicated to the Additional Party but it was unable to significantly revise the proposal. Third Party Proposal #2 was not actionable as it required concessions from stakeholders and creditors, which were unlikely to be achieved, particularly in the timeframe required. Accordingly, the Company determined to focus on pursuing the Ad Hoc Group Proposal and the Other Proposal.

8. Following receipt of their initial proposals, Greenhill and Stikeman Elliott LLP (counsel to the Applicant), in consultation with FTI and management of the Company, negotiated with the Ad Hoc Group and the other Initial Party from receipt of initial proposals on August 21, 2023 through September 3, 2023, in an attempt to secure the best terms possible in the circumstances. On September 3, 2023, Stikeman Elliott LLP communicated to both parties that they were required to submit committed, final and best proposals by September 5, 2023 at 12:00 p.m. EST for consideration by the Company.

9. On September 4, 2023, Greenhill contacted the Ad Hoc Group’s advisors with a proposed structure, interest rates and fees aimed at making their proposal comparable to the Other

Proposal when factoring in the benefit the Company would receive from the other arrangements offered to the Company by the other Initial Party.

10. Greenhill also reached out to the other Initial Party with a request on a proposed structure in terms of the size of the DIP facility and a proposed structure for interest rates and fees to make it more comparable to the Ad Hoc Group Proposal.

11. The Company received a revised proposal from the Ad Hoc Group by the deadline communicated to both parties. The Ad Hoc Group's revised proposal included the additional funding requested by the Company to address required payments by the Company in the case of potential decreases in iron-ore prices and also improved the economics and overall terms from their initial proposal.

12. The Company did not receive a revised proposal from the other Initial Party.

13. Following receipt of the revised proposal from the Ad Hoc Group, the Company continued negotiating with the advisors to the Ad Hoc Group in an attempt to secure the best terms possible in the circumstances and following those negotiations, entered into the DIP Agreement with the Ad Hoc Group, as DIP Lenders, on September 7, 2023.

## **B. DIP Facility**

14. The DIP Agreement is subject to customary covenants, events of default, conditions precedent, and representations and warranties. These include, among other things, the requirement that the Court grant a DIP Charge in favour of the DIP Lenders securing all obligations of the Applicant under or in connection with the DIP Agreement.

15. The primary terms of the DIP Agreement are summarized in the Broking Affidavit. Pursuant to the DIP Agreement, the DIP Lenders have committed to providing Tacora with \$113,850,000, of which an Initial Advance of \$28,000,000 will be made available to Tacora during the initial 10-day Stay Period. The quantum of the Initial Advance was sized by management of the Company, in consultation with FTI, based on the expected potential funding need during the initial 10-day stay period, considering the volatile nature of iron ore prices and potential contingencies that arise in large high-fixed cost mining operations. The three subsequent advances to Tacora are subject to certain conditions precedent.

16. The \$113,850,000 in funding is split in three tranches: Tranche 1 – \$60,000,000, Tranche 2 – \$40,000,000, and Tranche 3 – \$13,850,000. Interest is payable on each Tranche as follows:

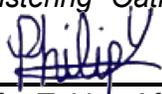
- (a) Tranche 1 – 10% per annum payable in cash and 3% per annum payable-in-kind;
- (b) Tranche 2 – 8.25% per annum payable in cash; and
- (c) Tranche 3 – 8.25% per annum payable in cash.

17. Interest on all advances under the DIP Facility are calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid.

18. In connection with the DIP Facility, the DIP Lenders also earn a Backstop Fee in an amount equal to 2% of the maximum availability of \$113,850,000 on a pro-rata basis as compensation for the DIP Lenders' commitment to, jointly and severally, backstop each other DIP Lender's obligation to provide financing under the DIP Agreement. The Backstop Fee is not earned until the Court grants an amended and restated Initial Order approving the DIP Facility following the initial 10-day stay period and the Backstop Fee is payable upon the maturity of the DIP Facility.

19. Based on my experience and my review of comparable recent DIP financings in the United States and Canada, I believe that (a) the interest rate provided in the DIP Agreement is lower than (i) interest rates provided for in comparable recent DIP financings and; (ii) debt yields of companies with comparable or superior credit quality to Tacora; and (b) the proposed Backstop Fee as a percentage of the DIP Facility is comparable to fees provided for in recent DIP financings. I also believe the DIP Facility and DIP Agreement represent the best terms the Company could achieve in the circumstances based on the competitive DIP Process.

SWORN remotely via videoconference, by Chetan Bhandari, stated as being located in the City of Greenwich, in the State of Connecticut, before me at the City of Toronto, in Province of Ontario, this 11th day of September, 2023, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits, etc.  
Philip Yang | LSO #820840



**CHETAN BHANDARI**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF TACORA RESOURCES INC.

Court File No.

Applicant

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

PROCEEDINGS COMMENCED AT TORONTO

**AFFIDAVIT OF CHETAN BHANDARI  
(SWORN SEPTEMBER 11, 2023)**

**STIKEMAN ELLIOTT LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Tel: 416-869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson (LSO #66412I)**  
Tel: 416-869-5604  
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**Natasha Rambaran (LSO #80200N)**  
Tel: 416-869-5504  
Email: [nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)

**Philip Yang (LSO #82084O)**  
Tel: 416-869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Counsel to the Applicant

**THIS IS EXHIBIT "G" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

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**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

**DIP LOAN AGREEMENT**

**Dated as of September 11, 2023**

**WHEREAS** the Borrower (as defined below) has requested that the DIP Lenders (as defined below) provide financing to fund certain obligations of the Borrower in the context of its anticipated proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), and such proceeding, the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in accordance with the terms and conditions set out in this agreement (this "**DIP Agreement**");

**NOW THEREFORE** the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Tacora Resources Inc. (the "**Borrower**").
2. **DIP LENDERS:** (i) Brigade Capital Management, LP;  
(ii) Concise Capital Management LP;  
(iii) CrossingBridge Advisors, LLC;  
(iv) Millstreet Capital Management LLC;  
(v) MSD Partners, LP;  
(vi) O'Brien-Staley Partners; and  
(vii) Snowcat Capital Management, LP;  
  
(collectively, in such capacity, the "**DIP Lenders**") on behalf of the parties listed in the signature pages hereto.
3. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Agreement have the meanings given thereto in **Schedule "I"** hereto.
4. **PURPOSE:** As set out in Section 21(e) of this DIP Agreement or as otherwise indicated herein.
5. **DIP FACILITY AND MAXIMUM AMOUNT** A super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") up to a maximum principal amount of \$113,850,000 (the "**Maximum Amount**").  
  
The DIP Facility shall be split into three tranches that in aggregate total the Maximum Amount:
  - Tranche 1 - \$60,000,000 ("**Tranche 1**")
  - Tranche 2 - \$40,000,000 ("**Tranche 2**")
  - Tranche 3 - \$13,850,000 ("**Tranche 3**")

For greater certainty, any interest, expenses or fees that are capitalized and added to the principal amount owing hereunder as contemplated by the terms hereof shall not constitute part of the Maximum Amount, and the Borrower is and shall be permitted to borrow up to the Maximum Amount without taking into account any such capitalized amounts, subject to the terms and conditions hereof.

Advances under the DIP Facility shall be made in accordance with Section 10 of this DIP Agreement.

**6. REPAYMENT:**

The aggregate principal amount owing under the DIP Facility, all accrued and unpaid interest, all fees (including, without limitation, the Backstop Fee (as defined below)) and reasonable and documented expenses incurred by the DIP Lenders (including, without limitation, the Expenses (as defined below)), and all other obligations of the Borrower to the DIP Lenders under or in connection with the CCAA Proceedings, this DIP Agreement, the DIP Facility or any other definitive security or other documents, agreements, registrations, financing statements and instruments in respect of the DIP Facility (collectively, the "**DIP Obligations**") shall be repaid in full on the earliest to occur of: (i) the occurrence of any Event of Default hereunder that has not been cured or waived in writing by the DIP Lenders and in respect of which the Borrower was provided prior written notice by the DIP Lenders of such Event of Default; (ii) the closing of one or more sale transactions for all or substantially all of the assets or shares in the capital of the Borrower approved by an order of the Court, including in connection with the Solicitation Process (as defined below); (iii) the implementation by the Borrower of a plan of compromise or arrangement in accordance with the CCAA and any Court Orders (as defined below); (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (v) September 7, 2024 (the earliest of such dates being the "**Maturity Date**"). Provided that there is no Event of Default hereunder which is continuing, the Maturity Date may be extended at the request of the Borrower, following consultation with FTI Consulting Canada Inc., in its capacity as proposed court-appointed monitor (as appointed in such capacity, the "**Monitor**"), and with the prior written consent of each of the DIP Lenders, in their sole discretion, for such period and on such terms and conditions as the Borrower (in consultation with the Monitor) and the DIP Lenders may agree.

The commitment in respect of the DIP Facility shall expire automatically on the Maturity Date (unless extended according to the terms hereunder) and all DIP Obligations shall be repaid in full on the Maturity Date (or extended Maturity Date), without the DIP Lenders being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and/or that the DIP Obligations are due and payable.

All payments received by the DIP Lenders shall be applied first to any fees and expenses due hereunder (including, without limitation, the Expenses), then to accrued and unpaid interest and then, after all such fees, expenses and interest are brought current, to principal, provided, however, that any amounts applied by the Borrower to repay DIP Obligations shall go first to satisfy in full the DIP Obligations owing to non-Defaulting Lenders, then to the DIP Obligations, if any, owing to Defaulting Lenders.

It is acknowledged that some or all of the DIP Obligations may be satisfied by the DIP Lenders "credit bidding" such DIP Obligations, with the prior written consent of the Required DIP Lenders, for some or all of the assets of the Borrower pursuant to the Solicitation Process to be implemented in the CCAA Proceedings, in the Required DIP Lenders' sole discretion and subject to approval by the Court.

**7. EXIT FINANCING:** If requested by the Borrower, the DIP Lenders may, with the prior written consent of the Required DIP Lenders, in their sole discretion, and with the consent of the Borrower (in consultation with the Monitor), convert any or all of the DIP Obligations outstanding on the Maturity Date into exit financing having terms and conditions satisfactory to the DIP Lenders and the Borrower.

**8. CASH FLOW PROJECTIONS:** The Borrower, in consultation with the Monitor in the CCAA Proceedings, has provided to the DIP Lenders the cash flow projections attached at **Schedule "A"** hereto, which are in form and substance satisfactory to the DIP Lenders and which are to be filed with the Court, reflecting the projected cash requirements of the Borrower for the 16-week period from September 10, 2023, through the period ending December 31, 2023, calculated on a weekly basis (together with the back-up information requested and received by the DIP Lenders, the "**Cash Flow Projection**").

The Borrower shall keep the DIP Lenders and the Monitor apprised of its cash flow requirements by providing: (i) an

updated rolling Cash Flow Projection (which shall include all reasonable backup information requested by the DIP Lenders) by no later than 5:00 p.m. (Eastern Time) on the Friday of each week ending after the week in which the First DIP Advance (as defined below) occurs, such updated cash flow projection to be in a form consistent with the Cash Flow Projection (a "**Proposed Amended Cash Flow Projection**"), provided that the Borrower (in consultation with the Monitor), at its option, may provide a Proposed Amended Cash Flow Projection on a more frequent basis, but in any event, not more than twice in any calendar week; and (ii) on a weekly basis, a report showing on a line-by-line basis (a) the cumulative actual receipts and disbursements for the preceding period and (b) the cumulative variances from the amounts in the DIP Agreement Cash Flow Projection (as defined below) and noting therein all variances on a line by line basis from the amounts in the DIP Agreement Cash Flow Projection, with reasonably detailed explanations for all material variances, such information described in this clause (ii) to be delivered to the DIP Lenders and Monitor weekly by no later than 5:00 p.m. (Eastern Time) on the Friday of each week.

The Proposed Amended Cash Flow Projection shall be considered the DIP Agreement Cash Flow Projection unless the Majority DIP Lenders determine that the Proposed Amended Cash Flow Projection is not acceptable and deliver a written objection to the Borrower with a copy to the Monitor within three (3) Business Days of receipt thereof, stating that the Proposed Amended Cash Flow Projection is not acceptable and setting out the reasons why such Proposed Amended Cash Flow Projection is not acceptable. In such case the prior Cash Flow Projection shall remain in effect.

At any given time, the cash flow projection in force and effect (whether the Cash Flow Projection or any subsequent Proposed Amended Cash Flow Projection) shall be the "**DIP Agreement Cash Flow Projection**".

For greater certainty, the DIP Lenders shall not be required to initiate any DIP Advances pursuant to a Proposed Amended Cash Flow Projection, nor is the Borrower entitled to utilize any DIP Advance to make payments set out in a Proposed Amended Cash Flow Projection, unless and until it has become effective as the DIP Agreement Cash Flow Projection in accordance with this Section 8.

The proceeds of each DIP Advance shall be used (i) by the Borrower solely in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (as defined below), or as may otherwise be agreed to in writing by the Required DIP Lenders, from time to time.

Notwithstanding anything to the contrary herein, unless the Required DIP Lenders consent in advance in writing, the Borrower shall be prohibited from using the proceeds of any DIP Advance to pay: (i) any expenses that are not of a type of expense that falls within an expense line-item contained in the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (and for certainty including the exceptions contained therein); (ii) professional fees of the Borrower or any other party to contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the DIP Lenders on any Court Order with respect to the validity or enforceability of the DIP Obligations, the DIP Agreement or any Order contemplated by the DIP Agreement; (iii) subject to the preceding subsection (ii), the professional fees of any party, except for such professional fees incurred for and on behalf of the Borrower, the Monitor and the DIP Lenders (as defined below); and (iv) any amounts outstanding as at the date of commencement of the CCAA Proceedings, including without limitation, any amounts owing to trade creditors and other lenders.

For the purposes of this DIP Agreement, “**Permitted Variance**” shall mean an adverse variance of not more than 10% of any disbursement line item in the DIP Agreement Cash Flow since the beginning of the period covered by the DIP Agreement Cash Flow Projection starting on the start date of the initial Cash Flow Projection referred to in the first paragraph of this Section 8 above; provided, however that: (i) the Permitted Variance calculation shall not take into account (a) the professional advisory fees (including the fees of counsel and a financial advisor) of the Borrower and the Monitor, (b) the Expenses, (c) the fees and expenses of the DIP Lenders; and (d) costs related to pre-existing compensation arrangements paid to employees based on production of the Scully mine; and (ii) an exceedance of the Permitted Variance by the Borrower only one time during any consecutive four week period beginning on the date the Initial Order is granted shall not result in an Event of Default.

**9. TRANCHE 3 USE  
AND DRAW  
CONDITIONS**

Notwithstanding any other provisions of this DIP Agreement, amounts funded pursuant to Tranche 3 may only be used to fund: (i) required margin payments due under the Offtake Agreement; or (ii) the purchase of hedges ("**Margin or Hedge Services**").

Prior to purchasing or making any payment for Margin or Hedge Services, the Borrower and its financial advisor shall request: (a) a quote for pricing of such Margin or Hedge Services from Cargill; and (b) a quote for pricing of such Margin or Hedge Services from an independent third-party who provides such services.

The Borrower shall not purchase any Margin or Hedge Services without the consent of the Monitor. For greater certainty, Margin or Hedge Services does not include required margin payments due under the Offtake Agreement.

**10. ADVANCES UNDER  
DIP FACILITY:**

Pursuant to the terms and conditions of this DIP Agreement, the DIP Lenders shall, on a several basis, advance the following disbursements as draws against the Maximum Amount (each of the below, a "**DIP Advance**"):

- (a) A first advance in the aggregate amount of \$28,000,000 ("**First DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such First DIP Advance to be advanced not later than 1 Business Day (as defined below) following the satisfaction of each of the conditions to the First DIP Advance set out in Section 13 of this DIP Agreement. The First DIP Advance shall be composed of: (i) \$13,800,000 of funding from Tranche 1; (ii) \$9,200,000 of funding from Tranche 2; and (iii) \$5,000,000 of funding from Tranche 3;
- (b) A second advance in the amount of \$53,850,000 ("**Second DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Second DIP Advance to be advanced not later than 1 Business Day following the satisfaction of each of the conditions to the Second DIP Advance set out in Section 13 of this DIP Agreement. The Second DIP Advance shall be composed of: (i) \$27,000,000 of funding from Tranche 1; (ii) \$18,000,000 of funding from Tranche 2; and (iii) \$8,850,000 of funding from Tranche 3;

- (c) A third advance in the amount of \$25,000,000 ("**Third DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Third DIP Advance to be advanced not later than 3 Business Days following the satisfaction of each of the conditions to the Third DIP Advance set out in Section 13 of this DIP Agreement. The Third DIP Advance shall be composed of: (i) \$15,000,000 of funding from Tranche 1; and (ii) \$10,000,000 of funding from Tranche 2; and
- (d) A fourth advance in the amount of \$7,000,000 ("**Fourth DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Fourth DIP Advance to be advanced not later than 3 Business Days following the satisfaction of each of the conditions to the Fourth DIP Advance set out in Section 13 of this DIP Agreement. The fourth DIP Advance shall be composed of: (i) \$4,200,000 of funding from Tranche 1; and (ii) \$2,800,000 of funding from Tranche 2.

## 11. BACKSTOP COMMITMENT

Each DIP Lender shall fund a portion of each DIP Advance equal to its Applicable Percentage of such DIP Advance.

The DIP Lenders shall, jointly and severally, backstop the DIP Financing Commitment of each other DIP Lender (each, a "**Backstop Commitment**"), such that if any DIP Lender shall fail to (x) fund its Applicable Percentage of any DIP Advance or (y) fund on a Pro Rata basis a Backstop Advance (collectively, a "**Defaulting Lender Funding Obligation**") (each such defaulting DIP Lender, a "**Defaulting Lender**"), each other DIP Lender which is not a Defaulting Lender shall, within: (A) 1 Business Day of receiving written notice of failure to fund from the Borrower in respect of the First DIP Advance or Second DIP Advance, or (B) 3 Business Days of receiving written notice of failure to fund from the Borrower in respect of the Third DIP Advance and Fourth DIP Advance, fund on a Pro Rata basis by way of a Backstop Advance each such Defaulting Lender Funding Obligation in accordance with Section 12 of this DIP Agreement.

## 12. SOLICITATION PROCESS MILESTONES:

The following milestones in respect of the Solicitation Process must be satisfied by the Borrower or such later dates as may be agreed by the Borrower, the Majority DIP Lenders and the

Monitor (each a "**Solicitation Process Milestone**" and collectively, the "**Solicitation Process Milestones**"):

- (a) The Solicitation Process Order must be obtained by October 3, 2023 and the Solicitation Process must commence no later than October 4, 2023, but, for greater certainty, the Borrower and the DIP Lenders shall use commercially reasonable efforts to obtain the Solicitation Process Order prior to the Second DIP Advance;
- (b) The deadline for the receipt of non-binding letters of intent: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale LOI**"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services LOI**"), must be no later than October 30, 2023;
- (c) Final deadline for the receipt of binding bids: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale Binding Bid**"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services Binding Bid**"), must be no later than December 15, 2023; and
- (d) Closing of transaction(s) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale Transaction**"); and/or (ii) in respect of an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services Transaction**"), must occur no later than January 15, 2024.

**13. CONDITIONS  
PRECEDENT TO DIP  
FACILITY  
ADVANCES:**

**A. CONDITIONS TO FIRST DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the First DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the Initial Order (as defined below) at

least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, which material documents shall include the proposed Initial Order, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.

- (b) The Court shall have issued an initial order in substantially the form attached as **Schedule "C"** hereto with such additional changes reasonably acceptable to the Borrower, Majority DIP Lenders and Monitor (the "**Initial Order**"), the effect of which shall, among other things, authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge (as defined below) securing the principal amount of the First DIP Advance, plus interest, fees and expenses payable pursuant to this DIP Agreement, and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such Initial Order shall have been obtained on notice to such parties required by the Required DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (d) The Initial Order shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (e) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the First DIP Advance;

- (f) No Material Adverse Change shall have occurred since the date hereof;
- (g) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the First DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for Permitted Priority Liens;
- (i) All Expenses for which invoices have been provided to the Borrower shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts;
- (j) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute.
- (k) The Borrower shall be in compliance with all Court Orders.

**B. CONDITIONS TO SECOND DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Second DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the ARIO and the Solicitation Process Order at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances)

to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, which material documents shall include the proposed ARIO, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.

- (b) The Court shall have issued an amended and restated Initial Order in substantially the form set out in **Schedule "D"** hereto, with such additional changes reasonably acceptable to the Borrower, Required DIP Lenders and Monitor (the "ARIO") the effect of which, among other things, is to authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge securing the principal amount of \$113,850,000 and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such ARIO shall have been obtained on notice to all parties entitled thereto pursuant to the CCAA or otherwise required by the Required DIP Lenders;
- (c) The Borrower shall have used commercially reasonable efforts to have obtained a Court Order in form and substance acceptable to the Required DIP Lenders (the "**Solicitation Process Order**") approving a sale, investment and offtake agreement solicitation process (the "**Solicitation Process**") as set out in **Schedule "E"** hereto, with any changes as may be agreed by the Borrower, the Monitor and the Required DIP Lenders;
- (d) The ARIO and any other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (e) Delivery to the DIP Lenders, with a copy to the Monitor of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Second DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance

with the Court Orders, and that no Default or Event of Default has occurred and is continuing;

- (f) The Initial Order and the ARIO shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (g) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Second DIP Advance;
- (h) No Material Adverse Change shall have occurred since the date hereof;
- (i) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the Second DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (j) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (k) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (l) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts;
- (m) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees located in the United States), except, in each case, for any such

amounts that are not yet due and payable or which are in dispute; and

- (n) The Borrower shall be in compliance with all Court Orders.

### **C. CONDITIONS TO THIRD DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Third DIP Advance hereunder:

- (a) The Court shall have issued the Solicitation Process Order;
- (b) The ARIO, and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of (i) October 15, 2023 and (ii) the date of receipt by the Borrower of Sale LOIs and Alternative Offtake or Services LOIs, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Third DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (d) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Third DIP Advance;
- (e) No Material Adverse Change shall have occurred after the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Third DIP Advance (unless any representation and warranty is qualified by materiality,

in which case it shall be true and correct in all respects as of the date made or deemed made);

- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (i) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (j) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (k) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (l) The Borrower shall be in compliance with all Court Orders.

**D. CONDITIONS TO FOURTH DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Fourth DIP Advance hereunder:

- (a) The ARIO, the Solicitation Process Order and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed

or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;

- (b) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of date of (i) December 4, 2023; and (ii) receipt by Borrower of Sale Binding Bids and Alternative Offtake or Services Binding Bids, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Fourth DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (c) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Fourth DIP Advance;
- (d) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (e) No Material Adverse Change shall have occurred since the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Fourth DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the

CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;

- (i) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (j) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (k) The Borrower shall be in compliance with all Court Orders.

**14. DISBURSEMENTS**

The proceeds of all DIP Advances shall be funded by the DIP Lenders into the Borrower's account noted in **Schedule "F"** hereto (the "**Borrower's Account**").

**15. VOLUNTARY PREPAYMENTS:**

The Borrower may prepay the DIP Obligations at any time prior to the Maturity Date by effecting a Pro Rata payment to the DIP Lenders, to one or more accounts to be specified in writing in advance, in minimum amounts \$1,000,000 and in increments of \$250,000 in excess thereof, without premium or penalty. Any amounts so prepaid may not be re-borrowed by the Borrower hereunder.

Any voluntary prepayments shall be applied: (i) first, to amounts outstanding under Tranche; (ii) second, once all amounts outstanding under Tranche 2 have been paid in full, to amounts outstanding under Tranche 3; and (iii) third, once all amounts outstanding under Tranche 2 and Tranche 3 have been paid in full, to amounts outstanding under Tranche 1.

**16. INTEREST RATE:**

The outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal in aggregate to (the "**Interest Rate**"):

Tranche 1 – 10% per annum payable in cash in accordance with this Section 16 ("**Cash Interest**") and 3% per annum payable-in-kind in accordance with this Section 16 (the "**PIK Interest**").

Tranche 2 – 8.25% per annum Cash Interest.

Tranche 3 – 8.25% per annum Cash Interest.

Upon the occurrence and during the continuance of an Event of Default the Cash Interest rate shall be increased by an additional 2% per annum ("**Default Interest**"), payable monthly in cash in arrears on the last Business Day of each calendar month and the Interest Rate, including Default Interest, shall begin to accrue on all amounts borrowed.

The Borrower shall pay in cash the Cash Interest on the aggregate outstanding principal amount of DIP Advances monthly in arrears on the last Business Day of each calendar month beginning on September 30, 2023. The Borrower shall pay the PIK Interest on the aggregate outstanding principal amount of the DIP Advances by adding such accrued interest to the principal amount of the DIP Obligations on the last Business Day of each calendar month. Amounts representing the interest payable hereunder that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance with this Section 16.

Interest on all DIP Advances shall accrue daily from and after the date of such DIP Advance to the Borrower to, but excluding, the date of repayment, as well as before and after maturity, demand and default and before and after judgment, and shall be calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid from time to time and on the basis of the actual number of days elapsed in a year of 365 days. For greater certainty, there shall not be any compounding in respect of Cash Interest provided it is paid on time in accordance with this DIP Agreement.

For the purposes of the *Interest Act* (Canada), the annual rates of interest referred to in this DIP Agreement calculated in accordance with the foregoing provisions of this DIP Agreement, are equivalent to the rates so calculated multiplied by the actual number of days in a calendar year and divided by 365 or 366, as the case may be.

If any provision of this DIP Agreement or any ancillary document in connection with this DIP Agreement would obligate the Borrower to make any payment of interest or other amount payable to the DIP Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a

receipt by the DIP Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the DIP Lenders of interest at a criminal rate and any such amounts actually paid by the Borrower in excess of the adjusted amount shall be forthwith refunded to the Borrower.

All PIK Interest and Backstop Fees (as defined below) (collectively, the "**PIK Amounts**") shall be: (i) converted to equity at plan or transaction value in the event of a sale or restructuring transaction in respect of the Borrower in which the DIP Lenders retain equity value in the Borrower or its successor(s) upon emergence from CCAA and in such circumstances, all PIK Amounts will be deemed satisfied in full; or (ii) in any other circumstance, paid in cash upon the Maturity Date (the "**PIK Mechanism**").

For greater certainty, unless otherwise expressly provided in this Agreement, all payments to be made by the Borrower to the DIP Lenders under this Agreement on account of principal, interest, fees or otherwise shall be made on a Pro Rata basis.

**17. BACKSTOP FEE:**

The Borrower shall pay to the DIP Lenders a backstop fee (the "**Backstop Fee**"), as compensation for their Backstop Commitments, in an amount equal to 2% of the entire Maximum Amount, which shall be earned by the DIP Lenders on a Pro Rata basis, upon the Court issuing the ARIIO.

The Backstop Fee, once earned and payable, shall be non-refundable under all circumstances and shall be paid by adding the amount of such fee to the principal amount of the DIP Obligations. Amounts representing the Backstop Fee that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and shall bear interest in accordance with Section 16 of this DIP Agreement. Only those DIP Lenders which are not Defaulting Lenders shall be entitled to any portion of the Backstop Fee when such fee is paid in cash or otherwise allocated to the DIP Lenders pursuant to the PIK Mechanism, with any amounts which would otherwise have been paid or allocated to a Defaulting Lender to instead be distributed, on a Pro Rata basis, to the DIP Lenders who are not Defaulting Lenders.

**18. DIP SECURITY:**

All of the DIP Obligations shall be secured by a Court-ordered charge (the "**DIP Charge**") over all present and after-acquired property, assets and undertakings of the Borrower (including for greater certainty and without limitation, insurance proceeds, intellectual property, goods, documents of title, investment property, securities now owned or hereafter owned or acquired by or on behalf of the Borrower and those assets set forth on the financial statements of the Borrower), including all proceeds therefrom and all causes of action of the Borrower (collectively, the "**Collateral**").

The DIP Charge shall be a super-priority charge which shall rank ahead of all existing, Liens, claims, trusts and charges, but shall be subject to and shall rank behind or pari passu with the Permitted Priority Liens.

Any amendment to, waiver of or release of a material portion of: (i) the priority of the DIP Charge; and (ii) the Collateral (subject to the terms of the Initial Order or the ARIO, as applicable), shall require the prior written consent of each of the DIP Lenders.

**19. MANDATORY REPAYMENTS:**

Unless the Borrower has obtained the prior written consent of the Majority DIP Lenders, the proceeds of any debt or equity issuance by the Borrower that occurs from and after the date hereof, and the proceeds of Collateral (for greater certainty, net of reasonable costs and closing adjustments, as applicable), including, without limitation, arising from: (a) any sale of Collateral out of the ordinary course of business (including for greater certainty, any sale of all or substantially all of the Collateral); or (b) insurance proceeds in respect of any damage, loss or destruction of the Collateral (collectively, the "**Net Proceeds**") shall be paid: (i) first, to satisfy the Admin Charge, the D&O Charge and the KERP Charge; (ii) second, to satisfy DIP Obligations under Tranche 2; (iii) third, to satisfy DIP Obligations under Tranche 3; (iv) fourth, to satisfy DIP Obligations under Tranche 1; (v) fifth, to satisfy any other priority charges in accordance with their priorities; (vi) sixth, to satisfy other indebtedness and liabilities of the Borrower as may be ordered by the Court in accordance with their priorities; and (vii) seventh, to the Borrower or such other persons as are entitled thereto in accordance with applicable law.

The Maximum Amount shall be permanently reduced in an amount equal to the Net Proceeds paid to the DIP Lenders and applied to the aggregate outstanding principal amount of the DIP Advances in accordance with Section 6 of this DIP

Agreement. For greater certainty, any mandatory repayments shall not be subject to any premium or penalty.

**20. REPRESENTATIONS AND WARRANTIES:** The Borrower jointly and severally represents and warrants to each DIP Lender, upon which each DIP Lender relies in entering into this DIP Agreement, that subject to the entry of the Initial Order:

- (a) The Borrower is a corporation duly incorporated and validly existing under the laws of its governing jurisdiction and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary, except where the failure to have such qualification, license or registration would not have a Material Adverse Effect (as defined below). For the purpose of this DIP Agreement, "**Material Adverse Effect**" means a material adverse effect on: (i) the financial condition, business or assets of the Borrower; or (ii) the ability of the Borrower to comply with its obligations hereunder or under any Court Order;
- (b) Subject to the granting of the Initial Order and the ARIIO, as the case may be, the Borrower has all requisite corporate or other power and authority to: (i) carry on its business; (ii) own property, borrow monies and enter into agreements therefor; and (iii) execute and enter into this DIP Agreement and observe and perform the terms and provisions hereof;
- (c) None of the subsidiaries and affiliates of the Borrower have any material assets;
- (d) Subject to the granting of the Initial Order and the ARIIO, as the case may be, the execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder has been duly authorized by all necessary corporate or other action and any actions required under applicable laws. Except as has been obtained and is in full force and effect, no registration, declaration, consent, waiver or authorization of, or filing with or notice to, any governmental body is required to be obtained in connection with the performance by the Borrower of its obligations under this DIP Agreement;

- (e) Subject to the granting of the Initial Order and the ARIO, as the case may be, this DIP Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to: (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; (ii) the fact that specific performance and injunctive relief may only be given at the discretion of the courts; and (iii) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;
- (f) The execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of: (i) its constating documents (including any shareholders' agreements) or by-laws; (ii) any applicable laws; (iii) except as stayed pursuant to the CCAA Proceedings by the terms of the Initial Order, the ARIO or other Court Order, as the case may be, any contractual restriction binding on or affecting it or its material properties; or (iv) any material judgment, injunction, determination or award which is binding on it;
- (g) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, the Borrower is in compliance with all applicable laws of each jurisdiction in which its business has been or is being carried on, non-compliance with which would reasonably be expected to have a Material Adverse Effect;
- (h) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, to the Borrower's Knowledge (as defined below), there are no actions, suits or proceedings pending, taken or, threatened, before or by any governmental body or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law, which would reasonably be expected to have a Material Adverse Effect and have not been

stayed pursuant to the CCAA Proceedings. For the purpose of this DIP Agreement, "**Borrower's Knowledge**" means the actual knowledge of the senior officers and directors of the Borrower and the knowledge that such individuals would have had if they had conducted a reasonably diligent inquiry into the relevant subject matter;

- (i) The DIP Agreement Cash Flow Projection includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Borrower on the date hereof that, if not paid, would likely result in Liens ranking in priority to the DIP Charge, except for purchase money security interests;
- (j) As at the date of the Initial Order, the Borrower has good and marketable title to all of the Collateral subject to Permitted Liens;
- (k) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**, as at September 6, 2023, the Borrower has filed all tax returns that are required to be filed and has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it, except any such assessment that is being contested in good faith by proper legal proceedings. Without limiting the foregoing, all employee source deductions (including in respect of income taxes, employment insurance and Canada Pension Plan) payroll taxes and workers' compensation dues are currently paid and up to date, subject to normal course accruals, except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**;
- (l) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "H"**, there are no actions, suits or proceedings (including any tax-related matter) by or before any arbitrator or governmental authority or by any other person pending against or threatened against or affecting the Borrower that have or will not have been stayed pursuant to the CCAA Proceedings which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;

- (m) The Borrower maintains insurance policies and coverage that: (i) is sufficient for compliance with any applicable law and all material agreements to which it is a party; and (ii) provides adequate insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons engaged in the same or similar business to the assets and operations of the Borrower;
- (n) All factual information provided by or on behalf of the Borrower to the DIP Lenders in writing for the purposes of or in connection with this DIP Agreement or any transaction contemplated herein, is true and accurate in all material respects on the date as of which such information is dated or certified and remains true in all material respects as of the date provided and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. With respect to any projections, future business plans or forward looking financial statements, the Borrower is not guaranteeing in giving this representation and warranty that the actual future results will be as forecast or projected (but, for greater certainty, the DIP Lenders have all of their rights hereunder in the event that such actual future results are not as forecast or projected, including, without limitation, as provided for in Section 24(e) of this DIP Agreement); and
- (o) As of the date hereof, the Borrower does not administer any pension plans and does not have any outstanding payment obligations in respect of special payments or amortization payments, including without limitation, in respect of any pension plan, payments related to post-retirement benefits, solvency deficiencies or wind-up shortfalls in relation to any pension plan.

**21. AFFIRMATIVE COVENANTS:**

The Borrower covenants and agrees to do the following until such time as the DIP Obligations are indefeasibly repaid in full:

- (a) Keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Collateral and the business and affairs of the Borrower subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in

consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;

- (b) Cooperate in all respects with the Technical Advisor, including, but not limited to: (i) providing the Technical Advisor with reasonable access to the Scully mine; (ii) providing substantive operational updates and reporting to the Technical Advisor as required by the Technical Advisor; (iii) reasonably considering all recommendations made by the Technical Advisor regarding the operations of the Scully mine; and (iv) facilitating reporting by the Technical Advisor to the independent members of the Board and the DIP Lenders on a weekly basis or more frequently if determined appropriate by the Technical Advisor;
- (c) Subject to the terms of the Solicitation Process and the Solicitation Process Order, keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Solicitation Process, subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (d) Perform its obligations hereunder as and when required and in the manner required;
- (e) Use the proceeds of the DIP Facility (at all times solely in accordance with the terms hereof and the DIP Agreement Cash Flow Projections subject to the Permitted Variance) only for the limited purpose of facilitating the CCAA Proceedings, including the Solicitation Process and for the purpose of funding: (i) transaction costs and expenses incurred by the DIP Lenders in connection with the DIP Facility; (ii) professional fees and expenses incurred by the Borrower, the Monitor and the DIP Lenders in respect of the CCAA Proceedings; and (iii) operating costs, expenses, capital expenditures and ordinary course liabilities (including, without limitation, wages, vacation pay and active employee benefits) of the Borrower;
- (f) Comply in all respects with the provisions of the court orders made in connection with the CCAA Proceedings

(collectively, the "**Court Orders**" and each a "**Court Order**");

- (g) Preserve, renew and keep in full force the Borrower's corporate or other existence and all material licenses, permits or approvals required in respect of its business, properties, assets or any activities or operations carried out therein except where the failure to do so would not cause a Material Adverse Effect;
- (h) Maintain insurance coverage consistent with the coverage in existence of the date hereof with respect to the Collateral;
- (i) Conduct its activities in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance;
- (j) Promptly notify the DIP Lenders and the Monitor of the occurrence of any Event of Default, or of any event or circumstance that may, with the passage of time or the giving of notice, constitute an Event of Default (a "**Default**");
- (k) Promptly notify the DIP Lenders and the Monitor of the commencement of, or receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting the Borrower that is not stayed by the Initial Order, ARIO or other Court Order;
- (l) Promptly after the same is available, but in no event later than the day that is two (2) Business Days prior to the date on which the same is to be served or if such advance notice is not possible then as soon as reasonably practicable prior to the date on which the same is to be served, provide copies to the DIP Lenders of all pleadings, motion records, application records, judicial information, financial information and other documents filed by or on behalf of the Borrower in the CCAA Proceedings and incorporate all reasonable comments of the DIP Lenders in respect of such materials;
- (m) Subject to the CCAA and the Court Orders, comply in all material respects with all applicable laws, rules and

regulations applicable to its business, including, without limitation, health and safety, and environmental laws;

- (n) Except where a stay of proceedings or Court Order otherwise applies, pay when due all government statutory Liens, trust and other Crown claims including employee source deductions, GST, HST, PST, employer health tax, and workplace safety and insurance premiums, but only with respect to: (i) payments that rank in priority to the DIP Charge; and (ii) payments that are otherwise authorized pursuant to Court Order;
- (o) Either (i) pay in full; or (ii) treat as unaffected, the DIP Obligations in any plan of compromise or arrangement, proposal or any other restructuring whatsoever;
- (p) At all times be and remain subject to the CCAA Proceedings until the DIP Obligations are irrevocably and unconditionally repaid in full or otherwise satisfied through credit bidding, with no further right to DIP Advances;
- (q) Subject to any Court Orders, grant the DIP Lenders and their professional advisors reasonable access to the Collateral and their business, properties, and books and records;
- (r) Conduct the Solicitation Process strictly in accordance with its terms (including milestones and timelines) and strictly comply with the Solicitation Process Order; and
- (s) If required, appoint the Additional Independent Directors (as defined below) in accordance with Section 25 of this DIP Agreement;
- (t) Deliver to the DIP Lenders and the Monitor no later than 5:00 p.m. (Eastern Time) on the Friday of each week a 13-week rolling iron ore delivery forecast prepared by the Borrower (the "**CCAA Iron Ore Delivery Forecast**"), which shall be consistent with the DIP Agreement Cash Flow Projection;
- (u) Commencing two weeks following the delivery of the initial CCAA Iron Ore Delivery Forecast and every two weeks thereafter, deliver to port not less than 85% of the iron ore contemplated (in tonnes) by the most

recently delivered CCAA Iron Ore Delivery Forecast on a trailing two week basis; and

- (v) By November 1, 2023, deliver to the DIP Lenders, with a copy to the Monitor, a capital expenditure budget for the 2024 calendar year, which budget shall include maintenance shutdown and winterization costs for the Scully mine and be in form and substance satisfactory to the Majority DIP Lenders, acting reasonably.

**22. NEGATIVE COVENANTS:**

The Borrower covenants and agrees not to do the following or permit any subsidiary to do the following while any DIP Obligations remain outstanding, other than with the prior written consent of the Required DIP Lenders or pursuant to an Order of the Court:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking except: (i) where permitted pursuant to the Initial Order or ARIIO; or (ii) where such transaction results in the repayment of DIP Obligations in accordance with Section 19 of this DIP Agreement;
- (b) Make any payment of principal or interest in respect of any indebtedness outstanding prior to Initial Order ("**Existing Indebtedness**") other than as may be permitted or required herein or by a Court Order;
- (c) Create or permit to exist indebtedness for borrowed money other than: (i) Existing Indebtedness; (ii) debt contemplated by this DIP Facility; and (iii) post-filing trade credit obtained in the ordinary course of business, in accordance with the DIP Agreement Cash Flow Projection;
- (d) Permit any new Liens to exist on any Collateral other than Permitted Liens;
- (e) Either: (i) change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity; or (ii) make any changes to its organizational documents that would reasonably be expected to be adverse to the DIP Lenders;
- (f) Other than as permitted by the terms of this DIP Agreement, make any acquisitions, investments or

loans, advances, payments, financial assistance, capital contributions or other distributions of any kind or guarantee the obligations of any person, other than those in existence on the date hereof and disclosed to the DIP Lenders in writing;

- (g) Enter into any transaction with any affiliate;
- (h) Pay any dividends, distributions or advances to shareholders of the Borrower, or any management bonus or similar payments except in the case of (i) the KERP, or (ii) management bonuses or similar payments to the extent provided for in the DIP Agreement Cash Flow Projection;
- (i) Engage in new businesses;
- (j) Change its fiscal year or accounting practices;
- (k) Issue any equity;
- (l) Take any action (or in any way support the taking of any action by another person) that has, or would reasonably be expected to have, a material adverse impact on the rights and interests of the DIP Lenders, including, without limitation, any action in furtherance of challenging the validity, enforceability or amount of the DIP Obligations;
- (m) Except in accordance with the Solicitation Process Order, commence, continue or seek any stakeholder or court approval for any sale, restructuring transaction or plan without the prior written consent of the Required DIP Lenders in their sole discretion;
- (n) Pay, incur any obligation to pay, or establish any retainer with respect to, the fees, expenses or disbursements of a legal, financial or other advisor of any third party, other than (i) the Borrower and its legal counsel, financial advisors and other advisors, (ii) the Monitor and its legal counsel, and (iii) the legal, financial and other advisors of the DIP Lenders, in each case engaged as of the date hereof;
- (o) Challenge or fail to support the DIP Charge and DIP Obligations;

- (p) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Agreement Cash Flow Projection subject to the Permitted Variances; and
- (q) Except for the addition of the Additional Independent Directors, if required, not actively carry out any changes to the composition (including the addition, removal or replacement) of its board of directors (the "**Board**") (other than any director resignation) or its officers (including the appointment of a chief restructuring officer) without the consent of the Required DIP Lenders.

**23. INDEMNITY AND RELEASE:**

The Borrower hereby indemnifies and holds harmless each of the DIP Lenders and each of their respective directors, officers, employees, partners, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as "**Indemnified Persons**", and each, an "**Indemnified Person**") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from the CCAA Proceedings, this DIP Agreement or any advance made hereunder, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability to the extent it resulted from the fraud, gross negligence, bad faith or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this DIP Agreement shall survive any termination of the DIP Facility.

The Borrower shall not contest, challenge or in any way oppose (or support any other person in contesting, challenging or

opposing) the validity and enforceability of the DIP Obligations or any loan, security or other documents relating thereto. The Borrower further covenants to, and does hereby, release each of the DIP Lenders solely in its capacity as lender hereunder and its respective predecessors, successors, agents, advisors, representatives and assigns of and from all claims and liabilities relating to any act or omission related to this DIP Agreement that occurred prior to the date of this DIP Agreement.

**24. EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events, without the prior written consent of the Required DIP Lenders, shall constitute an immediate event of default ("**Event of Default**") under this DIP Agreement:

- (a) The issuance of any order terminating the CCAA Proceedings, or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower or the Collateral (being Collateral with an aggregate fair market value as reasonably determined by the Required DIP Lenders in excess of \$250,000, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower or any of the Collateral;
- (b) Failure to obtain the Solicitation Process Order by October 3, 2023 or satisfy any Solicitation Process Milestone by the applicable date required hereunder;
- (c) The issuance of any Court Order: (i) staying, reversing, vacating or otherwise modifying the DIP Charge; or (ii) that adversely impacts or could reasonably be expected to adversely impact the rights and interests of the DIP Lenders in connection with the Collateral or under this DIP Agreement or any Court Order; provided; however, that any such order that provides for payment in full forthwith of all of the DIP Obligations shall not constitute an Event of Default;
- (d) Failure of the Borrower to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder (subject to a three (3) Business Day cure period in the case of interest, fees and any other amounts (other than principal amounts) due hereunder);

- (e) The issuance of an order granting a Lien of equal or superior status to that of the DIP Charge, other than as provided in Section 18 of this DIP Agreement;
- (f) Any Proposed Amended Cash Flow Projection contemplates or forecasts an adverse change or changes from the then existing DIP Agreement Cash Flow Projection and such change(s) constitute a Material Adverse Change or is not delivered to the DIP Lenders within two (2) days of the requisite time frame set out herein.
- (g) Any representation or warranty by the Borrower herein or in any certificate delivered by the Borrower to the DIP Lenders shall be incorrect or misleading in any material respect as of the date made or deemed made and, if the circumstances giving rise to the incorrect representation or warranty are capable of modification or rectification (such that, thereafter the representation or warranty would be correct), the representation or warranty remains uncorrected for a period of five (5) Business Days;
- (h) A Court Order is made, a liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, of the Borrower, that has or will have a Material Adverse Effect; provided that the forgoing shall exclude changes to the Borrower's business or its performance solely as a result of (i) the commencement, announcement or continuance of the CCAA Proceedings or (ii) conducting the Solicitation Process;
- (i) Any breach of any Court Order upon receipt by the Borrower (with a copy to the Monitor) of notice from the Required DIP Lenders of such breach by the Borrower and such breach is not cured within two (2) Business Days of delivery of such notice;
- (j) Failure of the Borrower to perform or comply with any other term or covenant under this DIP Agreement and such Default shall continue unremedied for a period of five (5) Business Days after the earlier of (i) delivery of notice given by the Required DIP Lenders to the Borrower, with a copy to the Monitor or (ii) the

Borrower's Knowledge of such failure to perform or comply;

- (k) The commencement by the Borrower of an action or any other proceeding against the DIP Lenders;
- (l) The expiry without further extension of the stay of proceedings provided for in the Initial Order or the ARIIO, as applicable;
- (m) Other than the appointment of the Additional Independent Directors, if required, any change to the composition of the Board or officers of the Borrower (other than as a result of director resignation(s)) that is not acceptable to the Majority DIP Lenders acting reasonably;
- (n) The removal, termination, replacement or material change in the scope or extent of the authority of any chief restructuring officer (if one is appointed);
- (o) Any change of control of the Borrower; or
- (p) The seeking or support by the Borrower, or the issuance, of any court order (in the CCAA Proceedings or otherwise) that is inconsistent with the terms of this DIP Agreement.

## **25. CORPORATE GOVERNANCE**

At the request of the Majority DIP Lenders at any time following the granting of the ARIIO, the Borrower shall cause the Board to appoint up to two (2) additional independent directors with substantial restructuring experience, acceptable to the Borrower, the Monitor and the Required DIP Lenders (the "**Additional Independent Directors**"). The Additional Independent Directors shall be appointed forthwith after any such request is made by the Required DIP Lenders, provided that the Required DIP Lenders shall provide the Borrower with a list of at least 5 candidates they deem acceptable concurrently with any such request.

## **26. REMEDIES:**

Upon the occurrence and during the continuance of an Event of Default, whether or not there is availability under the DIP Facility: (a) without any notice to the Borrower, the Borrower shall have no right to receive any additional DIP Advances or other accommodation of credit from the DIP Lenders except in the sole discretion of the Required DIP Lenders; and (b) the Required DIP Lenders may immediately terminate the DIP Facility and demand immediate payment of all of the DIP

Obligations by providing such a notice and demand to the Borrower, with a copy to the Monitor. With the leave of the Court sought on not less than five (5) Business Days' notice to the Borrower and the Monitor after the occurrence and during the continuance of an Event of Default, the Required DIP Lenders shall have the right to: (a) enforce the DIP Charge and to exercise all other rights and remedies in respect of the DIP Obligations and the DIP Charge, including the right to realize on all Collateral and to apply to the Court for the appointment of a court-appointed receiver; (b) exercise the rights of a secured party under the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Newfoundland and Labrador) or any other applicable law relating to the enforcement of Liens by secured parties against any type of property, including the Collateral; (c) apply to the Court for an order on terms satisfactory to the Monitor and the Required DIP Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceedings; and (d) exercise all such other rights and remedies under the Court Orders and applicable law. No failure or delay by the DIP Lenders in exercising any of their rights hereunder or at law shall be deemed a waiver of any kind, and the DIP Lenders shall be entitled to exercise such rights in accordance with this DIP Agreement at any time. The rights and remedies of the DIP Lenders under this DIP Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA.

**27. LEGAL FEES:**

The Borrower shall pay by wire transfer, within two (2) Business Days of receipt of a detailed invoice (redacted for privilege), all reasonable and documented out-of-pocket expenses, including all reasonable legal expenses on a solicitor-client basis and the expenses of one financial advisor and one Technical Advisor, incurred by the DIP Lenders in connection with the CCAA Proceedings, this DIP Agreement and the DIP Facility, including those with respect to any enforcement of the terms hereof or of the DIP Charge or otherwise incurred in connection with the DIP Facility (the "**Expenses**"). Subject to Court approval of this DIP Agreement, all Expenses shall be non-refundable under all circumstances.

**28. DIP LENDER APPROVALS:**

Any consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders to be delivered in writing may be delivered by any

written instrument, including by way of email, by the DIP Lenders, the Majority DIP Lenders or Required DIP Lenders (or their counsel), as applicable, pursuant to the terms hereof. For greater certainty, any consent, approval, instruction or other expression delivered in writing by Bennett Jones LLP shall be considered as delivery of a consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders, as may be indicated by Bennett Jones LLP in such written instrument.

**29. EVIDENCE OF INDEBTEDNESS**

The DIP Lenders' accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the DIP Lenders under the DIP Facility.

**30. TAXES:**

All payments by the Borrower under this DIP Agreement to the DIP Lenders, including any payments required to be made from and after the exercise of any remedies available to the DIP Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively, "**Taxes**").

**31. FURTHER ASSURANCES:**

The Borrower shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the DIP Lenders may reasonably request for the purpose of giving effect to this DIP Agreement. Without limiting the foregoing, the Borrower agrees that if so requested by the DIP Lenders, acting reasonably, it shall promptly execute and deliver to the DIP Lenders any general security agreement or other security documents securing its obligations to the DIP Lenders hereunder in forms reasonable and customary for debtor in possession financings, provided however that the execution of any such security document shall not be a condition precedent to funding the Maximum Amount or DIP Advances hereunder.

**32. ENTIRE AGREEMENT:**

This DIP Agreement, including the schedules hereto, constitutes the entire agreement between the parties relating to the subject matter hereof.

**33. AMENDMENTS,  
WAIVERS, ETC.:**

No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this DIP Agreement. Unless otherwise expressly provided in this Agreement, any waiver, amendment or other modification to this Agreement shall require the written consent of the Required DIP Lenders; provided that, notwithstanding the foregoing, solely with the consent of each DIP Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required DIP Lenders), any such agreement may:

(1) increase the DIP Financing Commitment of such DIP Lender; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall constitute an increase of any DIP Financing Commitment of such DIP Lender;

(2) reduce or forgive the principal amount of any DIP Advances (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute a reduction or forgiveness in principal);

(3) extend the scheduled Maturity Date of any DIP Advance (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute an extension of any maturity date);

(4) reduce the Interest Rate (other than to waive any Default or Event of Default or any obligations of the Borrower to pay interest at the default rate of interest in accordance with Section 16 of this Agreement) or the amount of any fees owed to such DIP Lender;

(5) waive, amend or modify the provisions of Section 16 (with respect to Pro Rata allocation of all payments among DIP Lenders) of this Agreement in a manner that would by its terms alter the Pro Rata sharing of payments required thereby;

(6) waive, amend or modify the definition of "Pro Rata; and

(7) waive, amend or modify the provisions of this Section 33.

Notwithstanding anything else in this DIP Agreement, and for greater certainty, this DIP Agreement may not be waived, amended or modified to reduce the principal amount owed to any DIP Lender under the DIP Facility or increase the amount of any DIP Lender's commitment under the DIP Facility, in each case, without the prior written consent of such DIP Lender.

Any amendment to the terms of this DIP Agreement shall be made in writing and signed by the Borrower and the requisite DIP Lenders.

To the extent any fees or other compensation becomes payable to the DIP Lenders in connection with any amendment to this DIP Agreement, all DIP Lenders who are not Defaulting Lenders shall have the opportunity to receive their Pro Rata portion of any such fees or other compensation.

**34. ASSIGNMENT:**

The DIP Lenders may assign this DIP Agreement and their rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lenders with the prior written consent of the Borrower, not to be unreasonably withheld (provided that no such consent of the Borrower shall be required upon the occurrence of an Event of Default which is continuing) and, provided that the Monitor shall have provided its prior written consent based solely on the Monitor being satisfied that the proposed assignee has the financial capacity to act as a DIP Lender.

Notwithstanding the foregoing, a DIP Lender shall be entitled to assign its rights and obligations hereunder to an affiliate without the consent of any other party.

Neither this DIP Agreement nor any right and obligation hereunder may be assigned by the Borrower.

**35. SEVERABILITY:**

Any provision in this DIP Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions

hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**36. COUNTERPARTS  
AND SIGNATURES:**

This DIP Agreement may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this DIP Agreement by signing any counterpart of it.

**37. DISCLOSURE**

Except as required by applicable laws (including any Court Orders), the Borrower shall not issue any press release or make any public announcement concerning this DIP Agreement, the CCAA Proceedings or the operations of their business (the "**Communications**"), without the prior written consent of the Majority DIP Lenders, which is not to be unreasonably withheld. The Borrower shall provide the DIP Lenders with a reasonable opportunity to review and comment on all Communications in respect of this DIP Agreement or the CCAA Proceedings prior to such Communications being issued or published.

**38. NOTICES:**

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

**(a) In the case of the Borrower:**

Tacora Resources Inc.  
102 NE 3rd Street Suite 120  
Grand Rapids, Minnesota  
55744 USA

Attention: Joe Broking & Heng Vuong  
Email: [joe.broking@tacoraresources.com](mailto:joe.broking@tacoraresources.com);  
[heng.vuong@tacoraresources.com](mailto:heng.vuong@tacoraresources.com)

With a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West, 199 Bay St.  
Toronto, ON M5L 1B9

Attention: Ashley Taylor & Lee Nicholson  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com); [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

and

Greenhill & Co., LLC  
1271 6th Ave, New York,  
NY 10020, USA

Attention: Chetan Bhandari, Michael Nessim & Usman  
Masood

Email: [chetan.bhandari@greenhill.com](mailto:chetan.bhandari@greenhill.com);  
[michael.nessim@greenhill.com](mailto:michael.nessim@greenhill.com);  
[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)

And with a copy to the Monitor:

FTI Consulting Canada Inc.  
Toronto-Dominion Centre, 79 Wellington St W Suite 2010,  
Toronto, ON M5K 1G8

Attention: Nigel Meakin & Jodi Porepa  
Email: [nigel.meakin@fticonsulting.com](mailto:nigel.meakin@fticonsulting.com);  
[jodi.porepa@fticonsulting.com](mailto:jodi.porepa@fticonsulting.com)

And with a copy to the Monitor's Counsel:

Cassels Brock & Blackwell LLP  
Bay Adelaide Centre – North Tower,  
Suite 3200, Toronto, ON M5H 0B4

Attention: Ryan Jacobs, Jane Dietrich & Michael Wunder  
Email: [rjacobs@cassels.com](mailto:rjacobs@cassels.com); [jdietrich@cassels.com](mailto:jdietrich@cassels.com);  
[mwunder@cassels.com](mailto:mwunder@cassels.com)

(b) In the case of the DIP Lenders:

c/o  
GLC Advisors & Co., LLC  
600 Lexington Ave., 9th Floor  
New York, NY 10022 USA

Attention: Michael Sellinger, Michael Kizer & Adam Kelly-  
Penso

Email: [michael.sellinger@glca.com](mailto:michael.sellinger@glca.com); [michael.kizer@glca.com](mailto:michael.kizer@glca.com);  
[adam.kellypenso@glca.com](mailto:adam.kellypenso@glca.com)

With a copy to:

Bennett Jones LLP  
3400 One First Canadian Place

P.O. Box 130  
Toronto, ON M5X 1A4

Attention: Sean Zweig, Mike Shakra & Thomas Gray  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com);  
[shakram@bennettjones.com](mailto:shakram@bennettjones.com);  
[grayt@bennettjones.com](mailto:grayt@bennettjones.com)

and

Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, NY 10001 USA

Attention: Sidney Levinson & Erica Weisgerber

Email: [slevinson@debevoise.com](mailto:slevinson@debevoise.com);  
[eweisgerber@debevoise.com](mailto:eweisgerber@debevoise.com)[mailto:](mailto:eweisgerber@debevoise.com)

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 ET or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day. For the purposes of this DIP Agreement, a "**Business Day**" means any day except any Saturday, any Sunday, or any day which is a legal holiday or any day on which banking institutions are authorized or required by law or other governmental action to close in the Provinces of Ontario or Newfoundland and Labrador or the State of New York.

**39. GOVERNING LAW  
AND  
JURISDICTION:**

This DIP Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**40. CURRENCY AND  
JUDGMENT  
CURRENCY:**

Unless otherwise specified herein, all dollar amounts are in the lawful currency of the United States of America. The Borrower shall pay to the DIP Lenders all payments on account of principal and interest hereunder in lawful money of the United States of America.

If in the recovery by the DIP Lenders of any amount owing by the Borrower hereunder in any currency, judgment can only be obtained in another currency and because of changes in the exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the amount received by the DIP Lenders is less than the recovery provided for under the judgment, the Borrower shall immediately pay any such shortfall to the DIP Lenders and

such shortfall can be claimed by the DIP Lenders against the Borrower as an alternative or additional cause of action.

*[- Signature pages follow -]*



**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



A handwritten signature in cursive script, appearing to read "Thomas Krasner", written over a horizontal line.

Name: Thomas Krasner  
Title: Portfolio Manager

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



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Name:  
Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of

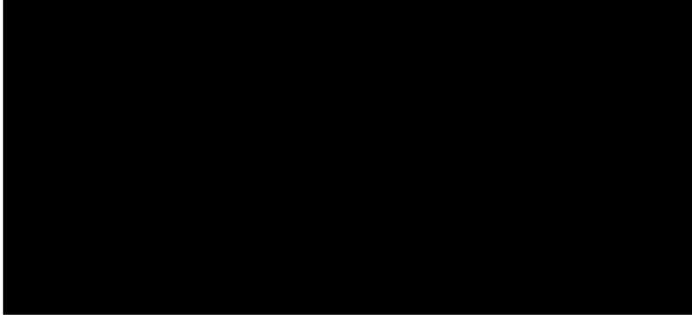


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Name:  
Title:

**MSD PARTNERS, LP**

on behalf of



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Name:

Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



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Name:

Title:

**SNOWCAT CAPITAL MANAGEMENT, LP**

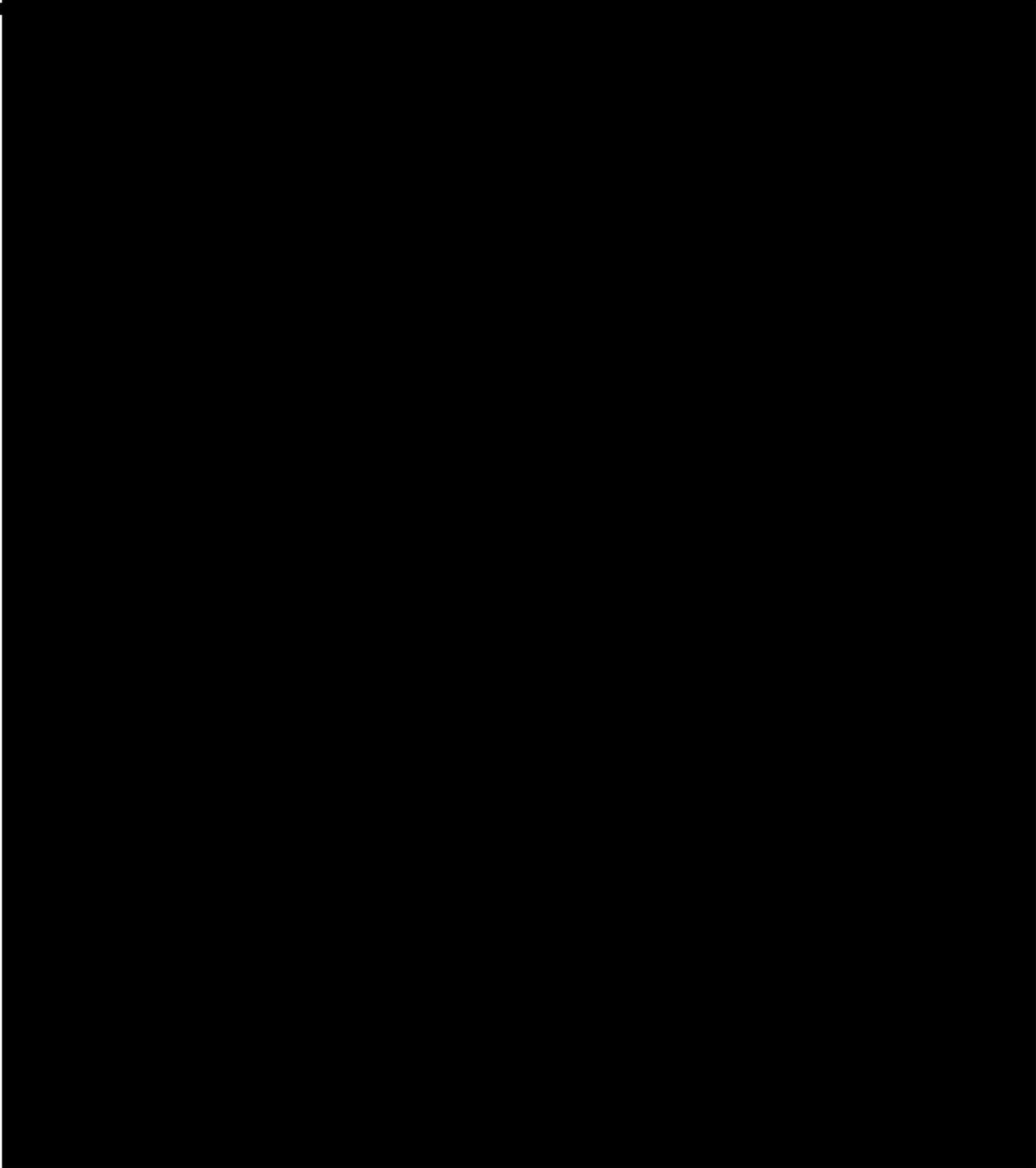
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Name:

Title:

**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of



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Name:  
Title:

**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



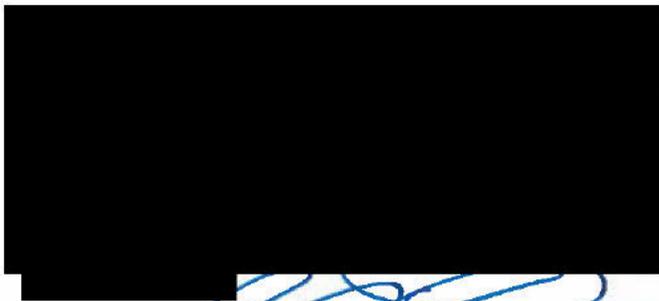
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Name:

Title:

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



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Name:

Title:

*DAVID K. STEERMAN*  
*Authorized Agent*

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of



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Name:

Title:

**MSD PARTNERS, LP**

on behalf of

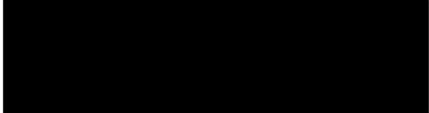


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Name:  
Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



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Name:  
Title:

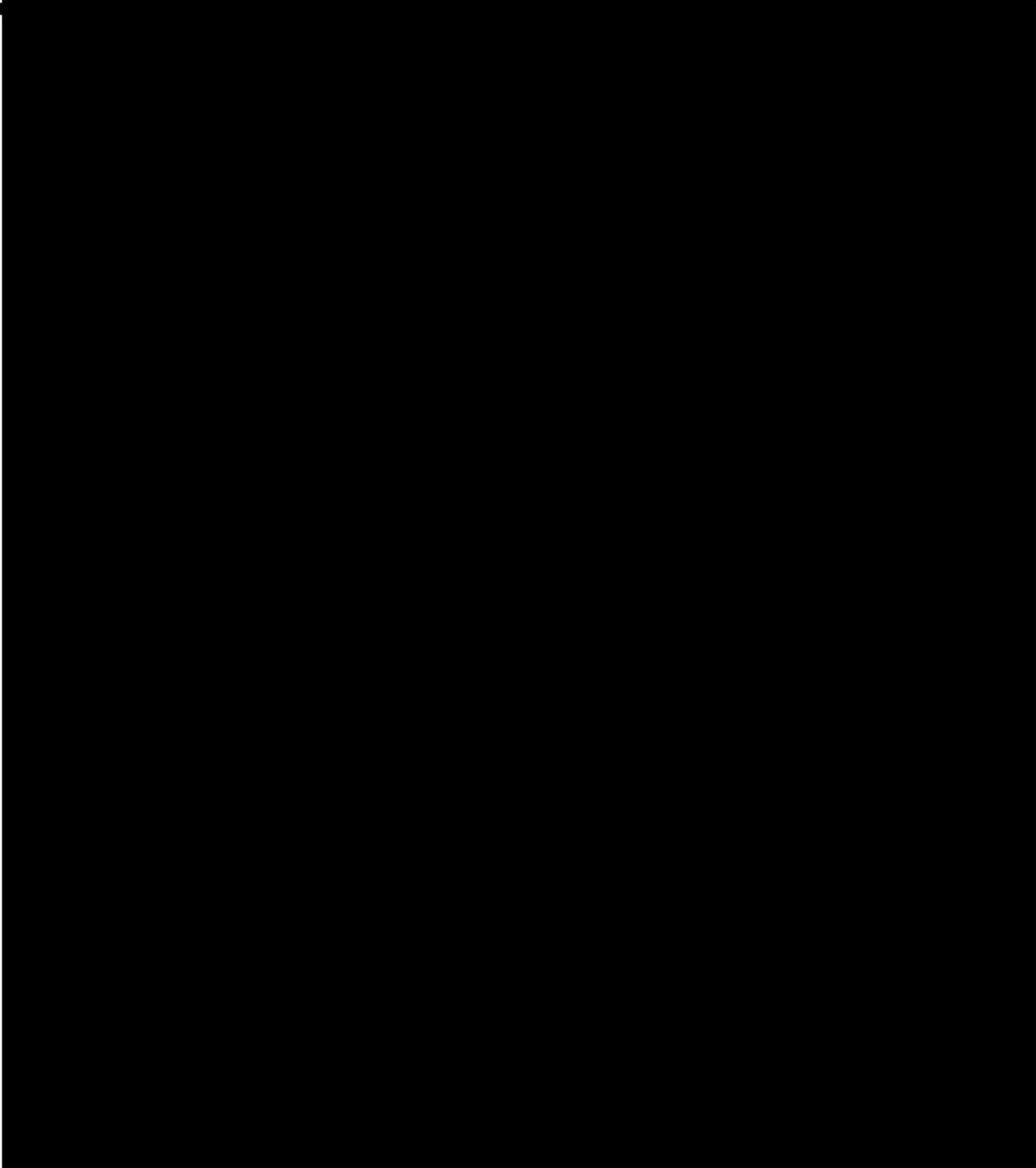
**SNOWCAT CAPITAL MANAGEMENT, LP**

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Name:  
Title:

**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of



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Name:  
Title:

**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



---

Name:

Title:

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



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Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of



A handwritten signature in cursive script that reads "Craig M. Kelleher".

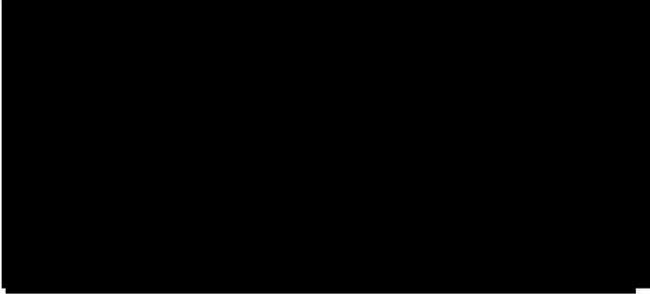
---

Name: Craig M. Kelleher

Title: Managing Member of MILLSTREET  
CAPITAL MANAGERMENT LLC

**MSD PARTNERS, LP**

on behalf of



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Name:

Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



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Name:

Title:

**SNOWCAT CAPITAL MANAGEMENT, LP**

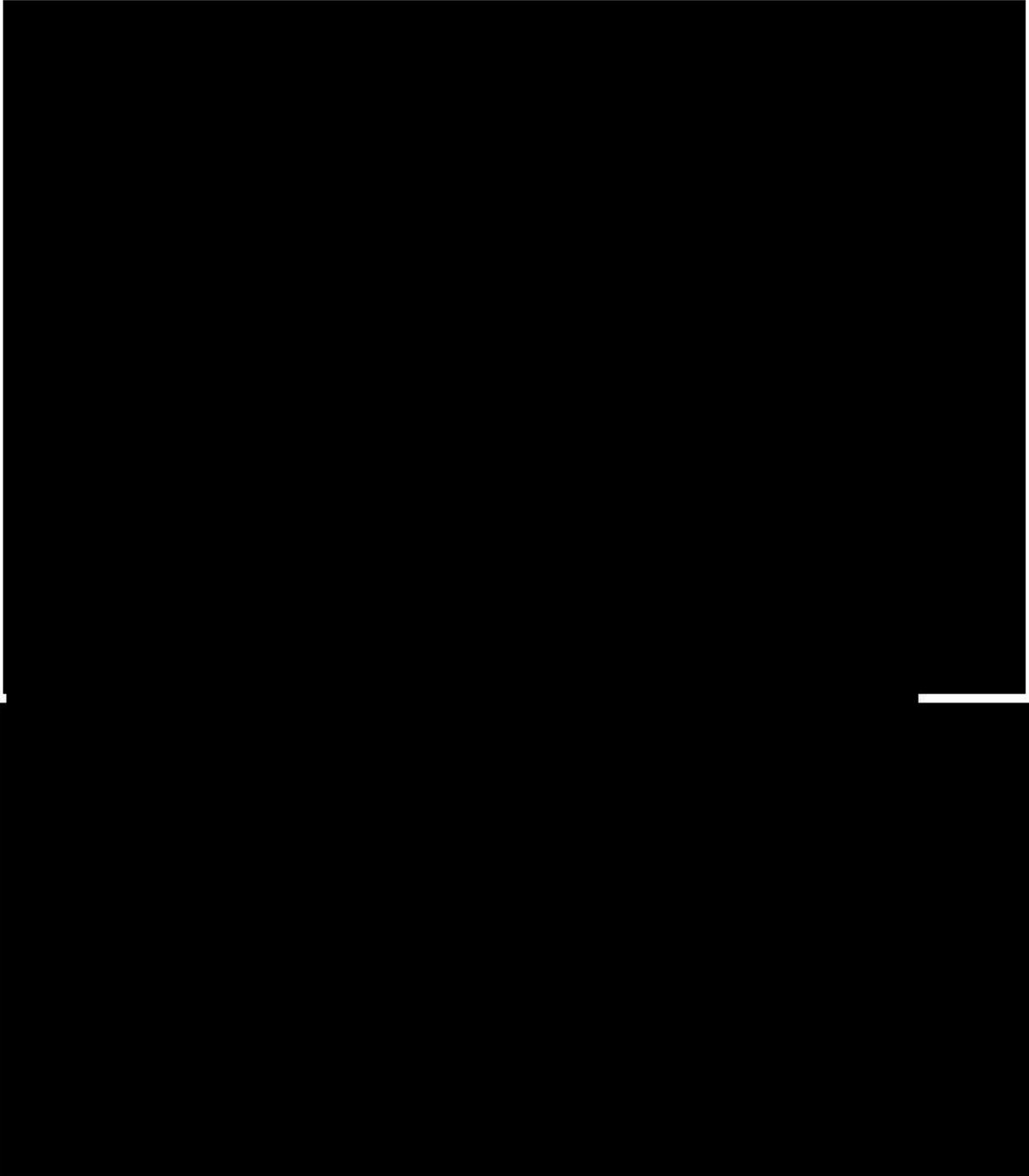
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Name:

Title:

**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of

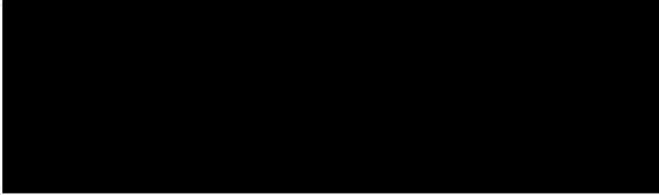


\_\_\_\_\_  
Name:  
Title:

**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



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Name:

Title:

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



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Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of



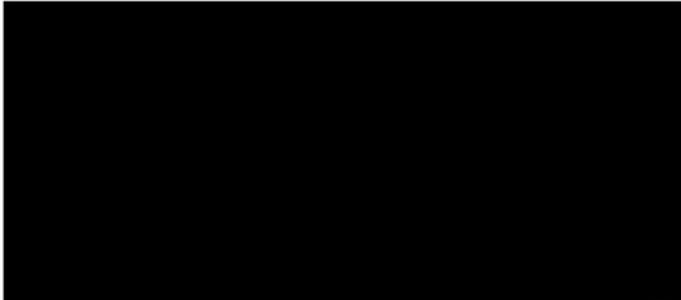
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Name:

Title:

**MSD PARTNERS, LP**

on behalf of



A handwritten signature in cursive script, appearing to read "Marcello Liguori".

Name: Marcello Liguori  
Title: Authorized Signatory

**O'BRIEN-STALEY PARTNERS**

on behalf of



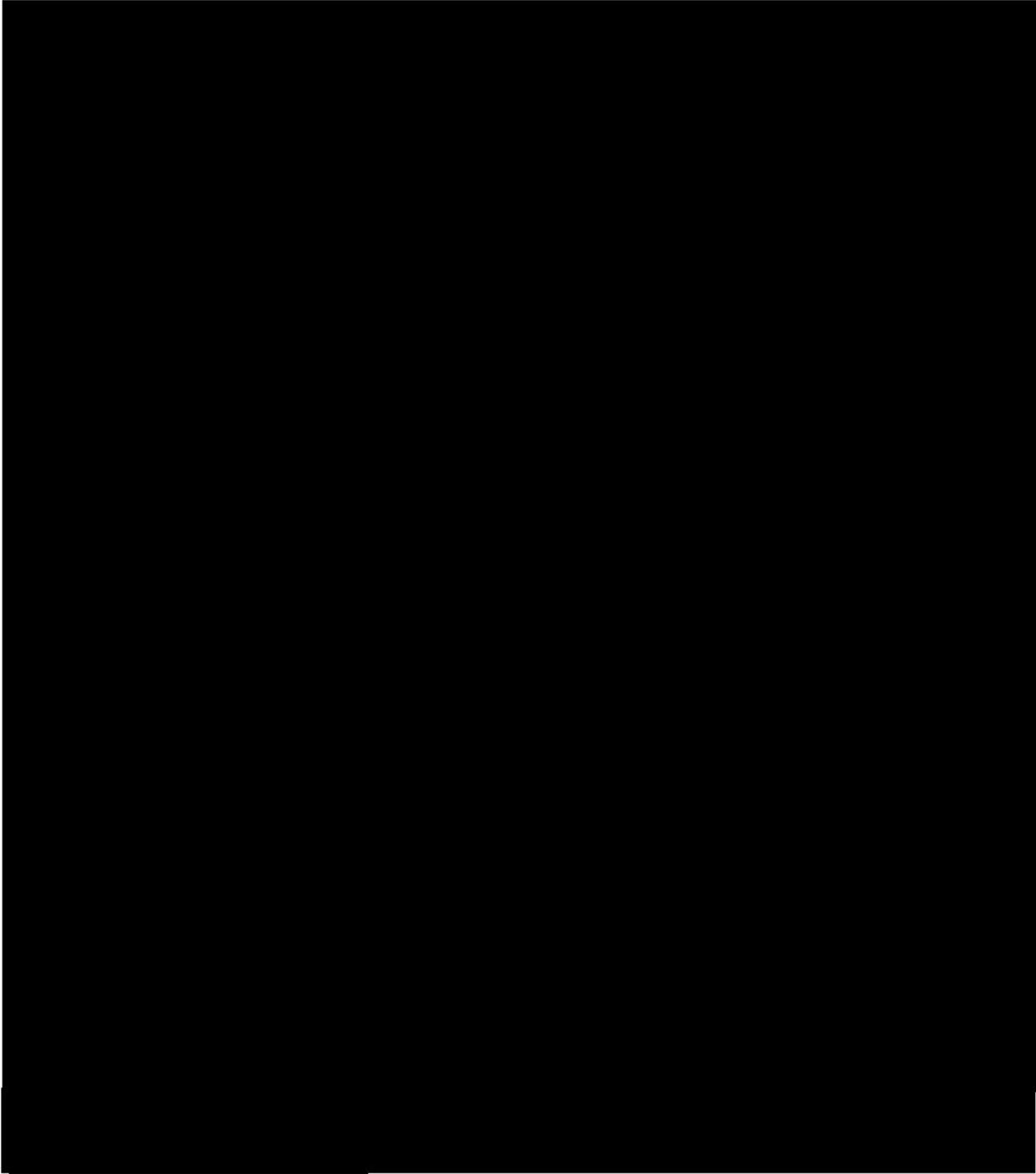
Name:  
Title:

**SNOWCAT CAPITAL MANAGEMENT, LP**

Name:  
Title:

**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of



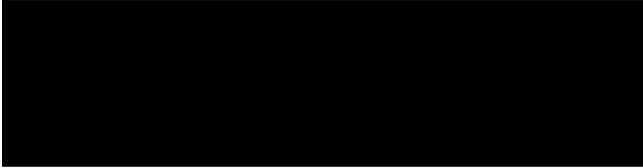
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Name:  
Title:

**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



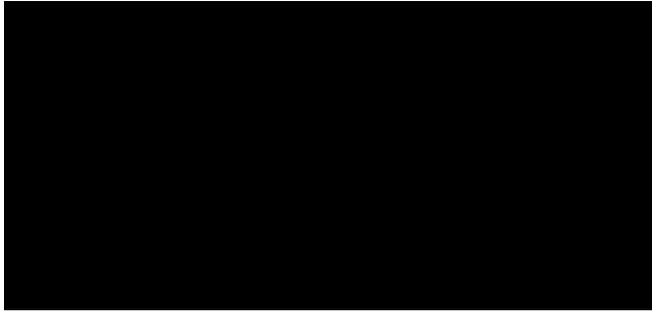
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Name:

Title:

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



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Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of



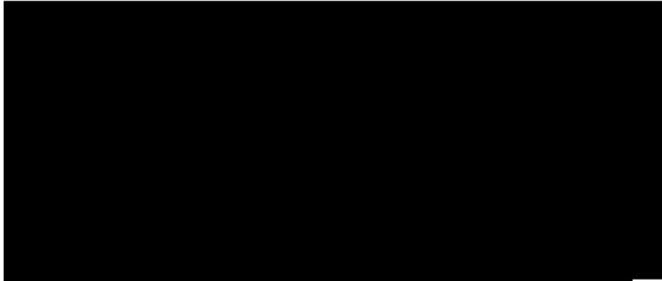
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Name:

Title:

**MSD PARTNERS, LP**

on behalf of



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Name:

Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



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Name: Adam Bernier

Title: Chief Financial Officer

**SNOWCAT CAPITAL MANAGEMENT, LP**

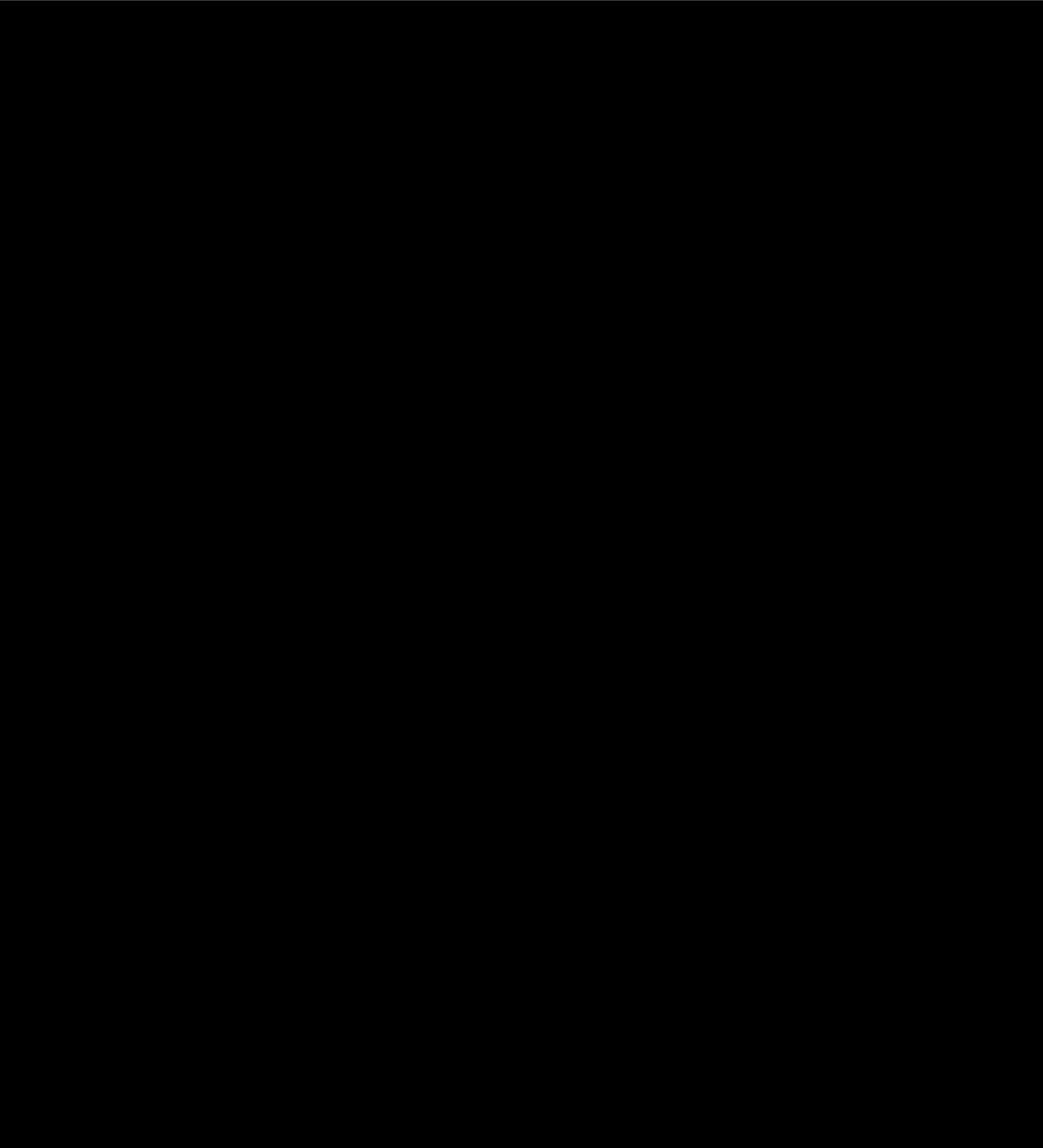
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Name:

Title:

**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of



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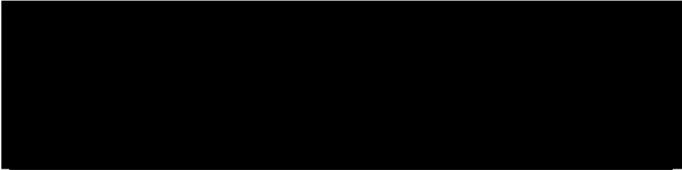
Name:

Title:

**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



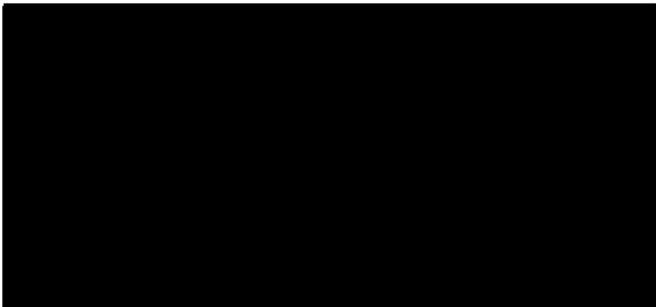
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Name:

Title:

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



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Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of



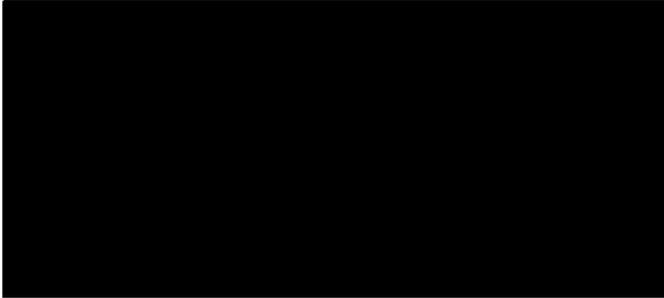
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Name:

Title:

**MSD PARTNERS, LP**

on behalf of



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Name:

Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



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Name:

Title:

**SNOWCAT CAPITAL MANAGEMENT, LP**

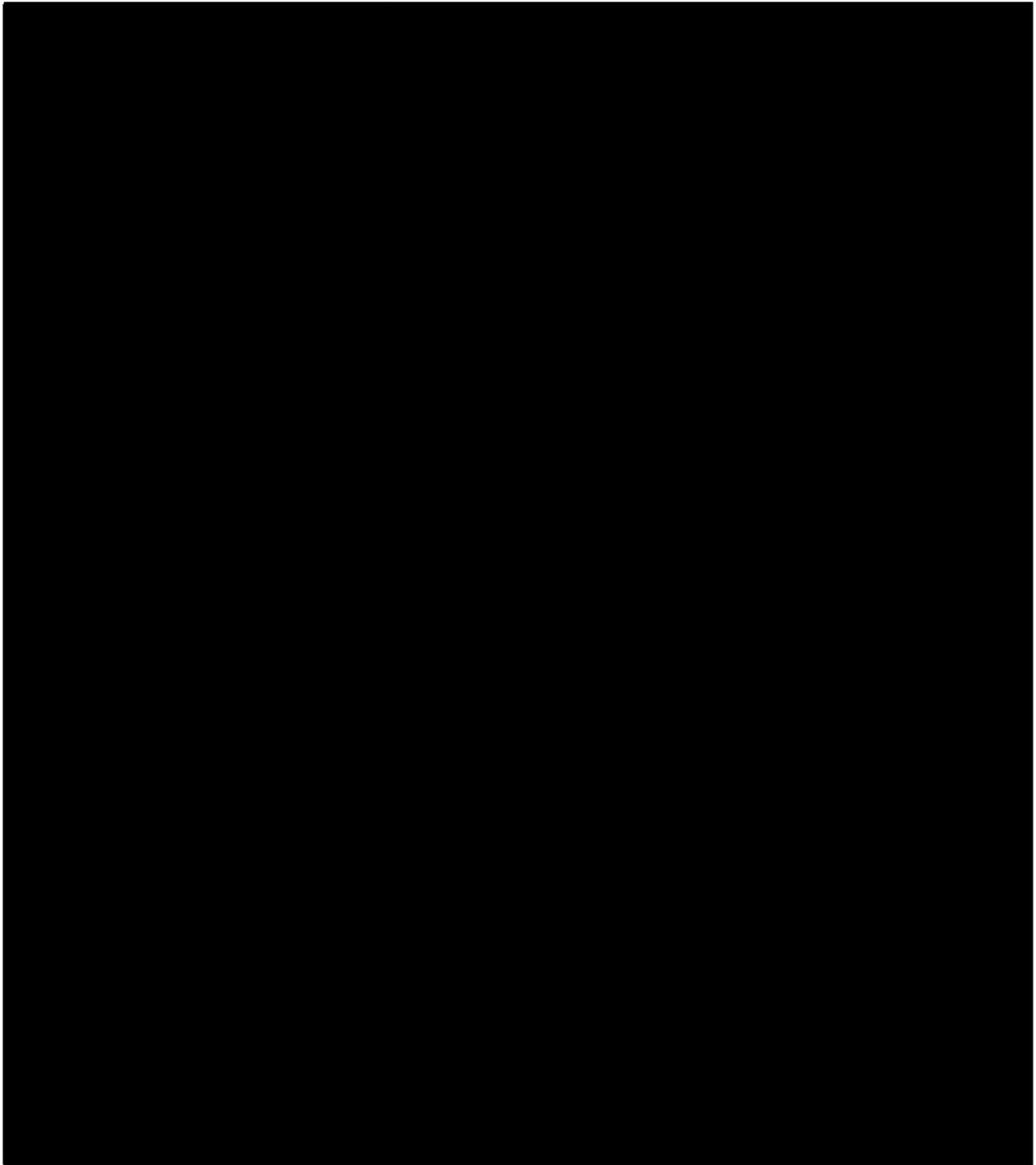
  
Name:

Title:

Rebecca Patten  
Founder

**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of



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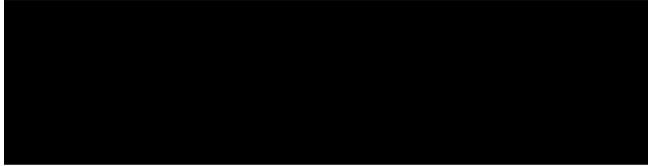
Name:

Title:

**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



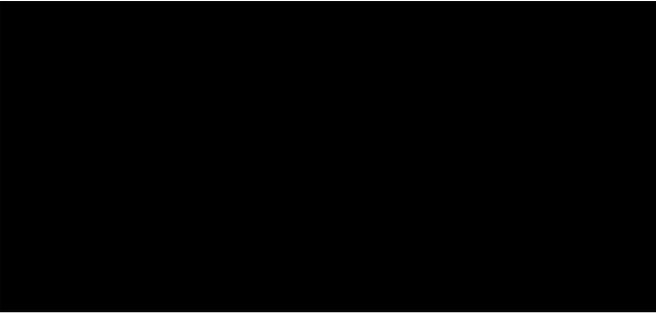
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Name:

Title:

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



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Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of



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Name:

Title:

**MSD PARTNERS, LP**

on behalf of



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Name:

Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



---

Name:

Title:

**SNOWCAT CAPITAL MANAGEMENT, LP**

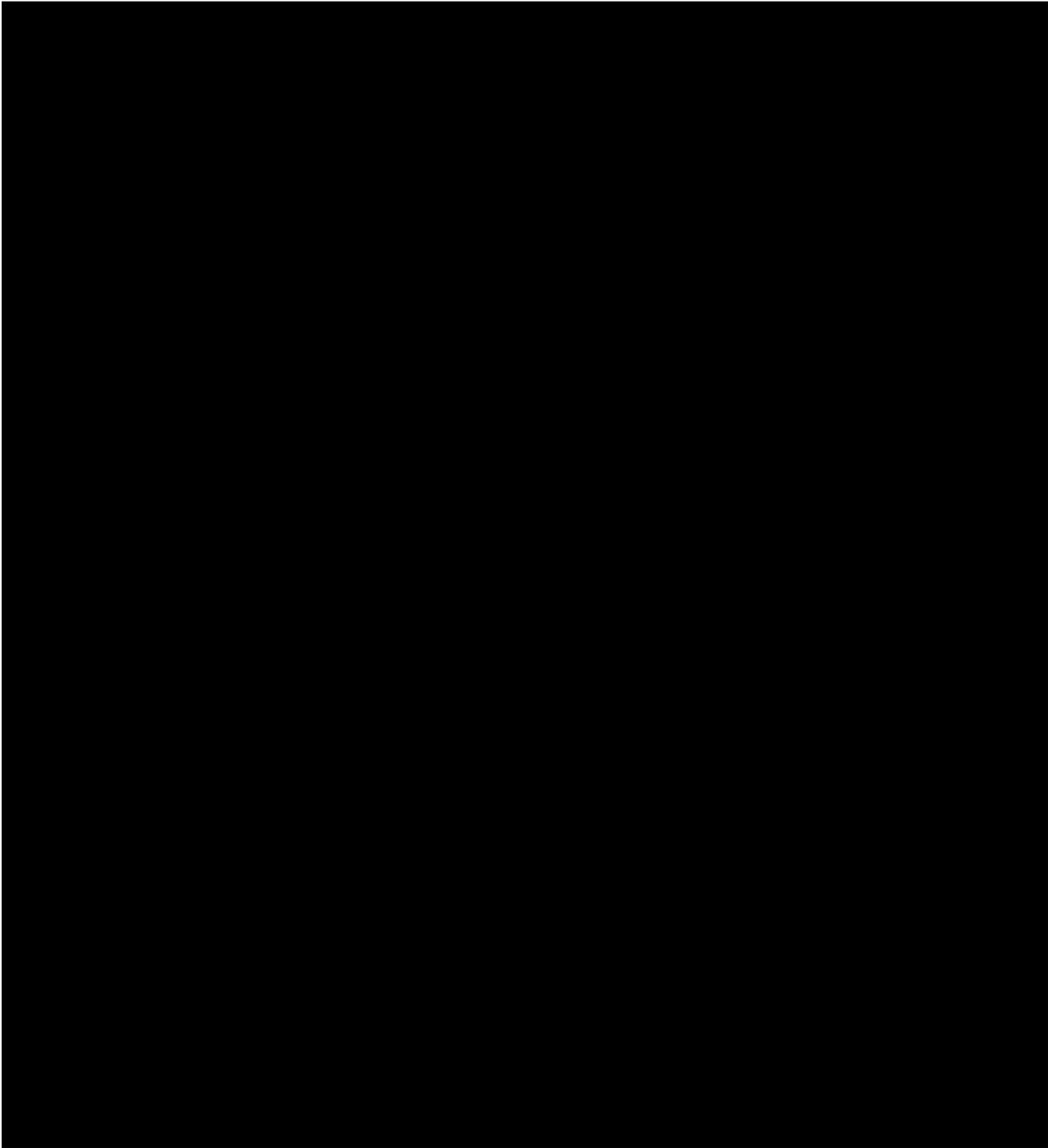
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Name:

Title:

**BRIGADE CAPITAL MANAGEMENT, LP**

as Investment Manager on behalf of



A handwritten signature in cursive script, appearing to read 'P. Criscillo', positioned above a horizontal line.

Name: Patrick Criscillo  
Title: Chief Financial Officer

**SCHEDULE "A"**

**CASH FLOW PROJECTION**

See attached.

**Tacora Resources Inc.**

## Consolidated Cash Flow Projections

(\$USD in thousands)

Forecast Week Ending	17-Sep-23	24-Sep-23	01-Oct-23	08-Oct-23	15-Oct-23	22-Oct-23	29-Oct-23	05-Nov-23	12-Nov-23	19-Nov-23	26-Nov-23	03-Dec-23	10-Dec-23	17-Dec-23	24-Dec-23	31-Dec-23	16 Week	
Forecast Week	[1]	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Total
<b>Total Receipts</b>	[2]	134	-	(1,680)	-	-	-	-	(120)	13,854	-	7,421	19,722	(60)	15,519	7,588	3,075	65,452
<b>Operating Disbursements</b>	[3]																	
Employees		(2,100)	(597)	(1,845)	(204)	(2,047)	(204)	(1,977)	(205)	(1,872)	(205)	(1,972)	(1,162)	(1,928)	(204)	(2,128)	(284)	(18,935)
Mine, Mill and Site Costs		(1,596)	(1,601)	(878)	(1,921)	(1,000)	(2,034)	(1,292)	(1,623)	(996)	(1,020)	(1,622)	(1,033)	(1,832)	(1,085)	(4,447)	(1,339)	(25,319)
Plant Repairs and Maintenance		90	(2,089)	(2,089)	(1,245)	(1,345)	(1,395)	(1,445)	(1,060)	(1,060)	(1,360)	(1,400)	(1,255)	(1,255)	(1,205)	(1,105)	(1,105)	(20,378)
Contract Labour		(3,444)	(1,227)	(1,017)	(1,218)	(1,118)	(1,018)	(968)	(1,343)	(1,311)	(961)	(1,111)	(1,010)	(1,184)	(984)	(984)	(984)	(19,884)
Logistics		(6,092)	(655)	(1,801)	(4,875)	(1,206)	(1,034)	(1,339)	(4,639)	(1,198)	(1,027)	(1,198)	(5,005)	(1,186)	(1,017)	(1,186)	(1,847)	(35,303)
Capital Expenditures		(371)	(2,702)	(692)	(1,690)	(993)	(993)	(993)	(1,688)	(1,190)	(1,190)	(1,190)	(1,190)	(1,801)	(1,105)	(1,105)	(1,105)	(19,997)
Other		(748)	(484)	(1,122)	(1,127)	(484)	(484)	(788)	(484)	(484)	(484)	(1,220)	(717)	(484)	(484)	(484)	(1,123)	(11,203)
<b>Total Operating Disbursements</b>		<b>(14,262)</b>	<b>(9,355)</b>	<b>(9,444)</b>	<b>(12,280)</b>	<b>(8,193)</b>	<b>(7,163)</b>	<b>(8,801)</b>	<b>(11,042)</b>	<b>(8,111)</b>	<b>(6,046)</b>	<b>(9,673)</b>	<b>(11,517)</b>	<b>(9,671)</b>	<b>(6,135)</b>	<b>(11,539)</b>	<b>(7,787)</b>	<b>(151,019)</b>
<b>Net Cash from Operations</b>		<b>(14,128)</b>	<b>(9,355)</b>	<b>(11,125)</b>	<b>(12,280)</b>	<b>(8,193)</b>	<b>(7,163)</b>	<b>(8,801)</b>	<b>(11,162)</b>	<b>5,743</b>	<b>(6,046)</b>	<b>(2,252)</b>	<b>8,205</b>	<b>(9,731)</b>	<b>9,384</b>	<b>(3,951)</b>	<b>(4,712)</b>	<b>(85,567)</b>
Restructuring Legal and Professional Costs	[4]	(610)	(422)	(1,541)	(366)	(323)	(366)	(277)	(435)	(277)	(320)	(277)	(435)	(277)	(320)	(277)	(435)	(6,960)
KERP	[5]	-	-	(3,040)	-	-	-	-	-	-	-	-	-	-	-	-	-	(3,040)
<b>NET CASH FLOWS</b>		<b>(14,737)</b>	<b>(9,777)</b>	<b>(15,706)</b>	<b>(12,646)</b>	<b>(8,516)</b>	<b>(7,529)</b>	<b>(9,079)</b>	<b>(11,597)</b>	<b>5,465</b>	<b>(6,366)</b>	<b>(2,530)</b>	<b>7,769</b>	<b>(10,008)</b>	<b>9,064</b>	<b>(4,229)</b>	<b>(5,147)</b>	<b>(95,567)</b>
<b>Cash</b>																		
Beginning Unrestricted Cash Balance		9,604	17,866	8,090	37,286	24,640	16,124	33,595	23,883	12,286	17,751	11,385	8,855	15,664	12,655	21,719	17,491	9,604
Net Receipts/ (Disbursements)		(14,737)	(9,777)	(15,706)	(12,646)	(8,516)	(7,529)	(9,079)	(11,597)	5,465	(6,366)	(2,530)	7,769	(10,008)	9,064	(4,229)	(5,147)	(95,567)
DIP Advances/ (Repayments)	[6]	23,000	-	45,000	-	-	25,000	-	-	-	-	-	7,000	-	-	-	-	100,000
DIP Fees & Interest Payment	[7]	-	-	(98)	-	-	-	(634)	-	-	-	-	(961)	-	-	-	(807)	(2,500)
<b>Ending Unrestricted Cash Balance</b>		<b>17,866</b>	<b>8,090</b>	<b>37,286</b>	<b>24,640</b>	<b>16,124</b>	<b>33,595</b>	<b>23,883</b>	<b>12,286</b>	<b>17,751</b>	<b>11,385</b>	<b>8,855</b>	<b>15,664</b>	<b>12,655</b>	<b>21,719</b>	<b>17,491</b>	<b>11,537</b>	<b>11,537</b>
<b>Restricted Cash</b>																		
Beginning Balance		-	5,000	5,000	13,850	13,850	13,850	13,850	13,850	13,850	13,850	13,850	13,850	13,850	13,850	13,850	13,850	-
DIP Advances for Restricted Cash	[6]	5,000	-	8,850	-	-	-	-	-	-	-	-	-	-	-	-	-	13,850
<b>Ending Restricted Cash Balance</b>		<b>5,000</b>	<b>5,000</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>	<b>13,850</b>
<b>Total Ending Cash Balance</b>	[8]	<b>22,866</b>	<b>13,090</b>	<b>51,136</b>	<b>38,490</b>	<b>29,974</b>	<b>47,445</b>	<b>37,733</b>	<b>26,136</b>	<b>31,601</b>	<b>25,235</b>	<b>22,705</b>	<b>29,514</b>	<b>26,505</b>	<b>35,569</b>	<b>31,341</b>	<b>25,387</b>	<b>25,387</b>
<b>Total DIP Advances</b>		<b>28,000</b>	<b>-</b>	<b>53,850</b>	<b>-</b>	<b>-</b>	<b>25,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>7,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>113,850</b>

**Notes to the Consolidated Cash Flow Projections:**

[1] The purpose of the Cashflow Projections is to estimate the liquidity requirements of Tacora Resources Inc. ("Tacora", or the "Company") during the forecast period. The forecast above is presented in US Dollars. Any estimates in Canadian dollars have been translated at an fx rate of 1.36.

[2] Forecast Total Receipts are based on management's current expectations regarding productions and vessel shipments of iron ore concentrate (total tonnage) and price indices net of mark to market adjustments. Receipts from operations have been forecast based on current payment terms, historical trends in collections and expected vessel shipment schedules.

[3] Operating disbursements include the following key categories:

Forecast Employee Costs are based on historic payroll amounts and future forecast payments.

Forecast Mine, Mill and Site Costs primarily include site costs based on forecast activity levels and known commitments including, utilities, fuel, and supplies and consumables.

Forecast Plant Repairs and Maintenance costs relate to Scully Mine.

Forecast Contract Labour costs relate to Scully Mine.

Forecast Logistics costs primarily include rail transportation costs as well as port-related payments.

Forecast Capital Expenditures include costs related to mine, milling, and other logistics / infrastructure improvements.

Forecast Other costs include environmental costs, security and other costs at the Scully Mine and corporate.

[4] Forecast Restructuring Legal and Professional Costs include legal and financial advisors associated with the CCAA proceedings and are based on estimates.

[5] Forecast Key Employee Retention Plan (KERP) consistent with the Initial Affidavit.

[6] Forecast DIP Advances/Repayments are consistent with the DIP term sheet including Tranche 1, Tranche 2, and Tranche 3 (Restricted Cash to be used to fund margin payments under the Offtake Agreement or hedging costs).

Forecast DIP Advances/Repayments are based on funding requirements and maintaining a minimum cash balance throughout the period.

[7] DIP Fees and Interest are calculated based on total draws from Tranche 1, Tranche 2, and Tranche 3.

[8] Total Ending Cash Balance includes Unrestricted and Restricted cash balances.

## SCHEDULE "B"

### FORM OF DRAWDOWN CERTIFICATE

TO: GLC Advisors Co., on behalf of the DIP lenders under the DIP Agreement dated September 11, 2023 (the "**DIP Lenders**")

AND TO: FTI Consulting Canada Inc. (the "**Monitor**")

FROM: Tacora Resources Inc. (the "**Borrower**")

DATE: [●]

1. This certificate is delivered to you in connection with a request for a DIP Advance pursuant to the DIP Agreement made as of [●], 2023, between the Borrower and the DIP Lenders, as amended, supplemented, restated or replaced from time to time (the "**DIP Agreement**"). All capitalized terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the DIP Agreement, unless the context requires otherwise.

2. The Borrower hereby requests a DIP Advance as follows:

(a) Date of DIP Advance: \_\_\_\_\_

(b) Aggregate amount of requested DIP Advance: \$[●]

to be transferred into the Borrower's Account by the DIP Lenders or the Monitor, as applicable, by direct deposit in accordance with the DIP Agreement.

3. All of the representations and warranties of the Borrower as set forth in the DIP Agreement are true and correct in all material respects as at the date hereof, as though made on and as of the date hereof (except for any representations and warranties made as of a specific date, which shall be true and correct as of the specific date made).

4. All of the covenants of the Borrower contained in the DIP Agreement and all other terms and conditions contained in the DIP Agreement to be complied with by the Borrower, and not waived in writing by or on behalf of the DIP Lenders, have been complied with.

5. The Borrower is in compliance with all Court Orders.

6. The proceeds of the DIP Advance hereby requested will be applied solely in accordance with the DIP Agreement Cash Flow Projection (subject to the Permitted Variance), or as has been otherwise agreed to by the DIP Lenders in advance in writing.

7. No Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the DIP Advance hereby requested.

**TACORA RESOURCES INC.**

By: \_\_\_\_\_  
Name:  
Title:

cc: Stikeman Elliott LLP  
Greenhill & Co Canada Ltd.

**SCHEDULE "C"**  
**INITIAL ORDER**

See attached.

Court File No.

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

THE HONOURABLE MADAM )  
JUSTICE KIMMEL ) TUESDAY, THE 12<sup>TH</sup>  
 ) DAY OF SEPTEMBER, 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  
TACORA RESOURCES INC.**

**(Applicant)**

**INITIAL ORDER**

**THIS APPLICATION**, made by Tacora Resources Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCA**") was heard this day by judicial videoconference via Zoom.

**ON READING** the Notice of Application, the affidavit of Joe Broking sworn September 11, 2023 and the Exhibits thereto (the "**Broking Affidavit**"), the affidavit of Chetan Bhandari sworn September 11, 2023, the consent of FTI Consulting Canada Inc. ("**FTI**") to act as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), the Pre-Filing Report of FTI, as the proposed Monitor, 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 Applicant, counsel for FTI and such other counsel and parties as listed on the Participant Information Form, with no one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

**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.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **POSSESSION OF PROPERTY AND OPERATIONS**

3. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is 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.

4. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement (as defined below), the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Broking Affidavit or replace it with another substantially similar 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 Applicant 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 Applicant, 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 Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement, the Applicant 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; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant 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), and maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments and/or advances to Tacora Resources LLC to pay salaries and wages for U.S. based employees and rent for Tacora's head office located in Grand Rapids, Minnesota.

7. **THIS COURT ORDERS** that the Applicant 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, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, 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 Applicant.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant 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 Applicant 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.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is 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 Applicant to any of its creditors as of this date; (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.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

10. **THIS COURT ORDERS** that until and including September 22, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or

affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

12. **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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, during the Stay Period, Cargill International Trading Pte Ltd. ("**Cargill**") shall not terminate or cease to perform pursuant to the Offtake Agreement (as defined in the Broking Affidavit) while such agreement remains in effect, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **NO PRE-FILING VS POST-FILING SET-OFF**

13. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicant in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicant in respect of obligations arising on or after the date of this Order, each without the consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, Cargill shall not set-off any amount due under the Advance Payment Facility Agreement (as defined in the Broking Affidavit) against any amounts that are or may become due to the Applicant on or after the date of this Order.

#### **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Applicant, 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 Applicant, and that the Applicant 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

15. **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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

16. **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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

17. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which obligation may become due and payable after the commencement of these 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.

18. **THIS COURT ORDERS** that the directors and officers of the Applicant 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 \$5,000,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 36 and 38 herein.

19. **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 Applicant’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 17 of this Order.

#### **APPOINTMENT OF MONITOR**

20. **THIS COURT ORDERS** that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

21. **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 Applicant’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) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and their counsel, pursuant to and in accordance with the DIP Agreement (as defined herein), or as may otherwise be agreed between the Applicant and the DIP Lenders;

- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lenders under the DIP Agreement, which information shall be reviewed with the Monitor and delivered to the DIP Lenders and their counsel in accordance with the DIP Agreement;
- (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 Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (f) hold and administer funds in connection with arrangements made among the Applicant, any counterparties and the Monitor or by Order of this Court;
- (g) 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
- (h) perform such other duties as are required by this Order or by this Court from time to time.

22. **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.

23. **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*, the *Ontario Occupational Health and Safety Act*, the *Newfoundland Environmental Protection Act*, the *Newfoundland Water Resources Act*, the *Newfoundland Occupational Health and Safety Act*, and the 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.

24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lenders with information provided by the Applicant 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 Applicant 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 Applicant may agree.

25. **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.

#### **ADMINISTRATION CHARGE**

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

27. **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.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicant's counsel and Greenhill & Co. Canada Ltd. ("**Greenhill**") for its Monthly Advisory Fee (as defined in the Engagement Letter dated as of January 23, 2023 between the Applicant and Greenhill) 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 US\$1,000,000, 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.

## **DIP FINANCING**

29. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow a super-priority, debtor-in-possession, non-revolving credit facility (the “**DIP Facility**”) under a DIP Loan Agreement dated September 11, 2023 (the “**DIP Agreement**”) from (i) Brigade Capital Management, LP; (ii) Concise Capital Management LP; (iii) CrossingBridge Advisors, LLC; (iv) Millstreet Capital Management LLC; (v) MSD Partners, LP; (vi) O-Brien-Staley Partners; and (vii) Snowcat Capital Management, LP (collectively, in such capacity, the “**DIP Lenders**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the DIP Agreement shall not exceed \$28,000,000 unless permitted by further Order of this Court.

30. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement attached as Exhibit “K” to the Broking Affidavit.

31. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such security documents and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

32. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Charge**”) on the Property, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 36 and 38 hereof.

33. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the DIP Agreement or the Definitive Documents, the DIP Lenders may, upon seven (7) days notice to the Applicant and the Monitor, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicant against the obligations of the Applicant to the DIP Lenders under the DIP Agreement, the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

34. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act of Canada* (the “**BIA**”), with respect to any advances made under the Definitive Documents.

35. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the Definitive Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lenders, whether under this Order (as made prior to the Variation), under the DIP Agreement or the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lenders being given notice of the Variation, and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the DIP Agreement and the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge and the DIP Charge (the “**Charges**”), as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of US\$1,000,000);

Second – the Directors' Charge (to the maximum amount of US\$5,000,000); and

Third – the DIP Charge.

37. **THIS COURT ORDERS** that the filing, registration or perfection of 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 Charges 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 except for any Person with a property perfected Encumbrance on the Property who did not receive notice of the Application. The Applicant shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrances over which the Charges have not obtained priority pursuant to this Order.

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

40. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the DIP Charge, the DIP Agreement and the Definitive Documents 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**") and/or the DIP Lenders thereunder 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant 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 Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Agreement or the Definitive Documents, 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 Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

42. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA, (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (iii) 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 Commercial List E-Service Guide (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide 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:  
<http://cfcanada.fticonsulting.com/tacora>.

44. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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.

45. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

#### **GENERAL**

46. **THIS COURT ORDERS** that the Applicant 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 Applicant, 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 Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

49. **THIS COURT ORDERS** that each of the Applicant 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 a hearing for the balance of the relief sought by the Applicant in the Notice of Application is hereby scheduled before this Court for September [●], 2023 at [10:00 a.m.] or such other date as determined by this Court.

51. **THIS COURT ORDERS** that any interested party (including the Applicant, the Monitor and the DIP Lenders) may apply to this Court to vary or amend this Order 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.

52. **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.

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

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,  
c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TACORA RESOURCES INC.**

**(Applicant)**

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

PROCEEDINGS COMMENCED AT TORONTO

**INITIAL ORDER**

**STIKEMAN ELLIOTT LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

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Counsel to Tacora Resources Inc.

**SCHEDULE "D"**

**ARIO**

See attached.

Court File No.

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

THE HONOURABLE MADAM ) ● DAY, THE ●  
JUSTICE KIMMEL ) DAY OF SEPTEMBER, 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  
TACORA RESOURCES INC.**

**(Applicant)**

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by Tacora Resources Inc. (the "**Applicant**"), 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 issued by the Court on September 12, 2023 (the "**Filing Date**"), substantially in the form included at the Applicant's Application Record was heard this day by judicial videoconference via Zoom.

**ON READING** the Notice of Application, the Motion Record of the Applicant dated September ●, 2023, the affidavits of Joe Broking sworn September 11, 2023 (the "**Broking Affidavit**") and September ●, 2023 (the "**Second Broking Affidavit**"), the affidavit of Chetan Bhandari sworn September 11, 2023, the consent of FTI Consulting Canada Inc. ("**FTI**") to act as Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), the Pre-Filing Report and First Report of FTI, 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 Applicant, counsel for the Monitor and such other counsel and parties as listed on the Participant Information Form, with no one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

## **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.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant 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**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is 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.

5. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement (as defined below), the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Broking Affidavit or replace it with another substantially similar 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 Applicant 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 Applicant, 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 Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement, the Applicant 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; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant 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), and maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments on behalf of Tacora Resources LLC to pay salaries and wages for U.S. based employees and rent for the Applicant's head office located in Grand Rapids, Minnesota.

8. **THIS COURT ORDERS** that the Applicant 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 employment insurance, Canada Pension Plan, and income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, 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 Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant 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 Applicant 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.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; to grant no security interests, trust, liens, charges or encumbrances upon or in respect

of any of its Property; and to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and 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, and to dispose of redundant or non-material assets not exceeding US\$1,000,000 in any one transaction or US\$5,000,000 in the aggregate;
- (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 Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant'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 Applicant'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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant 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 Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then 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 Applicant and the Monitor 24 hours' prior written notice, and 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 Applicant 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 APPLICANT OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including November 10, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH RIGHTS**

16. **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 Applicant, except with the

written consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, during the Stay Period, Cargill International Trading Pte Ltd. ("**Cargill**") shall not terminate or cease to perform pursuant to the Offtake Agreement (as defined in the Broking Affidavit) while such agreement remains in effect, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **NO PRE-FILING VS POST-FILING SET-OFF**

17. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicant in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicant in respect of obligations arising on or after the date of this Order, each without the consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, Cargill shall not set-off any amount due under the Advance Payment Facility Agreement (as defined in the Broking Affidavit) against any amounts that are or may become due to the Applicant on or after the date of this Order.

#### **CONTINUATION OF SERVICES**

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Applicant, 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 Applicant, and that the Applicant 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

19. **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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. **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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which obligation may become due and payable after the commencement of these 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.

22. **THIS COURT ORDERS** that the directors and officers of the Applicant 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 US\$5,300,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 46 and 49 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, no insurer shall be entitled to be subrogated to or claim the benefit of the

Directors' Charge, and the Applicant'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 21 of this Order.

#### **ENGAGEMENT OF GREENHILL**

24. **THIS COURT ORDERS** that the engagement of Greenhill & Co. Canada Ltd. ("**Greenhill**") by the Applicant as investment banker pursuant to the engagement letter dated as of January 23, 2023 (the "**Greenhill Engagement Letter**") and payment by the Applicant of the Monthly Advisory Fee (as defined in the Greenhill Engagement Letter) and the Transaction Fee (as defined in the Broking Affidavit) are hereby approved, subject to the priority provided for herein.

25. **THIS COURT ORDERS** that Greenhill shall be entitled to the benefit of and are hereby granted a charge (the "**Transaction Fee Charge**") on the Property as security for the Transaction Fee, which charge shall not exceed an aggregate amount of US\$5,600,000. The Transaction Fee Charge shall have the priority set out in paragraphs 46 and 49 herein.

26. **THIS COURT ORDERS** that Greenhill shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Greenhill Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

#### **APPOINTMENT OF MONITOR**

27. **THIS COURT ORDERS** that FTI. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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 Applicant'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) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and their counsel, pursuant to and in accordance with the DIP Agreement (as defined herein), or as may otherwise be agreed between the Applicant and the DIP Lenders;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lenders under the DIP Agreement, which information shall be reviewed with the Monitor and delivered to the DIP Lenders and their counsel in accordance with the DIP Agreement;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) 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 Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) hold and administer funds in connection with arrangements made among the Applicant, any counterparties and the Monitor or by Order of this Court;
- (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*, the *Ontario Occupational Health and Safety Act*, the *Newfoundland Environmental Protection Act*, the *Newfoundland Water Resources Act*, the *Newfoundland Occupational Health and Safety Act*, and the 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 Applicant and the DIP Lenders with information provided by the Applicant 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 Applicant 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 Applicant 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.

### **ADMINISTRATION CHARGE**

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

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.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicant's counsel and Greenhill for its Monthly Advisory Fee (as defined by the Greenhill Engagement Letter) 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 US\$1,000,000, 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 46 and 49 hereof.

### **DIP FINANCING**

36. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow a super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") under a DIP Loan Agreement dated September 11, 2023 (the "**DIP Agreement**") from (i) Brigade Capital Management, LP; (ii) Concise Capital Management LP; (iii) CrossingBridge Advisors, LLC; (iv) Millstreet Capital Management LLC; (v) MSD Partners, LP; (vi) O-Brien-Staley Partners; and (vii) Snowcat Capital Management, LP (collectively, in such capacity, the "**DIP Lenders**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the DIP Agreement shall not exceed the principal amount of \$113,850,000 unless permitted by further Order of this Court.

37. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement attached as Exhibit "K" to the Broking Affidavit.

38. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such security documents and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

39. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on the Property, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 46 and 49 hereof.

40. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement or the Definitive Documents, the DIP Lenders may, upon five (5) business days notice to the Applicant and the Monitor, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicant against the obligations of the Applicant to the DIP Lenders under the DIP Agreement, the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

41. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act of Canada* (the “**BIA**”), with respect to any advances made under the Definitive Documents.

42. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the Definitive Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lenders, whether under this Order (as made prior to the Variation), under the DIP Agreement or the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lenders being given notice of the Variation, and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the DIP Agreement and the Definitive Documents.

#### **KEY EMPLOYEE RETENTION PLAN**

43. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Broking Affidavit [and the Second Broking Affidavit] and [attached as the **Confidential Appendix to the [First Report]**] (the “**Confidential Appendix**”), is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

44. **THIS COURT ORDERS** that payments made by the Applicant pursuant to the KERP do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. **THIS COURT ORDERS** that the Applicant is authorized to pay up to US\$● to the Monitor to hold in a segregated account (the “**KERP Funds**”) and the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the KERP Funds (the “**KERP Charge**”), which charge shall not exceed an aggregate amount of US\$● to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 46 and 49 hereof. The Monitor shall not be

responsible for making the payments to the Key Employees under the KERP; paying any tax withholdings or remittances payable to any tax authorities or otherwise in respect of the KERP; or reporting or making disclosure with respect to the KERP to any taxing authorities or otherwise.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the Transaction Fee Charge and the DIP Charge (collectively, with the KERP Charge, the "**Charges**"), as among them, as against the Property other than the KERP Funds, shall be as follows:

*First* – the Administration Charge (to the maximum amount of US\$1,000,000);

*Second* – the Directors' Charge (to the maximum amount of US\$5,300,000);

*Third* – (a) the Transaction Fee Charge (to the maximum amount of the GLC Fees (as defined in the DIP Agreement)); and (b) the DIP Charge, on a *pari passu* basis; and

*Fourth* – the Transaction Fee Charge (to the maximum amount of US\$5,600,000 less the GLC Fees) on a *pari passu* basis with the Senior Priority Notes and Senior Priority Advances (each as defined in the First Broking Affidavit).

47. **THIS COURT ORDERS** that the KERP Charge (to the maximum amount of US\$●) shall rank first solely as against the KERP Funds and the other Charges shall rank subordinate to the KERP Charge as against the KERP Funds in the priorities set out in paragraph 46.

48. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

49. **THIS COURT ORDERS** that each of the Charges 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, except for the portion of the Transaction Fee Charge which ranks *pari passu* basis with the Senior Priority Notes and Senior Priority Advances.

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

51. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the KERP Charge, the Transaction Fee Charge, the DIP Charge, the DIP Agreement and the Definitive Documents 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**") and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by the pendency of these proceedings and the declarations of insolvency made herein; any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; the filing of any assignments for the general benefit of creditors made pursuant to the BIA; the provisions of any federal or provincial statutes; or 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant 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 Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Agreement or the Definitive Documents, 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.

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

### **SERVICE AND NOTICE**

53. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA, (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (iii) 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.

54. **THIS COURT ORDERS** that the Commercial List E-Service Guide (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide 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: <http://cfcanada.fticonsulting.com/tacora>.

55. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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.

56. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

#### **SEALING**

57. **THIS COURT ORDERS** that the Confidential Appendix to the First Report is hereby sealed pending further Order of the Court and shall not form part of the public record.

#### **GENERAL**

58. **THIS COURT ORDERS** that the Applicant 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.

59. **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 Applicant, the Business or the Property.

60. **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 Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

61. **THIS COURT ORDERS** that each of the Applicant 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.

62. **THIS COURT ORDERS** that any interested party (including the Applicant, the Monitor and the DIP Lenders) 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.

63. **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 Filing Date.

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

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,  
c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TACORA RESOURCES INC.**

**(Applicant)**

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

PROCEEDINGS COMMENCED AT TORONTO

**AMENDED AND RESTATED INITIAL ORDER**

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Counsel to Tacora Resources Inc.

**SCHEDULE "E"**  
**SOLICITATION PROCESS**

See attached.

## Schedule "A"

### Procedures for the Sale, Investment and Services Solicitation Process

Tacora Resources Inc. ("**Tacora**") is a private company that is focused on the production and sale of high-grade and quality iron ore products that improve the efficiency and environmental performance of steel making. Tacora currently sells 100% of the iron ore concentrate production at the Scully Mine, an iron ore concentrate mine located near Wabush, Newfoundland and Labrador, Canada (the "**Scully Mine**"), pursuant to the Offtake Agreement with Cargill.

On September 12, 2023, Tacora commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Ontario Superior Court of Justice (Commercial List) in the City of Toronto (the "**Court**") pursuant to an order granted by the Court on the same day (as may be amended or amended and restated from time to time, the "**Initial Order**").

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**"). Greenhill & Co. Canada Ltd. (the "**Financial Advisor**") is acting as Tacora's financial advisor and investment banker.

On September [●], 2023, the Court granted an order (the "**Solicitation Order**"), authorizing Tacora to undertake a sale, investment and services solicitation process (the "**Solicitation Process**") to solicit offers or proposals for (a) a sale, restructuring or recapitalization transaction in respect of Tacora's assets (the "**Property**") and business operations (the "**Business**"); and (b) alternative offtake, service or other agreements in respect of the Property or Business. The Solicitation Process will be conducted by the Financial Advisor with the Monitor in the manner set forth in these procedures (the "**Solicitation Procedures**").

#### Defined Terms

1. Capitalized terms used in these Solicitation Procedures and not otherwise defined herein have the meanings given to them in Appendix "A".

#### Solicitation Procedures

##### *Opportunity*

2. The Solicitation Process is intended to solicit interest in, and opportunities for: (a) one or more sales of all, substantially all, or certain portions of the Property or the Business; or (b) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of Tacora or its Business as a going concern, or a combination thereof (the "**Transaction Opportunity**").
3. The Solicitation Process is also intended to solicit interest in an offer for offtake, service or other agreements in respect of the Business (the "**Offtake Opportunity**" and together with the Transaction Opportunity, the "**Opportunity**"). For greater certainty, a Potential Bidder (as defined below) may propose a Transaction Opportunity that is conditional on an Offtake Opportunity being completed, and vice versa.

**General**

4. The Solicitation Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning Tacora, the Business and the Property, the manner in which bidders may participate in the Solicitation Process, the requirements of and the receipt and negotiation of Bids received, the ultimate selection of a Successful Transaction Bidder and/or Successful Offtake Bidder and the requisite approvals to be sought from the Court in connection therewith.
5. Tacora, in consultation with the Monitor, the DIP Lenders and the Financial Advisor, may at any time and from time to time, modify, amend, vary or supplement the Solicitation Procedures, without the need for obtaining an order of the Court or providing notice to Phase 1 Bidders, Phase 2 Bidders, the Successful Transaction Bidder, the Back-Up Transaction Bidder, or the Successful Offtake Bidder, provided that the Financial Advisor and the Monitor, in consultation with the DIP Lenders, determine that such modification, amendment, variation or supplement is expressly limited to changes that do not materially alter, amend or prejudice the rights of such bidders or the DIP Lenders and that are necessary or useful in order to give effect to the substance of the Solicitation, the Solicitation Procedures and the Solicitation Order. Notwithstanding the foregoing, none of the dates in section 9 may be extended beyond the applicable Solicitation Process Milestone (as defined in the DIP Agreement) provided in the DIP Agreement, as applicable, without the prior written consent of the DIP Lenders.
6. Except as set forth in this section, nothing in this Solicitation Process shall prohibit a secured creditor of Tacora (a) from participating as a bidder in the Solicitation Process, or (b) committing to Bid its secured debt, including a credit bid of some or all outstanding indebtedness under any loan facility (inclusive of interest and all amounts payable under any loan agreement to and including the date of closing of a definitive transaction) in the Solicitation Process.
7. To the extent any secured creditor, including the DIP Lenders, is or is related to a party submitting a Bid, the Financial Advisor, Tacora, and the Monitor shall not provide such secured lender with information that might create an unfair advantage or jeopardize the integrity of the Solicitation Process, unless and until such secured creditor irrevocably confirms in writing to the Financial Advisor and the Monitor that it will not submit or participate directly or indirectly in the submission of a Bid, other than a protective credit bid in an amount not to exceed the amount of secured debt being credit bid plus any amounts that rank in priority to, or pari passu with, the secured debt being credit bid (a "**Protective Credit Bid**"). Further, notwithstanding anything to the contrary herein: (i) regardless of whether Cargill has confirmed it will not submit an Offtake Bid, Cargill shall not receive any information related to the Offtake Bids or Offtake Proposals; and (ii) unless and until the DIP Lenders have confirmed that they will not submit a Bid in an amount in excess of a Protective Credit Bid, they shall not be provided with any information or consultation rights hereunder.
8. Upon the Financial Advisor and the Monitor receiving confirmation from any secured creditor, including the DIP Lenders, that they will not submit or participate directly or indirectly in the submission of a Bid, other than a Protective Credit Bid, the Financial Advisor or the Monitor shall forthwith notify such parties as the Financial Advisor and the Monitor deem appropriate in a manner that the Financial Advisor and Monitor deem

appropriate.

**Timeline**

9. The following table sets out the key milestones under this Solicitation Process:

Event	Timing
<b><u>Phase 1</u></b>	
<p><b>1. Notice</b></p> <p>Monitor to publish a notice of the Solicitation Process on the Monitor's Website</p> <p>Financial Advisor / Tacora to publish notice of the Solicitation Process in industry trade publications, as determined appropriate</p> <p>Financial Advisor to distribute Teaser Letter and NDA to potentially interested parties</p>	<p>Within five (5) days following issuance of the Solicitation Order.</p>
<p><b>2. Phase 1 - Access to VDR</b></p> <p>Phase 1 Bidders provided access to the VDR, subject to execution of appropriate NDAs</p>	<p>September [●], 2023 to October 25, 2023</p>
<p><b>3. Phase 1 Bid Deadline</b></p> <p>Deadline for Phase 1 Bidders to submit non-binding LOIs in accordance with the requirement of section 19</p>	<p>By no later than October 25, 2023 at 12:00 p.m. (Eastern Time)</p>
<p><b>4. Notification of Phase 1 Qualified Bid</b></p> <p>Deadline to notify a Phase 1 Bidder whether it has been designated as a Phase 2 Bidder invited to participate in Phase 2</p>	<p>By no later than October 30, 2023, at 12:00 p.m. (Eastern Time)</p>
<b><u>Phase 2</u></b>	
<p><b>5. Phase 2 Bid Deadline</b></p> <p>Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of section 28)</p>	<p>By no later than December 6, 2023, at 12:00 p.m. (Eastern Time)</p>
<p><b>6. Definitive Documentation</b></p> <p>Deadline for completion of definitive documentation in respect of a Successful Transaction Bid and/or Successful Offtake Bid</p>	<p>By no later than December 22, 2023</p>

and filing of the Approval Motion	
<b>7. Approval Motion</b>  Hearing of Approval Motion in respect of Successful Transaction Bid and/or Successful Offtake Bid (subject to Court availability)	Week of January 2, 2024
<b>8. Outside Date – Closing</b>  Outside Date by which the Successful Transaction Bid and/or Successful Offtake Bid must close	January 15, 2024 (subject to customary conditions related to necessary and required regulatory approvals acceptable to Tacora, in consultation with the Financial Advisor and the Monitor, in their sole discretion)

***Solicitation of Interest***

10. As soon as reasonably practicable, but, in any event, by no later than five (5) days after the granting of the Solicitation Order:
  - (a) the Financial Advisor, in consultation with the Monitor and Tacora, will prepare a list of potential bidders, including (i) parties that have approached Tacora, the Financial Advisor, or the Monitor indicating an interest in the Opportunity, (ii) parties suggested by the DIP Lenders or their advisors, (iii) local and international strategic and financial parties who the Financial Advisor, in consultation with Tacora and the Monitor, believes may be interested in the Opportunity,; (iv) all secured creditors of Tacora; and (v) parties that showed an interest in Tacora and/or its assets prior to the date of the Solicitation Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the “**Potential Bidders**”);
  - (b) a notice of the Solicitation and any other relevant information that the Monitor considers appropriate regarding the Solicitation Process, in consultation with Tacora and the Financial Advisor, will be published by the Monitor on the Monitor’s Website;
  - (c) a notice of the Solicitation Process and any other relevant information that the Financial Advisor, in consultation with Tacora and the Monitor, considers appropriate will be published by the Financial Advisor in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Financial Advisor; and
  - (d) the Financial Advisor, in consultation with Tacora, the Monitor and the DIP Lenders, will prepare a process summary (the “**Teaser Letter**”) describing both the Transaction Opportunity and Offtake Opportunity, outlining the process under the Solicitation Process and inviting recipients of the Teaser Letter to express their interest pursuant to the Solicitation Process; and (ii) a non-disclosure agreement in form and substance satisfactory to the Financial Advisor, Tacora, the Monitor, the DIP Lenders and their respective counsel (an

**"NDA").**

11. The Financial Advisor will cause the Teaser Letter and NDA to be sent to each Potential Bidder by no later than five (5) days after the Solicitation Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Financial Advisor or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

### **Phase 1: Non-Binding LOIs**

#### ***Phase 1 Due Diligence***

12. In order to participate in the Solicitation Process, and prior to the distribution of any confidential information to an interested party, such interested party must deliver to the Financial Advisor an executed NDA, (with a copy to the Monitor) which will enure to the benefit of (a) any Successful Transaction Bidder that closes a transaction contemplated by the Successful Transaction Bid; and (b) any Successful Offtake Bidder that executes an offtake, services or other agreement with Tacora contemplated by the Successful Offtake Bid. Pursuant to the terms of the NDA to be signed by a potential bidder (each Potential Bidder interested in the Transaction Opportunity and/or Offtake Opportunity who has executed an NDA with Tacora, a "**Phase 1 Bidder**"), each Phase 1 Bidder will be prohibited from communicating with any other Phase 1 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process, without the consent of Tacora and the Monitor, in consultation with the Financial Advisor. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Phase 1 Bidder for the purpose of providing financing to a Phase 1 Bidder in connection with the Opportunity (such party a "**Financing Party**") will not be deemed a Phase 1 Bidder for purposes of the Solicitation Process, provided that such Financing Party undertakes to inform the Financial Advisor and the Monitor in the event that it may submit a Bid. Phase 1 Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the Solicitation Process and any transaction they enter into with Tacora.
13. With the prior consent of the Monitor and Financial Advisor, which consent may include such terms and conditions as the Monitor deems appropriate, Phase 1 Bidders may also communicate with the DIP Lenders in respect of the Solicitation Process.
14. Notwithstanding any other provision of this Solicitation Process, prior to Tacora executing an NDA with any Potential Bidder, Tacora, in consultation with the Financial Advisor and the Monitor, may require evidence reasonably satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor, of the financial wherewithal of the Potential Bidder to complete on a timely basis a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors.
15. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by Tacora to Phase 1 Bidders that have executed the NDA in accordance with section 12 as soon as practicable. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect

of Tacora and the Opportunity. The Financial Advisor, in consultation with Tacora and the Monitor, may establish or cause Tacora to establish separate VDRs (including "clean rooms"), if Tacora reasonably determines that doing so would further Tacora's and any Phase 1 Bidder's compliance with applicable antitrust and competition laws, would prevent the distribution of commercially sensitive competitive information, or to protect the integrity of the Solicitation Process and Tacora's restructuring process generally. Tacora may also, in consultation with the Financial Advisor and the Monitor, limit the access of any Phase 1 Bidder to any confidential information in the VDR where Tacora may also, in consultation with the Financial Advisor and the Monitor, reasonably determine that such access could negatively impact the Solicitation Process, the ability to maintain the confidentiality of the information, the Business or its value.

16. Tacora, in consultation with the Financial Advisor and the Monitor, may (but is not required to) provide management presentations to Phase 1 Bidders. Any communications between Phase 1 Bidders and management of Tacora shall be supervised by representatives of the Financial Advisor and the Monitor, provided that such discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Financial Advisor and the Monitor shall continue to have duties to the Court to ensure that the Solicitation Process proceeds in a manner that complies with the CCAA and the terms of the Solicitation Process. The provisions of this section are subject to further order of the Court.
17. The Financial Advisor, Tacora, the Monitor, and their respective employees, officers, directors, agents, other representatives and their respective advisors make no representation, warranty, condition or guarantee of any kind, nature or description as to the information contained in the VDR or made available in connection with the Solicitation Process.

### ***Phase 1 Bids***

18. If a Phase 1 Bidder wishes to submit either (a) a bid in respect of the Transaction Opportunity (a "**Transaction Bid**"); and/or (b) a bid in respect of the Offtake Opportunity (an "**Offtake Bid**"), it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, in accordance with section 19 below, a "**Phase 1 Qualified Bid**") to the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by the Financial Advisor not later than 12:00 p.m. (Eastern Time) on October 25, 2023 or such other date or time as may be agreed by the Tacora, in consultation with the Financial Advisor, and consent of the Monitor (the "**Phase 1 Bid Deadline**").
19. A LOI submitted by a Phase 1 Bidder will only be considered a Phase 1 Qualified Bid if the LOI complies at a minimum with the following:
  - (a) it has been duly executed by all required parties;
  - (b) it is received by the Phase 1 Bid Deadline;
  - (c) it clearly indicates that:
    - (i) the Phase 1 Bidder is (A) seeking to acquire all or substantially all of the Property or Business, whether through an asset purchase, a share

purchase or a combination thereof (either one, a "**Sale Proposal**"); (B); offering to make an investment in, restructure, recapitalize or refinance Tacora or the Business (an "**Recapitalization Proposal**"); or (C) offering to provide Tacora with an offtake agreement, a services agreement or another agreement (an "**Offtake Proposal**"). For avoidance of doubt, a LOI may submit a combined Offtake Proposal and a Sale Proposal or Recapitalization Proposal.

- (d) in the case of a Sale Proposal, the Bid includes:
  - (i) the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
  - (ii) details regarding any consideration which is not cash;
  - (iii) any contemplated purchase price adjustment;
  - (iv) a specific indication of the expected structure and financing of the transaction (including, but not limited to the sources of financing to fund the acquisition);
  - (v) a description of the Property that is subject to the transaction and any of the Property expected to be excluded;
  - (vi) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction and shall specifically identify whether the Phase 1 Bidder intends to assume the Offtake Agreement and if not, whether the Phase 1 Bidder anticipates being paired with an Offtake Bid to complete the contemplated transaction;
  - (vii) information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Phase 1 Bidder has sufficient financial ability to complete the transaction contemplated by the Sale Proposal;
  - (viii) a description of the Phase 1 Bidder's intentions for the Business, including any plans or conditions related to Tacora's management and employees;
  - (ix) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
  - (x) any other terms or conditions of the Sale Proposal that the Phase 1 Bidder believes are material to the transaction.
- (e) in the case of a Recapitalization Proposal, the Bid includes:
  - (i) a description of how the Phase 1 Bidder proposes to structure the

proposed investment, restructuring, recapitalization or refinancing;

- (ii) the aggregate amount of the equity and/or debt investment to be made in Tacora or its Business;
  - (iii) details on the permitted use of proceeds;
  - (iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction, and shall specifically identify whether the Phase 1 Bidder intends to assume the Offtake Agreement and if not, whether the Phase 1 Bidder anticipates being paired with an Offtake Bid to complete the contemplated transaction;
  - (v) information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Phase 1 Bidder has sufficient ability to complete the transaction contemplated by the Recapitalization Proposal;
  - (vi) the underlying assumptions regarding the pro forma capital structure;
  - (vii) a description of the Phase 1 Bidder's intentions for the Business, including any plans or conditions related to the Tacora's management and employees;
  - (viii) the equity, if any, to be allocated to the secured creditors, unsecured creditors, shareholders and/or any other stakeholder of Tacora;
  - (ix) a specific indication of the expected structure and financing of the transaction (including, but not limited to the sources of financing to fund the acquisition);
  - (x) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
  - (xi) any other terms or conditions of the Recapitalization Proposal which the Phase 1 Bidder believes are material to the transaction.
- (f) in the case of an Offtake Proposal, the bid includes:
- (i) the product to be purchased from Tacora and any required specifications;
  - (ii) the term of the contract, including all options to extend;
  - (iii) the committed volume of product to be purchased, including market price and hedged price (if applicable);
  - (iv) product pricing terms, including price indices to be used, premiums, hedging terms (if any);

- (v) delivery and payment terms, including delivery point for product;
  - (vi) other services that the Phase 1 Bidder anticipates providing to Tacora, including any working capital financing;
  - (vii) any proposed capital investment by the bidder and the form of such investment, including the criteria set forth in Sections 19(e)(ii), (iii) and (ix); and
  - (viii) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer.
- (g) it provides written evidence, satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor, of the ability to consummate the transaction within the timeframe contemplated by the Solicitation Process and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital and, to the extent that the Phase 1 Bidder expects to finance any portion of the purchase price, the identity of the financing source and the steps necessary and associated timing to obtain the capital;
- (h) it provides any relevant details of the previous investments or acquisitions, or any other experience a Phase 1 Bidder has and deemed relevant by such Phase 1 Bidder, in the mining industry, including the date, nature of the investment, amount invested, geography and any other relevant information related to such investment;
- (i) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for Tacora, in consultation with the Financial Advisor, and the Monitor, to determine that these conditions are reasonable in relation to the Phase 1 Bidder;
- (j) it includes a statement disclosing any connections or agreements between the Phase 1 Bidder, on the one hand, and Tacora, its shareholders, creditors and affiliates and all of their respective directors and officers and/or any other known Phase 1 Bidder, on the other hand;
- (k) it includes an acknowledgement that any Sale Proposal, Recapitalization Proposal and/or Offtake Proposal is made on an “as-is, where-is” basis; and
- (l) it contains such other information as may be reasonably requested by Tacora, in consultation with the Financial Advisor and the Monitor.

***Assessment of Phase 1 Bids***

20. Following the Phase 1 Bid Deadline, Tacora, in consultation with the Financial Advisor and the Monitor, will assess the LOIs received by the Phase 1 Bid Deadline and

determine whether such LOIs constitute Phase 1 Qualified Bids and subject to section 7 hereof, provide copies of the LOIs received to the DIP Lenders.

21. Tacora, in consultation with the Financial Advisor and the Monitor, may following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid.
22. Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor, may (a) waive compliance with any one or more of the requirements specified above and deem such non-compliant bid to be a Phase 1 Qualified Bid; or (b) reject any LOI if it is determined that such Bid does not constitute a Phase 1 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interests of Tacora and its creditors and other stakeholders.

### ***Selection of Phase 2 Bidders***

23. The Financial Advisor shall notify each Phase 1 Bidder in writing as to whether the Phase 1 Bidder has been determined to be a “**Phase 2 Bidder**” and therefore shall be permitted to proceed to Phase 2 by no later than October 30, 2023 at 12:00 p.m. (Eastern Time).

### **Phase 2 – Formal Binding Offers**

#### ***Phase 2 Due Diligence***

24. Each Phase 2 Bidder shall be invited to participate in on-site tours and inspections at the Scully Mine (within reason and not at the expense of Tacora maintaining “business as usual” operations).
25. Tacora, in consultation with the Financial Advisor and the Monitor, shall allow each Phase 2 Bidder such further access to due diligence materials and information relating to the Property and Business as they deem appropriate in their reasonable business judgment and subject to competitive and other business considerations.
26. Phase 2 Bidders shall be advised that management of Tacora are available to meet with them in respect of the formulation of their Bid. Any communications between Phase 2 Bidders and management of Tacora shall be supervised by representatives of the Financial Advisor and the Monitor, provided that the discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. With the prior consent of the Monitor and the Financial Advisor, which consent may include such terms and conditions as the Monitor deems appropriate, Phase 2 Bidders may also communicate with the DIP Lenders in respect of the Solicitation Process. In connection with the foregoing, the Financial Advisor and the Monitor shall continue to have duties to the Court to ensure that the Solicitation Process proceeds in a manner that complies with the CCAA and the terms of the Solicitation Process. The provisions of this section are subject to further order of the Court.
27. Each Phase 2 Bidder will be prohibited from communicating with any other Phase 2 Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Solicitation Process, without the consent of Tacora and the Monitor, in consultation with the Financial Advisor, and if such consent is

provided, such communication shall occur in the presence of the Financial Advisor and the Monitor. Notwithstanding the foregoing, with the consent of the Financial Advisor and the Monitor, any Phase 2 Bidder who submits only an Offtake Bid may communicate with a Phase 2 Bidder who submits only a Transaction Bid, and vice versa. Such communications shall only occur on such terms as the Financial Advisor and the Monitor may determine, and for greater certainty, the Financial Advisor, with consent of the Monitor, may introduce a Phase 2 Bidder who only submits an Offtake Bid and a Phase 2 Bidder who submits a Transaction Bid, and vice versa, at the time determined by the Financial Advisor in its sole discretion.

### **Phase 2 Bids**

28. A Phase 2 Bidder that wishes to make a definitive Transaction Proposal and/or an Offtake Proposal (a “**Phase 2 Bid**”) shall submit a binding offer that complies with all of the following requirements to the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by the Financial Advisor not later than 12:00 p.m. (Eastern Time) on December 6, 2023 (the “**Phase 2 Bid Deadline**”). Such Phase 2 Bid shall be a “**Phase 2 Qualified Bid**” if it meets all of the following criteria:
- (a) it is received by the Phase 2 Bid Deadline;
  - (b) the Bid complies with all of the requirements set forth in respect of Phase 1 Qualified Bids other than the requirements set out in Sections 19(b), 19(d)(ix), and 19(f)(viii) herein;
  - (c) if the Bid is a Sale Proposal or Recapitalization Proposal: (i) the Transaction Bid is binding and includes a letter confirming that the Phase 2 Bid is irrevocable until the selection of the Successful Transaction Bidder and the Back-Up Transaction Bidder, if any, provided that if such Phase 2 Bidder is selected as the Successful Transaction Bidder, Back-Up Transaction Bidder, its offer shall remain irrevocable until the earlier of (a) completion of the transaction with the Successful Transaction Bidder, and (b) January 30, 2024, subject to further extensions as may be agreed to under the applicable transaction agreement(s), with the consent of the Monitor; and (ii) provides for payment of all obligations owing under the DIP Agreement in full<sup>1</sup>;
  - (d) if the Bid is an Offtake Proposal, the Offtake Bid is binding and includes a letter confirming that the Phase 2 Bid is irrevocable until the selection of the Successful Offtake Bidder, provided that if such Phase 2 Bidder is selected as the Successful Offtake Bidder, its offer shall remain irrevocable until the earlier of (i) a fully executed offtake agreement to replace the Offtake Agreement; and (ii) January 30, 2024, subject to further extensions as may be agreed to under the applicable agreement(s), with the consent of the Monitor;
  - (e) the Bid is in the form of duly authorized and executed transaction agreements, and in the case of:

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<sup>1</sup> The DIP Lenders have confirmed to Tacora and the Monitor that they will credit bid the obligations owing under the DIP Agreement if there is not a Bid obtained in the Solicitation Process that provides for payment of all obligations owing under the DIP Agreement in full.

- (i) a Sale Proposal, the Bid includes an executed share or asset purchase agreement, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a blackline to any model documents provided by Tacora during the Solicitation Process;
  - (ii) a Recapitalization Proposal, the Bid includes the draft transaction documents contemplated to effect the Recapitalization Proposal, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a blackline to any model documents provided by Tacora during the Solicitation Process; and
  - (iii) an Offtake Proposal, the Bid includes an executed offtake agreement, services agreement and/or other agreement, as applicable including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a blackline to any model documents provided by Tacora during the Solicitation Process;
- (f) the Bid includes written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor (unless such Bid is an Offtake Bid that does not contemplate any investment by the bidder in Business or Property);
  - (g) the Bid is not subject to the outcome of unperformed due diligence, internal approval(s) or contingency financing;
  - (h) any conditions to closing or required approvals, including any agreements or approvals with unions, regulators or other stakeholders, the anticipated time frame and any anticipated impediments for obtaining such approvals are set forth in detail, such that Tacora, the Financial Advisor and the Monitor, can assess the risk to closing associated with any such conditions or approvals;
  - (i) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing (including through the issuance of debt in connection with such Bid), or that is sponsoring, participating or benefiting from such Bid, and such disclosure shall include, without limitation: (i) in the case of a Phase 2 Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Bidder and the terms and participation percentage of such equity holder's interest in such Bid; and (ii) the identity of each entity that has or will receive a benefit from such Bid from or through the Phase 2 Bidder or any of its equity holders and the terms of such benefit
  - (j) the Bid provides a detailed timeline to closing with critical milestones;
  - (k) the Transaction Bid is accompanied by a non-refundable good faith cash deposit (the "**Deposit**"), equal to 10% of the total purchase price or investment contemplated under the Phase 2 Bid which shall be paid to the Monitor and held

in trust pursuant to Section 38 hereof until the earlier of (i) closing of the Successful Transaction Bid or Back-Up Transaction Bid, as applicable; and (ii) rejection of the Phase 2 Bid pursuant to Section 37. No deposit will be required for an Offtake Proposal; and

- (l) The Bid includes acknowledgements and representations of the Phase 2 Bidder that: (i) it had an opportunity to conduct any and all due diligence desired regarding the Property, Business and Tacora prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property or Tacora or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive transaction agreement executed by Tacora.

### ***Assessment of Phase 2 Bids***

29. Following the Phase 2 Bid Deadline, Tacora in consultation with the Financial Advisor and the Monitor, will assess the Phase 2 Bids received by the Phase 2 Bid Deadline and determine whether such Bids constitute Phase 2 Qualified Bids, and subject to section 7 hereof, provides copies of the Phase 2 Bids received to the DIP Lenders.
30. Tacora, in consultation with the Financial Advisor, and with the consent of the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bid to be a Phase 2 Qualified Bid.
31. Phase 2 Bids may not be modified, amended, or withdrawn after the Phase 2 Bid Deadline without the written consent of Tacora, in consultation with the Financial Advisor and the Monitor, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Phase 2 Bid for Tacora.
32. Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, may reject any Phase 2 Bid if it is determined that such Bid does not constitute a Phase 2 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interest of Tacora and its creditors and other stakeholders.

### **Evaluation of Qualified Bids and Subsequent Actions**

33. Following the Phase 2 Bid Deadline, Tacora, the Financial Advisor and the Monitor will review the Phase 2 Qualified Bids. In performing such review and assessment, the Financial Advisor, Tacora, and the Monitor may evaluate the following non-exhaustive list of considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the Phase 2 Bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the claims likely to be created by such Bid in relation to other Bids; (d) the counterparties to the transaction; (e) the terms of transaction documents; (f) the closing conditions and other factors affecting the speed, certainty and value of the transaction; (g) planned treatment of stakeholders, including employees; (h) the assets included or excluded from the Bid; (i) any restructuring costs that would arise from the Bid; (j) the likelihood and timing of consummating the transaction; (k) the capital sufficient to implement post-closing measures and

- transactions; and (l) any other factors that the Financial Advisor, Tacora, and Monitor may deem relevant in their sole discretion.
34. Following evaluation of the Phase 2 Qualified Bids, Tacora may, in consultation with the Financial Advisor and the Monitor:
- (a) accept:
    - (i) one of the Qualified Phase 2 Bids which is a Sale Proposal or Recapitalization Proposal (the “**Successful Transaction Bid**” and the offeror making such Successful Transaction Bid the “**Successful Transaction Bidder**”) and take such steps as may be necessary to finalize definitive transaction documents for the Successful Transaction Bid with Successful Transaction Bidder; and
    - (ii) one of the Qualified Phase 2 Bids which is an Offtake Proposal (the “**Successful Offtake Bid**” and the offeror making such Successful Offtake Bid, the “**Successful Offtake Bidder**”) and take such steps as may be necessary to finalize definitive documents for the Successful Offtake Bid with Successful Offtake Bidder; or
  - (b) continue negotiations with selected Phase 2 Bidders who have submitted Qualified Phase 2 Bids with a view to finalizing acceptable terms with one or more of the Phase 2 Qualified Bidders.
35. Tacora, in consultation with the Financial Advisor and the Monitor, may select the next highest or otherwise best Qualified Phase 2 Bid which is a Sale Proposal or Recapitalization Proposal to be a back-up bid (the “**Back-Up Transaction Bid**” and such bidder, the “**Back-Up Transaction Bidder**”).
36. If a Successful Transaction Bidder fails to consummate the Successful Transaction Bid for any reason, then the Back-Up Transaction Bid will be deemed to be the Successful Transaction Bid and Tacora will proceed with the transaction pursuant to the terms of the Back-Up Transaction Bid. Any Back-Up Transaction Bid shall remain open for acceptance until the completion of the transaction with the Successful Transaction Bidder.
37. All Qualified Phase 2 Bids (other than the Successful Transaction Bid, the Back-Up Transaction Bid, and Successful Offtake Bid) shall be deemed rejected by Tacora on and as of the date of the execution of the definitive documents contemplated by the Successful Transaction Bid and/or Successful Offtake Bid by Tacora.
38. All Deposits will be retained by the Monitor and deposited in a trust account. The Deposit (without interest thereon) paid by the Successful Transaction Bidder and Back-Up Transaction Bidder whose bid(s) is/are approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Transaction Bidder and/or Back-Up Transaction Bidder, as applicable upon closing of the approved transaction and will be non-refundable, other than in the circumstances set out in the Successful Transaction Bid or the Back-Up Transaction Bid, as applicable. The Deposits (without interest) of Qualified Transaction Bidders not selected as the Successful Transaction Bidder and Back-Up Transaction Bidder will be returned to such bidders within five (5) Business Days after the selection of the

Successful Transaction Bidder and Back-Up Transaction Bidder or any earlier date as may be determined by the Monitor, in consultation with the Financial Advisor and Tacora. The Deposit of the Back-Up Transaction Bidder, if any, shall be returned to such Back-Up Transaction Bidder no later than five (5) Business Days after closing of the transaction contemplated by the Successful Transaction Bid.

39. If a Successful Transaction Bidder or Back-Up Transaction Bidder breaches its obligations under the terms of the Solicitation Process, its Deposit shall be forfeited as liquidated damages and not as a penalty, without limiting any other claims or actions that Tacora may have against such Successful Transaction Bidder or Back-Up Transaction Bidder and/or their affiliates.
40. If no Qualified Phase 2 Bids are received by the Phase 2 Bid Deadline, the Solicitation Process shall automatically terminate. If no transaction has been successfully consummated with the Successful Transaction Bidder or the Back-Up Transaction Bidder and no agreement(s) are successfully entered into with the Successful Offtake Bidder by January 15, 2024, the Solicitation Process shall automatically terminate.
41. Notwithstanding anything else herein, to the extent a secured creditor will not be paid in full in cash as a result of any Bids received in the Solicitation Process, such secured creditor shall then be entitled to submit a Protective Credit Bid in an amount that exceeds the highest Bid received.

#### **Approval Motion**

42. Prior to the Approval Motion, the Monitor shall provide a report to the Court providing information on the process and including its recommendation in connection with the relief sought at the Approval Motion. At the Approval Motion, Tacora shall seek the Approval Order.
43. The consummation of the transaction contemplated by the Successful Transaction Bid, or the Back-Up Transaction Bid if the Successful Transaction Bid does not close, will not occur unless and until the Approval Order is granted.
44. The offtake, services or other agreement contemplated by the Successful Offtake Bid will not be consummated unless and until the Approval Order is granted.

#### **“As Is, Where Is”**

45. Any sale of the Business and/or Property or any investment in Tacora or its Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Financial Advisor, Tacora, or Monitor, or their advisors or agents, except to the extent otherwise provided under (a) any definitive sale or investment agreement with the Successful Transaction Bidder executed by Tacora; or (b) any definitive offtake, services or other agreement with the Successful Offtake Bidder. None of the Financial Advisor, Tacora, or Monitor, or their advisors or agents, including the Financial Advisor, make any representation or warranty as to the information contained in the Teaser Letter, any management presentation or the VDR, except to the extent otherwise provided under (a) any definitive sale or investment agreement with the Successful Transaction Bidder executed by Tacora; or (b) any definitive offtake, services or other agreement with the Successful Offtake Bidder. Each

Phase 2 Bidder is deemed to acknowledge and represent that: (a) it has had an opportunity to conduct any and all due diligence regarding the Business and Property prior to making its Phase 2 Bid; (b) it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Business and Property in making its Bid; and (c) it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business and Property, or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale or investment agreement executed by Tacora.

#### **No Entitlement to Expense Reimbursement or Other Amounts**

46. Phase 1 Bidders and Phase 2 Bidders shall not be entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.

#### **Jurisdiction**

47. Upon submitting an LOI or a Phase 2 Bid, the Phase 1 Bidder or the Phase 2 Bidder, as applicable, shall be deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters relating to the Solicitation Process and the terms and conditions of this Solicitation Process, any Sale Proposal, Recapitalization Proposal or Offtake Proposal.
48. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Transaction Bid or Successful Offtake Bid.
49. Neither Tacora, the Financial Advisor nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the Solicitation Process arising out of any agreement or arrangement entered into by the parties that submitted the Successful Transaction Bid, Successful Offtake Bid and Back-Up Transaction Bid.
50. The Monitor shall supervise the Solicitation Process as outlined herein. In the event that there is disagreement or clarification is required as to the interpretation or application of this Solicitation Process or the responsibilities of the Monitor, the Financial Advisor or Tacora hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor or Tacora or any other interested party with a hearing which shall be scheduled on not less than three (3) Business Days' notice.

## APPENDIX A

### DEFINED TERMS

- (a) “**Approval Motion**” means the motion seeking approval by the Court of the Successful Transaction Bid with the Successful Transaction Bidder, if applicable, any Back-Up Transaction Bid if the Successful Transaction Bid is not consummated, and the Successful Offtake Bid with the Successful Offtake Bidder;
- (b) “**Approval Order**” means an order of the Court approving, among other things, if applicable the Successful Transaction Bid and the consummation thereof, if applicable, any Back-Up Transaction Bid if the Successful Transaction Bid is not consummated, and if applicable, the Successful Offtake Bid;
- (c) “**Back-Up Transaction Bid**” shall have the meaning attributed to it in Section 35;
- (d) “**Back-Up Transaction Bidder**” shall have the meaning attributed to it in Section 35;
- (e) “**Bid**” means a Transaction Bid or an Offtake Bid.
- (f) “**Business**” shall have the meaning attributed to it in the preamble;
- (g) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (h) “**Cargill**” means Cargill International Trading PTE Ltd. and its affiliates.
- (i) “**CCAA**” shall have the meaning attributed to it in the preamble;
- (j) “**Court**” shall have the meaning attributed to it in the preamble;
- (k) “**DIP Agreement**” means the DIP Loan Agreement between Tacora and the lenders party thereto, dated September 11, 2023, as may be amended from time to time;
- (l) “**DIP Lenders**” means the lenders party to the DIP Agreement;
- (m) “**Financial Advisor**” shall have the meaning attributed to it in the preamble;
- (n) “**Initial Order**” shall have the meaning attributed to it in the preamble;
- (o) “**LOI**” shall have the meaning attributed to it in Section 18;
- (p) “**Monitor**” shall have the meaning attributed to it in the preamble;
- (q) “**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/Tacora>;
- (r) “**NDA**” shall have the meaning attributed to it in Section 10(d);
- (s) “**Offtake Agreement**” means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended;
- (t) “**Offtake Bid**” shall have the meaning attributed to it in Section 18;

- (u) **"Offtake Opportunity"** shall have the meaning attributed to it in the Section 3;
- (v) **"Offtake Proposal"** shall have the meaning attributed to it in Section 19(c)(i);
- (w) **"Opportunity"** shall have the meaning attributed to it in the Section 3;
- (x) **"Phase 1 Bid Deadline"** shall have the meaning attributed to it in Section 18;
- (y) **"Phase 1 Bidder"** shall have the meaning attributed to it in Section 12;
- (z) **"Phase 1 Qualified Bid"** shall have the meaning attributed to it in Section 18;
- (aa) **"Phase 2 Bid"** shall have the meaning attributed to it in Section 28;
- (bb) **"Phase 2 Bid Deadline"** shall have the meaning attributed to it in Section 28;
- (cc) **"Phase 2 Bidder"** shall have the meaning attributed to it in Section 23;
- (dd) **"Phase 2 Qualified Bid"** shall have the meaning attributed to it in Section 28;
- (ee) **"Potential Bidder"** shall have the meaning attributed to it in Section 10(a);
- (ff) **"Property"** shall have the meaning attributed to it in the preamble;
- (gg) **"Protective Credit Bid"** shall have the meaning attributed to it in Section 7;
- (hh) **"Recapitalization Proposal"** shall have the meaning attributed to it in Section 19(c)(i);
- (ii) **"Sale Proposal"** shall have the meaning attributed to it in Section 19(c)(i);
- (jj) **"Scully Mine"** shall have the meaning attributed to it in the preamble;
- (kk) **"Solicitation Order"** shall have the meaning attributed to it in the preamble;
- (ll) **"Solicitation Process"** shall have the meaning attributed to it in the preamble;
- (mm) **"Solicitation Procedures"** shall have the meaning attributed to it in the preamble;
- (nn) **"Successful Offtake Bid"** shall have the meaning attributed to it in Section 34;
- (oo) **"Successful Offtake Bidder"** shall have the meaning attributed to it in Section 34;  
and
- (pp) **"Successful Transaction Bid"** shall have the meaning attributed to it in Section 34;  
and
- (qq) **"Successful Transaction Bidder"** shall have the meaning attributed to it in Section 34.
- (rr) **"Teaser Letter"** shall have the meaning attributed to it in Section 10(d);

- (ss) **“Transaction Bid”** shall have the meaning attributed to it in Section 18; and
- (tt) **“Transaction Opportunity”** shall have the meaning attributed to it in Section 2.

**SCHEDULE "F"**

**BORROWER'S ACCOUNT INFORMATION**



Tacora Resources Inc.  
102 NE 3<sup>rd</sup> Street  
Suite 120  
Grand Rapids, MN 55744  
Ph: 218-999-5165  
Fax: 218-999-5827

## **“USD PAYMENT ROUTING INSTRUCTIONS”**

### **PAYMENT ROUTING INSTRUCTIONS:**

**Pay through:**  
(Destination Bank)

**Wells Fargo Bank, N.A. (formerly known as  
Wachovia)  
New York  
S.W.I.F.T. BIC CODE: PNBPUS3NNYC**

**Fed wire ABA Number 026005092 or  
CHIPS UID Number 0509**

**Beneficiary’s Bank:**  
(BBK field  
or SWIFT field 57a)

**Bank of Montreal,  
Intl Banking H.O. Montreal  
S.W.I.F.T. BIC CODE: BOFMCAM2  
Institution Code : 0001  
Transit Number : 00022**

**Beneficiary Customer:**  
(BNF field or  
SWIFT field 59)

**00024635560  
Tacora Resources Inc.  
102 NE 3<sup>rd</sup> St, Suite 120  
Grand Rapids, MN 55744**

**SCHEDULE "G"**  
**TAXES AND SOURCE DEDUCTIONS**

Nil

## **SCHEDULE H**

### **LITIGATION**

1. None.

For greater certainty, the following claims are ongoing but will be subject to the Initial Order:

1. Claims made pursuant to a letter dated March 27, 2023 from Quebec Iron Ore Inc.
2. Claims made pursuant to a letter dated April 27, 2023 from 1128349 B.C. Ltd. and subject to arbitration proceedings in Newfoundland and Labrador
3. Claims made by Construction & Expertise PG Inc. subject to proceedings before the Supreme Court of Newfoundland and Labrador (Court file. 2022 01G 3243)

## SCHEDULE I

### DEFINITIONS

"**Additional Independent Directors**" has the meaning provided in Section 25.

"**Admin Charge**" means an administration charge in an aggregate amount not to exceed \$1,000,000 which shall rank in priority to the DIP Charge and the D&O Charge, pursuant to the Initial Order.

"**Alternative Offtake or Services Binding Bid**" has the meaning provided in Section 12.

"**Alternative Offtake or Services LOIs**" has the meaning provided in Section 12.

"**Alternative Offtake or Services Transaction**" has the meaning provided in Section 12.

"**Applicable Percentage**" means, in respect of any DIP Lender at any time, with respect to a DIP Advance, the percentage of such DIP Advance which such DIP Lender has agreed to make available to the Borrowers at such time, determined by dividing the DIP Financing Commitment of such DIP Lender by the aggregate DIP Financing Commitments of all of the DIP Lenders.

"**ARIO**" has the meaning provided in Section 13.

"**Backstop Advance**" means an advance made by a DIP Lender to the Borrower in connection with the Backstop Commitment of such DIP Lender. 11

"**Backstop Commitment**" has the meaning provided in Section.

"**Backstop Fee**" has the meaning provided in Section 17.

"**Board**" has the meaning provided in Section 22.

"**Borrower**" has the meaning provided in Section 1.

"**Borrower's Account**" has the meaning provided in Section 14.

"**Borrower's Knowledge**" has the meaning provided in Section 20.

"**Business Day**" has the meaning provided in Section 38.

"**Cash Flow Projection**" has the meaning provided in Section 8.

"**Cash Interest**" has the meaning provided in Section 16.

"**CCAA**" has the meaning provided in the preamble.

"**CCAA Iron Ore Delivery Forecast**" has the meaning provided in Section 21.

"**CCAA Proceedings**" has the meaning provided in the preamble.

"**Collateral**" has the meaning provided in Section 18.

"**Communications**" has the meaning provided in Section 37.

"**Court**" has the meaning provided in the preamble.

"**Court Order**" has the meaning provided in Section 21.

"**D&O Charge**" means a directors and officers liability charge in an amount not to exceed \$5,300,000 which shall rank behind the Admin Charge but ahead of the DIP Charge, pursuant to the Initial Order.

"**Default**" has the meaning provided in Section 21.

"**Defaulting Lender**" has the meaning provided in Section 11.

"**Defaulting Lender Funding Obligation**" has the meaning provided in Section 11.

"**DIP Advance**" has the meaning provided in Section 10.

"**DIP Agreement**" has the meaning provided in the preamble.

"**DIP Agreement Cash Flow Projection**" has the meaning provided in Section 8.

"**DIP Charge**" has the meaning provided in Section 18.

"**DIP Facility**" has the meaning provided in Section 5.

"**DIP Financing Commitment**" means, with respect to each of the respective DIP Lenders, the amount indicated in the table below, the amount of which may not be amended for a specific DIP Lender, without the prior written consent that DIP Lender:

<u><b>DIP Lender</b></u>	<u><b>DIP Financing Commitment (\$)</b></u>
Brigade Capital Management, LP	██████████
Concise Capital Management LP	██████████
CrossingBridge Advisors, LLC	██████████
Millstreet Capital Management LLC	██████████

MSD Partners, LP	██████████
O'Brien-Staley Partners	██████████
Snowcat Capital Management, LP	██████████

"**DIP Lenders**" has the meaning provided in Section 2.

"**DIP Obligations**" has the meaning provided in Section 6.

"**Event of Default**" has the meaning provided in Section 24.

"**Existing Indebtedness**" has the meaning provided in Section 22.

"**Expenses**" has the meaning provided in Section 27.

"**First DIP Advance**" has the meaning provided in Section 10.

"**Fourth DIP Advance**" has the meaning provided in Section 10.

"**GLC Fees**" means any transaction fees payable to GLC Advisors & Co., LLC under its engagement letter with Bennett Jones LLP, as may be amended.

"**Indemnified Person**" has the meaning provided in Section 23.

"**Initial Order**" has the meaning provided in Section 13.

"**Interest Rate**" has the meaning provided in Section 16.

"**KERP**" means a key employee retention program (i) providing payments to the Borrower's on-site personnel in an amount not to exceed \$1,500,000 in the aggregate; and (ii) providing for payments to the Borrower's management and executive team, acceptable to the Required DIP Lenders in all material respects, which the DIP Lenders covenant to make good faith efforts to resolve with the Borrower in a timely manner.

"**KERP Charge**" means a Court-ordered priority charge granted by the Court over a segregated account of the Monitor where an amount in respect of the KERP is paid, in an amount not to exceed \$1,500,000, plus such further amount agreed to by the Required DIP Lenders in respect of the Borrower's management and executive team, to secure the Borrower's obligations under the KERP.

"**Liens**" means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever.

"**Majority DIP Lenders**" means, at any time, DIP Lenders holding more than 50% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

**"Margin or Hedge Services"** has the meaning provided in Section 9.

**"Material Adverse Change"** means an event, change or condition that has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, operations, financial condition or operating results of the Borrower and its subsidiaries, taken as a whole (other than as a result of the events leading up to and following commencement of the CCAA Proceedings).

**"Material Adverse Effect"** has the meaning provided in Section 20.

**"Maturity Date"** has the meaning provided in Section 6.

**"Maximum Amount"** has the meaning provided in Section 5.

**"Monitor"** has the meaning provided in Section 8.

**"Net Proceeds"** has the meaning provided in Section 19.

**"Offtake Agreement"** means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended.

**"Permitted Liens"** means (i) Permitted Priority Liens, (ii) the DIP Charge, (iii) validly perfected Liens existing prior to the date hereof as in effect on the date hereof; and (iv) inchoate statutory Liens arising after the date on which the Initial Order is obtained in respect of any accounts payable arising after the date on which the Initial Order is obtained in the ordinary course of business, subject to the obligation to pay all such amounts as and when due, (v) the Subordinate Transaction Fee Charge.

**"Permitted Priority Liens"** means the (i) the Admin Charge, (ii) D&O Charge, (ii) KERP Charge (if applicable), (iv) the Priority Transaction Fee Charge, (v) Liens in favour of secured parties that did not receive notice of the application for the Initial Order (to the extent the Majority DIP Lenders (or their counsel) agreed based on the service list that such secured parties would not be served), (vi) Liens in respect of claims that are individually and in the aggregate immaterial, solely to the extent such Liens are not registered under a personal property registry system and (vii) any amounts payable by a Borrower for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) (net of input credits), income tax and workers compensation claims, in the case of this item (viii) solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts have not been subordinated to the DIP Charge pursuant to the Court Orders; and (ix) such other Liens existing as of the date of the Initial Order that have not been subordinated to the DIP Lender Charge pursuant to the Court Order.

**"Permitted Variance"** has the meaning provided in Section 8.

**"PIK Amounts"** has the meaning provided in Section 16.

**"PIK Interest"** has the meaning provided in Section 16.

"**PIK Mechanism**" has the meaning provided in Section 16.

"**Priority Transaction Fee Charge**" means a super priority charge that shall rank pari passu with the DIP Charge in favour of Greenhill & Co. Canada Ltd. in an aggregate amount up to the GLC Fees in respect of Greenhill & Co. Canada Ltd.'s fees owing under its engagement letter with the Borrower dated January 23, 2023.

"**Proposed Amended Cash Flow Projection**" has the meaning provided in Section 8.

"**Pro Rata**" means, in respect of any DIP Lender at any time, the ratio of the DIP Obligations owing to such DIP Lender at such time to the aggregate DIP Obligations owing to all DIP Lenders which are not Defaulting Lenders at such time.

"**Required DIP Lenders**" means, at any time, DIP Lenders holding more than 66 2/3% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"**Sale Binding Bid**" has the meaning provided in Section 12.

"**Sale Transaction**" has the meaning provided in Section 12.

"**Second DIP Advance**" has the meaning provided in Section 10.

"**Solicitation Process**" has the meaning provided in Section 13.

"**Solicitation Process Milestone**" has the meaning provided in Section 12.

"**Solicitation Process Order**" has the meaning provided in Section 13.

"**Subordinate Transaction Fee Charge**" means a charge that shall rank pari passu with the Senior Priority Notes, and any other secured claim that ranks pari passu with the Senior Priority Notes, in favour of Greenhill & Co. Canada Ltd. for any fees payable to Greenhill & Co. Canada Ltd. in excess of the quantum of the GLC Fees under its engagement letter with the Borrower dated January 23, 2023.

"**Senior Priority Notes**" means the Borrower's 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023.

"**Taxes**" has the meaning provided in Section 30.

"**Technical Advisor**" means a technical advisor engaged by the DIP Lenders or their legal or financial advisors.

"**Third DIP Advance**" has the meaning provided in Section 10.

"**Tranche 1**" has the meaning provided in Section 5.

"**Tranche 2**" has the meaning provided in Section 5.

"**Tranche 3**" has the meaning provided in Section 5.

**THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

## Thomas Gray

---

**From:** Lee Nicholson <leenicholson@stikeman.com>  
**Sent:** Thursday, October 5, 2023 10:09 PM  
**To:** Sean Zweig; Mike Shakra; Thomas Gray  
**Cc:** Ashley Taylor; Philip Yang; Project Element 2023; Nigel Meakin  
**Subject:** T - DIP

### **Confidential and Without Prejudice**

Sean – as discussed, we are informing all parties that have submitted DIP Proposals to provide final Definitive Term Sheets with all terms and conditions, for final consideration by **October 7, 2023 at 5:00 p.m. EST**. Proposals cannot be subject to further internal approvals or otherwise conditional, and we would request final proposals include all proposed schedules and signature pages such that the Definitive Term Sheet can be executed by the Company.

We will provide parties with feedback on terms and economics tomorrow and will be available to discuss. We also would like to finalize DIP budgets tomorrow.

#### **Lee Nicholson**

Direct: +1 416 869 5604  
Mobile: +1 647 821 1931  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

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#### **Stikeman Elliott LLP** Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

**THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**



Bennett Jones

Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130  
Toronto, Ontario, M5X 1A4 Canada  
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F: 416.863.1716

**Richard B. Swan**  
**Partner and Department Co-Head, Litigation**  
Direct Line: 416.777.7479  
e-mail: swanr@bennettjones.com

October 6, 2023

**Sent via Email**

John Ciardullo, Ashley Taylor and Lee Nicholson      Joe Broking, Trey Jackson and Leon Davies

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario, Canada M5L 1B9

Tacora Resources Inc.  
Board of Directors  
102 3rd St NE #120,  
Grand Rapids, MN 55744, United States

Dear Sirs:

**Re: Tacora Resources Inc. ("Tacora" or the "Company")<sup>1</sup>**

In the evening of October 5, 2023, mere hours before the Company's scheduled hearing for an initial order under the CCAA, we were advised by the Company's counsel that the Company had received a DIP proposal from a party that it would not name – but which we understand the CEO of the Company has confirmed to our clients was submitted by Cargill (the "**Cargill Proposal**"). We were then advised that the Board had determined not to proceed with the planned CCAA filing on the morning of October 6, 2023 with a DIP to be provided by the Ad Hoc Group (the "**AHG DIP**"), but would instead take time to consider the Cargill Proposal.

**The DIP Solicitation Process**

On August 14, 2023, the Company and its advisors commenced a solicitation process for DIP proposals (the "**DIP Solicitation Process**"). The Ad Hoc Group made good faith efforts to participate in the DIP Solicitation Process in accordance with the rules set out by the Company and its advisors and to develop a proposal that would maximize the Company's likelihood of a successful CCAA proceeding. In that regard, the Ad Hoc Group submitted a non-binding DIP proposal on August 21, 2023 and a draft of a definitive DIP agreement on August 28, 2023, which – following further good-faith negotiations – was subsequently executed on September 11, 2023 in anticipation of a filing under the CCAA the week of September 11, 2023. A CCAA filing the week of September 11, 2023 was ultimately abandoned by the Company in order to continue discussions regarding a consensual recapitalization transaction, which discussions ultimately failed.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to them in previous correspondence from the Ad Hoc Group to the Company.

Over the past number of weeks Cargill has repeatedly threatened or actually refused to pay timely the Company in accordance with its agreements, and has threatened not to extend the Onshore Purchase Agreement (the "OPA") and the Advanced Payments Facility (the "APF") in full knowledge of the Company's precarious financial condition in attempts to bend the Company to its will. While the record in this regard is clear, the demand letter sent by the Company on September 8, 2023 is but one example of such conduct (that letter is attached hereto at **Appendix "A"**). Cargill's most recent "concession" of paying what it is legally required in order to seek to insert itself into providing its DIP Proposal is yet another example of its manipulation of the Company.

Based on the terms of the DIP Solicitation Process and the conduct of the Company and its advisors, the Ad Hoc Group was led to believe that the DIP Solicitation Process had closed and that no further DIP financing would be solicited or considered. The decision to consider the Cargill Proposal at this juncture calls into question the governance and decision making process of the Board, which includes the CEO of the Company. By considering the Cargill Proposal at this late stage, the Company has created a tilted playing field that plainly favours the interests of Cargill by allowing it to submit a revised bid after having had the benefit of reviewing a copy of the Ad Hoc Group's bid that was executed on September 11, 2023. By contrast, the Ad Hoc Group does not know anything about Cargill's proposed DIP.

### **Any DIP Financing Provided by Cargill is Materially Prejudicial to the Noteholders**

In order for the Court to approve DIP financing, it must consider all of the facts and circumstances surrounding the Company, and specifically the matters set forth in subsection 11.2(4) of the CCAA, including, crucially, subsection 11.2(4)(4), whether the Company's existing secured creditors would be materially prejudiced by the granting of any priming DIP. The selection of any priming DIP from Cargill would obviously be materially prejudicial to the Noteholders, and is unlikely to be approved by a Court.

With respect to the Noteholders, at the first lien level, there is currently \$27 million of Senior Priority Notes outstanding. At the second lien level, there is currently \$225 million of Senior Secured Notes outstanding, plus over \$16 million in accrued and unpaid interest. By contrast, Cargill is owed approximately \$5 million at the first lien level under the Senior Secured Hedging Facility and \$30 million under the APF at the second lien level. Cargill is owed a fraction of what is owed to the Noteholders.

The appropriate scope of reference to assess prejudice and balance interests is actually very narrow in this case. Given that the cash flows which underlie the Ad Hoc Group DIP (and we assume Cargill's) contemplate that most or all of the pre-CCAA filing obligations owed to third party trade creditors and contracting parties will be paid in the CCAA proceedings (an extraordinary matter in itself), there are really only two economic stakeholders impacted by any DIP proposal – Cargill in respect of approximately \$35 million and the Noteholders in respect of approximately \$269 million. In other words, the Noteholders are prejudiced to the factor of more than 7 times by a Cargill DIP than the reverse. The Company must answer for how it intends to balance these interests given that the approval of a DIP from Cargill in these circumstances would be entirely unprecedented under Canadian law.



As we have previously advised, the Court will also be focused on scrutinizing matters where the proposed DIP lender wears multiple "hats" in relation to the situation and/or otherwise seeks to use its DIP financing for its own collateral benefit and not for the sole benefit of the Company and all of its stakeholders. With respect to Cargill (including affiliated and related entities), we note again that: (i) it is the counterparty to the Offtake Agreement; (ii) it is a technical advisor to the Company and its employees have been working and continue to work onsite at Tacora's operations; (iii) it is a direct and indirect equityholder of the Company; (iv) it is a creditor through various financing arrangements; (v) it has recently employed the former COO of the Company as "Customer Manager" of its Metals Business; and (vi) it has had a representative on the Board for several years, including at various times when it has considered and made decisions regarding matters involving Cargill, such as when material amendments were made to the Offtake Agreement which ultimately resulted in additional economic benefits to Cargill. All of these factors call into question whether it would be appropriate for Cargill to provide DIP financing to the Company over the objections of the Company's largest secured creditors. In addition, we believe that it is clear that Leon Davies, Cargill's employee on the Board, is required to recuse himself from any discussion and decision in connection with a DIP provided by Cargill.

### **A DIP from Cargill Is a Bridge to Nowhere**

Any DIP provided by Cargill would serve only to frustrate a robust process to seek to recapitalize Tacora in a manner that frees it from Cargill's improper influence over Tacora through, among other things, its off market Offtake Agreement. Cargill's DIP is inevitably a road to nowhere since any proposal concerning a restructuring of Tacora which does not have the support of the Ad Hoc Group is doomed to fail. The fact that Cargill has again been able to manipulate the Company given its past and recent conduct (including as described in our letter of September 28, 2023 (which is attached hereto at **Appendix "B"**)), solidifies the Ad Hoc Group's lack of confidence that the management of the Company and the Board are acting in the best interests of the Company itself (rather than Cargill) and consistent with their fiduciary duties.

In addition to the above, our clients have substantial concerns that, for reasons that have nothing to do with the maximization of the value of the Company, management does not share its desire to ensure that a robust solicitation process is engaged on an expedited basis. While examples of this include the refusal of the Company to even provide the forms of NDA that will be sought from interested parties, our clients fully expect that the records of the Company and its personnel will disclose the true motivations of management for its intransigence in the event that the Company continues to prefer the interests of Cargill over its creditors.

For all of the aforementioned reasons, we believe that any attempt by the Company to seek Court approval of a DIP provided by Cargill is doomed to fail. As summarized in our letter to the Company dated September 28, 2023, while the Ad Hoc Group continues to approach matters in good faith, there has been no indication that Cargill is prepared to do so based on its recent conduct. Cargill has shown itself to be a poor and completely self-interested partner to the Company, as evidenced by the September 8, 2023 demand letter the Company was forced to issue to Cargill for non-payment of



critical amounts that were past due. That, in and of itself, should demonstrate to the Company that Cargill is not an appropriate DIP provider.

In contrast, given the secured interests of the Ad Hoc Group, it is clear that the Ad Hoc Group is able to execute a comprehensive recapitalization of Tacora by way of credit bid – which we have disclosed to you for weeks. There is no evidence at all that Cargill will do this, and any decision by the Company to bind itself to a road to nowhere – while definitely adding additional cost, delay and uncertainty to the Company – will not change that outcome.

### **Preservation of Documents**

To the extent the Cargill Proposal is accepted, the Company should expect the CCAA proceedings to be contested and inevitable litigation against Cargill (among others). Accordingly, the Company and its directors and officers should take immediate steps to ensure that they preserve the following documents:<sup>2</sup>

- Any communications, analyses, presentations or other documents relating to respect to:
  - The Offtake Agreement, including without limitation any communications between Cargill and the Company or concerning modifications thereto in connection with a restructuring of the Company;
  - The OPA;
  - The APF;
  - The Preferred Equity;
  - The Wetcon Purchase Agreement;
  - Any proposals, whether proposed internally or externally, to amend or modify any of the Offtake Agreement, the OPA, the APF, Wetcon Purchase Agreement or the Preferred equity;
  - All hedging arrangements;
  - The restructuring of the Company, including the possibility of the Company filing for protection under the CCAA (specifically including, without limitation, any communications between Joe Broking and Leon Davies); and

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<sup>2</sup> The term "documents" should be construed in accordance with section 30.01(1) of the Ontario *Rules of Civil Procedure*. Documents within the scope of this hold must be preserved wherever they may be located. Please retain all copies, whether in draft or final form, and whether or not duplicative of other documents. No documents may be destroyed or overwritten, even if they otherwise would be in the ordinary course of business. "Retain" means do not alter or delete. We also ask that you suspend any document destruction policy with regard to any documents that may be covered by this retention request.



- Any proposal by Cargill to provide DIP financing to the Company.
- All invoices, documents, communications, and analyses related to hedging arrangements, including the \$15,000,000 Floor Price Premium in the APF.
- All invoices, documents, communications, and analyses related to the Offtake Agreement and the OPA, including demurrage, shipping charges, bills of lading, and other documents used to derive pricing, payments and profit sharing.
- All Board meeting minutes, materials, and resolutions, including but not limited to any documentation (including board minutes and associated resolutions) regarding Board meetings attended by any Cargill representatives, or related to any board member's potential recusal from any decision made by the Board.

Please confirm in writing that the Company and its advisors are taking all necessary steps to preserve the documents referenced herein and any other potentially relevant documents. In order to maintain an appropriate record going forward, the Ad Hoc Group also requests that the Company ensure there is a court reporter present at any hearing for an initial order and amended and restated initial order under the CCAA.

As you will note below, we have copied this letter to FTI in its capacity as financial advisor to the Company and the proposed CCAA Monitor. Our clients fully expect that any pre-filing report that it may file in connection with any CCAA proceedings with a Cargill DIP specifically address the concerns laid out in this and our prior correspondence and explain in specific detail the basis upon which it makes any recommendation to the Court to approve the Cargill DIP. This would include, but not be limited to, its assessment of the economic and other benefits accruing to Cargill from the continued existence of its contractual arrangements so that the Court has a better record on which to decide any motion to approve a Cargill DIP.

The Ad Hoc Group looks forward to finalizing and executing the AHG DIP with the Company as soon as possible and reserves all rights and remedies available to it in the circumstances.

Yours truly,



Richard B. Swan

cc: Kevin Zych, Sean Zweig & Mike Shakra – Bennett Jones LLP  
Sidney Levinson & Erica Weisgerber – Debevoise & Plimpton LLP  
Michael Nessim, Usman Masood & Chetan Bhandari – Greenhill & Co., LLC  
Michael Sellinger & Michael Kizer – GLC Advisors & Co, LLC



October 6, 2023

Page 6

Nigel Meakin – FTI Consulting Canada Inc.  
Ryan Jacobs & Jane Dietrich – Cassels Brock & Blackwell LLP  
Noteholder Steering Committee



## Appendix "A"

# Stikeman Elliott

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON Canada M5L 1B9

Main: 416 869 5500  
Fax: 416 947 0866  
www.stikeman.com

Lee Nicholson  
Direct: (416) 869-5604  
leenicholson@stikeman.com

September 8, 2023

**By E-mail (rchadwick@goodmans.ca)**

Goodmans LLP  
Bay Adelaide Centre - West Tower  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: Robert Chadwick

Dear Sir:

**Re: Tacora Resources Inc.**

As you know, we represent Tacora Resources Inc. ("**Tacora**" or the "**Company**").

The Company and Cargill International Trading Pte. Ltd ("**Cargill**") are parties to Restatement #1 of the Iron Ore Sale and Purchase Contract dated November 9, 2018 and the Iron Ore Stockpile Purchase Agreement dated December 17, 2019 (the "**Agreements**"). The Company shipped 63,400 dry metric tonnes of iron ore concentrate (the "**Product**") during the week of August 27, 2023 to the stockpile located at the Port of Sept-Îles in accordance with the Agreements. Pursuant to the Agreements, 53,427 dry metric tonnes of the Product was considered delivered (the "**Delivered Product**"). The Company sent an invoice for the Delivered Product to Cargill on September 5, 2023 (the "**Invoice**"). We understand that during discussions with the Company, Cargill communicated that they are not able to pay the Invoice without approval from Cargill senior management and to date payment for the Invoice has not been received in breach of the contractual terms of the Agreements. We also understand that you confirmed during a discussion with FTI Consulting Canada Inc. on September 8, 2023 that Cargill did not presently intend on making payment.

We remind you that Section 2.1 of Advance Payment Facility Agreement dated May 29, 2023 between Tacora and Cargill (as amended, the "**APF**") provides that "[u]ntil the Termination Date, the Buyer shall pay the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement and such deliveries shall not be credited against the outstanding balance of the funded Original Advances." Further, Section 11 provides that Cargill may set off amounts owing by Cargill to Tacora *only* upon an Event of Default. The Termination Date has not occurred nor has any Event of Default. Accordingly, Cargill is in breach of both the Agreements and the APF.

We reiterate the demand that Cargill immediately pay the Invoice and also confirm that Cargill will pay for any additional Product delivered to the stockpile in accordance with the Agreements. By taking these actions Cargill is further exacerbating the Company's dire liquidity position and jeopardizing its ability to continue operating in the ordinary course to the detriment of all stakeholders.

If Cargill fails to immediately pay the Invoice and provide the above confirmation, Tacora reserves all rights, remedies and claims as against Cargill for any losses suffered by the Company.

# Stikeman Elliott

2

Yours truly,

A handwritten signature in black ink, appearing to read "L. Nicholson". The signature is fluid and cursive, with a large initial "L" and a distinct "N".

Lee Nicholson

LN/

cc. A. Taylor, Stikeman Elliott LLP  
J. Broking and H. Vuong, Tacora  
N. Meakin, FTI Consulting Canada Inc.

## Appendix "B"



**Bennett Jones**

**Bennett Jones LLP**  
3400 One First Canadian Place, P.O. Box 130  
Toronto, Ontario, M5X 1A4 Canada  
T: 416.863.1200  
F: 416.863.1716

**Sean Zweig**  
**Partner**  
Direct Line: 416.777.6254  
e-mail: zweigs@bennettjones.com

September 28, 2023

**Sent via Email**

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario  
M5L 1B9

Attention: John Ciardullo, Ashley Taylor and Lee Nicholson

Dear Sirs:

**Re: Tacora Resources Inc. ("Tacora" or the "Company")**

As you know, the Company and its primary financial stakeholders have been engaged in discussions concerning a potential financial recapitalization of the Company for over nine months. Such discussions have intensified in recent weeks and substantial time and financial expense have been incurred against the backdrop of the Company's continuing deteriorating financial condition.<sup>1</sup>

While a framework for consensual commercial resolution was arrived at on September 12, 2023 (as evidenced in the PowerPoint term sheet prepared by the Company's financial advisor), resolution has been thwarted (perhaps irreparably) as a result of the re-trades and other steps taken by Cargill to seek to leverage its multifaceted relationship and existing contractual arrangements to the detriment of the Company and its stakeholders. While such matters are readily demonstrable (and have been documented and provided to the Company and its advisors), given the without prejudice nature of the discussions, they are not outlined herein as our intention is for this letter to form part of the record against which decisions made by the Company will be judged. Suffice it to say that our clients believe that Cargill has not acted in good faith and it would be unrealistic for the Company to think otherwise.

While our clients will continue to approach matters in good faith, there has been no indication that Cargill is prepared to do so – as the Company itself should surmise based on Cargill's conduct. Accordingly, our clients believe the Company must take steps to ensure that it does not find itself in a position where Cargill can further prejudice the financial position of the Company. This includes avoiding a situation where Cargill fails to make timely full payment to the Company for iron ore product that has already been shipped. This is by no means an idle concern on their part as Cargill has

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to them in previous correspondence from the Ad Hoc Group to the Company.

September 28, 2023

Page 2

done precisely that as evidenced by the demand letter the Company issued to Cargill on September 8, 2023 (the "**Demand Letter**").

Given the Company's continuing deteriorating financial condition, it is incumbent (and legally required) that the Company and the Board make clear-eyed decisions which give due consideration to not only its current financial condition, but also the conduct of the parties to date in assessing whether it is appropriate to manage liquidity in the near term to the long-term detriment of the Company and its stakeholders in the "hope" that a consensual resolution is forthcoming. Hope is obviously not a strategy and it would be a breach of applicable duties to "burn the furniture" to "manage" liquidity (such as, for example, by deferring critical plant maintenance and/or harming relations with critical suppliers – particularly given the geographic remoteness of the Wabush mine) on a strategy based on hope when the facts provide no basis to do so and in fact clearly point to the contrary.

Our clients have been "hopeful" for a consensual resolution for nine months. However, they have reluctantly accepted the reality that the record – based both on without prejudice negotiations and the actions of Cargill which necessitated the issuance of the Demand Letter by the Company – would inexorably lead any reasonable businessperson to conclude that a definitive date for the execution of a contingency plan under the CCAA needs to be determined and communicated and that the determination of that date should be done without regard to whatever time it could be extended to by taking steps which are to the long-term detriment of the Company.

We request that a copy of this letter be provided to the Board forthwith.

Yours truly,

**BENNETT JONES LLP**

DocuSigned by:  
  
65B6BE2E814144E...  
Sean H. Zweig

c: Kevin Zych & Mike Shakra – Bennett Jones LLP  
Sidney Levinson & Erica Weisgerber – Debevoise & Plimpton LLP  
Michael Nessim, Usman Masood & Chetan Bhandari – Greenhill & Co., LLC  
Michael Sellinger & Michael Kizer – GLC  
Noteholder Steering Committee



**THIS IS EXHIBIT "J" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

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**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

## Thomas Gray

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**Subject:** RE: T - DIP  
**Attachments:** Tacora - DIP Loan Agreement.DOCX; Redline - Tacora - DIP Loan Agreement (Execution) and Tacora - DIP Loan Agreement-35260765-v22.pdf  
**DocstoreMailItemId:** 39ef13b0-35c5-447b-9586-ad96bb26152b

**From:** Thomas Gray  
**Sent:** Sunday, October 8, 2023 11:43 AM  
**To:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; Lee Nicholson <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>; Mike Shakra <[ShakraM@bennettjones.com](mailto:ShakraM@bennettjones.com)>  
**Cc:** Ashley Taylor <[ATAYLOR@stikeman.com](mailto:ATAYLOR@stikeman.com)>; Philip Yang <[PYang@stikeman.com](mailto:PYang@stikeman.com)>; Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>; Nigel Meakin <[Nigel.Meakin@fticonsulting.com](mailto:Nigel.Meakin@fticonsulting.com)>; 'Tundra-GLC' <[Tundra-GLC@glca.com](mailto:Tundra-GLC@glca.com)>; 'Tundra-Counsel' <[Tundra-Counsel@glca.com](mailto:Tundra-Counsel@glca.com)>; Ryan Jacobs - Cassels ([rjacobs@cassels.com](mailto:rjacobs@cassels.com)) <[rjacobs@cassels.com](mailto:rjacobs@cassels.com)>; Dietrich, Jane <[jdietrich@cassels.com](mailto:jdietrich@cassels.com)>; Porepa, Jodi <[Jodi.Porepa@fticonsulting.com](mailto:Jodi.Porepa@fticonsulting.com)>  
**Subject:** RE: T - DIP

Further to the below, please see attached the revised draft, along with a redline to the version from September.

Thanks,

Thomas

**Thomas Gray**  
Associate, Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. 416 777 7924 | F. 416 863 1716  
[BennettJones.com](http://BennettJones.com)



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**From:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Sent:** Sunday, October 8, 2023 10:23 AM  
**To:** Lee Nicholson <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>; Mike Shakra <[ShakraM@bennettjones.com](mailto:ShakraM@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>  
**Cc:** Ashley Taylor <[ATAYLOR@stikeman.com](mailto:ATAYLOR@stikeman.com)>; Philip Yang <[PYang@stikeman.com](mailto:PYang@stikeman.com)>; Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>; Nigel Meakin <[Nigel.Meakin@fticonsulting.com](mailto:Nigel.Meakin@fticonsulting.com)>; 'Tundra-GLC' <[Tundra-GLC@glca.com](mailto:Tundra-GLC@glca.com)>; 'Tundra-Counsel' <[Tundra-Counsel@glca.com](mailto:Tundra-Counsel@glca.com)>; Ryan Jacobs - Cassels ([rjacobs@cassels.com](mailto:rjacobs@cassels.com)) <[rjacobs@cassels.com](mailto:rjacobs@cassels.com)>; Dietrich, Jane <[jdietrich@cassels.com](mailto:jdietrich@cassels.com)>; Porepa, Jodi <[Jodi.Porepa@fticonsulting.com](mailto:Jodi.Porepa@fticonsulting.com)>  
**Subject:** RE: T - DIP

We just finished our client call. For convenience, Thomas will send a revised draft shortly reflecting the changes we are prepared to make. We will include a blackline against the Sept 12 version.

We also understand that GLC is reaching out to Greenhill to finalize the cash flow.

Thanks.

**Sean Zweig**

Partner\*, Bennett Jones LLP

\*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

BennettJones.com



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**From:** Lee Nicholson <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>

**Date:** Saturday, Oct 07, 2023 at 9:16 PM

**To:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>, Mike Shakra <[ShakraM@bennettjones.com](mailto:ShakraM@bennettjones.com)>, Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>

**Cc:** Ashley Taylor <[ATAYLOR@stikeman.com](mailto:ATAYLOR@stikeman.com)>, Philip Yang <[PYang@stikeman.com](mailto:PYang@stikeman.com)>, Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>, Nigel Meakin <[Nigel.Meakin@fticonsulting.com](mailto:Nigel.Meakin@fticonsulting.com)>, 'Tundra-GLC' <[Tundra-GLC@glca.com](mailto:Tundra-GLC@glca.com)>, 'Tundra-Counsel' <[Tundra-Counsel@glca.com](mailto:Tundra-Counsel@glca.com)>, Ryan Jacobs - Cassels <[rjacobs@cassels.com](mailto:rjacobs@cassels.com)> <[rjacobs@cassels.com](mailto:rjacobs@cassels.com)>, Dietrich, Jane <[jdietrich@cassels.com](mailto:jdietrich@cassels.com)>, Porepa, Jodi <[Jodi.Porepa@fticonsulting.com](mailto:Jodi.Porepa@fticonsulting.com)>

**Subject:** RE: T - DIP

Sean –

Thank you for your note.

1. We understand from Nigel that the changes the Ad Hoc Group is willing to make from the issues list that we provided yesterday early afternoon are: (i) provide that the Monitor may consider any adverse impact on the solicitation process in connection with an assignment; and (ii) provide that Expenses will be paid from the First Advance rather than in advance. Please confirm.
2. Please confirm whether the Ad Hoc Group is willing to increase the size of the DIP facility as follows:
  - a. US\$109.5 million available under Tranche 1 and 2, split 60/40 between Tranche 1 and 2, respectively, in accordance with your September 12 DIP Term Sheet; and/or
  - b. US\$18.85 million available under Tranche 3
3. Please confirm whether the timing of draws may occur in accordance with the DIP Budget provided by Greenhill today at 11:46 a.m., and whether such DIP Budget is acceptable to the Ad Hoc Group.

Subject to the above, we understand the Ad Hoc Group's position. However, we disagree with certain characterizations in your email below. As previously communicated, the advisors to the Company were available yesterday and today, on Canadian Thanksgiving, to discuss any remaining issues in order for the Ad Hoc Group to make an informed decision on whether to make any revisions to their proposal. Additionally, the vast majority of the issues raised in the list sent yesterday have been previously discussed with the Ad Hoc Group's advisors, including when we were finalizing the September 12 DIP Term Sheet. The Company intends to consider the proposals submitted and make a decision based on what we have received by the deadline we communicated on Thursday.

We appreciate the Ad Hoc Group being willing to continue to stand behind their previous proposal, subject to the revisions outlined above.

Thank you,

Lee

Lee Nicholson

Direct: +1 416 869 5604

Mobile: +1 647 821 1931

Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

If you do not wish to receive our email marketing messages, please **unsubscribe**.

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**From:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>

**Sent:** Saturday, October 7, 2023 4:47 PM

**To:** Lee Nicholson <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>; Mike Shakra <[ShakraM@bennettjones.com](mailto:ShakraM@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>

**Cc:** Ashley Taylor <[ATAYLOR@stikeman.com](mailto:ATAYLOR@stikeman.com)>; Philip Yang <[PYang@stikeman.com](mailto:PYang@stikeman.com)>; Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>; Nigel Meakin <[Nigel.Meakin@fticonsulting.com](mailto:Nigel.Meakin@fticonsulting.com)>; 'Tundra-GLC' <[Tundra-GLC@glca.com](mailto:Tundra-GLC@glca.com)>; 'Tundra-Counsel' <[Tundra-Counsel@glca.com](mailto:Tundra-Counsel@glca.com)>

**Subject:** RE: T - DIP

All,

As you know, the Ad Hoc Group has met all of the timelines set by the Company throughout. However, we will not be able to provide a binding executed offer by 5pm today as requested. It is not for lack of effort.

New items were provided on the cash flow last night/overnight, we received a significant rewrite to the sale process after 10am today, we do not yet have revised versions of the Orders reflecting the "Cargill Charge", etc, etc. Also, we have a number of DIP Lenders, many of which are travelling for Columbus Day.

We continue to stand behind our Sept 12 DIP, as needs to be amended slightly for the delay in the filing, etc. Our clients are also prepared to discuss certain other changes, but not within these timing constraints. We and our clients are prepared to work in good faith to resolve outstanding matters on the cash flow, etc. Also, as just discussed with Nigel, there are certain more minor things in the "Issues List" from yesterday that we are likely able to accept.

To be clear, the Ad Hoc Group is still committed to assisting the company and providing the DIP previously agreed.

We are available to discuss.

**Sean Zweig**

*Partner\**, Bennett Jones LLP

\*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

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**THIS IS EXHIBIT "K" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

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**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

~~EXECUTION VERSION~~

**DIP LOAN AGREEMENT**

Dated as of ~~September 11~~ October 8, 2023

WHEREAS the Borrower (as defined below) has requested that the DIP Lenders (as defined below) provide financing to fund certain obligations of the Borrower in the context of its anticipated proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA", and such proceeding, the "CCAA Proceedings") before the Ontario Superior Court of Justice (Commercial List) (the "Court") in accordance with the terms and conditions set out in this agreement (this "DIP Agreement");

NOW THEREFORE the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Tacora Resources Inc. (the "**Borrower**").
2. **DIP LENDERS:** (i) Brigade Capital Management, LP;  
(ii) Concise Capital Management LP;  
(iii) ~~CrossingBridge Advisors, LLC~~;  
(iv) Millstreet Capital Management LLC;  
(v) MSD Partners, LP;  
(vi) O'Brien-Staley Partners; and  
(vii) Snowcat Capital Management, LP,  
  
(collectively, in such capacity, the "**DIP Lenders**") on behalf of the parties listed in the signature pages hereto.
3. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Agreement have the meanings given thereto in **Schedule "I"** hereto.
4. **PURPOSE:** As set out in Section 21(e) of this DIP Agreement or as otherwise indicated herein.
5. **DIP FACILITY AND MAXIMUM AMOUNT** A super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") up to a maximum principal amount of \$~~13,850,000~~ 119,005,000 (the "**Maximum Amount**").  
  
The DIP Facility shall be split into three tranches that in aggregate total the Maximum Amount:
  - Tranche 1 - \$~~60,000,000~~  
65,155,000 ("**Tranche 1**")
  - Tranche 2 - \$40,000,000

("Tranche 2")

- Tranche 3 - \$13,850,000  
("Tranche 3")

For greater certainty, any interest, expenses or fees that are capitalized and added to the principal amount owing hereunder as contemplated by the terms hereof shall not constitute part of the Maximum Amount, and the Borrower is and shall be permitted to borrow up to the Maximum Amount without taking into account any such capitalized amounts, subject to the terms and conditions hereof.

Advances under the DIP Facility shall be made in accordance with Section 10 of this DIP Agreement.

**6. REPAYMENT:**

The aggregate principal amount owing under the DIP Facility, all accrued and unpaid interest, all fees (including, without limitation, the Backstop Fee (as defined below)) and reasonable and documented expenses incurred by the DIP Lenders (including, without limitation, the Expenses (as defined below)), and all other obligations of the Borrower to the DIP Lenders under or in connection with the CCAA Proceedings, this DIP Agreement, the DIP Facility or any other definitive security or other documents, agreements, registrations, financing statements and instruments in respect of the DIP Facility (collectively, the "**DIP Obligations**") shall be repaid in full on the earliest to occur of: (i) the occurrence of any Event of Default hereunder that has not been cured or waived in writing by the DIP Lenders and in respect of which the Borrower was provided prior written notice by the DIP Lenders of such Event of Default; (ii) the closing of one or more sale transactions for all or substantially all of the assets or shares in the capital of the Borrower approved by an order of the Court, including in connection with the Solicitation Process (as defined below); (iii) the implementation by the Borrower of a plan of compromise or arrangement in accordance with the CCAA and any Court Orders (as defined below); (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (v) ~~September 7~~October 10, 2024 (the earliest of such dates being the "**Maturity Date**"). Provided that there is no Event of Default hereunder which is continuing, the Maturity Date may be extended at the request of the Borrower, following consultation with FTI Consulting Canada Inc., in its capacity as proposed court-appointed monitor (as appointed in such capacity, the "**Monitor**"), and with the prior written consent of

each of the DIP Lenders, in their sole discretion, for such period and on such terms and conditions as the Borrower (in consultation with the Monitor) and the DIP Lenders may agree.

The commitment in respect of the DIP Facility shall expire automatically on the Maturity Date (unless extended according to the terms hereunder) and all DIP Obligations shall be repaid in full on the Maturity Date (or extended Maturity Date), without the DIP Lenders being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and/or that the DIP Obligations are due and payable.

All payments received by the DIP Lenders shall be applied first to any fees and expenses due hereunder (including, without limitation, the Expenses), then to accrued and unpaid interest and then, after all such fees, expenses and interest are brought current, to principal, provided, however, that any amounts applied by the Borrower to repay DIP Obligations shall go first to satisfy in full the DIP Obligations owing to non-Defaulting Lenders, then to the DIP Obligations, if any, owing to Defaulting Lenders.

It is acknowledged that some or all of the DIP Obligations may be satisfied by the DIP Lenders "credit bidding" such DIP Obligations, with the prior written consent of the Required DIP Lenders, for some or all of the assets of the Borrower pursuant to the Solicitation Process to be implemented in the CCAA Proceedings, in the Required DIP Lenders' sole discretion and subject to approval by the Court.

7. **EXIT FINANCING:** If requested by the Borrower, the DIP Lenders may, with the prior written consent of the Required DIP Lenders, in their sole discretion, and with the consent of the Borrower (in consultation with the Monitor), convert any or all of the DIP Obligations outstanding on the Maturity Date into exit financing having terms and conditions satisfactory to the DIP Lenders and the Borrower.
8. **CASH FLOW PROJECTIONS:** The Borrower, in consultation with the Monitor in the CCAA Proceedings, has provided to the DIP Lenders the cash flow projections attached at Schedule "A" hereto, which are in form and substance satisfactory to the DIP Lenders and which are to be filed with the Court, reflecting the projected cash requirements of the Borrower for the ~~46~~<sup>20</sup>-week period from ~~September 10~~the week ending October 15, 2023, through the ~~period~~week ending ~~December 31~~February 25, 2023~~2024~~, calculated on a weekly basis (together with the back-up

information requested and received by the DIP Lenders, the "**Cash Flow Projection**").

The Borrower shall keep the DIP Lenders and the Monitor apprised of its cash flow requirements by providing: (i) an updated rolling Cash Flow Projection (which shall include all reasonable backup information requested by the DIP Lenders) by no later than 5:00 p m. (Eastern Time) on the Friday of each week ending after the week in which the First DIP Advance (as defined below) occurs, such updated cash flow projection to be in a form consistent with the Cash Flow Projection (a "**Proposed Amended Cash Flow Projection**"), provided that the Borrower (in consultation with the Monitor), at its option, may provide a Proposed Amended Cash Flow Projection on a more frequent basis, but in any event, not more than twice in any calendar week; and (ii) on a weekly basis, a report showing on a line-by-line basis (a) the cumulative actual receipts and disbursements for the preceding period and (b) the cumulative variances from the amounts in the DIP Agreement Cash Flow Projection (as defined below) and noting therein all variances on a line by line basis from the amounts in the DIP Agreement Cash Flow Projection, with reasonably detailed explanations for all material variances, such information described in this clause (ii) to be delivered to the DIP Lenders and Monitor weekly by no later than 5:00 p m. (Eastern Time) on the Friday of each week.

The Proposed Amended Cash Flow Projection shall be considered the DIP Agreement Cash Flow Projection unless the Majority DIP Lenders determine that the Proposed Amended Cash Flow Projection is not acceptable and deliver a written objection to the Borrower with a copy to the Monitor within three (3) Business Days of receipt thereof, stating that the Proposed Amended Cash Flow Projection is not acceptable and setting out the reasons why such Proposed Amended Cash Flow Projection is not acceptable. In such case the prior Cash Flow Projection shall remain in effect.

At any given time, the cash flow projection in force and effect (whether the Cash Flow Projection or any subsequent Proposed Amended Cash Flow Projection) shall be the "**DIP Agreement Cash Flow Projection**".

For greater certainty, the DIP Lenders shall not be required to initiate any DIP Advances pursuant to a Proposed Amended Cash Flow Projection, nor is the Borrower entitled to utilize any DIP Advance to make payments set out in a Proposed

Amended Cash Flow Projection, unless and until it has become effective as the DIP Agreement Cash Flow Projection in accordance with this Section 8.

The proceeds of each DIP Advance shall be used (i) by the Borrower solely in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (as defined below), or as may otherwise be agreed to in writing by the Required DIP Lenders, from time to time.

Notwithstanding anything to the contrary herein, unless the Required DIP Lenders consent in advance in writing, the Borrower shall be prohibited from using the proceeds of any DIP Advance to pay: (i) any expenses that are not of a type of expense that falls within an expense line-item contained in the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (and for certainty including the exceptions contained therein); (ii) professional fees of the Borrower or any other party to contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the DIP Lenders on any Court Order with respect to the validity or enforceability of the DIP Obligations, the DIP Agreement or any Order contemplated by the DIP Agreement; (iii) subject to the preceding subsection (ii), the professional fees of any party, except for such professional fees incurred for and on behalf of the Borrower, the Monitor and the DIP Lenders (as defined below); and (iv) any amounts outstanding as at the date of commencement of the CCAA Proceedings, including without limitation, any amounts owing to trade creditors and other lenders.

For the purposes of this DIP Agreement, “**Permitted Variance**” shall mean an adverse variance of not more than 10% of any disbursement line item in the DIP Agreement Cash Flow since the beginning of the period covered by the DIP Agreement Cash Flow Projection starting on the start date of the initial Cash Flow Projection referred to in the first paragraph of this Section 8 above; provided, however that: (i) the Permitted Variance calculation shall not take into account (a) the professional advisory fees (including the fees of counsel and a financial advisor) of the Borrower and the Monitor, (b) the Expenses, (c) the fees and expenses of the DIP Lenders; and (d) costs related to pre-existing compensation arrangements paid to employees based on production of the Scully mine; and (ii) an exceedance of the Permitted Variance by the Borrower only one time during any consecutive four week period beginning on the date the Initial Order is granted

shall not result in an Event of Default.

**9. TRANCHE 3 USE  
AND DRAW CONDITIONS**

Notwithstanding any other provisions of this DIP Agreement, amounts funded pursuant to Tranche 3 may only be used to fund: (i) required margin payments due under the Offtake Agreement; or (ii) the purchase of hedges ("**Margin or Hedge Services**").

Prior to purchasing or making any payment for Margin or Hedge Services, the Borrower and its financial advisor shall request: (a) a quote for pricing of such Margin or Hedge Services from Cargill; and (b) a quote for pricing of such Margin or Hedge Services from an independent third-party who provides such services.

The Borrower shall not purchase any Margin or Hedge Services without the consent of the Monitor. For greater certainty, Margin or Hedge Services does not include required margin payments due under the Offtake Agreement, provided that the amount of any such margin payment must be approved by the Monitor.

**10. ADVANCES UNDER  
DIP FACILITY:**

Pursuant to the terms and conditions of this DIP Agreement, the DIP Lenders shall, on a several basis, advance the following disbursements as draws against the Maximum Amount (each of the below, a "**DIP Advance**"):

- (a) A first advance in the aggregate amount of ~~\$28,000,000~~ 17,471,000 ("**First DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such First DIP Advance to be advanced not later than one (1) Business Day (as defined below) following the satisfaction of each of the conditions to the First DIP Advance set out in Section 13 of this DIP Agreement. The First DIP Advance shall be composed of: (i) ~~\$13,800,000~~ 7,727,146 of funding from Tranche 1; (ii) ~~\$9,200,000~~ 4,743,854 of funding from Tranche 2; and (iii) \$5,000,000 of funding from Tranche 3;
- (b) A second advance in the amount of ~~\$53,850,000~~ 73,783,000 ("**Second DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Second DIP Advance to be advanced not later than one (1) Business Day following the satisfaction of each of the conditions to the Second DIP Advance set out in Section 13 of this

DIP Agreement. The Second DIP Advance shall be composed of: (i) ~~\$27,000,000~~40,233,081 of funding from Tranche 1; (ii) ~~\$18,000,000~~24,699,919 of funding from Tranche 2; and (iii) \$8,850,000 of funding from Tranche 3. Tranche 1 and Tranche 2 shall be adjusted downward to the extent the KERP is paid later in the CCAA proceedings or upon exit from the CCAA proceedings, with a commensurate increase to the Third DIP Advance or Fourth DIP Advance;

- (c) A third advance in the amount of ~~\$25,000,000~~24,272,000 ("Third DIP Advance") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Third DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Third DIP Advance set out in Section 13 of this DIP Agreement. The Third DIP Advance shall be composed of: (i) ~~\$15,000,000~~15,039,153 of funding from Tranche 1; and (ii) ~~\$10,000,000~~9,232,847 of funding from Tranche 2; and
- (d) A fourth advance in the amount of ~~\$7,000,000~~3,479,000 ("Fourth DIP Advance") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Fourth DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Fourth DIP Advance set out in Section 13 of this DIP Agreement. The fourth DIP Advance shall be composed of: (i) ~~\$4,200,000~~2,155,620 of funding from Tranche 1; and (ii) ~~\$2,800,000~~1,323,380 of funding from Tranche 2.

## 11. BACKSTOP COMMITMENT

Each DIP Lender shall fund a portion of each DIP Advance equal to its Applicable Percentage of such DIP Advance.

The DIP Lenders shall, jointly and severally, backstop the DIP Financing Commitment of each other DIP Lender (each, a "Backstop Commitment"), such that if any DIP Lender shall fail to (x) fund its Applicable Percentage of any DIP Advance or (y) fund on a Pro Rata basis a Backstop Advance (collectively, a "Defaulting Lender Funding Obligation") (each such defaulting DIP Lender, a "Defaulting Lender"),

each other DIP Lender which is not a Defaulting Lender shall, within: (A) one (1) Business Day of receiving written notice of failure to fund from the Borrower in respect of the First DIP Advance or Second DIP Advance, or (B) three (3) Business Days of receiving written notice of failure to fund from the Borrower in respect of the Third DIP Advance and Fourth DIP Advance, fund on a Pro Rata basis by way of a Backstop Advance each such Defaulting Lender Funding Obligation in accordance with this Section ~~+211~~ of this DIP Agreement.

## 12. SOLICITATION PROCESS MILESTONES:

The following milestones in respect of the Solicitation Process must be satisfied by the Borrower or such later dates as may be agreed by the Borrower, the Majority DIP Lenders and the Monitor (each a "Solicitation Process Milestone" and collectively, the "Solicitation Process Milestones"):

- (a) The Solicitation Process Order must be obtained by October ~~327~~, 2023 and the Solicitation Process must commence no later than October ~~430~~, 2023, ~~but, for greater certainty, the Borrower and the DIP Lenders shall use commercially reasonable efforts to obtain the Solicitation Process Order prior to the Second DIP Advance;~~
- (b) The deadline for the receipt of non-binding letters of intent: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "Sale LOI"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "Alternative Offtake or Services LOI"), must be no later than ~~December 30~~, 2023;
- (c) Final deadline for the receipt of binding bids: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "Sale Binding Bid"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "Alternative Offtake or Services Binding Bid"), must be no later than ~~December 15, 2023~~ January 19, 2024; and
- (d) Closing of transaction(s) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "Sale Transaction"); and/or (ii) in respect of an offtake, services or other agreement in respect of the Borrower's business (an "Alternative Offtake or

Services Transaction"), must occur no later than ~~Jan~~ February 15, 2024.

The Borrower agrees that the DIP Lenders may submit a "stalking horse" bid for a sale of or investment in all or substantially all of the Borrower's assets or its business pursuant to the Solicitation Process. The Solicitation Process Order shall provide that the Borrower shall have the right to seek approval by the Court of a "stalking horse" bid any time prior to the deadline for Sale LOIs and Alternative Offtake or Services LOI.

**13. CONDITIONS  
PRECEDENT TO DIP  
FACILITY  
ADVANCES:**

**A. CONDITIONS TO FIRST DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the First DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the Initial Order (as defined below) at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, which material documents shall include the proposed Initial Order, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.
- (b) The Court shall have issued on or before October 10, 2023 an initial order in substantially the form attached as Schedule "C" hereto with such additional changes reasonably acceptable to the Borrower, Majority DIP Lenders and Monitor (the "**Initial Order**"), the effect of which shall, among other things, authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge (as defined below) securing the principal amount of the First DIP Advance, plus interest, fees and expenses payable pursuant to this DIP Agreement, and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such

Initial Order shall have been obtained on notice to such parties required by the Required DIP Lenders;

- (c) Delivery to the DIP Lenders, with a copy to the Monitor, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (d) The Initial Order shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (e) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the First DIP Advance;
- (f) No Material Adverse Change shall have occurred since the date hereof;
- (g) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the First DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for Permitted Priority Liens;
- (i) ~~All~~ **Arrangements have been made to pay** Expenses for which invoices have been provided to the Borrower ~~shall have been paid, or arrangements satisfactory to from~~ the **Required First** DIP Lenders ~~shall have been made to pay such amounts~~ **Advance on the next business day after receipt of the First DIP Advance;**
- (j) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in

existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute.

- (k) The Borrower shall be in compliance with all Court Orders.

**B. CONDITIONS TO SECOND DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Second DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the ARIO and the Solicitation Process Order at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, which material documents shall include the proposed ARIO, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.
- (b) The Court shall have issued an amended and restated Initial Order in substantially the form set out in **Schedule "D"** hereto, with such additional changes reasonably acceptable to the Borrower, Required DIP Lenders and Monitor (the "ARIO") the effect of which, among other things, is to authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge securing the principal amount of \$113,850,000 and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such ARIO shall have been obtained on notice to all parties entitled thereto pursuant to the CCAA or otherwise required by the Required DIP Lenders;
- (c) The Borrower shall have used commercially

reasonable efforts to have obtained a Court Order in form and substance acceptable to the Required DIP Lenders (the "**Solicitation Process Order**") approving a sale, investment and offtake agreement solicitation process (the "**Solicitation Process**") as set out in **Schedule "E"** hereto, with any changes as may be agreed by the Borrower, the Monitor and the Required DIP Lenders;

- (d) The ARIO and any other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (e) Delivery to the DIP Lenders, with a copy to the Monitor of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Second DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (f) The Initial Order and the ARIO shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (g) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Second DIP Advance;
- (h) No Material Adverse Change shall have occurred since the date hereof;
- (i) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the Second DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (j) The DIP Lenders have received, as and when required

hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);

- (k) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (l) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts;
- (m) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees located in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute; and
- (n) The Borrower shall be in compliance with all Court Orders.

#### **C. CONDITIONS TO THIRD DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Third DIP Advance hereunder:

- (a) The Court shall have issued the Solicitation Process Order;
- (b) The ARIO, and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of (i) ~~October 15~~<sup>[ ]</sup>, 2023 [To be updated based on cash flow] and (ii) the

date of receipt by the Borrower of Sale LOIs and Alternative Offtake or Services LOIs, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Third DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;

- (d) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Third DIP Advance;
- (e) No Material Adverse Change shall have occurred after the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Third DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (i) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that

are not yet due and payable or which are in dispute;

- (j) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (k) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (l) The Borrower shall be in compliance with all Court Orders.

**D. CONDITIONS TO FOURTH DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Fourth DIP Advance hereunder:

- (a) The ARIO, the Solicitation Process Order and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (b) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of date of (i) ~~December 4, 2023~~ 2023 [to be updated based on cash flow]; and (ii) receipt by Borrower of Sale Binding Bids and Alternative Offtake or Services Binding Bids, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Fourth DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (c) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Fourth DIP Advance;
- (d) There shall be no Liens ranking in priority to or *pari*

*passu* with the DIP Charge except for the Permitted Priority Liens;

- (e) No Material Adverse Change shall have occurred since the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Fourth DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (i) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (j) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (k) The Borrower shall be in compliance with all Court Orders.

#### 14. DISBURSEMENTS

The proceeds of all DIP Advances shall be funded by the DIP Lenders into the Borrower's account noted in **Schedule "F"**

hereto (the "**Borrower's Account**").

**15. VOLUNTARY PREPAYMENTS:**

The Borrower may prepay the DIP Obligations at any time prior to the Maturity Date by effecting a Pro Rata payment to the DIP Lenders, to one or more accounts to be specified in writing in advance, in minimum amounts \$1,000,000 and in increments of \$250,000 in excess thereof, without premium or penalty. Any amounts so prepaid may not be re-borrowed by the Borrower hereunder.

Any voluntary prepayments shall be applied: (i) first, to amounts outstanding under Tranche; (ii) second, once all amounts outstanding under Tranche 2 have been paid in full, to amounts outstanding under Tranche 3; and (iii) third, once all amounts outstanding under Tranche 2 and Tranche 3 have been paid in full, to amounts outstanding under Tranche 1.

**16. INTEREST RATE:**

The outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal in aggregate to (the "**Interest Rate**"):

Tranche 1 – 10% per annum payable in cash in accordance with this Section 16 ("**Cash Interest**") and 3% per annum payable-in-kind in accordance with this Section 16 (the "**PIK Interest**").

Tranche 2 – 8.25% per annum Cash Interest.

Tranche 3 – 8.25% per annum Cash Interest.

Upon the occurrence and during the continuance of an Event of Default the Cash Interest rate shall be increased by an additional 2% per annum ("**Default Interest**"), payable monthly in cash in arrears on the last Business Day of each calendar month and the Interest Rate, including Default Interest, shall begin to accrue on all amounts borrowed.

The Borrower shall pay in cash the Cash Interest on the aggregate outstanding principal amount of DIP Advances monthly in arrears on the last Business Day of each calendar month beginning on ~~September 30~~ October 31, 2023. The Borrower shall pay the PIK Interest on the aggregate outstanding principal amount of the DIP Advances by adding such accrued interest to the principal amount of the DIP Obligations on the last Business Day of each calendar month. Amounts representing the interest payable hereunder that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance

with this Section 16.

Interest on all DIP Advances shall accrue daily from and after the date of such DIP Advance to the Borrower to, but excluding, the date of repayment, as well as before and after maturity, demand and default and before and after judgment, and shall be calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid from time to time and on the basis of the actual number of days elapsed in a year of 365 days. For greater certainty, there shall not be any compounding in respect of Cash Interest provided it is paid on time in accordance with this DIP Agreement.

For the purposes of the *Interest Act* (Canada), the annual rates of interest referred to in this DIP Agreement calculated in accordance with the foregoing provisions of this DIP Agreement, are equivalent to the rates so calculated multiplied by the actual number of days in a calendar year and divided by 365 or 366, as the case may be.

If any provision of this DIP Agreement or any ancillary document in connection with this DIP Agreement would obligate the Borrower to make any payment of interest or other amount payable to the DIP Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the DIP Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the DIP Lenders of interest at a criminal rate and any such amounts actually paid by the Borrower in excess of the adjusted amount shall be forthwith refunded to the Borrower.

All PIK Interest and Backstop Fees (as defined below) (collectively, the "**PIK Amounts**") shall be: (i) converted to equity at plan or transaction value in the event of a sale or restructuring transaction in respect of the Borrower in which the DIP Lenders retain equity value in the Borrower or its successor(s) upon emergence from CCAA and in such circumstances, all PIK Amounts will be deemed satisfied in full; or (ii) in any other circumstance, paid in cash upon the Maturity Date (the "**PIK Mechanism**").

For greater certainty, unless otherwise expressly provided in

this Agreement, all payments to be made by the Borrower to the DIP Lenders under this Agreement on account of principal, interest, fees or otherwise shall be made on a Pro Rata basis.

**17. BACKSTOP FEE:**

The Borrower shall pay to the DIP Lenders a backstop fee (the "**Backstop Fee**"), as compensation for their Backstop Commitments, in an amount equal to 2% of the entire Maximum Amount, which shall be earned by the DIP Lenders on a Pro Rata basis, upon the Court issuing the ARIO.

The Backstop Fee, once earned and payable, shall be non-refundable under all circumstances and shall be paid by adding the amount of such fee to the principal amount of the DIP Obligations. Amounts representing the Backstop Fee that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and shall bear interest in accordance with Section 16 of this DIP Agreement. Only those DIP Lenders which are not Defaulting Lenders shall be entitled to any portion of the Backstop Fee when such fee is paid in cash or otherwise allocated to the DIP Lenders pursuant to the PIK Mechanism, with any amounts which would otherwise have been paid or allocated to a Defaulting Lender to instead be distributed, on a Pro Rata basis, to the DIP Lenders who are not Defaulting Lenders.

**18. DIP SECURITY:**

All of the DIP Obligations shall be secured by a Court-ordered charge (the "**DIP Charge**") over all present and after-acquired property, assets and undertakings of the Borrower (including for greater certainty and without limitation, insurance proceeds, intellectual property, goods, documents of title, investment property, securities now owned or hereafter owned or acquired by or on behalf of the Borrower and those assets set forth on the financial statements of the Borrower), including all proceeds therefrom and all causes of action of the Borrower (collectively, the "**Collateral**").

The DIP Charge shall be a super-priority charge which shall rank ahead of all existing, Liens, claims, trusts and charges, but shall be subject to and shall rank behind or pari passu with the Permitted Priority Liens.

Any amendment to, waiver of or release of a material portion of: (i) the priority of the DIP Charge; and (ii) the Collateral (subject to the terms of the Initial Order or the ARIO, as applicable), shall require the prior written consent of each of the DIP Lenders.

**19. MANDATORY REPAYMENTS:**

Unless the Borrower has obtained the prior written consent of the Majority DIP Lenders, the proceeds of any debt or equity issuance by the Borrower that occurs from and after the date hereof, and the proceeds of Collateral (for greater certainty, net of reasonable costs and closing adjustments, as applicable), including, without limitation, arising from: (a) any sale of Collateral out of the ordinary course of business (including for greater certainty, any sale of all or substantially all of the Collateral); or (b) insurance proceeds in respect of any damage, loss or destruction of the Collateral (collectively, the "Net Proceeds") shall be paid: (i) first, to satisfy the Admin Charge, the D&O Charge, ~~the Cargill Charge~~ to be updated and the KERP Charge; (ii) second, to satisfy DIP Obligations under Tranche 2; (iii) third, to satisfy DIP Obligations under Tranche 3; (iv) fourth, to satisfy DIP Obligations under Tranche 1; (v) fifth, to satisfy any other priority charges in accordance with their priorities; (vi) sixth, to satisfy other indebtedness and liabilities of the Borrower as may be ordered by the Court in accordance with their priorities; and (vii) seventh, to the Borrower or such other persons as are entitled thereto in accordance with applicable law.

The Maximum Amount shall be permanently reduced in an amount equal to the Net Proceeds paid to the DIP Lenders and applied to the aggregate outstanding principal amount of the DIP Advances in accordance with Section 6 of this DIP Agreement. For greater certainty, any mandatory repayments shall not be subject to any premium or penalty.

**20. REPRESENTATIONS AND WARRANTIES:**

The Borrower jointly and severally represents and warrants to each DIP Lender, upon which each DIP Lender relies in entering into this DIP Agreement, that subject to the entry of the Initial Order:

- (a) The Borrower is a corporation duly incorporated and validly existing under the laws of its governing jurisdiction and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary, except where the failure to have such qualification, license or registration would not have a Material Adverse Effect (as defined below). For the purpose of this DIP Agreement, "**Material Adverse Effect**" means a material adverse effect on: (i) the financial condition, business or assets of the Borrower; or (ii) the ability of

the Borrower to comply with its obligations hereunder or under any Court Order;

- (b) Subject to the granting of the Initial Order and the ARIO, as the case may be, the Borrower has all requisite corporate or other power and authority to: (i) carry on its business; (ii) own property, borrow monies and enter into agreements therefor; and (iii) execute and enter into this DIP Agreement and observe and perform the terms and provisions hereof;
- (c) None of the subsidiaries and affiliates of the Borrower have any material assets;
- (d) Subject to the granting of the Initial Order and the ARIO, as the case may be, the execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder has been duly authorized by all necessary corporate or other action and any actions required under applicable laws. Except as has been obtained and is in full force and effect, no registration, declaration, consent, waiver or authorization of, or filing with or notice to, any governmental body is required to be obtained in connection with the performance by the Borrower of its obligations under this DIP Agreement;
- (e) Subject to the granting of the Initial Order and the ARIO, as the case may be, this DIP Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to: (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; (ii) the fact that specific performance and injunctive relief may only be given at the discretion of the courts; and (iii) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;
- (f) The execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of:

- (i) its constating documents (including any shareholders' agreements) or by-laws; (ii) any applicable laws; (iii) except as stayed pursuant to the CCAA Proceedings by the terms of the Initial Order, the ARIO or other Court Order, as the case may be, any contractual restriction binding on or affecting it or its material properties; or (iv) any material judgment, injunction, determination or award which is binding on it;
- (g) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, the Borrower is in compliance with all applicable laws of each jurisdiction in which its business has been or is being carried on, non-compliance with which would reasonably be expected to have a Material Adverse Effect;
- (h) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, to the Borrower's Knowledge (as defined below), there are no actions, suits or proceedings pending, taken or, threatened, before or by any governmental body or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law, which would reasonably be expected to have a Material Adverse Effect and have not been stayed pursuant to the CCAA Proceedings. For the purpose of this DIP Agreement, "**Borrower's Knowledge**" means the actual knowledge of the senior officers and directors of the Borrower and the knowledge that such individuals would have had if they had conducted a reasonably diligent inquiry into the relevant subject matter;
- (i) The DIP Agreement Cash Flow Projection includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Borrower on the date hereof that, if not paid, would likely result in Liens ranking in priority to the DIP Charge, except for purchase money security interests;
- (j) As at the date of the Initial Order, the Borrower has good and marketable title to all of the Collateral subject to Permitted Liens;
- (k) Except as previously disclosed in writing by the

Borrower to the DIP Lenders and set out on **Schedule "G"**, as at ~~September 6~~October 8, 2023, the Borrower has filed all tax returns that are required to be filed and has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it, except any such assessment that is being contested in good faith by proper legal proceedings. Without limiting the foregoing, all employee source deductions (including in respect of income taxes, employment insurance and Canada Pension Plan) payroll taxes and workers' compensation dues are currently paid and up to date, subject to normal course accruals, except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**;

- (l) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "H"**, there are no actions, suits or proceedings (including any tax-related matter) by or before any arbitrator or governmental authority or by any other person pending against or threatened against or affecting the Borrower that have or will not have been stayed pursuant to the CCAA Proceedings which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;
- (m) The Borrower maintains insurance policies and coverage that: (i) is sufficient for compliance with any applicable law and all material agreements to which it is a party; and (ii) provides adequate insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons engaged in the same or similar business to the assets and operations of the Borrower;
- (n) All factual information provided by or on behalf of the Borrower to the DIP Lenders in writing for the purposes of or in connection with this DIP Agreement or any transaction contemplated herein, is true and accurate in all material respects on the date as of which such information is dated or certified and remains true in all material respects as of the date provided and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was

provided. With respect to any projections, future business plans or forward looking financial statements, the Borrower is not guaranteeing in giving this representation and warranty that the actual future results will be as forecast or projected (but, for greater certainty, the DIP Lenders have all of their rights hereunder in the event that such actual future results are not as forecast or projected, including, without limitation, as provided for in Section 24(e) of this DIP Agreement); and

- (o) As of the date hereof, the Borrower does not administer any pension plans and does not have any outstanding payment obligations in respect of special payments or amortization payments, including without limitation, in respect of any pension plan, payments related to post-retirement benefits, solvency deficiencies or wind-up shortfalls in relation to any pension plan.

**21. AFFIRMATIVE COVENANTS:**

The Borrower covenants and agrees to do the following until such time as the DIP Obligations are indefeasibly repaid in full:

- (a) Keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Collateral and the business and affairs of the Borrower subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (b) ~~Cooperate in all respects with the Technical Advisor, including, but not limited to:~~ The Borrower shall (i) ~~providing~~ provide the Technical Advisor with reasonable access to the Scully mine; (ii) ~~providing~~ provide the Technical Advisor with substantive operational updates; ~~and reporting to the Technical Advisor as required by the Technical Advisor;~~ (iii) ~~reasonably considering all~~ consider recommendations made by the Technical Advisor regarding the operations of the Scully mine; ~~and (iv) facilitating reporting by the Technical Advisor to the independent members of the Board and the DIP Lenders on a weekly basis or more frequently if determined appropriate by the Technical Advisor;~~

- (c) Subject to the terms of the Solicitation Process and the Solicitation Process Order, keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Solicitation Process, subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (d) Perform its obligations hereunder as and when required and in the manner required;
- (e) Use the proceeds of the DIP Facility (at all times solely in accordance with the terms hereof and the DIP Agreement Cash Flow Projections subject to the Permitted Variance) only for the limited purpose of facilitating the CCAA Proceedings, including the Solicitation Process and for the purpose of funding: (i) transaction costs and expenses incurred by the DIP Lenders in connection with the DIP Facility; (ii) professional fees and expenses incurred by the Borrower, the Monitor and the DIP Lenders in respect of the CCAA Proceedings; and (iii) operating costs, expenses, capital expenditures and ordinary course liabilities (including, without limitation, wages, vacation pay and active employee benefits) of the Borrower;
- (f) Comply in all respects with the provisions of the court orders made in connection with the CCAA Proceedings (collectively, the "**Court Orders**" and each a "**Court Order**");
- (g) Preserve, renew and keep in full force the Borrower's corporate or other existence and all material licenses, permits or approvals required in respect of its business, properties, assets or any activities or operations carried out therein except where the failure to do so would not cause a Material Adverse Effect;
- (h) Maintain insurance coverage consistent with the coverage in existence of the date hereof with respect to the Collateral;
- (i) Conduct its activities in accordance with the DIP Agreement Cash Flow Projection, subject to the

Permitted Variance;

- (j) Promptly notify the DIP Lenders and the Monitor of the occurrence of any Event of Default, or of any event or circumstance that may, with the passage of time or the giving of notice, constitute an Event of Default (a "**Default**");
- (k) Promptly notify the DIP Lenders and the Monitor of the commencement of, or receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting the Borrower that is not stayed by the Initial Order, ARIO or other Court Order;
- (l) Promptly after the same is available, but in no event later than the day that is two (2) Business Days prior to the date on which the same is to be served or if such advance notice is not possible then as soon as reasonably practicable prior to the date on which the same is to be served, provide copies to the DIP Lenders of all pleadings, motion records, application records, judicial information, financial information and other documents filed by or on behalf of the Borrower in the CCAA Proceedings and incorporate all reasonable comments of the DIP Lenders in respect of such materials;
- (m) Subject to the CCAA and the Court Orders, comply in all material respects with all applicable laws, rules and regulations applicable to its business, including, without limitation, health and safety, and environmental laws;
- (n) Except where a stay of proceedings or Court Order otherwise applies, pay when due all government statutory Liens, trust and other Crown claims including employee source deductions, GST, HST, PST, employer health tax, and workplace safety and insurance premiums, but only with respect to: (i) payments that rank in priority to the DIP Charge; and (ii) payments that are otherwise authorized pursuant to Court Order;
- (o) Either (i) pay in full; or (ii) treat as unaffected, the DIP Obligations in any plan of compromise or arrangement,

proposal or any other restructuring whatsoever;

- (p) At all times be and remain subject to the CCAA Proceedings until the DIP Obligations are irrevocably and unconditionally repaid in full or otherwise satisfied through credit bidding, with no further right to DIP Advances;
- (q) Subject to any Court Orders, grant the DIP Lenders and their professional advisors reasonable access to the Collateral and their business, properties, and books and records;
- (r) Conduct the Solicitation Process strictly in accordance with its terms (including milestones and timelines) and strictly comply with the Solicitation Process Order; and
- (s) If required, appoint the Additional Independent Directors (as defined below) in accordance with Section 25 of this DIP Agreement;
- (t) Deliver to the DIP Lenders and the Monitor no later than 5:00 p.m. (Eastern Time) on the Friday of each week a 13-week rolling iron ore delivery forecast prepared by the Borrower (the "**CCAA Iron Ore Delivery Forecast**"), which shall be consistent with the DIP Agreement Cash Flow Projection;
- (u) Commencing two weeks following the delivery of the initial CCAA Iron Ore Delivery Forecast and every two weeks thereafter, deliver to port not less than 85% of the iron ore contemplated (in tonnes) by the most recently delivered CCAA Iron Ore Delivery Forecast on a trailing two week basis; and
- (v) By November 1, 2023, deliver to the DIP Lenders, with a copy to the Monitor, a capital expenditure budget for the 2024 calendar year, which budget shall include maintenance shutdown and winterization costs for the Scully mine and be in form and substance satisfactory to the Majority DIP Lenders, acting reasonably.

**22. NEGATIVE COVENANTS:**

The Borrower covenants and agrees not to do the following or permit any subsidiary to do the following while any DIP Obligations remain outstanding, other than with the prior written consent of the Required DIP Lenders or pursuant to an

Order of the Court:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking except: (i) where permitted pursuant to the Initial Order or ARIO; or (ii) where such transaction results in the repayment of DIP Obligations in accordance with Section 19 of this DIP Agreement;
- (b) Make any payment of principal or interest in respect of any indebtedness outstanding prior to Initial Order ("**Existing Indebtedness**") other than as may be permitted or required herein or by a Court Order;
- (c) Create or permit to exist indebtedness for borrowed money other than: (i) Existing Indebtedness; (ii) debt contemplated by this DIP Facility; and (iii) post-filing trade credit obtained in the ordinary course of business, in accordance with the DIP Agreement Cash Flow Projection;
- (d) Permit any new Liens to exist on any Collateral other than Permitted Liens;
- (e) Either: (i) change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity; or (ii) make any changes to its organizational documents that would reasonably be expected to be adverse to the DIP Lenders;
- (f) Other than as permitted by the terms of this DIP Agreement, make any acquisitions, investments or loans, advances, payments, financial assistance, capital contributions or other distributions of any kind or guarantee the obligations of any person, other than those in existence on the date hereof and disclosed to the DIP Lenders in writing;
- (g) Enter into any transaction with any affiliate;
- (h) Pay any dividends, distributions or advances to shareholders of the Borrower, or any management bonus or similar payments except in the case of (i) the KERP, or (ii) management bonuses or similar payments to the extent provided for in the DIP Agreement Cash Flow Projection;

- (i) Engage in new businesses;
- (j) Change its fiscal year or accounting practices;
- (k) Issue any equity;
- (l) Take any action (or in any way support the taking of any action by another person) that has, or would reasonably be expected to have, a material adverse impact on the rights and interests of the DIP Lenders, including, without limitation, any action in furtherance of challenging the validity, enforceability or amount of the DIP Obligations;
- (m) Except in accordance with the Solicitation Process Order, commence, continue or seek any stakeholder or court approval for any sale, restructuring transaction or plan without the prior written consent of the Required DIP Lenders in their sole discretion;
- (n) Pay, incur any obligation to pay, or establish any retainer with respect to, the fees, expenses or disbursements of a legal, financial or other advisor of any third party, other than (i) the Borrower and its legal counsel, financial advisors and other advisors, (ii) the Monitor and its legal counsel, and (iii) the legal, financial and other advisors of the DIP Lenders, in each case engaged as of the date hereof;
- (o) Challenge or fail to support the DIP Charge and DIP Obligations;
- (p) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Agreement Cash Flow Projection subject to the Permitted Variances; and
- (q) Except for the addition of the Additional Independent Directors, if required, not actively carry out any changes to the composition (including the addition, removal or replacement) of its board of directors (the "**Board**") (other than any director resignation) or its officers (including the appointment of a chief restructuring officer) without the consent of the Required DIP Lenders.

**23. INDEMNITY AND**

The Borrower hereby indemnifies and holds harmless each of the DIP Lenders and each of their respective directors, officers,

**RELEASE:**

employees, partners, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as "**Indemnified Persons**", and each, an "**Indemnified Person**") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from the CCAA Proceedings, this DIP Agreement or any advance made hereunder, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability to the extent it resulted from the fraud, gross negligence, bad faith or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this DIP Agreement shall survive any termination of the DIP Facility.

The Borrower shall not contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the validity and enforceability of the DIP Obligations or any loan, security or other documents relating thereto. The Borrower further covenants to, and does hereby, release each of the DIP Lenders solely in its capacity as lender hereunder and its respective predecessors, successors, agents, advisors, representatives and assigns of and from all claims and liabilities relating to any act or omission related to this DIP Agreement that occurred prior to the date of this DIP Agreement.

**24. EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events, without the prior written consent of the Required DIP Lenders, shall constitute an immediate event of default ("**Event of Default**") under this DIP Agreement:

- (a) The issuance of any order terminating the CCAA

Proceedings, or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower or the Collateral (being Collateral with an aggregate fair market value as reasonably determined by the Required DIP Lenders in excess of \$250,000, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower or any of the Collateral;

- (b) Failure to obtain the Solicitation Process Order by October ~~3~~27, 2023 or satisfy any Solicitation Process Milestone by the applicable date required hereunder;
- (c) The issuance of any Court Order: (i) staying, reversing, vacating or otherwise modifying the DIP Charge; or (ii) that adversely impacts or could reasonably be expected to adversely impact the rights and interests of the DIP Lenders in connection with the Collateral or under this DIP Agreement or any Court Order; provided; however, that any such order that provides for payment in full forthwith of all of the DIP Obligations shall not constitute an Event of Default;
- (d) Failure of the Borrower to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder (subject to a three (3) Business Day cure period in the case of interest, fees and any other amounts (other than principal amounts) due hereunder);
- (e) The issuance of an order granting a Lien of equal or superior status to that of the DIP Charge, other than as provided in Section 18 of this DIP Agreement;
- (f) Any Proposed Amended Cash Flow Projection contemplates or forecasts an adverse change or changes from the then existing DIP Agreement Cash Flow Projection and such change(s) constitute a Material Adverse Change or is not delivered to the DIP Lenders within two (2) days of the requisite time frame set out herein.
- (g) Any representation or warranty by the Borrower herein or in any certificate delivered by the Borrower to the DIP Lenders shall be incorrect or misleading in any material respect as of the date made or deemed made

and, if the circumstances giving rise to the incorrect representation or warranty are capable of modification or rectification (such that, thereafter the representation or warranty would be correct), the representation or warranty remains uncorrected for a period of five (5) Business Days;

- (h) A Court Order is made, a liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, of the Borrower, that has or will have a Material Adverse Effect; provided that the forgoing shall exclude changes to the Borrower's business or its performance solely as a result of (i) the commencement, announcement or continuance of the CCAA Proceedings or (ii) conducting the Solicitation Process;
- (i) Any breach of any Court Order upon receipt by the Borrower (with a copy to the Monitor) of notice from the Required DIP Lenders of such breach by the Borrower and such breach is not cured within two (2) Business Days of delivery of such notice;
- (j) Failure of the Borrower to perform or comply with any other term or covenant under this DIP Agreement and such Default shall continue unremedied for a period of five (5) Business Days after the earlier of (i) delivery of notice given by the Required DIP Lenders to the Borrower, with a copy to the Monitor or (ii) the Borrower's Knowledge of such failure to perform or comply;
- (k) The commencement by the Borrower of an action or any other proceeding against the DIP Lenders;
- (l) The expiry without further extension of the stay of proceedings provided for in the Initial Order or the ARIO, as applicable;
- (m) Other than the appointment of the Additional Independent Directors, if required, any change to the composition of the Board or officers of the Borrower (other than as a result of director resignation(s)) that is not acceptable to the Majority DIP Lenders acting reasonably;
- (n) The removal, termination, replacement or material

change in the scope or extent of the authority of any chief restructuring officer (if one is appointed);

- (o) Any change of control of the Borrower; ~~or~~
- (p) The seeking or support by the Borrower, or the issuance, of any court order (in the CCAA Proceedings or otherwise) that is inconsistent with the terms of this DIP Agreement; or

(q) Failure to pay Expenses for which invoices have been provided to the Borrower from the First DIP Advance on the next business day after receipt of the First DIP Advance.

## 25. CORPORATE GOVERNANCE

At the request of the Majority DIP Lenders at any time following the granting of the ARIO, the Borrower shall cause the Board to appoint up to two (2) additional independent directors with substantial restructuring experience, acceptable to the Borrower, the Monitor and the Required DIP Lenders (the "**Additional Independent Directors**"). The Additional Independent Directors shall be appointed forthwith after any such request is made by the Required DIP Lenders, provided that the Required DIP Lenders shall provide the Borrower with a list of at least 5 candidates they deem acceptable concurrently with any such request.

## 26. REMEDIES:

Upon the occurrence and during the continuance of an Event of Default, whether or not there is availability under the DIP Facility: (a) without any notice to the Borrower, the Borrower shall have no right to receive any additional DIP Advances or other accommodation of credit from the DIP Lenders except in the sole discretion of the Required DIP Lenders; and (b) the Required DIP Lenders may immediately terminate the DIP Facility and demand immediate payment of all of the DIP Obligations by providing such a notice and demand to the Borrower, with a copy to the Monitor. With the leave of the Court sought on not less than five (5) Business Days' notice to the Borrower and the Monitor after the occurrence and during the continuance of an Event of Default, the Required DIP Lenders shall have the right to: (a) enforce the DIP Charge and to exercise all other rights and remedies in respect of the DIP Obligations and the DIP Charge, including the right to realize on all Collateral and to apply to the Court for the appointment of a court-appointed receiver; (b) exercise the rights of a secured party under the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act*

(Ontario, the *Personal Property Security Act* (Newfoundland and Labrador) or any other applicable law relating to the enforcement of Liens by secured parties against any type of property, including the Collateral; (c) apply to the Court for an order on terms satisfactory to the Monitor and the Required DIP Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceedings; and (d) exercise all such other rights and remedies under the Court Orders and applicable law. No failure or delay by the DIP Lenders in exercising any of their rights hereunder or at law shall be deemed a waiver of any kind, and the DIP Lenders shall be entitled to exercise such rights in accordance with this DIP Agreement at any time. The rights and remedies of the DIP Lenders under this DIP Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA.

**27. LEGAL FEES:**

The Borrower shall pay by wire transfer, within two (2) Business Days of receipt of a detailed invoice (redacted for privilege), all reasonable and documented out-of-pocket expenses, including all reasonable ~~legal~~ expenses of Canadian legal counsel and US legal counsel on a solicitor-client basis and the expenses of one financial advisor, one communications consultant and one Technical Advisor, incurred by the DIP Lenders in connection with the CCAA Proceedings, this DIP Agreement and the DIP Facility, including those with respect to any enforcement of the terms hereof or of the DIP Charge or otherwise incurred in connection with the DIP Facility (the "**Expenses**"). Subject to Court approval of this DIP Agreement, all Expenses shall be non-refundable under all circumstances.

**28. DIP LENDER APPROVALS:**

Any consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders to be delivered in writing may be delivered by any written instrument, including by way of email, by the DIP Lenders, the Majority DIP Lenders or Required DIP Lenders (or their counsel), as applicable, pursuant to the terms hereof. For greater certainty, any consent, approval, instruction or other expression delivered in writing by Bennett Jones LLP shall be considered as delivery of a consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders, as may be indicated by Bennett Jones LLP in such written instrument.

**29. EVIDENCE OF**

The DIP Lenders' accounts and records constitute, in the

**INDEBTEDNESS**

absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the DIP Lenders under the DIP Facility.

**30. TAXES:**

All payments by the Borrower under this DIP Agreement to the DIP Lenders, including any payments required to be made from and after the exercise of any remedies available to the DIP Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively, "**Taxes**").

**31. FURTHER ASSURANCES:**

The Borrower shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the DIP Lenders may reasonably request for the purpose of giving effect to this DIP Agreement. Without limiting the foregoing, the Borrower agrees that if so requested by the DIP Lenders, acting reasonably, it shall promptly execute and deliver to the DIP Lenders any general security agreement or other security documents securing its obligations to the DIP Lenders hereunder in forms reasonable and customary for debtor in possession financings, provided however that the execution of any such security document shall not be a condition precedent to funding the Maximum Amount or DIP Advances hereunder.

**32. ENTIRE AGREEMENT:**

This DIP Agreement, including the schedules hereto, constitutes the entire agreement between the parties relating to the subject matter hereof.

**33. AMENDMENTS, WAIVERS, ETC.:**

No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this DIP Agreement. Unless otherwise expressly provided in this Agreement, any waiver, amendment or other modification to this Agreement shall require the written consent of the Required DIP Lenders; provided that, notwithstanding the foregoing, solely with the consent of each DIP Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required DIP Lenders), any such agreement may:

(1) increase the DIP Financing Commitment of such DIP Lender; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall constitute an increase of any DIP Financing Commitment of such DIP Lender;

(2) reduce or forgive the principal amount of any DIP Advances (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute a reduction or forgiveness in principal);

(3) extend the scheduled Maturity Date of any DIP Advance (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute an extension of any maturity date);

(4) reduce the Interest Rate (other than to waive any Default or Event of Default or any obligations of the Borrower to pay interest at the default rate of interest in accordance with Section 16 of this Agreement) or the amount of any fees owed to such DIP Lender;

(5) waive, amend or modify the provisions of Section 16 (with respect to Pro Rata allocation of all payments among DIP Lenders) of this Agreement in a manner that would by its terms alter the Pro Rata sharing of payments required thereby;

(6) waive, amend or modify the definition of "Pro Rata; and

(7) waive, amend or modify the provisions of this Section 33.

Notwithstanding anything else in this DIP Agreement, and for greater certainty, this DIP Agreement may not be waived, amended or modified to reduce the principal amount owed to any DIP Lender under the DIP Facility or increase the amount of any DIP Lender's commitment under the DIP Facility, in each case, without the prior written consent of such DIP Lender.

Any amendment to the terms of this DIP Agreement shall be made in writing and signed by the Borrower and the requisite DIP Lenders.

To the extent any fees or other compensation becomes payable to the DIP Lenders in connection with any amendment to this DIP Agreement, all DIP Lenders who are not Defaulting Lenders shall have the opportunity to receive their Pro Rata portion of any such fees or other compensation.

**34. ASSIGNMENT:**

The DIP Lenders may assign this DIP Agreement and their rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lenders with the prior written consent of the Borrower, not to be unreasonably withheld (provided that no such consent of the Borrower shall be required upon the occurrence of an Event of Default which is continuing) and, provided that the Monitor shall have provided its prior written consent based solely on the Monitor being satisfied that the proposed assignee has the financial capacity to act as a DIP Lender and that the assignment will not have a material adverse impact on the Solicitation Process.

Notwithstanding the foregoing, a DIP Lender shall be entitled to assign its rights and obligations hereunder to an affiliate without the consent of any other party.

Neither this DIP Agreement nor any right and obligation hereunder may be assigned by the Borrower.

**35. SEVERABILITY:**

Any provision in this DIP Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**36. COUNTERPARTS AND SIGNATURES:**

This DIP Agreement may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this DIP Agreement by signing any counterpart of it.

**37. DISCLOSURE**

Except as required by applicable laws (including any Court Orders), the Borrower shall not issue any press release or make any public announcement concerning this DIP Agreement, the CCAA Proceedings or the operations of their business (the

"Communications"), without the prior written consent of the Majority DIP Lenders, which is not to be unreasonably withheld. The Borrower shall provide the DIP Lenders with a reasonable opportunity to review and comment on all Communications in respect of this DIP Agreement or the CCAA Proceedings prior to such Communications being issued or published.

**38. NOTICES:**

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

**(a) In the case of the Borrower:**

Tacora Resources Inc.  
102 NE 3rd Street Suite 120  
Grand Rapids, Minnesota  
55744 USA

Attention: Joe Broking & Heng Vuong  
Email: [joe.broking@tacoraresources.com](mailto:joe.broking@tacoraresources.com);  
[heng.vuong@tacoraresources.com](mailto:heng.vuong@tacoraresources.com)

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With a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West, 199 Bay St.  
Toronto, ON M5L 1B9

Attention: Ashley Taylor & Lee Nicholson  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com); [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

Field Code Changed  
Field Code Changed

and

Greenhill & Co., LLC  
1271 6th Ave, New York,  
NY 10020, USA

Attention: Chetan Bhandari, Michael Nessim & Usman Masood  
Email: [chetan.bhandari@greenhill.com](mailto:chetan.bhandari@greenhill.com);  
[michael.nessim@greenhill.com](mailto:michael.nessim@greenhill.com);  
[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)

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And with a copy to the Monitor:

FTI Consulting Canada Inc.  
Toronto-Dominion Centre, 79 Wellington St W Suite 2010,  
Toronto, ON M5K 1G8

Attention: Nigel Meakin & Jodi Porepa  
Email: [nigel.meakin@fticonsulting.com](mailto:nigel.meakin@fticonsulting.com);  
[jodi.porepa@fticonsulting.com](mailto:jodi.porepa@fticonsulting.com)

And with a copy to the Monitor's Counsel:

Cassels Brock & Blackwell LLP  
Bay Adelaide Centre – North Tower,  
Suite 3200, Toronto, ON M5H 0B4

Attention: Ryan Jacobs, Jane Dietrich & Michael Wunder  
Email: [rjacobs@cassels.com](mailto:rjacobs@cassels.com); [jdietrich@cassels.com](mailto:jdietrich@cassels.com);  
[mwunder@cassels.com](mailto:mwunder@cassels.com)

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(b) In the case of the DIP Lenders:

c/o  
GLC Advisors & Co., LLC  
600 Lexington Ave., 9th Floor  
New York, NY 10022 USA

Attention: Michael Sellinger, Michael Kizer & Adam  
Kelly-Penso  
Email: [michael.sellinger@glca.com](mailto:michael.sellinger@glca.com); [michael.kizer@glca.com](mailto:michael.kizer@glca.com);  
[adam.kellypenso@glca.com](mailto:adam.kellypenso@glca.com)

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With a copy to:

Bennett Jones LLP  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Attention: Sean Zweig, Mike Shakra & Thomas Gray  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com);  
[shakram@bennettjones.com](mailto:shakram@bennettjones.com);  
[grayt@bennettjones.com](mailto:grayt@bennettjones.com)

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and

Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, NY 10001 USA

Attention: Sidney Levinson & Erica Weisgerber

Email: [slevinson@debevoise.com](mailto:slevinson@debevoise.com);

~~[eweisgerber@debevoise.com](mailto:eweisgerber@debevoise.com)~~;

[eweisgerber@debevoise.com](mailto:eweisgerber@debevoise.com)

Field Code Changed

Field Code Changed

Field Code Changed

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 ET or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day. For the purposes of this DIP Agreement, a "**Business Day**" means any day except any Saturday, any Sunday, or any day which is a legal holiday or any day on which banking institutions are authorized or required by law or other governmental action to close in the Provinces of Ontario or Newfoundland and Labrador or the State of New York.

**39. GOVERNING LAW AND JURISDICTION:**

This DIP Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**40. CURRENCY AND JUDGMENT CURRENCY:**

Unless otherwise specified herein, all dollar amounts are in the lawful currency of the United States of America. The Borrower shall pay to the DIP Lenders all payments on account of principal and interest hereunder in lawful money of the United States of America.

If in the recovery by the DIP Lenders of any amount owing by the Borrower hereunder in any currency, judgment can only be obtained in another currency and because of changes in the exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the amount received by the DIP Lenders is less than the recovery provided for under the judgment, the Borrower shall immediately pay any such shortfall to the DIP Lenders and such shortfall can be claimed by the DIP Lenders against the Borrower as an alternative or additional cause of action.

**41. PRIOR DIP LOAN AGREEMENT**

The Borrower and the DIP Lenders agree to terminate the DIP Loan Agreement dated as of September 11, 2023 and the parties release and discharge each other from their respective commitments and obligations thereunder.

*[- Signature pages follow -]*

**IN WITNESS HEREOF**, the parties hereby execute this DIP Agreement as at the date first mentioned above.

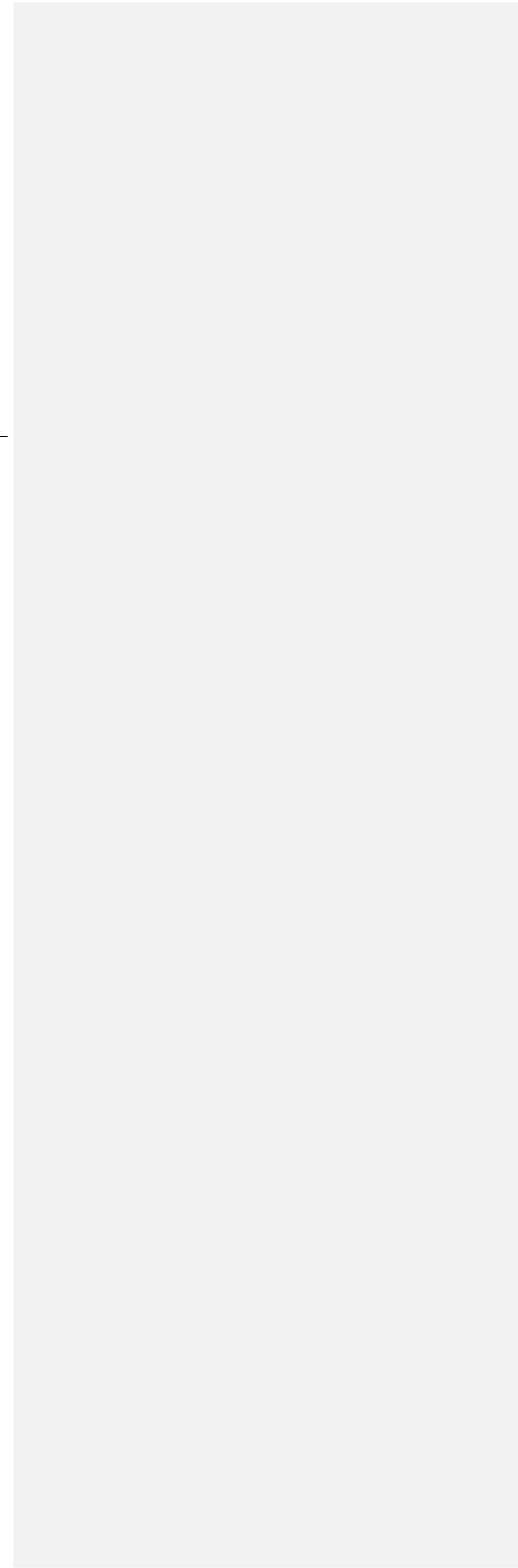
**BORROWER :**

**TACORA RESOURCES INC.**

By: \_\_\_\_\_

Name:

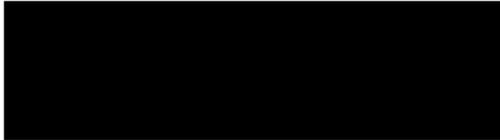
Title:



**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



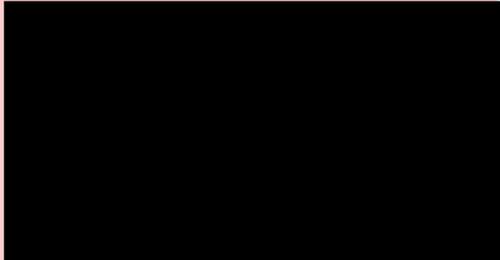
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Name:

Title:

**CROSSINGBRIDGE ADVISORS, LLC**

on behalf of



---

Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

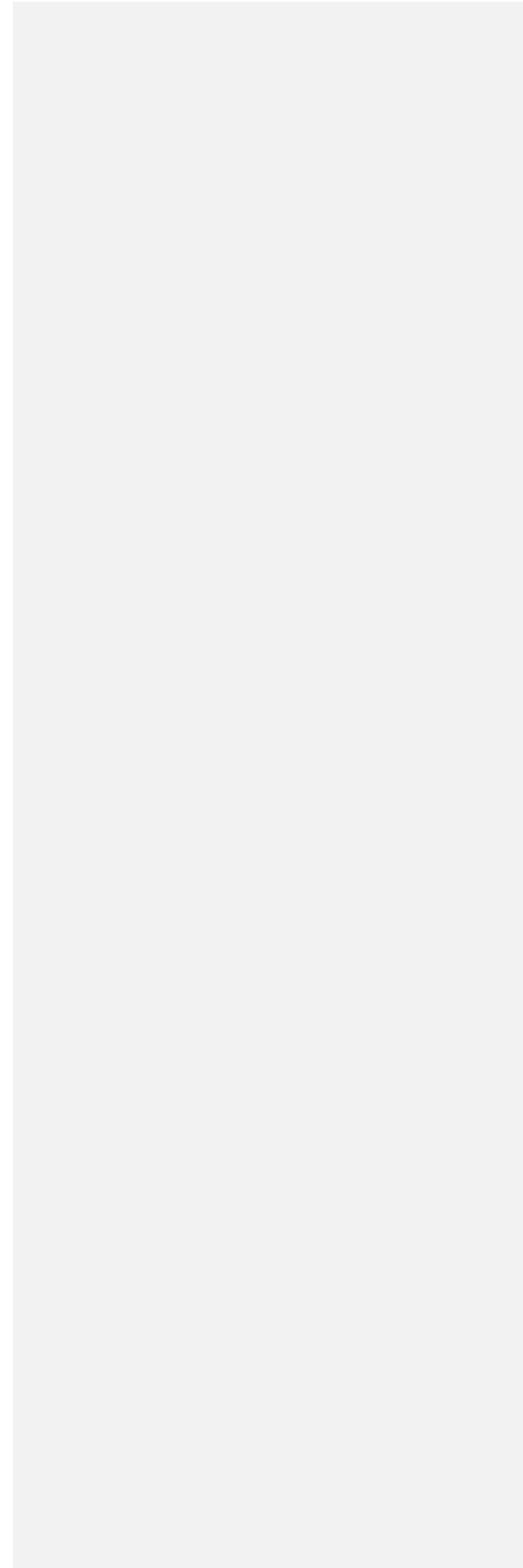
on behalf of



---

Name:

Title:



**MSD PARTNERS, LP**

on behalf of



---

Name:

Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



---

Name:

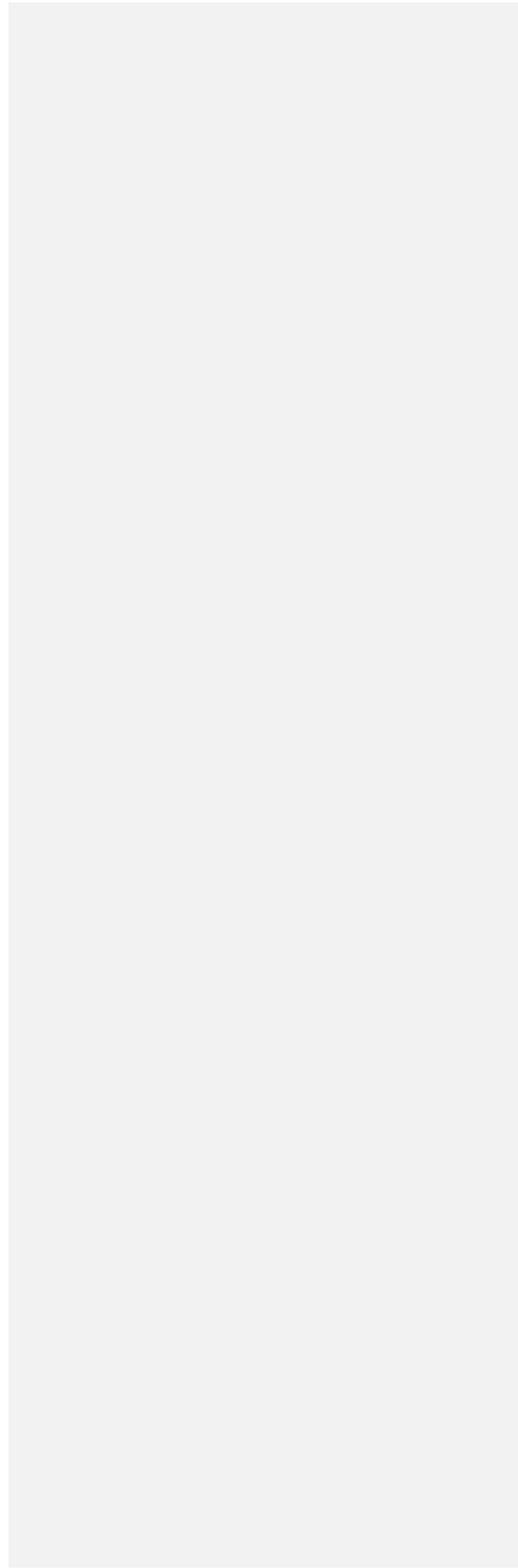
Title:

**SNOWCAT CAPITAL MANAGEMENT, LP**

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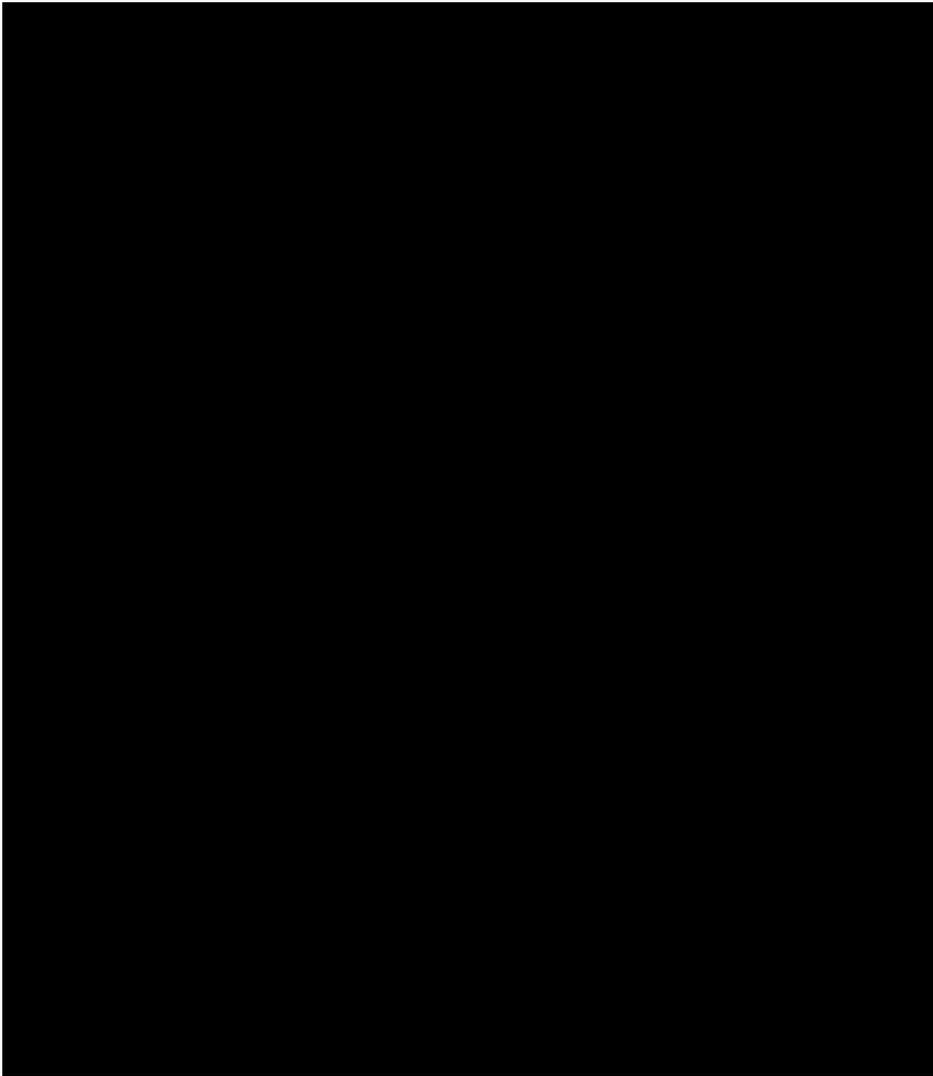
Name:

Title:



**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of



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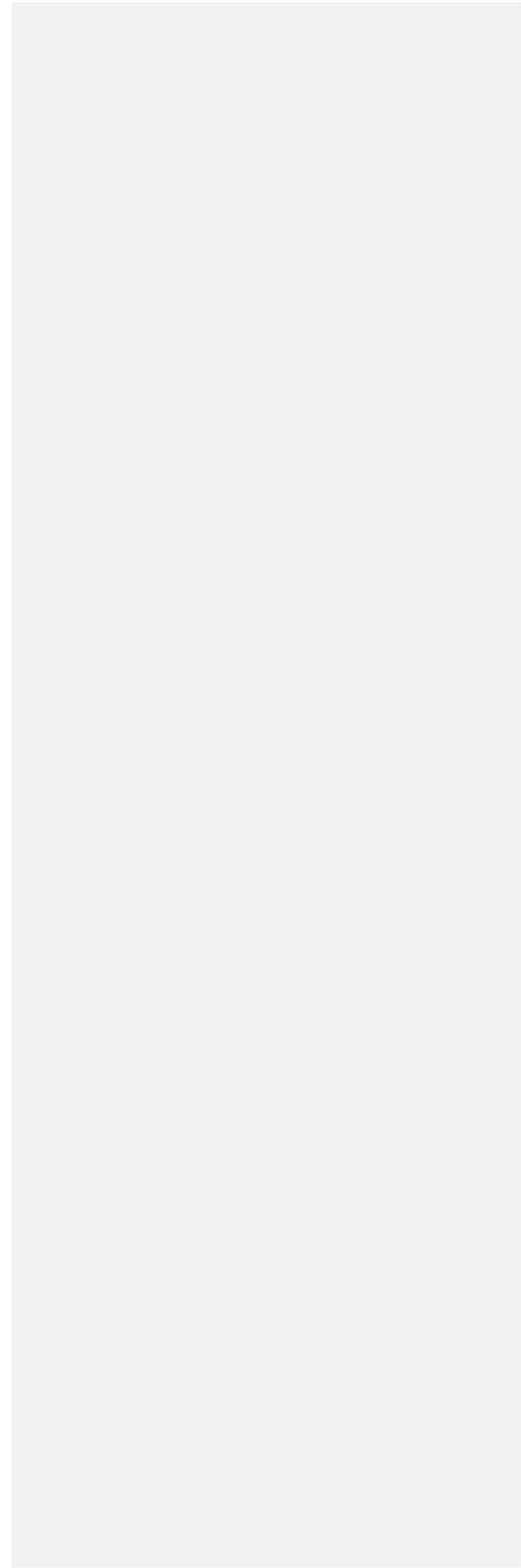
Name:  
Title:

[118024211 v4](#)

*Signature Page – DIP Agreement*

**SCHEDULE "A"**  
**CASH FLOW PROJECTION**

See attached.



**SCHEDULE "B"**  
**FORM OF DRAWDOWN CERTIFICATE**

TO: GLC Advisors Co., on behalf of the DIP lenders under the DIP Agreement dated ~~September 11~~ October 8, 2023 (the "**DIP Lenders**")

AND TO: FTI Consulting Canada Inc. (the "**Monitor**")

FROM: Tacora Resources Inc. (the "**Borrower**")

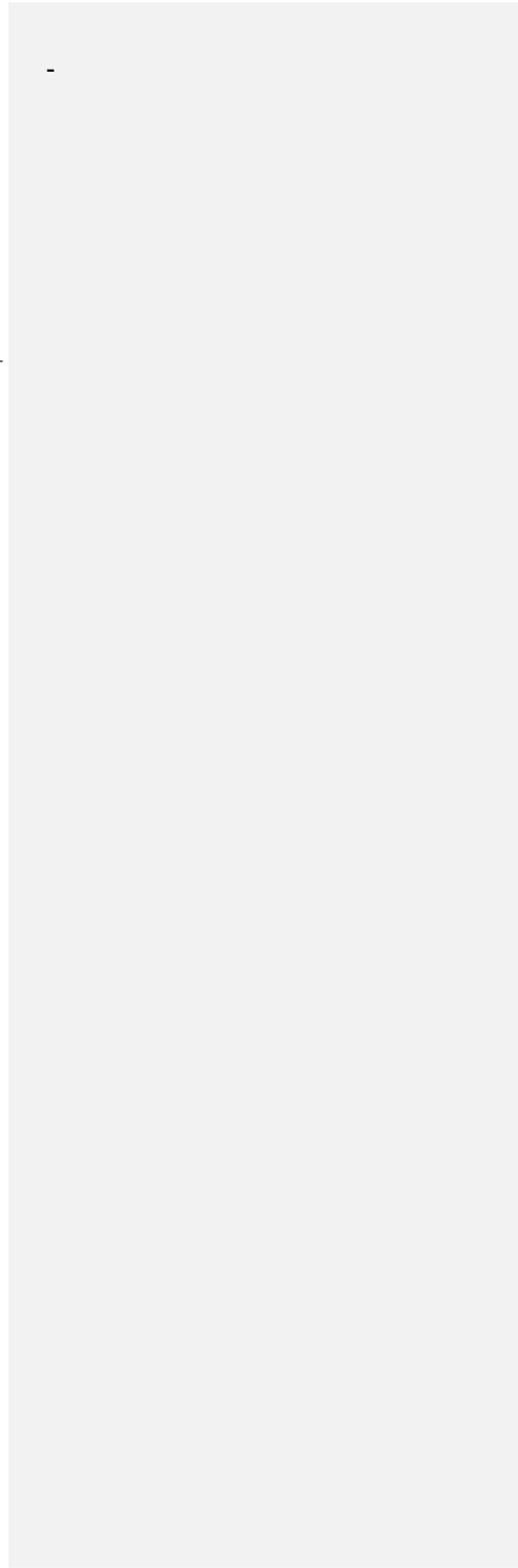
DATE: [●]

1. This certificate is delivered to you in connection with a request for a DIP Advance pursuant to the DIP Agreement made as of ~~11~~ October 8, 2023, between the Borrower and the DIP Lenders, as amended, supplemented, restated or replaced from time to time (the "**DIP Agreement**"). All capitalized terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the DIP Agreement, unless the context requires otherwise.
2. The Borrower hereby requests a DIP Advance as follows:
  - (a) Date of DIP Advance: \_\_\_\_\_
  - (b) Aggregate amount of requested DIP Advance: \$[●]to be transferred into the Borrower's Account by the DIP Lenders or the Monitor, as applicable, by direct deposit in accordance with the DIP Agreement.
3. All of the representations and warranties of the Borrower as set forth in the DIP Agreement are true and correct in all material respects as at the date hereof, as though made on and as of the date hereof (except for any representations and warranties made as of a specific date, which shall be true and correct as of the specific date made).
4. All of the covenants of the Borrower contained in the DIP Agreement and all other terms and conditions contained in the DIP Agreement to be complied with by the Borrower, and not waived in writing by or on behalf of the DIP Lenders, have been complied with.
5. The Borrower is in compliance with all Court Orders.
6. The proceeds of the DIP Advance hereby requested will be applied solely in accordance with the DIP Agreement Cash Flow Projection (subject to the Permitted Variance), or as has been otherwise agreed to by the DIP Lenders in advance in writing.
7. No Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the DIP Advance hereby requested.

**TACORA RESOURCES INC.**

By: \_\_\_\_\_  
Name:  
Title:

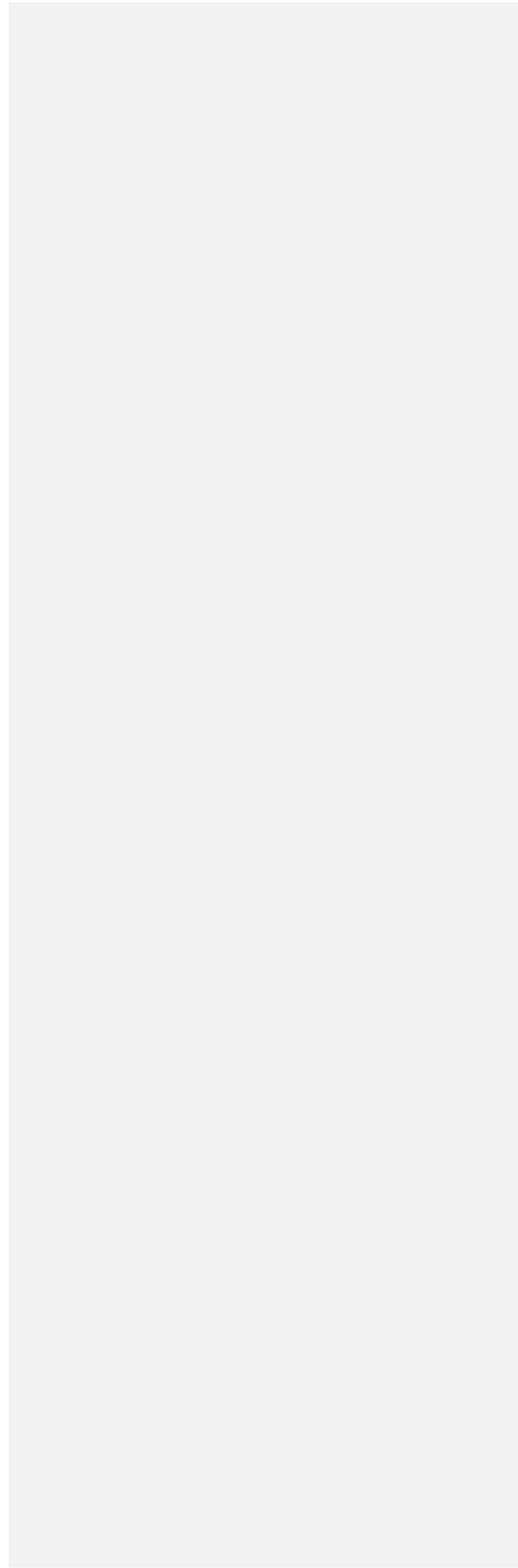
cc: Stikeman Elliott LLP  
Greenhill & Co Canada Ltd.





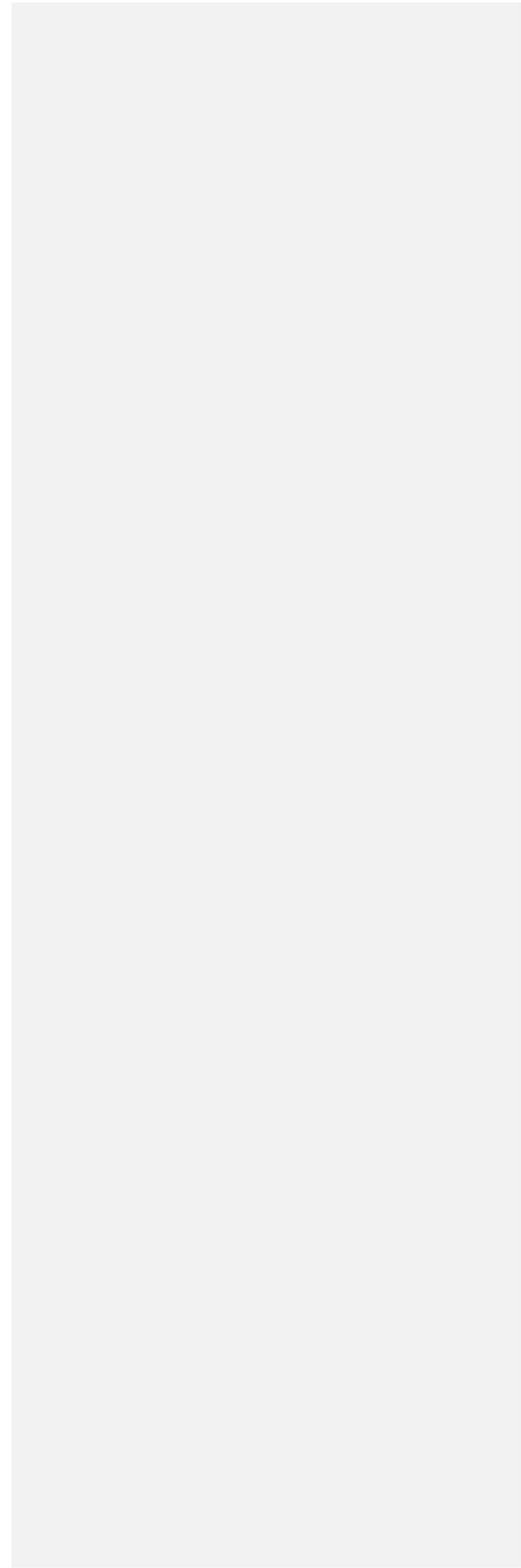
**SCHEDULE "C"**  
**INITIAL ORDER**

See attached.



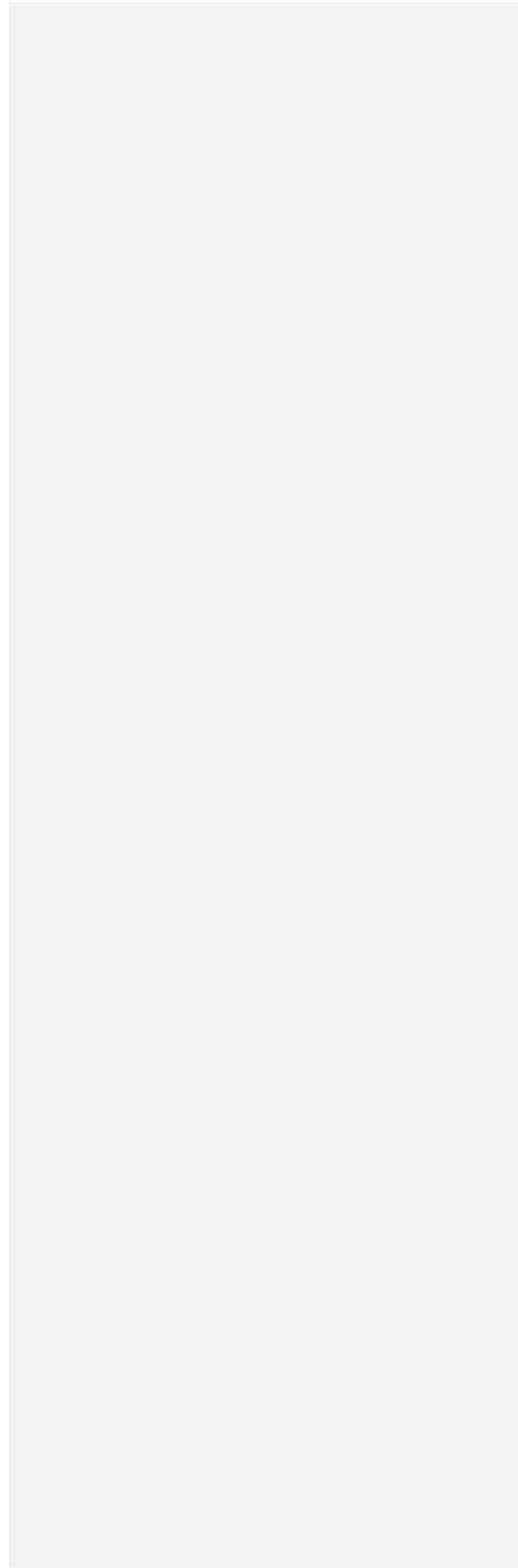
**SCHEDULE "D"**  
**ARIO**

See attached.

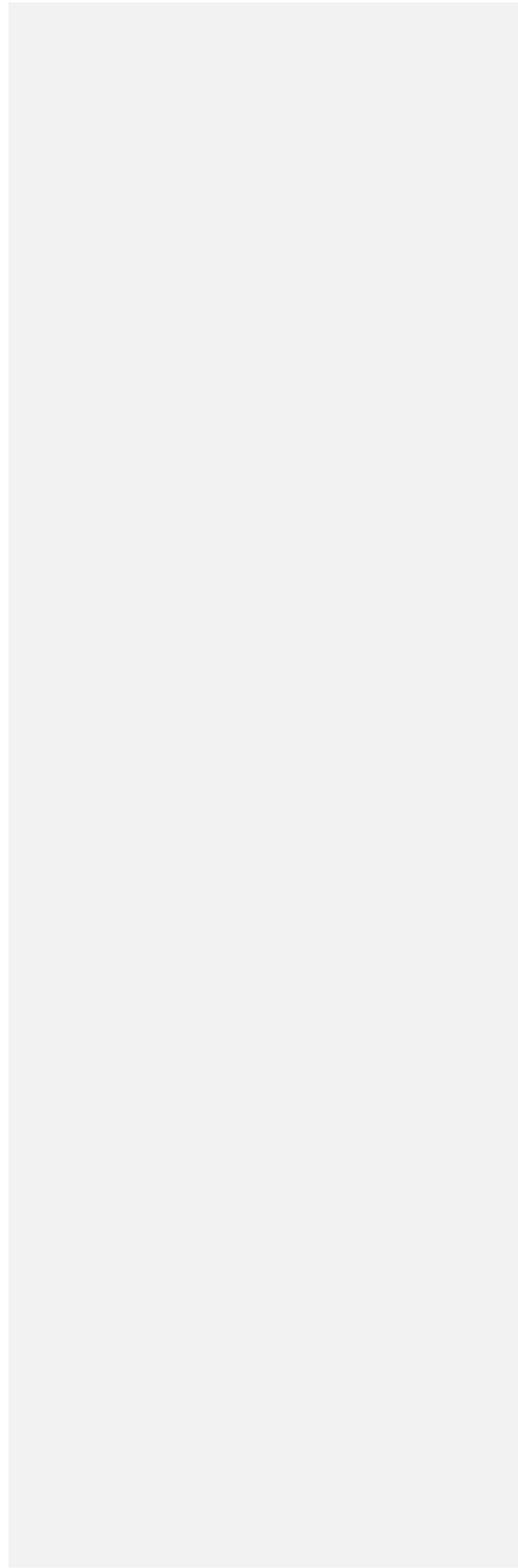


**SCHEDULE "E"**  
**SOLICITATION PROCESS**

See attached.



**SCHEDULE "F"**  
**BORROWER'S ACCOUNT INFORMATION**



**SCHEDULE "G"**  
**TAXES AND SOURCE DEDUCTIONS**

Nil

**SCHEDULE H**  
**LITIGATION**

1. None.

For greater certainty, the following claims are ongoing but will be subject to the Initial Order:

1. Claims made pursuant to a letter dated March 27, 2023 from Quebec Iron Ore Inc.
2. Claims made pursuant to a letter dated April 27, 2023 from 1128349 B.C. Ltd. and subject to arbitration proceedings in Newfoundland and Labrador
3. Claims made by Construction & Expertise PG Inc. subject to proceedings before the Supreme Court of Newfoundland and Labrador (Court file. 2022 01G 3243)

## SCHEDULE I

### DEFINITIONS

"**Additional Independent Directors**" has the meaning provided in Section 25.

"**Admin Charge**" means an administration charge in an aggregate amount not to exceed \$1,000,000 which shall rank in priority to the DIP Charge and the D&O Charge, pursuant to the Initial Order.

"**Alternative Offtake or Services Binding Bid**" has the meaning provided in Section 12.

"**Alternative Offtake or Services LOIs**" has the meaning provided in Section 12.

"**Alternative Offtake or Services Transaction**" has the meaning provided in Section 12.

"**Applicable Percentage**" means, in respect of any DIP Lender at any time, with respect to a DIP Advance, the percentage of such DIP Advance which such DIP Lender has agreed to make available to the Borrowers at such time, determined by dividing the DIP Financing Commitment of such DIP Lender by the aggregate DIP Financing Commitments of all of the DIP Lenders.

"**ARIO**" has the meaning provided in Section 13.

"**Backstop Advance**" means an advance made by a DIP Lender to the Borrower in connection with the Backstop Commitment of such DIP Lender. 11

"**Backstop Commitment**" has the meaning provided in Section.

"**Backstop Fee**" has the meaning provided in Section 17.

"**Board**" has the meaning provided in Section 22.

"**Borrower**" has the meaning provided in Section 1.

"**Borrower's Account**" has the meaning provided in Section 14.

"**Borrower's Knowledge**" has the meaning provided in Section 20.

"**Business Day**" has the meaning provided in Section 38.

"**Cash Flow Projection**" has the meaning provided in Section 8.

"**Cash Interest**" has the meaning provided in Section 16.

"**CCAA**" has the meaning provided in the preamble.

"**CCAA Iron Ore Delivery Forecast**" has the meaning provided in Section 21.

"CCAA Proceedings" has the meaning provided in the preamble.

"Collateral" has the meaning provided in Section 18.

"Communications" has the meaning provided in Section 37.

"Court" has the meaning provided in the preamble.

"Court Order" has the meaning provided in Section 21.

"D&O Charge" means a directors and officers liability charge in an amount not to exceed \$5,300,000 which shall rank behind the Admin Charge but ahead of the DIP Charge, pursuant to the Initial Order.

"Default" has the meaning provided in Section 21.

"Defaulting Lender" has the meaning provided in Section 11.

"Defaulting Lender Funding Obligation" has the meaning provided in Section 11.

"DIP Advance" has the meaning provided in Section 10.

"DIP Agreement" has the meaning provided in the preamble.

"DIP Agreement Cash Flow Projection" has the meaning provided in Section 8.

"DIP Charge" has the meaning provided in Section 18.

"DIP Facility" has the meaning provided in Section 5.

"DIP Financing Commitment" means, with respect to each of the respective DIP Lenders, the amount indicated in the table below, the amount of which may not be amended for a specific DIP Lender, without the prior written consent that DIP Lender:

[NTD: DIP Lenders to advise of updated allocations](#)

<u>DIP Lender</u>	<u>DIP Financing Commitment (\$)</u>
Brigade Capital Management, LP	██████████
Concise Capital Management LP	██████████
CrossingBridge Advisors, LLC	██████████
Millstreet Capital	██████████

Management LLC	
MSD Partners, LP	██████████
O'Brien-Staley Partners	██████████
Snowcat Capital Management, LP	██████████

"DIP Lenders" has the meaning provided in Section 2.

"DIP Obligations" has the meaning provided in Section 6.

"Event of Default" has the meaning provided in Section 24.

"Existing Indebtedness" has the meaning provided in Section 22.

"Expenses" has the meaning provided in Section 27.

"First DIP Advance" has the meaning provided in Section 10.

"Fourth DIP Advance" has the meaning provided in Section 10.

"GLC Fees" means any transaction fees payable to GLC Advisors & Co., LLC under its engagement letter with Bennett Jones LLP, as may be amended.

"Indemnified Person" has the meaning provided in Section 23.

"Initial Order" has the meaning provided in Section 13.

"Interest Rate" has the meaning provided in Section 16.

"KERP" means a key employee retention program ~~(i) providing payments to the Borrower's on site personnel~~ in an amount not to exceed \$~~1,500,000~~5,000,000 in the aggregate; ~~and (ii) providing for payments to the Borrower's management and executive team, which program shall be~~ acceptable to the Required DIP Lenders in all material respects, including milestones and allocation, which the DIP Lenders covenant to make good faith efforts to resolve with the Borrower in a timely manner.

"KERP Charge" means a Court-ordered priority charge granted by the Court over a segregated account of the Monitor where an amount in respect of the KERP is paid, in an amount not to exceed \$~~1,500,000~~5,000,000, plus such further amount agreed to by the Required DIP Lenders in respect of the Borrower's management and executive team, to secure the Borrower's obligations under the KERP.

"Liens" means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever.

"**Majority DIP Lenders**" means, at any time, DIP Lenders holding more than 50% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"**Margin or Hedge Services**" has the meaning provided in Section 9.

"**Material Adverse Change**" means an event, change or condition that has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, operations, financial condition or operating results of the Borrower and its subsidiaries, taken as a whole (other than as a result of the events leading up to and following commencement of the CCAA Proceedings).

"**Material Adverse Effect**" has the meaning provided in Section 20.

"**Maturity Date**" has the meaning provided in Section 6.

"**Maximum Amount**" has the meaning provided in Section 5.

"**Monitor**" has the meaning provided in Section 8.

"**Net Proceeds**" has the meaning provided in Section 19.

"**Offtake Agreement**" means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended.

"**Permitted Liens**" means (i) Permitted Priority Liens, (ii) the DIP Charge, (iii) validly perfected Liens existing prior to the date hereof as in effect on the date hereof; and (iv) inchoate statutory Liens arising after the date on which the Initial Order is obtained in respect of any accounts payable arising after the date on which the Initial Order is obtained in the ordinary course of business, subject to the obligation to pay all such amounts as and when due, (v) the Subordinate Transaction Fee Charge.

"**Permitted Priority Liens**" means the (i) the Admin Charge, (ii) D&O Charge, (ii) KERP Charge (if applicable), (iv) the Priority Transaction Fee Charge, (v) Liens in favour of secured parties that did not receive notice of the application for the Initial Order (to the extent the Majority DIP Lenders (or their counsel) agreed based on the service list that such secured parties would not be served), (vi) Liens in respect of claims that are individually and in the aggregate immaterial, solely to the extent such Liens are not registered under a personal property registry system and (vii) any amounts payable by a Borrower for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) (net of input credits), income tax and workers compensation claims, in the case of this item (viii) solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts have not been subordinated to the DIP Charge pursuant to the Court Orders; ~~and~~ (ix) such other Liens existing as of the date of the Initial Order that have not been subordinated to the DIP Lender Charge pursuant to the Court Order; and (x) [the Cargill Charge, as defined in Initial Order].

"**Permitted Variance**" has the meaning provided in Section 8.

"**PIK Amounts**" has the meaning provided in Section 16.

"**PIK Interest**" has the meaning provided in Section 16.

"**PIK Mechanism**" has the meaning provided in Section 16.

"**Priority Transaction Fee Charge**" means a super priority charge that shall rank pari passu with the DIP Charge in favour of Greenhill & Co. Canada Ltd. in an aggregate amount up to the GLC Fees in respect of Greenhill & Co. Canada Ltd.'s [transaction](#) fees owing under its engagement letter with the Borrower dated January 23, 2023.

"**Proposed Amended Cash Flow Projection**" has the meaning provided in Section 8.

"**Pro Rata**" means, in respect of any DIP Lender at any time, the ratio of the DIP Obligations owing to such DIP Lender at such time to the aggregate DIP Obligations owing to all DIP Lenders which are not Defaulting Lenders at such time.

"**Required DIP Lenders**" means, at any time, DIP Lenders holding more than 66 2/3% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"**Sale Binding Bid**" has the meaning provided in Section 12.

"**Sale Transaction**" has the meaning provided in Section 12.

"**Second DIP Advance**" has the meaning provided in Section 10.

"**Solicitation Process**" has the meaning provided in Section 13.

"**Solicitation Process Milestone**" has the meaning provided in Section 12.

"**Solicitation Process Order**" has the meaning provided in Section 13.

"**Subordinate Transaction Fee Charge**" means a charge that shall rank pari passu with the Senior Priority Notes, and any other secured claim that ranks pari passu with the Senior Priority Notes, in favour of Greenhill & Co. Canada Ltd. for any [transaction](#) fees payable to Greenhill & Co. Canada Ltd. in excess of the quantum of the GLC Fees under its engagement letter with the Borrower dated January 23, 2023.

"**Senior Priority Notes**" means the Borrower's 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023.

"**Taxes**" has the meaning provided in Section 30.

"**Technical Advisor**" means a technical advisor engaged by the DIP Lenders or their legal or financial advisors.

"**Third DIP Advance**" has the meaning provided in Section 10.

"**Tranche 1**" has the meaning provided in Section 5.

"**Tranche 2**" has the meaning provided in Section 5.

"**Tranche 3**" has the meaning provided in Section 5.

**THIS IS EXHIBIT "L" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

## DIP LOAN AGREEMENT

**Dated as of October 8, 2023**

**WHEREAS** the Borrower (as defined below) has requested that the DIP Lenders (as defined below) provide financing to fund certain obligations of the Borrower in the context of its anticipated proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**", and such proceeding, the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in accordance with the terms and conditions set out in this agreement (this "**DIP Agreement**");

**NOW THEREFORE** the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Tacora Resources Inc. (the "**Borrower**").
2. **DIP LENDERS:** (i) Brigade Capital Management, LP;  
(ii) Concise Capital Management LP;  
(iii) Millstreet Capital Management LLC;  
(iv) MSD Partners, LP;  
(v) O'Brien-Staley Partners; and  
(vi) Snowcat Capital Management, LP,  
  
(collectively, in such capacity, the "**DIP Lenders**") on behalf of the parties listed in the signature pages hereto.
3. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Agreement have the meanings given thereto in **Schedule "I"** hereto.
4. **PURPOSE:** As set out in Section 21(e) of this DIP Agreement or as otherwise indicated herein.
5. **DIP FACILITY AND MAXIMUM AMOUNT** A super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") up to a maximum principal amount of \$119,005,000 (the "**Maximum Amount**").

The DIP Facility shall be split into three tranches that in aggregate total the Maximum Amount:

- Tranche 1 - \$65,155,000 ("**Tranche 1**")
- Tranche 2 - \$40,000,000 ("**Tranche 2**")
- Tranche 3 - \$13,850,000 ("**Tranche 3**")

For greater certainty, any interest, expenses or fees that are capitalized and added to the principal amount owing hereunder as contemplated by the terms hereof shall not constitute part of the Maximum Amount, and the Borrower is and shall be permitted to borrow up to the Maximum Amount without taking into account any such capitalized amounts, subject to the terms and conditions hereof.

Advances under the DIP Facility shall be made in accordance with Section 10 of this DIP Agreement.

**6. REPAYMENT:**

The aggregate principal amount owing under the DIP Facility, all accrued and unpaid interest, all fees (including, without limitation, the Backstop Fee (as defined below)) and reasonable and documented expenses incurred by the DIP Lenders (including, without limitation, the Expenses (as defined below)), and all other obligations of the Borrower to the DIP Lenders under or in connection with the CCAA Proceedings, this DIP Agreement, the DIP Facility or any other definitive security or other documents, agreements, registrations, financing statements and instruments in respect of the DIP Facility (collectively, the "**DIP Obligations**") shall be repaid in full on the earliest to occur of: (i) the occurrence of any Event of Default hereunder that has not been cured or waived in writing by the DIP Lenders and in respect of which the Borrower was provided prior written notice by the DIP Lenders of such Event of Default; (ii) the closing of one or more sale transactions for all or substantially all of the assets or shares in the capital of the Borrower approved by an order of the Court, including in connection with the Solicitation Process (as defined below); (iii) the implementation by the Borrower of a plan of compromise or arrangement in accordance with the CCAA and any Court Orders (as defined below); (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (v) October 10, 2024 (the earliest of such dates being the "**Maturity Date**"). Provided that there is no Event of Default hereunder which is continuing, the Maturity Date may be extended at the request of the Borrower, following consultation with FTI Consulting Canada Inc., in its capacity as proposed court-appointed monitor (as appointed in such capacity, the "**Monitor**"), and with the prior written consent of each of the DIP Lenders, in their sole discretion, for such period and on such terms and conditions as the Borrower (in consultation with the Monitor) and the DIP Lenders may agree.

The commitment in respect of the DIP Facility shall expire automatically on the Maturity Date (unless extended according to the terms hereunder) and all DIP Obligations shall be repaid in full on the Maturity Date (or extended Maturity Date), without the DIP Lenders being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and/or that the DIP Obligations are due and payable.

All payments received by the DIP Lenders shall be applied first to any fees and expenses due hereunder (including, without limitation, the Expenses), then to accrued and unpaid interest and then, after all such fees, expenses and interest are brought current, to principal, provided, however, that any amounts applied by the Borrower to repay DIP Obligations shall go first to satisfy in full the DIP Obligations owing to non-Defaulting Lenders, then to the DIP Obligations, if any, owing to Defaulting Lenders.

It is acknowledged that some or all of the DIP Obligations may be satisfied by the DIP Lenders "credit bidding" such DIP Obligations, with the prior written consent of the Required DIP Lenders, for some or all of the assets of the Borrower pursuant to the Solicitation Process to be implemented in the CCAA Proceedings, in the Required DIP Lenders' sole discretion and subject to approval by the Court.

**7. EXIT FINANCING:** If requested by the Borrower, the DIP Lenders may, with the prior written consent of the Required DIP Lenders, in their sole discretion, and with the consent of the Borrower (in consultation with the Monitor), convert any or all of the DIP Obligations outstanding on the Maturity Date into exit financing having terms and conditions satisfactory to the DIP Lenders and the Borrower.

**8. CASH FLOW PROJECTIONS:** The Borrower, in consultation with the Monitor in the CCAA Proceedings, has provided to the DIP Lenders the cash flow projections attached at **Schedule "A"** hereto, which are in form and substance satisfactory to the DIP Lenders and which are to be filed with the Court, reflecting the projected cash requirements of the Borrower for the 20-week period from the week ending October 15, 2023, through the week ending February 25, 2024, calculated on a weekly basis (together with the back-up information requested and received by the DIP Lenders, the "**Cash Flow Projection**").

The Borrower shall keep the DIP Lenders and the Monitor apprised of its cash flow requirements by providing: (i) an

updated rolling Cash Flow Projection (which shall include all reasonable backup information requested by the DIP Lenders) by no later than 5:00 p.m. (Eastern Time) on the Friday of each week ending after the week in which the First DIP Advance (as defined below) occurs, such updated cash flow projection to be in a form consistent with the Cash Flow Projection (a "**Proposed Amended Cash Flow Projection**"), provided that the Borrower (in consultation with the Monitor), at its option, may provide a Proposed Amended Cash Flow Projection on a more frequent basis, but in any event, not more than twice in any calendar week; and (ii) on a weekly basis, a report showing on a line-by-line basis (a) the cumulative actual receipts and disbursements for the preceding period and (b) the cumulative variances from the amounts in the DIP Agreement Cash Flow Projection (as defined below) and noting therein all variances on a line by line basis from the amounts in the DIP Agreement Cash Flow Projection, with reasonably detailed explanations for all material variances, such information described in this clause (ii) to be delivered to the DIP Lenders and Monitor weekly by no later than 5:00 p.m. (Eastern Time) on the Friday of each week.

The Proposed Amended Cash Flow Projection shall be considered the DIP Agreement Cash Flow Projection unless the Majority DIP Lenders determine that the Proposed Amended Cash Flow Projection is not acceptable and deliver a written objection to the Borrower with a copy to the Monitor within three (3) Business Days of receipt thereof, stating that the Proposed Amended Cash Flow Projection is not acceptable and setting out the reasons why such Proposed Amended Cash Flow Projection is not acceptable. In such case the prior Cash Flow Projection shall remain in effect.

At any given time, the cash flow projection in force and effect (whether the Cash Flow Projection or any subsequent Proposed Amended Cash Flow Projection) shall be the "**DIP Agreement Cash Flow Projection**".

For greater certainty, the DIP Lenders shall not be required to initiate any DIP Advances pursuant to a Proposed Amended Cash Flow Projection, nor is the Borrower entitled to utilize any DIP Advance to make payments set out in a Proposed Amended Cash Flow Projection, unless and until it has become effective as the DIP Agreement Cash Flow Projection in accordance with this Section 8.

The proceeds of each DIP Advance shall be used (i) by the Borrower solely in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (as defined below), or as may otherwise be agreed to in writing by the Required DIP Lenders, from time to time.

Notwithstanding anything to the contrary herein, unless the Required DIP Lenders consent in advance in writing, the Borrower shall be prohibited from using the proceeds of any DIP Advance to pay: (i) any expenses that are not of a type of expense that falls within an expense line-item contained in the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (and for certainty including the exceptions contained therein); (ii) professional fees of the Borrower or any other party to contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the DIP Lenders on any Court Order with respect to the validity or enforceability of the DIP Obligations, the DIP Agreement or any Order contemplated by the DIP Agreement; (iii) subject to the preceding subsection (ii), the professional fees of any party, except for such professional fees incurred for and on behalf of the Borrower, the Monitor and the DIP Lenders (as defined below); and (iv) any amounts outstanding as at the date of commencement of the CCAA Proceedings, including without limitation, any amounts owing to trade creditors and other lenders.

For the purposes of this DIP Agreement, “**Permitted Variance**” shall mean an adverse variance of not more than 10% of any disbursement line item in the DIP Agreement Cash Flow since the beginning of the period covered by the DIP Agreement Cash Flow Projection starting on the start date of the initial Cash Flow Projection referred to in the first paragraph of this Section 8 above; provided, however that: (i) the Permitted Variance calculation shall not take into account (a) the professional advisory fees (including the fees of counsel and a financial advisor) of the Borrower and the Monitor, (b) the Expenses, (c) the fees and expenses of the DIP Lenders; and (d) costs related to pre-existing compensation arrangements paid to employees based on production of the Scully mine; and (ii) an exceedance of the Permitted Variance by the Borrower only one time during any consecutive four week period beginning on the date the Initial Order is granted shall not result in an Event of Default.

**9. TRANCHE 3 USE  
AND DRAW  
CONDITIONS**

Notwithstanding any other provisions of this DIP Agreement, amounts funded pursuant to Tranche 3 may only be used to fund: (i) required margin payments due under the Offtake Agreement; or (ii) the purchase of hedges ("**Margin or Hedge Services**").

Prior to purchasing or making any payment for Margin or Hedge Services, the Borrower and its financial advisor shall request: (a) a quote for pricing of such Margin or Hedge Services from Cargill; and (b) a quote for pricing of such Margin or Hedge Services from an independent third-party who provides such services.

The Borrower shall not purchase any Margin or Hedge Services without the consent of the Monitor. For greater certainty, Margin or Hedge Services does not include required margin payments due under the Offtake Agreement, provided that the amount of any such margin payment must be approved by the Monitor.

**10. ADVANCES UNDER  
DIP FACILITY:**

Pursuant to the terms and conditions of this DIP Agreement, the DIP Lenders shall, on a several basis, advance the following disbursements as draws against the Maximum Amount (each of the below, a "**DIP Advance**"):

- (a) A first advance in the aggregate amount of \$17,471,000 ("**First DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such First DIP Advance to be advanced not later than one (1) Business Day (as defined below) following the satisfaction of each of the conditions to the First DIP Advance set out in Section 13 of this DIP Agreement. The First DIP Advance shall be composed of: (i) \$7,727,146 of funding from Tranche 1; (ii) \$4,743,854 of funding from Tranche 2; and (iii) \$5,000,000 of funding from Tranche 3;
- (b) A second advance in the amount of \$73,783,000 ("**Second DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Second DIP Advance to be advanced not later than one (1) Business Day following the satisfaction of each of the conditions to the Second DIP Advance set out in Section 13 of this DIP Agreement. The Second DIP Advance shall be composed of: (i) \$40,233,081 of funding from Tranche 1; (ii) \$24,699,919 of funding from Tranche 2; and (iii)

\$8,850,000 of funding from Tranche 3. Tranche 1 and Tranche 2 shall be adjusted downward to the extent the KERP is paid later in the CCAA proceedings or upon exit from the CCAA proceedings, with a commensurate increase to the Third DIP Advance or Fourth DIP Advance;

- (c) A third advance in the amount of \$24,272,000 ("**Third DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Third DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Third DIP Advance set out in Section 13 of this DIP Agreement. The Third DIP Advance shall be composed of: (i) \$15,039,153 of funding from Tranche 1; and (ii) \$9,232,847 of funding from Tranche 2; and
- (d) A fourth advance in the amount of \$3,479,000 ("**Fourth DIP Advance**") shall be made by the DIP Lenders to the Borrower in accordance with Section 14 of this DIP Agreement, such Fourth DIP Advance to be advanced not later than three (3) Business Days following the satisfaction of each of the conditions to the Fourth DIP Advance set out in Section 13 of this DIP Agreement. The fourth DIP Advance shall be composed of: (i) \$2,155,620 of funding from Tranche 1; and (ii) \$1,323,380 of funding from Tranche 2.

## 11. BACKSTOP COMMITMENT

Each DIP Lender shall fund a portion of each DIP Advance equal to its Applicable Percentage of such DIP Advance.

The DIP Lenders shall, jointly and severally, backstop the DIP Financing Commitment of each other DIP Lender (each, a "**Backstop Commitment**"), such that if any DIP Lender shall fail to (x) fund its Applicable Percentage of any DIP Advance or (y) fund on a Pro Rata basis a Backstop Advance (collectively, a "**Defaulting Lender Funding Obligation**") (each such defaulting DIP Lender, a "**Defaulting Lender**"), each other DIP Lender which is not a Defaulting Lender shall, within: (A) one (1) Business Day of receiving written notice of failure to fund from the Borrower in respect of the First DIP Advance or Second DIP Advance, or (B) three (3) Business Days of receiving written notice of failure to fund from the Borrower in respect of the Third DIP Advance and Fourth DIP Advance, fund on a Pro Rata basis by way of a Backstop

Advance each such Defaulting Lender Funding Obligation in accordance with this Section 11 of this DIP Agreement.

**12. SOLICITATION  
PROCESS MILESTONES:**

The following milestones in respect of the Solicitation Process must be satisfied by the Borrower or such later dates as may be agreed by the Borrower, the Majority DIP Lenders and the Monitor (each a "**Solicitation Process Milestone**" and collectively, the "**Solicitation Process Milestones**"):

- (a) The Solicitation Process Order must be obtained by October 27, 2023 and the Solicitation Process must commence no later than October 30, 2023;
- (b) The deadline for the receipt of non-binding letters of intent: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale LOI**"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services LOI**"), must be no later than December 1, 2023;
- (c) Final deadline for the receipt of binding bids: (i) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale Binding Bid**"); and/or (ii) to provide the Borrower with an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services Binding Bid**"), must be no later than January 19, 2024; and
- (d) Closing of transaction(s) for a sale of or investment in all or substantially all of the Borrower's assets or its business (a "**Sale Transaction**"); and/or (ii) in respect of an offtake, services or other agreement in respect of the Borrower's business (an "**Alternative Offtake or Services Transaction**"), must occur no later than February 16, 2024.

The Borrower agrees that the DIP Lenders may submit a "stalking horse" bid for a sale of or investment in all or substantially all of the Borrower's assets or its business pursuant to the Solicitation Process. The Solicitation Process Order shall provide that the Borrower shall have the right to seek approval by the Court of a "stalking horse" bid any time

prior to the deadline for Sale LOIs and Alternative Offtake or Services LOI.

**13. CONDITIONS  
PRECEDENT TO DIP  
FACILITY  
ADVANCES:**

**A. CONDITIONS TO FIRST DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the First DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the Initial Order (as defined below) at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, which material documents shall include the proposed Initial Order, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.
- (b) The Court shall have issued on or before October 10, 2023 an initial order in substantially the form attached as **Schedule "C"** hereto with such additional changes reasonably acceptable to the Borrower, Majority DIP Lenders and Monitor (the "**Initial Order**"), the effect of which shall, among other things, authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge (as defined below) securing the principal amount of the First DIP Advance, plus interest, fees and expenses payable pursuant to this DIP Agreement, and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such Initial Order shall have been obtained on notice to such parties required by the Required DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that

the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;

- (d) The Initial Order shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (e) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the First DIP Advance;
- (f) No Material Adverse Change shall have occurred since the date hereof;
- (g) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the First DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for Permitted Priority Liens;
- (i) Arrangements have been made to pay Expenses for which invoices have been provided to the Borrower from the First DIP Advance on the next business day after receipt of the First DIP Advance;
- (j) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute.
- (k) The Borrower shall be in compliance with all Court Orders.

## **B. CONDITIONS TO SECOND DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Second DIP Advance hereunder:

- (a) The Borrower shall have provided to the DIP Lenders a draft copy of all material documents to be served and/or filed by the Borrower in connection with its application for the ARIO and the Solicitation Process Order at least two (2) Business Days before the earlier of service and filing thereof (unless not practicable in the circumstances, in which case they shall be provided with as much notice as possible in the circumstances) to permit review by the DIP Lenders and their advisors, unless otherwise consented to by the Required DIP Lenders, acting reasonably, which material documents shall include the proposed ARIO, and such material documents shall be in form and substance satisfactory to the Required DIP Lenders, acting reasonably.
- (b) The Court shall have issued an amended and restated Initial Order in substantially the form set out in **Schedule "D"** hereto, with such additional changes reasonably acceptable to the Borrower, Required DIP Lenders and Monitor (the "**ARIO**") the effect of which, among other things, is to authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge securing the principal amount of \$113,850,000 and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such ARIO shall have been obtained on notice to all parties entitled thereto pursuant to the CCAA or otherwise required by the Required DIP Lenders;
- (c) The Borrower shall have used commercially reasonable efforts to have obtained a Court Order in form and substance acceptable to the Required DIP Lenders (the "**Solicitation Process Order**") approving a sale, investment and offtake agreement solicitation process (the "**Solicitation Process**") as set out in **Schedule "E"** hereto, with any changes as may be agreed by the Borrower, the Monitor and the Required DIP Lenders;
- (d) The ARIO and any other Court Orders in the CCAA Proceedings shall be in full force and effect and shall

not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;

- (e) Delivery to the DIP Lenders, with a copy to the Monitor of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Second DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (f) The Initial Order and the ARIO shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lenders;
- (g) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Second DIP Advance;
- (h) No Material Adverse Change shall have occurred since the date hereof;
- (i) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the Second DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (j) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (k) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (l) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or

arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts;

- (m) The Borrower shall have paid all government statutory Liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees located in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute; and
- (n) The Borrower shall be in compliance with all Court Orders.

### C. CONDITIONS TO THIRD DIP ADVANCE

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Third DIP Advance hereunder:

- (a) The Court shall have issued the Solicitation Process Order;
- (b) The ARIO, and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (c) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of (i) [●], 2023 [**To be updated based on cash flow**] and (ii) the date of receipt by the Borrower of Sale LOIs and Alternative Offtake or Services LOIs, of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Third DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;

- (d) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Third DIP Advance;
- (e) No Material Adverse Change shall have occurred after the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Third DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (i) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (j) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (k) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and

- (l) The Borrower shall be in compliance with all Court Orders.

**D. CONDITIONS TO FOURTH DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the Required DIP Lenders, in their sole discretion, prior to the Fourth DIP Advance hereunder:

- (a) The ARIO, the Solicitation Process Order and all other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lenders;
- (b) Delivery to the DIP Lenders, with a copy to the Monitor, on or after the earlier of date of (i) [●] 2023 [to be updated based on cash flow]; and (ii) receipt by Borrower of Sale Binding Bids and Alternative Offtake or Services Binding Bids, of a drawdown certificate, in substantially the form set out in Schedule "B" hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Fourth DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred and is continuing;
- (c) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Fourth DIP Advance;
- (d) There shall be no Liens ranking in priority to or *pari passu* with the DIP Charge except for the Permitted Priority Liens;
- (e) No Material Adverse Change shall have occurred since the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of the Fourth DIP Advance (unless any representation and warranty is qualified by materiality,

in which case it shall be true and correct in all respects as of the date made or deemed made);

- (g) The DIP Lenders have received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 8 of this DIP Agreement);
- (h) The Borrower shall have paid all government statutory Liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions (including similar employee remittances in respect of employees in the United States), except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (i) The Borrower shall have diligently and in good faith implemented and be conducting or have conducted, as applicable, the Solicitation Process in accordance with the Solicitation Process Order;
- (j) All Expenses for which detailed invoices (redacted for privilege) have been provided to the Borrower (with a copy to the Monitor) shall have been paid, or arrangements satisfactory to the Required DIP Lenders shall have been made to pay such amounts; and
- (k) The Borrower shall be in compliance with all Court Orders.

**14. DISBURSEMENTS**

The proceeds of all DIP Advances shall be funded by the DIP Lenders into the Borrower's account noted in **Schedule "F"** hereto (the "**Borrower's Account**").

**15. VOLUNTARY PREPAYMENTS:**

The Borrower may prepay the DIP Obligations at any time prior to the Maturity Date by effecting a Pro Rata payment to the DIP Lenders, to one or more accounts to be specified in writing in advance, in minimum amounts \$1,000,000 and in increments of \$250,000 in excess thereof, without premium or penalty. Any amounts so prepaid may not be re-borrowed by the Borrower hereunder.

Any voluntary prepayments shall be applied: (i) first, to amounts outstanding under Tranche; (ii) second, once all

amounts outstanding under Tranche 2 have been paid in full, to amounts outstanding under Tranche 3; and (iii) third, once all amounts outstanding under Tranche 2 and Tranche 3 have been paid in full, to amounts outstanding under Tranche 1.

**16. INTEREST RATE:**

The outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal in aggregate to (the "**Interest Rate**"):

Tranche 1 – 10% per annum payable in cash in accordance with this Section 16 ("**Cash Interest**") and 3% per annum payable-in-kind in accordance with this Section 16 (the "**PIK Interest**").

Tranche 2 – 8.25% per annum Cash Interest.

Tranche 3 – 8.25% per annum Cash Interest.

Upon the occurrence and during the continuance of an Event of Default the Cash Interest rate shall be increased by an additional 2% per annum ("**Default Interest**"), payable monthly in cash in arrears on the last Business Day of each calendar month and the Interest Rate, including Default Interest, shall begin to accrue on all amounts borrowed.

The Borrower shall pay in cash the Cash Interest on the aggregate outstanding principal amount of DIP Advances monthly in arrears on the last Business Day of each calendar month beginning on October 31, 2023. The Borrower shall pay the PIK Interest on the aggregate outstanding principal amount of the DIP Advances by adding such accrued interest to the principal amount of the DIP Obligations on the last Business Day of each calendar month. Amounts representing the interest payable hereunder that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance with this Section 16.

Interest on all DIP Advances shall accrue daily from and after the date of such DIP Advance to the Borrower to, but excluding, the date of repayment, as well as before and after maturity, demand and default and before and after judgment, and shall be calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid from time to time and on the basis of the actual number of days elapsed in a year of 365 days. For greater certainty, there shall not be any compounding in respect of

Cash Interest provided it is paid on time in accordance with this DIP Agreement.

For the purposes of the *Interest Act* (Canada), the annual rates of interest referred to in this DIP Agreement calculated in accordance with the foregoing provisions of this DIP Agreement, are equivalent to the rates so calculated multiplied by the actual number of days in a calendar year and divided by 365 or 366, as the case may be.

If any provision of this DIP Agreement or any ancillary document in connection with this DIP Agreement would obligate the Borrower to make any payment of interest or other amount payable to the DIP Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the DIP Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the DIP Lenders of interest at a criminal rate and any such amounts actually paid by the Borrower in excess of the adjusted amount shall be forthwith refunded to the Borrower.

All PIK Interest and Backstop Fees (as defined below) (collectively, the "**PIK Amounts**") shall be: (i) converted to equity at plan or transaction value in the event of a sale or restructuring transaction in respect of the Borrower in which the DIP Lenders retain equity value in the Borrower or its successor(s) upon emergence from CCAA and in such circumstances, all PIK Amounts will be deemed satisfied in full; or (ii) in any other circumstance, paid in cash upon the Maturity Date (the "**PIK Mechanism**").

For greater certainty, unless otherwise expressly provided in this Agreement, all payments to be made by the Borrower to the DIP Lenders under this Agreement on account of principal, interest, fees or otherwise shall be made on a Pro Rata basis.

**17. BACKSTOP FEE:**

The Borrower shall pay to the DIP Lenders a backstop fee (the "**Backstop Fee**"), as compensation for their Backstop Commitments, in an amount equal to 2% of the entire Maximum Amount, which shall be earned by the DIP Lenders on a Pro Rata basis, upon the Court issuing the ARIIO.

The Backstop Fee, once earned and payable, shall be non-refundable under all circumstances and shall be paid by adding the amount of such fee to the principal amount of the DIP Obligations. Amounts representing the Backstop Fee that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and shall bear interest in accordance with Section 16 of this DIP Agreement. Only those DIP Lenders which are not Defaulting Lenders shall be entitled to any portion of the Backstop Fee when such fee is paid in cash or otherwise allocated to the DIP Lenders pursuant to the PIK Mechanism, with any amounts which would otherwise have been paid or allocated to a Defaulting Lender to instead be distributed, on a Pro Rata basis, to the DIP Lenders who are not Defaulting Lenders.

**18. DIP SECURITY:**

All of the DIP Obligations shall be secured by a Court-ordered charge (the "**DIP Charge**") over all present and after-acquired property, assets and undertakings of the Borrower (including for greater certainty and without limitation, insurance proceeds, intellectual property, goods, documents of title, investment property, securities now owned or hereafter owned or acquired by or on behalf of the Borrower and those assets set forth on the financial statements of the Borrower), including all proceeds therefrom and all causes of action of the Borrower (collectively, the "**Collateral**").

The DIP Charge shall be a super-priority charge which shall rank ahead of all existing, Liens, claims, trusts and charges, but shall be subject to and shall rank behind or pari passu with the Permitted Priority Liens.

Any amendment to, waiver of or release of a material portion of: (i) the priority of the DIP Charge; and (ii) the Collateral (subject to the terms of the Initial Order or the ARIO, as applicable), shall require the prior written consent of each of the DIP Lenders.

**19. MANDATORY REPAYMENTS:**

Unless the Borrower has obtained the prior written consent of the Majority DIP Lenders, the proceeds of any debt or equity issuance by the Borrower that occurs from and after the date hereof, and the proceeds of Collateral (for greater certainty, net of reasonable costs and closing adjustments, as applicable), including, without limitation, arising from: (a) any sale of Collateral out of the ordinary course of business (including for greater certainty, any sale of all or substantially all of the Collateral); or (b) insurance proceeds in respect of any damage, loss or destruction of the Collateral (collectively, the "**Net**

**Proceeds**") shall be paid: (i) first, to satisfy the Admin Charge, the D&O Charge, [the [Cargill Charge] [**To be updated**] and the KERP Charge; (ii) second, to satisfy DIP Obligations under Tranche 2; (iii) third, to satisfy DIP Obligations under Tranche 3; (iv) fourth, to satisfy DIP Obligations under Tranche 1; (v) fifth, to satisfy any other priority charges in accordance with their priorities; (vi) sixth, to satisfy other indebtedness and liabilities of the Borrower as may be ordered by the Court in accordance with their priorities; and (vii) seventh, to the Borrower or such other persons as are entitled thereto in accordance with applicable law.

The Maximum Amount shall be permanently reduced in an amount equal to the Net Proceeds paid to the DIP Lenders and applied to the aggregate outstanding principal amount of the DIP Advances in accordance with Section 6 of this DIP Agreement. For greater certainty, any mandatory repayments shall not be subject to any premium or penalty.

**20. REPRESENTATIONS AND WARRANTIES:**

The Borrower jointly and severally represents and warrants to each DIP Lender, upon which each DIP Lender relies in entering into this DIP Agreement, that subject to the entry of the Initial Order:

- (a) The Borrower is a corporation duly incorporated and validly existing under the laws of its governing jurisdiction and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary, except where the failure to have such qualification, license or registration would not have a Material Adverse Effect (as defined below). For the purpose of this DIP Agreement, "**Material Adverse Effect**" means a material adverse effect on: (i) the financial condition, business or assets of the Borrower; or (ii) the ability of the Borrower to comply with its obligations hereunder or under any Court Order;
- (b) Subject to the granting of the Initial Order and the ARIIO, as the case may be, the Borrower has all requisite corporate or other power and authority to: (i) carry on its business; (ii) own property, borrow monies and enter into agreements therefor; and (iii) execute and enter into this DIP Agreement and observe and perform the terms and provisions hereof;

- (c) None of the subsidiaries and affiliates of the Borrower have any material assets;
- (d) Subject to the granting of the Initial Order and the ARIO, as the case may be, the execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder has been duly authorized by all necessary corporate or other action and any actions required under applicable laws. Except as has been obtained and is in full force and effect, no registration, declaration, consent, waiver or authorization of, or filing with or notice to, any governmental body is required to be obtained in connection with the performance by the Borrower of its obligations under this DIP Agreement;
- (e) Subject to the granting of the Initial Order and the ARIO, as the case may be, this DIP Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to: (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; (ii) the fact that specific performance and injunctive relief may only be given at the discretion of the courts; and (iii) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;
- (f) The execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of: (i) its constating documents (including any shareholders' agreements) or by-laws; (ii) any applicable laws; (iii) except as stayed pursuant to the CCAA Proceedings by the terms of the Initial Order, the ARIO or other Court Order, as the case may be, any contractual restriction binding on or affecting it or its material properties; or (iv) any material judgment, injunction, determination or award which is binding on it;

- (g) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, the Borrower is in compliance with all applicable laws of each jurisdiction in which its business has been or is being carried on, non-compliance with which would reasonably be expected to have a Material Adverse Effect;
- (h) Unless previously disclosed to the DIP Lenders in writing prior to execution of this DIP Agreement, to the Borrower's Knowledge (as defined below), there are no actions, suits or proceedings pending, taken or, threatened, before or by any governmental body or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law, which would reasonably be expected to have a Material Adverse Effect and have not been stayed pursuant to the CCAA Proceedings. For the purpose of this DIP Agreement, "**Borrower's Knowledge**" means the actual knowledge of the senior officers and directors of the Borrower and the knowledge that such individuals would have had if they had conducted a reasonably diligent inquiry into the relevant subject matter;
- (i) The DIP Agreement Cash Flow Projection includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Borrower on the date hereof that, if not paid, would likely result in Liens ranking in priority to the DIP Charge, except for purchase money security interests;
- (j) As at the date of the Initial Order, the Borrower has good and marketable title to all of the Collateral subject to Permitted Liens;
- (k) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**, as at October 8, 2023, the Borrower has filed all tax returns that are required to be filed and has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it, except any such assessment that is being contested in good faith by proper legal proceedings. Without limiting the foregoing, all employee source deductions (including in respect of income taxes, employment insurance and Canada

Pension Plan) payroll taxes and workers' compensation dues are currently paid and up to date, subject to normal course accruals, except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "G"**;

- (l) Except as previously disclosed in writing by the Borrower to the DIP Lenders and set out on **Schedule "H"**, there are no actions, suits or proceedings (including any tax-related matter) by or before any arbitrator or governmental authority or by any other person pending against or threatened against or affecting the Borrower that have or will not have been stayed pursuant to the CCAA Proceedings which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;
- (m) The Borrower maintains insurance policies and coverage that: (i) is sufficient for compliance with any applicable law and all material agreements to which it is a party; and (ii) provides adequate insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons engaged in the same or similar business to the assets and operations of the Borrower;
- (n) All factual information provided by or on behalf of the Borrower to the DIP Lenders in writing for the purposes of or in connection with this DIP Agreement or any transaction contemplated herein, is true and accurate in all material respects on the date as of which such information is dated or certified and remains true in all material respects as of the date provided and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. With respect to any projections, future business plans or forward looking financial statements, the Borrower is not guaranteeing in giving this representation and warranty that the actual future results will be as forecast or projected (but, for greater certainty, the DIP Lenders have all of their rights hereunder in the event that such actual future results are not as forecast or projected, including, without

limitation, as provided for in Section 24(e) of this DIP Agreement); and

- (o) As of the date hereof, the Borrower does not administer any pension plans and does not have any outstanding payment obligations in respect of special payments or amortization payments, including without limitation, in respect of any pension plan, payments related to post-retirement benefits, solvency deficiencies or wind-up shortfalls in relation to any pension plan.

**21. AFFIRMATIVE COVENANTS:**

The Borrower covenants and agrees to do the following until such time as the DIP Obligations are indefeasibly repaid in full:

- (a) Keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Collateral and the business and affairs of the Borrower subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (b) The Borrower shall (i) provide the Technical Advisor with reasonable access to the Scully mine; (ii) provide the Technical Advisor with substantive operational updates; and (iii) consider recommendations made by the Technical Advisor regarding the operations of the Scully mine;
- (c) Subject to the terms of the Solicitation Process and the Solicitation Process Order, keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Solicitation Process, subject to any restrictions on disclosure contained in any Court Order, or that, in the opinion of the Borrower (in consultation with the Monitor), acting reasonably, are necessary to protect the Borrower's restructuring process;
- (d) Perform its obligations hereunder as and when required and in the manner required;
- (e) Use the proceeds of the DIP Facility (at all times solely in accordance with the terms hereof and the DIP Agreement Cash Flow Projections subject to the Permitted Variance) only for the limited purpose of facilitating the CCAA Proceedings, including the

Solicitation Process and for the purpose of funding: (i) transaction costs and expenses incurred by the DIP Lenders in connection with the DIP Facility; (ii) professional fees and expenses incurred by the Borrower, the Monitor and the DIP Lenders in respect of the CCAA Proceedings; and (iii) operating costs, expenses, capital expenditures and ordinary course liabilities (including, without limitation, wages, vacation pay and active employee benefits) of the Borrower;

- (f) Comply in all respects with the provisions of the court orders made in connection with the CCAA Proceedings (collectively, the "**Court Orders**" and each a "**Court Order**");
- (g) Preserve, renew and keep in full force the Borrower's corporate or other existence and all material licenses, permits or approvals required in respect of its business, properties, assets or any activities or operations carried out therein except where the failure to do so would not cause a Material Adverse Effect;
- (h) Maintain insurance coverage consistent with the coverage in existence of the date hereof with respect to the Collateral;
- (i) Conduct its activities in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance;
- (j) Promptly notify the DIP Lenders and the Monitor of the occurrence of any Event of Default, or of any event or circumstance that may, with the passage of time or the giving of notice, constitute an Event of Default (a "**Default**");
- (k) Promptly notify the DIP Lenders and the Monitor of the commencement of, or receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting the Borrower that is not stayed by the Initial Order, ARIO or other Court Order;
- (l) Promptly after the same is available, but in no event later than the day that is two (2) Business Days prior to

the date on which the same is to be served or if such advance notice is not possible then as soon as reasonably practicable prior to the date on which the same is to be served, provide copies to the DIP Lenders of all pleadings, motion records, application records, judicial information, financial information and other documents filed by or on behalf of the Borrower in the CCAA Proceedings and incorporate all reasonable comments of the DIP Lenders in respect of such materials;

- (m) Subject to the CCAA and the Court Orders, comply in all material respects with all applicable laws, rules and regulations applicable to its business, including, without limitation, health and safety, and environmental laws;
- (n) Except where a stay of proceedings or Court Order otherwise applies, pay when due all government statutory Liens, trust and other Crown claims including employee source deductions, GST, HST, PST, employer health tax, and workplace safety and insurance premiums, but only with respect to: (i) payments that rank in priority to the DIP Charge; and (ii) payments that are otherwise authorized pursuant to Court Order;
- (o) Either (i) pay in full; or (ii) treat as unaffected, the DIP Obligations in any plan of compromise or arrangement, proposal or any other restructuring whatsoever;
- (p) At all times be and remain subject to the CCAA Proceedings until the DIP Obligations are irrevocably and unconditionally repaid in full or otherwise satisfied through credit bidding, with no further right to DIP Advances;
- (q) Subject to any Court Orders, grant the DIP Lenders and their professional advisors reasonable access to the Collateral and their business, properties, and books and records;
- (r) Conduct the Solicitation Process strictly in accordance with its terms (including milestones and timelines) and strictly comply with the Solicitation Process Order; and

- (s) If required, appoint the Additional Independent Directors (as defined below) in accordance with Section 25 of this DIP Agreement;
- (t) Deliver to the DIP Lenders and the Monitor no later than 5:00 p.m. (Eastern Time) on the Friday of each week a 13-week rolling iron ore delivery forecast prepared by the Borrower (the "**CCAA Iron Ore Delivery Forecast**"), which shall be consistent with the DIP Agreement Cash Flow Projection;
- (u) Commencing two weeks following the delivery of the initial CCAA Iron Ore Delivery Forecast and every two weeks thereafter, deliver to port not less than 85% of the iron ore contemplated (in tonnes) by the most recently delivered CCAA Iron Ore Delivery Forecast on a trailing two week basis; and
- (v) By November 1, 2023, deliver to the DIP Lenders, with a copy to the Monitor, a capital expenditure budget for the 2024 calendar year, which budget shall include maintenance shutdown and winterization costs for the Scully mine and be in form and substance satisfactory to the Majority DIP Lenders, acting reasonably.

**22. NEGATIVE COVENANTS:**

The Borrower covenants and agrees not to do the following or permit any subsidiary to do the following while any DIP Obligations remain outstanding, other than with the prior written consent of the Required DIP Lenders or pursuant to an Order of the Court:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking except: (i) where permitted pursuant to the Initial Order or ARIO; or (ii) where such transaction results in the repayment of DIP Obligations in accordance with Section 19 of this DIP Agreement;
- (b) Make any payment of principal or interest in respect of any indebtedness outstanding prior to Initial Order ("**Existing Indebtedness**") other than as may be permitted or required herein or by a Court Order;
- (c) Create or permit to exist indebtedness for borrowed money other than: (i) Existing Indebtedness; (ii) debt contemplated by this DIP Facility; and (iii) post-filing trade credit obtained in the ordinary course of business,

in accordance with the DIP Agreement Cash Flow Projection;

- (d) Permit any new Liens to exist on any Collateral other than Permitted Liens;
- (e) Either: (i) change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity; or (ii) make any changes to its organizational documents that would reasonably be expected to be adverse to the DIP Lenders;
- (f) Other than as permitted by the terms of this DIP Agreement, make any acquisitions, investments or loans, advances, payments, financial assistance, capital contributions or other distributions of any kind or guarantee the obligations of any person, other than those in existence on the date hereof and disclosed to the DIP Lenders in writing;
- (g) Enter into any transaction with any affiliate;
- (h) Pay any dividends, distributions or advances to shareholders of the Borrower, or any management bonus or similar payments except in the case of (i) the KERP, or (ii) management bonuses or similar payments to the extent provided for in the DIP Agreement Cash Flow Projection;
- (i) Engage in new businesses;
- (j) Change its fiscal year or accounting practices;
- (k) Issue any equity;
- (l) Take any action (or in any way support the taking of any action by another person) that has, or would reasonably be expected to have, a material adverse impact on the rights and interests of the DIP Lenders, including, without limitation, any action in furtherance of challenging the validity, enforceability or amount of the DIP Obligations;
- (m) Except in accordance with the Solicitation Process Order, commence, continue or seek any stakeholder or court approval for any sale, restructuring transaction or

plan without the prior written consent of the Required DIP Lenders in their sole discretion;

- (n) Pay, incur any obligation to pay, or establish any retainer with respect to, the fees, expenses or disbursements of a legal, financial or other advisor of any third party, other than (i) the Borrower and its legal counsel, financial advisors and other advisors, (ii) the Monitor and its legal counsel, and (iii) the legal, financial and other advisors of the DIP Lenders, in each case engaged as of the date hereof;
- (o) Challenge or fail to support the DIP Charge and DIP Obligations;
- (p) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Agreement Cash Flow Projection subject to the Permitted Variances; and
- (q) Except for the addition of the Additional Independent Directors, if required, not actively carry out any changes to the composition (including the addition, removal or replacement) of its board of directors (the "**Board**") (other than any director resignation) or its officers (including the appointment of a chief restructuring officer) without the consent of the Required DIP Lenders.

**23. INDEMNITY AND RELEASE:**

The Borrower hereby indemnifies and holds harmless each of the DIP Lenders and each of their respective directors, officers, employees, partners, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as "**Indemnified Persons**", and each, an "**Indemnified Person**") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from the CCAA Proceedings, this DIP Agreement or any advance made hereunder, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or

investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability to the extent it resulted from the fraud, gross negligence, bad faith or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this DIP Agreement shall survive any termination of the DIP Facility.

The Borrower shall not contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the validity and enforceability of the DIP Obligations or any loan, security or other documents relating thereto. The Borrower further covenants to, and does hereby, release each of the DIP Lenders solely in its capacity as lender hereunder and its respective predecessors, successors, agents, advisors, representatives and assigns of and from all claims and liabilities relating to any act or omission related to this DIP Agreement that occurred prior to the date of this DIP Agreement.

**24. EVENTS OF  
DEFAULT:**

The occurrence of any one or more of the following events, without the prior written consent of the Required DIP Lenders, shall constitute an immediate event of default ("**Event of Default**") under this DIP Agreement:

- (a) The issuance of any order terminating the CCAA Proceedings, or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower or the Collateral (being Collateral with an aggregate fair market value as reasonably determined by the Required DIP Lenders in excess of \$250,000, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower or any of the Collateral;
- (b) Failure to obtain the Solicitation Process Order by October 27, 2023 or satisfy any Solicitation Process Milestone by the applicable date required hereunder;
- (c) The issuance of any Court Order: (i) staying, reversing, vacating or otherwise modifying the DIP Charge; or (ii)

that adversely impacts or could reasonably be expected to adversely impact the rights and interests of the DIP Lenders in connection with the Collateral or under this DIP Agreement or any Court Order; provided; however, that any such order that provides for payment in full forthwith of all of the DIP Obligations shall not constitute an Event of Default;

- (d) Failure of the Borrower to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder (subject to a three (3) Business Day cure period in the case of interest, fees and any other amounts (other than principal amounts) due hereunder);
- (e) The issuance of an order granting a Lien of equal or superior status to that of the DIP Charge, other than as provided in Section 18 of this DIP Agreement;
- (f) Any Proposed Amended Cash Flow Projection contemplates or forecasts an adverse change or changes from the then existing DIP Agreement Cash Flow Projection and such change(s) constitute a Material Adverse Change or is not delivered to the DIP Lenders within two (2) days of the requisite time frame set out herein.
- (g) Any representation or warranty by the Borrower herein or in any certificate delivered by the Borrower to the DIP Lenders shall be incorrect or misleading in any material respect as of the date made or deemed made and, if the circumstances giving rise to the incorrect representation or warranty are capable of modification or rectification (such that, thereafter the representation or warranty would be correct), the representation or warranty remains uncorrected for a period of five (5) Business Days;
- (h) A Court Order is made, a liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, of the Borrower, that has or will have a Material Adverse Effect; provided that the forgoing shall exclude changes to the Borrower's business or its performance solely as a result of (i) the commencement, announcement or continuance of the CCAA Proceedings or (ii) conducting the Solicitation Process;

- (i) Any breach of any Court Order upon receipt by the Borrower (with a copy to the Monitor) of notice from the Required DIP Lenders of such breach by the Borrower and such breach is not cured within two (2) Business Days of delivery of such notice;
- (j) Failure of the Borrower to perform or comply with any other term or covenant under this DIP Agreement and such Default shall continue unremedied for a period of five (5) Business Days after the earlier of (i) delivery of notice given by the Required DIP Lenders to the Borrower, with a copy to the Monitor or (ii) the Borrower's Knowledge of such failure to perform or comply;
- (k) The commencement by the Borrower of an action or any other proceeding against the DIP Lenders;
- (l) The expiry without further extension of the stay of proceedings provided for in the Initial Order or the ARIO, as applicable;
- (m) Other than the appointment of the Additional Independent Directors, if required, any change to the composition of the Board or officers of the Borrower (other than as a result of director resignation(s)) that is not acceptable to the Majority DIP Lenders acting reasonably;
- (n) The removal, termination, replacement or material change in the scope or extent of the authority of any chief restructuring officer (if one is appointed);
- (o) Any change of control of the Borrower;
- (p) The seeking or support by the Borrower, or the issuance, of any court order (in the CCAA Proceedings or otherwise) that is inconsistent with the terms of this DIP Agreement; or
- (q) Failure to pay Expenses for which invoices have been provided to the Borrower from the First DIP Advance on the next business day after receipt of the First DIP Advance.

## **25. CORPORATE GOVERNANCE**

At the request of the Majority DIP Lenders at any time following the granting of the ARIO, the Borrower shall cause the Board to appoint up to two (2) additional independent

directors with substantial restructuring experience, acceptable to the Borrower, the Monitor and the Required DIP Lenders (the "**Additional Independent Directors**"). The Additional Independent Directors shall be appointed forthwith after any such request is made by the Required DIP Lenders, provided that the Required DIP Lenders shall provide the Borrower with a list of at least 5 candidates they deem acceptable concurrently with any such request.

**26. REMEDIES:**

Upon the occurrence and during the continuance of an Event of Default, whether or not there is availability under the DIP Facility: (a) without any notice to the Borrower, the Borrower shall have no right to receive any additional DIP Advances or other accommodation of credit from the DIP Lenders except in the sole discretion of the Required DIP Lenders; and (b) the Required DIP Lenders may immediately terminate the DIP Facility and demand immediate payment of all of the DIP Obligations by providing such a notice and demand to the Borrower, with a copy to the Monitor. With the leave of the Court sought on not less than five (5) Business Days' notice to the Borrower and the Monitor after the occurrence and during the continuance of an Event of Default, the Required DIP Lenders shall have the right to: (a) enforce the DIP Charge and to exercise all other rights and remedies in respect of the DIP Obligations and the DIP Charge, including the right to realize on all Collateral and to apply to the Court for the appointment of a court-appointed receiver; (b) exercise the rights of a secured party under the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Newfoundland and Labrador) or any other applicable law relating to the enforcement of Liens by secured parties against any type of property, including the Collateral; (c) apply to the Court for an order on terms satisfactory to the Monitor and the Required DIP Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceedings; and (d) exercise all such other rights and remedies under the Court Orders and applicable law. No failure or delay by the DIP Lenders in exercising any of their rights hereunder or at law shall be deemed a waiver of any kind, and the DIP Lenders shall be entitled to exercise such rights in accordance with this DIP Agreement at any time. The rights and remedies of the DIP Lenders under this DIP Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA.

- 27. LEGAL FEES:** The Borrower shall pay by wire transfer, within two (2) Business Days of receipt of a detailed invoice (redacted for privilege), all reasonable and documented out-of-pocket expenses, including all reasonable expenses of Canadian legal counsel and US legal counsel on a solicitor-client basis and the expenses of one financial advisor, one communications consultant and one Technical Advisor, incurred by the DIP Lenders in connection with the CCAA Proceedings, this DIP Agreement and the DIP Facility, including those with respect to any enforcement of the terms hereof or of the DIP Charge or otherwise incurred in connection with the DIP Facility (the "**Expenses**"). Subject to Court approval of this DIP Agreement, all Expenses shall be non-refundable under all circumstances.
- 28. DIP LENDER APPROVALS:** Any consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders to be delivered in writing may be delivered by any written instrument, including by way of email, by the DIP Lenders, the Majority DIP Lenders or Required DIP Lenders (or their counsel), as applicable, pursuant to the terms hereof. For greater certainty, any consent, approval, instruction or other expression delivered in writing by Bennett Jones LLP shall be considered as delivery of a consent, approval, instruction or other expression of the DIP Lenders, the Majority DIP Lenders or the Required DIP Lenders, as may be indicated by Bennett Jones LLP in such written instrument.
- 29. EVIDENCE OF INDEBTEDNESS** The DIP Lenders' accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the DIP Lenders under the DIP Facility.
- 30. TAXES:** All payments by the Borrower under this DIP Agreement to the DIP Lenders, including any payments required to be made from and after the exercise of any remedies available to the DIP Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively, "**Taxes**").

**31. FURTHER ASSURANCES:**

The Borrower shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the DIP Lenders may reasonably request for the purpose of giving effect to this DIP Agreement. Without limiting the foregoing, the Borrower agrees that if so requested by the DIP Lenders, acting reasonably, it shall promptly execute and deliver to the DIP Lenders any general security agreement or other security documents securing its obligations to the DIP Lenders hereunder in forms reasonable and customary for debtor in possession financings, provided however that the execution of any such security document shall not be a condition precedent to funding the Maximum Amount or DIP Advances hereunder.

**32. ENTIRE AGREEMENT:**

This DIP Agreement, including the schedules hereto, constitutes the entire agreement between the parties relating to the subject matter hereof.

**33. AMENDMENTS, WAIVERS, ETC.:**

No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this DIP Agreement. Unless otherwise expressly provided in this Agreement, any waiver, amendment or other modification to this Agreement shall require the written consent of the Required DIP Lenders; provided that, notwithstanding the foregoing, solely with the consent of each DIP Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required DIP Lenders), any such agreement may:

(1) increase the DIP Financing Commitment of such DIP Lender; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall constitute an increase of any DIP Financing Commitment of such DIP Lender;

(2) reduce or forgive the principal amount of any DIP Advances (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute a reduction or forgiveness in principal);

(3) extend the scheduled Maturity Date of any DIP Advance (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the DIP Financing Commitments shall not constitute an extension of any maturity date);

(4) reduce the Interest Rate (other than to waive any Default or Event of Default or any obligations of the Borrower to pay interest at the default rate of interest in accordance with Section 16 of this Agreement) or the amount of any fees owed to such DIP Lender;

(5) waive, amend or modify the provisions of Section 16 (with respect to Pro Rata allocation of all payments among DIP Lenders) of this Agreement in a manner that would by its terms alter the Pro Rata sharing of payments required thereby;

(6) waive, amend or modify the definition of "Pro Rata; and

(7) waive, amend or modify the provisions of this Section 33.

Notwithstanding anything else in this DIP Agreement, and for greater certainty, this DIP Agreement may not be waived, amended or modified to reduce the principal amount owed to any DIP Lender under the DIP Facility or increase the amount of any DIP Lender's commitment under the DIP Facility, in each case, without the prior written consent of such DIP Lender.

Any amendment to the terms of this DIP Agreement shall be made in writing and signed by the Borrower and the requisite DIP Lenders.

To the extent any fees or other compensation becomes payable to the DIP Lenders in connection with any amendment to this DIP Agreement, all DIP Lenders who are not Defaulting Lenders shall have the opportunity to receive their Pro Rata portion of any such fees or other compensation.

**34. ASSIGNMENT:**

The DIP Lenders may assign this DIP Agreement and their rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lenders with the prior written consent of the Borrower, not to be unreasonably withheld (provided that no such consent of the Borrower shall be required upon the occurrence of an Event of Default which is

continuing) and, provided that the Monitor shall have provided its prior written consent based solely on the Monitor being satisfied that the proposed assignee has the financial capacity to act as a DIP Lender and that the assignment will not have a material adverse impact on the Solicitation Process.

Notwithstanding the foregoing, a DIP Lender shall be entitled to assign its rights and obligations hereunder to an affiliate without the consent of any other party.

Neither this DIP Agreement nor any right and obligation hereunder may be assigned by the Borrower.

- 35. SEVERABILITY:** Any provision in this DIP Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- 36. COUNTERPARTS AND SIGNATURES:** This DIP Agreement may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this DIP Agreement by signing any counterpart of it.
- 37. DISCLOSURE** Except as required by applicable laws (including any Court Orders), the Borrower shall not issue any press release or make any public announcement concerning this DIP Agreement, the CCAA Proceedings or the operations of their business (the "**Communications**"), without the prior written consent of the Majority DIP Lenders, which is not to be unreasonably withheld. The Borrower shall provide the DIP Lenders with a reasonable opportunity to review and comment on all Communications in respect of this DIP Agreement or the CCAA Proceedings prior to such Communications being issued or published.
- 38. NOTICES:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

**(a) In the case of the Borrower:**

Tacora Resources Inc.  
102 NE 3rd Street Suite 120

Grand Rapids, Minnesota  
55744 USA

Attention: Joe Broking & Heng Vuong  
Email: [joe.broking@tacoraresources.com](mailto:joe.broking@tacoraresources.com);  
[heng.vuong@tacoraresources.com](mailto:heng.vuong@tacoraresources.com)

With a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West, 199 Bay St.  
Toronto, ON M5L 1B9

Attention: Ashley Taylor & Lee Nicholson  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com); [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

and

Greenhill & Co., LLC  
1271 6th Ave, New York,  
NY 10020, USA

Attention: Chetan Bhandari, Michael Nessim & Usman  
Masood  
Email: [chetan.bhandari@greenhill.com](mailto:chetan.bhandari@greenhill.com);  
[michael.nessim@greenhill.com](mailto:michael.nessim@greenhill.com);  
[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)

And with a copy to the Monitor:

FTI Consulting Canada Inc.  
Toronto-Dominion Centre, 79 Wellington St W Suite 2010,  
Toronto, ON M5K 1G8

Attention: Nigel Meakin & Jodi Porepa  
Email: [nigel.meakin@fticonsulting.com](mailto:nigel.meakin@fticonsulting.com);  
[jodi.porepa@fticonsulting.com](mailto:jodi.porepa@fticonsulting.com)

And with a copy to the Monitor's Counsel:

Cassels Brock & Blackwell LLP  
Bay Adelaide Centre – North Tower,  
Suite 3200, Toronto, ON M5H 0B4

Attention: Ryan Jacobs, Jane Dietrich & Michael Wunder  
Email: [rjacobs@cassels.com](mailto:rjacobs@cassels.com); [jdietrich@cassels.com](mailto:jdietrich@cassels.com);  
[mwunder@cassels.com](mailto:mwunder@cassels.com)

(b) In the case of the DIP Lenders:

c/o  
GLC Advisors & Co., LLC  
600 Lexington Ave., 9th Floor  
New York, NY 10022 USA

Attention: Michael Sellinger, Michael Kizer & Adam Kelly-  
Penso  
Email: [michael.sellinger@glca.com](mailto:michael.sellinger@glca.com); [michael.kizer@glca.com](mailto:michael.kizer@glca.com);  
[adam.kellypenso@glca.com](mailto:adam.kellypenso@glca.com)

With a copy to:

Bennett Jones LLP  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Attention: Sean Zweig, Mike Shakra & Thomas Gray  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com);  
[shakram@bennettjones.com](mailto:shakram@bennettjones.com);  
[grayt@bennettjones.com](mailto:grayt@bennettjones.com)

and

Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, NY 10001 USA

Attention: Sidney Levinson & Erica Weisgerber

Email: [slevinson@debevoise.com](mailto:slevinson@debevoise.com);  
[eweisgerber@debevoise.com](mailto:eweisgerber@debevoise.com)

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 ET or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day. For the purposes of this DIP Agreement, a "**Business Day**" means any day except any Saturday, any Sunday, or any day which is a legal holiday or any day on which banking institutions are authorized or required by law or other governmental action to close in the

Provinces of Ontario or Newfoundland and Labrador or the State of New York.

**39. GOVERNING LAW  
AND  
JURISDICTION:**

This DIP Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**40. CURRENCY AND  
JUDGMENT  
CURRENCY:**

Unless otherwise specified herein, all dollar amounts are in the lawful currency of the United States of America. The Borrower shall pay to the DIP Lenders all payments on account of principal and interest hereunder in lawful money of the United States of America.

If in the recovery by the DIP Lenders of any amount owing by the Borrower hereunder in any currency, judgment can only be obtained in another currency and because of changes in the exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the amount received by the DIP Lenders is less than the recovery provided for under the judgment, the Borrower shall immediately pay any such shortfall to the DIP Lenders and such shortfall can be claimed by the DIP Lenders against the Borrower as an alternative or additional cause of action.

**41. PRIOR DIP LOAN  
AGREEMENT**

The Borrower and the DIP Lenders agree to terminate the DIP Loan Agreement dated as of September 11, 2023 and the parties release and discharge each other from their respective commitments and obligations thereunder.

*[- Signature pages follow -]*

**IN WITNESS HEREOF**, the parties hereby execute this DIP Agreement as at the date first mentioned above.

**BORROWER :**

**TACORA RESOURCES INC.**

By: \_\_\_\_\_

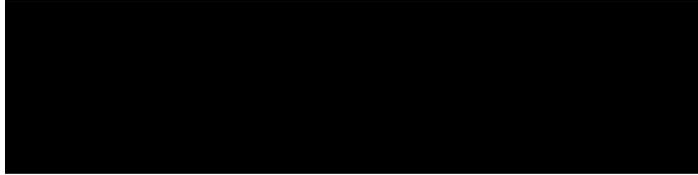
Name:

Title:

**DIP LENDERS :**

**CONCISE CAPITAL MANAGEMENT, LP**

on behalf of



---

Name:

Title:

**MILLSTREET CAPITAL MANAGEMENT  
LLC**

on behalf of



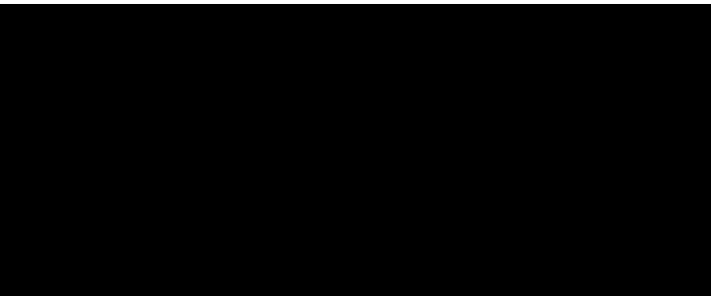
---

Name:

Title:

**MSD PARTNERS, LP**

on behalf of



---

Name:

Title:

**O'BRIEN-STALEY PARTNERS**

on behalf of



---

Name:

Title:

**SNOWCAT CAPITAL MANAGEMENT, LP**

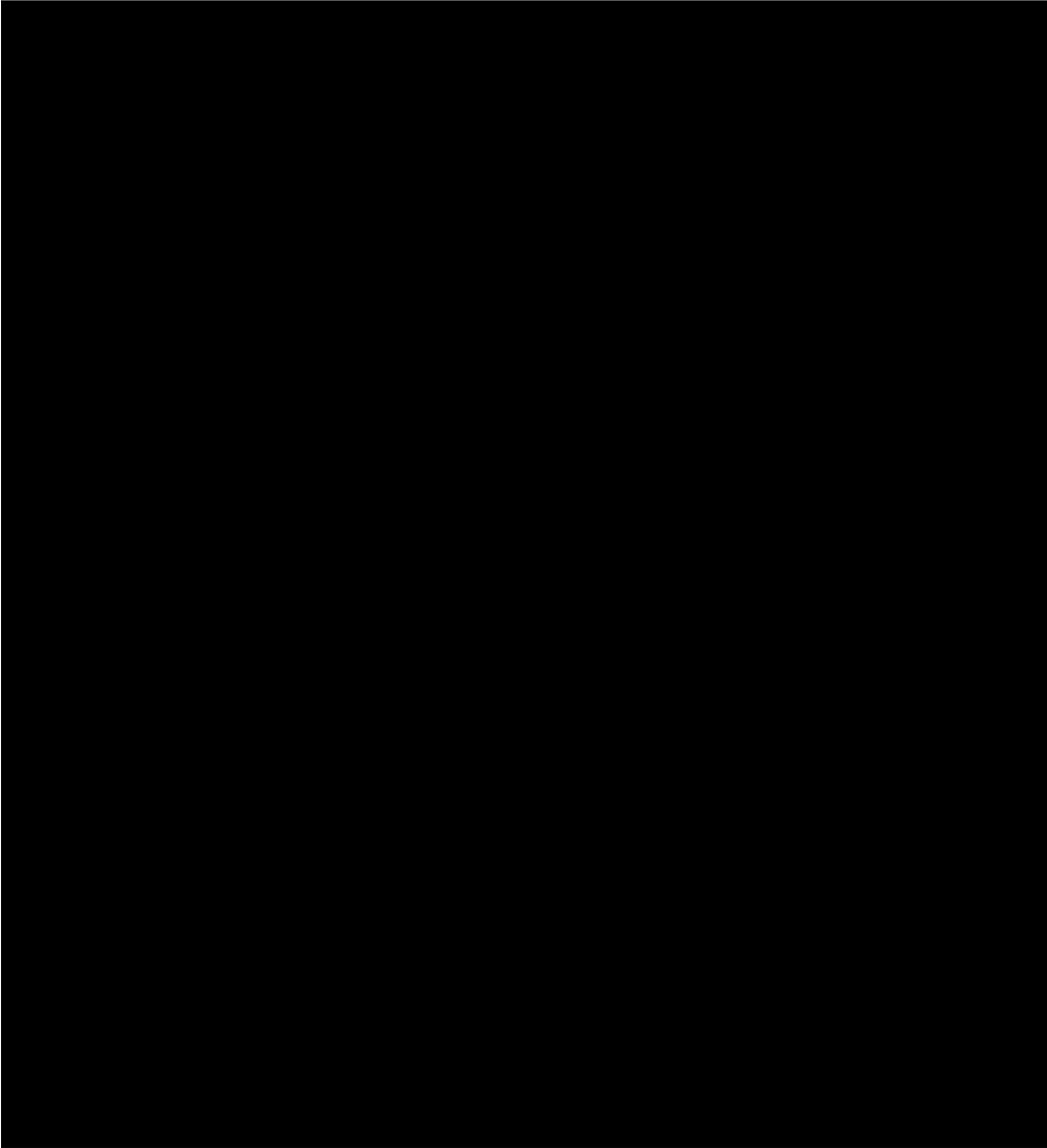
---

Name:

Title:

**BRIGADE CAPITAL MANAGEMENT, LP**

on behalf of



---

Name:  
Title:

**SCHEDULE "A"**

**CASH FLOW PROJECTION**

See attached.

## SCHEDULE "B"

### FORM OF DRAWDOWN CERTIFICATE

TO: GLC Advisors Co., on behalf of the DIP lenders under the DIP Agreement dated October 8, 2023 (the "**DIP Lenders**")

AND TO: FTI Consulting Canada Inc. (the "**Monitor**")

FROM: Tacora Resources Inc. (the "**Borrower**")

DATE: [●]

1. This certificate is delivered to you in connection with a request for a DIP Advance pursuant to the DIP Agreement made as of October 8, 2023, between the Borrower and the DIP Lenders, as amended, supplemented, restated or replaced from time to time (the "**DIP Agreement**"). All capitalized terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the DIP Agreement, unless the context requires otherwise.

2. The Borrower hereby requests a DIP Advance as follows:

(a) Date of DIP Advance: \_\_\_\_\_

(b) Aggregate amount of requested DIP Advance: \$[●]

to be transferred into the Borrower's Account by the DIP Lenders or the Monitor, as applicable, by direct deposit in accordance with the DIP Agreement.

3. All of the representations and warranties of the Borrower as set forth in the DIP Agreement are true and correct in all material respects as at the date hereof, as though made on and as of the date hereof (except for any representations and warranties made as of a specific date, which shall be true and correct as of the specific date made).

4. All of the covenants of the Borrower contained in the DIP Agreement and all other terms and conditions contained in the DIP Agreement to be complied with by the Borrower, and not waived in writing by or on behalf of the DIP Lenders, have been complied with.

5. The Borrower is in compliance with all Court Orders.

6. The proceeds of the DIP Advance hereby requested will be applied solely in accordance with the DIP Agreement Cash Flow Projection (subject to the Permitted Variance), or as has been otherwise agreed to by the DIP Lenders in advance in writing.

7. No Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the DIP Advance hereby requested.

**TACORA RESOURCES INC.**

By: \_\_\_\_\_  
Name:  
Title:

cc: Stikeman Elliott LLP  
Greenhill & Co Canada Ltd.

**SCHEDULE "C"**  
**INITIAL ORDER**

See attached.

**SCHEDULE "D"**

**ARIO**

See attached.

**SCHEDULE "E"**  
**SOLICITATION PROCESS**

See attached.

**SCHEDULE "F"**

**BORROWER'S ACCOUNT INFORMATION**

**SCHEDULE "G"**  
**TAXES AND SOURCE DEDUCTIONS**

Nil

## **SCHEDULE H**

### **LITIGATION**

1. None.

For greater certainty, the following claims are ongoing but will be subject to the Initial Order:

1. Claims made pursuant to a letter dated March 27, 2023 from Quebec Iron Ore Inc.
2. Claims made pursuant to a letter dated April 27, 2023 from 1128349 B.C. Ltd. and subject to arbitration proceedings in Newfoundland and Labrador
3. Claims made by Construction & Expertise PG Inc. subject to proceedings before the Supreme Court of Newfoundland and Labrador (Court file. 2022 01G 3243)

## SCHEDULE I

### DEFINITIONS

"**Additional Independent Directors**" has the meaning provided in Section 25.

"**Admin Charge**" means an administration charge in an aggregate amount not to exceed \$1,000,000 which shall rank in priority to the DIP Charge and the D&O Charge, pursuant to the Initial Order.

"**Alternative Offtake or Services Binding Bid**" has the meaning provided in Section 12.

"**Alternative Offtake or Services LOIs**" has the meaning provided in Section 12.

"**Alternative Offtake or Services Transaction**" has the meaning provided in Section 12.

"**Applicable Percentage**" means, in respect of any DIP Lender at any time, with respect to a DIP Advance, the percentage of such DIP Advance which such DIP Lender has agreed to make available to the Borrowers at such time, determined by dividing the DIP Financing Commitment of such DIP Lender by the aggregate DIP Financing Commitments of all of the DIP Lenders.

"**ARIO**" has the meaning provided in Section 13.

"**Backstop Advance**" means an advance made by a DIP Lender to the Borrower in connection with the Backstop Commitment of such DIP Lender. 11

"**Backstop Commitment**" has the meaning provided in Section.

"**Backstop Fee**" has the meaning provided in Section 17.

"**Board**" has the meaning provided in Section 22.

"**Borrower**" has the meaning provided in Section 1.

"**Borrower's Account**" has the meaning provided in Section 14.

"**Borrower's Knowledge**" has the meaning provided in Section 20.

"**Business Day**" has the meaning provided in Section 38.

"**Cash Flow Projection**" has the meaning provided in Section 8.

"**Cash Interest**" has the meaning provided in Section 16.

"**CCAA**" has the meaning provided in the preamble.

"**CCAA Iron Ore Delivery Forecast**" has the meaning provided in Section 21.

"**CCAA Proceedings**" has the meaning provided in the preamble.

"**Collateral**" has the meaning provided in Section 18.

"**Communications**" has the meaning provided in Section 37.

"**Court**" has the meaning provided in the preamble.

"**Court Order**" has the meaning provided in Section 21.

"**D&O Charge**" means a directors and officers liability charge in an amount not to exceed \$5,300,000 which shall rank behind the Admin Charge but ahead of the DIP Charge, pursuant to the Initial Order.

"**Default**" has the meaning provided in Section 21.

"**Defaulting Lender**" has the meaning provided in Section 11.

"**Defaulting Lender Funding Obligation**" has the meaning provided in Section 11.

"**DIP Advance**" has the meaning provided in Section 10.

"**DIP Agreement**" has the meaning provided in the preamble.

"**DIP Agreement Cash Flow Projection**" has the meaning provided in Section 8.

"**DIP Charge**" has the meaning provided in Section 18.

"**DIP Facility**" has the meaning provided in Section 5.

"**DIP Financing Commitment**" means, with respect to each of the respective DIP Lenders, the amount indicated in the table below, the amount of which may not be amended for a specific DIP Lender, without the prior written consent that DIP Lender: **[NTD: DIP Lenders to advise of updated allocations]**

<u>DIP Lender</u>	<u>DIP Financing Commitment (\$)</u>
Brigade Capital Management, LP	\$[●]
Concise Capital Management LP	\$[●]
Millstreet Capital Management LLC	\$[●]
MSD Partners, LP	\$[●]

O'Brien-Staley Partners	[\$●]
Snowcat Capital Management, LP	[\$●]

"**DIP Lenders**" has the meaning provided in Section 2.

"**DIP Obligations**" has the meaning provided in Section 6.

"**Event of Default**" has the meaning provided in Section 24.

"**Existing Indebtedness**" has the meaning provided in Section 22.

"**Expenses**" has the meaning provided in Section 27.

"**First DIP Advance**" has the meaning provided in Section 10.

"**Fourth DIP Advance**" has the meaning provided in Section 10.

"**GLC Fees**" means any transaction fees payable to GLC Advisors & Co., LLC under its engagement letter with Bennett Jones LLP, as may be amended.

"**Indemnified Person**" has the meaning provided in Section 23.

"**Initial Order**" has the meaning provided in Section 13.

"**Interest Rate**" has the meaning provided in Section 16.

"**KERP**" means a key employee retention program in an amount not to exceed \$5,000,000 in the aggregate, which program shall be acceptable to the Required DIP Lenders in all material respects, including milestones and allocation, which the DIP Lenders covenant to make good faith efforts to resolve with the Borrower in a timely manner.

"**KERP Charge**" means a Court-ordered priority charge granted by the Court over a segregated account of the Monitor where an amount in respect of the KERP is paid, in an amount not to exceed \$5,000,000, plus such further amount agreed to by the Required DIP Lenders in respect of the Borrower's management and executive team, to secure the Borrower's obligations under the KERP.

"**Liens**" means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever.

"**Majority DIP Lenders**" means, at any time, DIP Lenders holding more than 50% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

"**Margin or Hedge Services**" has the meaning provided in Section 9.

**“Material Adverse Change”** means an event, change or condition that has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, operations, financial condition or operating results of the Borrower and its subsidiaries, taken as a whole (other than as a result of the events leading up to and following commencement of the CCAA Proceedings).

**"Material Adverse Effect"** has the meaning provided in Section 20.

**"Maturity Date"** has the meaning provided in Section 6.

**"Maximum Amount"** has the meaning provided in Section 5.

**"Monitor"** has the meaning provided in Section 8.

**"Net Proceeds"** has the meaning provided in Section 19.

**“Offtake Agreement”** means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended.

**“Permitted Liens”** means (i) Permitted Priority Liens, (ii) the DIP Charge, (iii) validly perfected Liens existing prior to the date hereof as in effect on the date hereof; and (iv) inchoate statutory Liens arising after the date on which the Initial Order is obtained in respect of any accounts payable arising after the date on which the Initial Order is obtained in the ordinary course of business, subject to the obligation to pay all such amounts as and when due, (v) the Subordinate Transaction Fee Charge.

**“Permitted Priority Liens”** means the (i) the Admin Charge, (ii) D&O Charge, (ii) KERP Charge (if applicable), (iv) the Priority Transaction Fee Charge, (v) Liens in favour of secured parties that did not receive notice of the application for the Initial Order (to the extent the Majority DIP Lenders (or their counsel) agreed based on the service list that such secured parties would not be served), (vi) Liens in respect of claims that are individually and in the aggregate immaterial, solely to the extent such Liens are not registered under a personal property registry system and (vii) any amounts payable by a Borrower for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) (net of input credits), income tax and workers compensation claims, in the case of this item (viii) solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts have not been subordinated to the DIP Charge pursuant to the Court Orders; (ix) such other Liens existing as of the date of the Initial Order that have not been subordinated to the DIP Lender Charge pursuant to the Court Order; and (x) [the Cargill Charge, as defined in Initial Order].

**"Permitted Variance"** has the meaning provided in Section 8.

**"PIK Amounts"** has the meaning provided in Section 16.

**"PIK Interest"** has the meaning provided in Section 16.

**"PIK Mechanism"** has the meaning provided in Section 16.

**"Priority Transaction Fee Charge"** means a super priority charge that shall rank pari passu with the DIP Charge in favour of Greenhill & Co. Canada Ltd. in an aggregate amount up to the GLC Fees in respect of Greenhill & Co. Canada Ltd.'s transaction fees owing under its engagement letter with the Borrower dated January 23, 2023.

**"Proposed Amended Cash Flow Projection"** has the meaning provided in Section 8.

**"Pro Rata"** means, in respect of any DIP Lender at any time, the ratio of the DIP Obligations owing to such DIP Lender at such time to the aggregate DIP Obligations owing to all DIP Lenders which are not Defaulting Lenders at such time.

**"Required DIP Lenders"** means, at any time, DIP Lenders holding more than 66 2/3% of the aggregate DIP Financing Commitments held by DIP Lenders which are not Defaulting Lenders.

**"Sale Binding Bid"** has the meaning provided in Section 12.

**"Sale Transaction"** has the meaning provided in Section 12.

**"Second DIP Advance"** has the meaning provided in Section 10.

**"Solicitation Process"** has the meaning provided in Section 13.

**"Solicitation Process Milestone"** has the meaning provided in Section 12.

**"Solicitation Process Order"** has the meaning provided in Section 13.

**"Subordinate Transaction Fee Charge"** means a charge that shall rank pari passu with the Senior Priority Notes, and any other secured claim that ranks pari passu with the Senior Priority Notes, in favour of Greenhill & Co. Canada Ltd. for any transaction fees payable to Greenhill & Co. Canada Ltd. in excess of the quantum of the GLC Fees under its engagement letter with the Borrower dated January 23, 2023.

**"Senior Priority Notes"** means the Borrower's 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023.

**"Taxes"** has the meaning provided in Section 30.

**"Technical Advisor"** means a technical advisor engaged by the DIP Lenders or their legal or financial advisors.

**"Third DIP Advance"** has the meaning provided in Section 10.

**"Tranche 1"** has the meaning provided in Section 5.

**"Tranche 2"** has the meaning provided in Section 5.

"**Tranche 3**" has the meaning provided in Section 5.

**THIS IS EXHIBIT "M" REFERRED TO IN THE  
AFFIDAVIT OF THOMAS GRAY SWORN  
THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

*Joshua Foster*

---

**JOSHUA FOSTER**

**A Commissioner for taking affidavits, etc.**

## Thomas Gray

---

**Subject:** Tacora

**From:** Ashley Taylor <[ATAYLOR@stikeman.com](mailto:ATAYLOR@stikeman.com)>  
**Date:** Monday, Oct 09, 2023 at 9:49 AM  
**To:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Cc:** Lee Nicholson <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>  
**Subject:** Tacora

Sean,

Give me a call if you want to talk, but we wanted to let you know that the board has resolved to go with the Cargill DIP. We have confirmed with the Court that we will be appearing tomorrow at 11:00am. We will send you our application record as soon as it is finalized, and will send the Zoom coordinates when they are provided.

Ash.

Ashley Taylor

Mobile: +1 416 450 6627  
Office: +1 416 869 5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

---

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**Stikeman Elliott LLP** Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF TACORA RESOURCES INC.**

**(Applicant)**

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

PROCEEDINGS COMMENCED AT  
TORONTO

**AFFIDAVIT OF THOMAS GRAY**  
**(Sworn October 16, 2023)**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Kevin Zych (LSO#33129T)**  
**Richard Swan (LSO#32076A)**  
**Sean Zweig (LSO#57307I)**  
**Mike Shakra (LSO#64604K)**  
**Thomas Gray (LSO#82473H)**

Tel: 416.863.1200 / Fax: 416.863.1716

*Lawyers for the Ad Hoc Group of Noteholders*

# **Tab 3**

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

THE HONOURABLE )  
JUSTICE KIMMEL ) TUESDAY, THE 24<sup>th</sup>  
) DAY OF OCTOBER, 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  
TACORA RESOURCES INC.**

**(Applicant)**

**AMENDED AND RESTATED INITIAL ORDER**

**THIS MOTION**, made by the ad hoc group of holders (the "**Ad Hoc Group**") of the 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023 (the "**SPNs**") and 8.250% Senior Secured Notes (the "**SSNs**") due 2026 of Tacora Resources Inc. ("**Tacora**" or the "**Applicant**") for an order amending and restating the initial order issued by the Court on October 10, 2023 (the "**Filing Date**"), among other things, approving the Ad Hoc Group DIP Agreement (as defined below) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day in person at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Ad Hoc Group dated October 16, 2023, the Application Record of Tacora dated October 10, 2023, the affidavits of Joe Broking sworn October 9, 2023 (the "**Broking Affidavit**") and October 15, 2023 (the "**Second Broking Affidavit**"), the affidavits of Chetan Bhandari sworn October 9, 2023 and October 15, 2023, the consent of FTI Consulting Canada Inc. ("**FTI**") to act as Court-appointed monitor of Tacora (in such capacity, the "**Monitor**"), the Pre-Filing Report and First Report of FTI, and the other materials filed in connection with this motion, 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 Ad Hoc Group, counsel for Tacora, counsel for Cargill, Incorporated, counsel for the Monitor and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of Thomas Gray dated October 16, 2023,

## **SERVICE**

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

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant 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**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is 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.

5. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement (as defined below), the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Broking Affidavit or replace it with another substantially similar 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 Applicant 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 Applicant, 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 Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement, the Applicant 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; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant 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), and maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments on behalf of Tacora Resources LLC to pay salaries and wages for U.S. based employees and rent for the Applicant's head office located in Grand Rapids, Minnesota.

8. **THIS COURT ORDERS** that the Applicant 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 employment insurance, Canada Pension Plan, and income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, 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 Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant 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 Applicant 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.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and 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, and to dispose of redundant or non-material assets not exceeding US\$1,000,000 in any one transaction or US\$5,000,000 in the aggregate;
- (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 Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’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 Applicant’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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant 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 Applicant’s claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then 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 Applicant and the Monitor 24 hours’ prior written notice, and 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 Applicant 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 APPLICANT OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including February 9, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH RIGHTS**

16. **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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, during the Stay Period, Cargill International Trading Pte Ltd. (“**Cargill**”) shall not terminate or cease to perform pursuant to the Offtake Agreement (as defined in the Broking Affidavit) while such agreement remains in effect, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **NO PRE-FILING VS POST-FILING SET-OFF**

17. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicant in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicant in respect of obligations arising on or after the date of this Order, each without the consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, Cargill shall not set-off any amount due under the Advance Payment Facility Agreement (as defined in the Broking Affidavit) against any amounts that are or may become due to the Applicant on or after the date of this Order.

#### **CONTINUATION OF SERVICES**

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Applicant, 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 Applicant, and that the Applicant 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. **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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. **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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which obligation may become due and payable after the commencement of these 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.

22. **THIS COURT ORDERS** that the directors and officers of the Applicant 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 US\$5,200,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 49 and 52 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and the Applicant'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 21 of this Order.

## **ENGAGEMENT OF GREENHILL**

24. **THIS COURT ORDERS** that the engagement of Greenhill & Co. Canada Ltd. ("**Greenhill**") by the Applicant as investment banker pursuant to the engagement letter dated as of January 23,

2023 (the “**Greenhill Engagement Letter**”) and payment by the Applicant of the Monthly Advisory Fee (as defined in the Greenhill Engagement Letter) and the Transaction Fee (as defined in the Broking Affidavit) are hereby approved, subject to the priority provided for herein.

25. **THIS COURT ORDERS** that Greenhill shall be entitled to the benefit of and are hereby granted a charge (the “**Transaction Fee Charge**”) on the Property as security for the Transaction Fee, which charge shall not exceed an aggregate amount of US\$5,600,000. The Transaction Fee Charge shall have the priority set out in paragraphs 49 and 52 herein.

26. **THIS COURT ORDERS** that Greenhill shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Greenhill Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

#### **ENGAGEMENT OF GLC**

27. **THIS COURT ORDERS** that the engagement of GLC Advisors & Co., and GLC Securities, LLC (together, “**GLC**”) as an investment banker to the DIP Lenders pursuant to the engagement letter dated as of April 25, 2023 and as amended as of September 7, 2023 (the “**GLC Engagement Letter**”) and payment by the Applicant of the Monthly Advisory Fees, Transaction Fee, Discretionary Fee and Expenses (each as defined in the GLC Engagement Letter) are hereby approved and shall be secured by the DIP Charge (as defined below) with the priority provided for herein.

#### **APPOINTMENT OF MONITOR**

28. **THIS COURT ORDERS** that FTI. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

29. **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 Applicant’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) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and their counsel, pursuant to and in accordance with the DIP Agreement (as defined herein), or as may otherwise be agreed between the Applicant and the DIP Lenders;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lenders under the DIP Agreement, which information shall be reviewed with the Monitor and delivered to the DIP Lenders and their counsel in accordance with the DIP Agreement;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) 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 Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) hold and administer funds in connection with arrangements made among the Applicant, any counterparties and the Monitor or by Order of this Court;
- (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.

30. **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.

31. **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*, the *Ontario Occupational Health and Safety Act*, the *Newfoundland Environmental Protection Act*, the *Newfoundland Water Resources Act*, the *Newfoundland Occupational Health and Safety Act*, and the 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.

32. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lenders with information provided by the Applicant 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 Applicant 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 Applicant may agree.

33. **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.

#### **ADMINISTRATION CHARGE**

34. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and

directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

35. **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.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicant's counsel and Greenhill for its Monthly Advisory Fee (as defined by the Greenhill Engagement Letter) 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 US\$1,000,000, 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 49 and 52 hereof.

#### **DIP FINANCING**

37. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow a super-priority, debtor-in-possession, non-revolving credit facility (the "**DIP Facility**") under a DIP Loan Agreement dated October 24, 2023 (the "**DIP Agreement**") from (i) Brigade Capital Management, LP; (ii) Concise Capital Management LP; (iii) Millstreet Capital Management LLC; (iv) MSD Partners, LP; (v) O-Brien-Staley Partners; and (vi) Snowcat Capital Management, LP (collectively, in such capacity, the "**DIP Lenders**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the DIP Agreement shall not exceed the principal amount of US\$119,005,000 unless permitted by further Order of this Court.

38. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement attached as **Exhibit "L"** to the Affidavit of Thomas Gray sworn October 16, 2023, with such minor amendments as are necessary and agreed to between the parties.

39. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such security documents and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably

required by the DIP Lenders pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Charge**”) on the Property, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 49 and 52 hereof.

41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement or the Definitive Documents, the DIP Lenders may, upon five (5) business days notice to the Applicant and the Monitor, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicant against the obligations of the Applicant to the DIP Lenders under the DIP Agreement, the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

42. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act of Canada* (the “**BIA**”), with respect to any advances made under the Definitive Documents.

43. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the Definitive Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lenders, whether under this Order (as made prior to the Variation), under the DIP Agreement or the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lenders being given notice of the Variation, and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the DIP Agreement and the Definitive Documents.

#### **KEY EMPLOYEE RETENTION PLAN**

44. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the DIP Agreement, is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

45. **THIS COURT ORDERS** that payments made by the Applicant pursuant to the KERP do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that the Applicant is authorized to pay up to US\$● to the Monitor to hold in a segregated account (the “**KERP Funds**”) and the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the KERP Funds (the “**KERP Charge**”), which charge shall not exceed an aggregate amount of US\$● to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 49 and 52 hereof. The Monitor shall not be responsible for making the payments to the Key Employees under the KERP; paying any tax withholdings or remittances payable to any tax authorities or otherwise in respect of the KERP; or reporting or making disclosure with respect to the KERP to any taxing authorities or otherwise.

#### **MARGIN ADVANCES AND CARGILL MARGIN CHARGE**

47. **THIS COURT ORDERS** that Cargill shall continue to make the deemed Margin Advances (as defined in the Advance Payments Facility Agreement) under section 2.2 of the Advance Payments Facility Agreement to fund any Margin Amounts (as defined in the Advance Payments Facility Agreement) required to be funded from and after October 24, 2023.

48. **THIS COURT ORDERS** that Cargill shall be entitled to the benefit of and is hereby granted a charge (the “**Cargill Margin Charge**”) in the amount of all such Margin Advances advanced by Cargill on or after October 24, 2023 that are at any time outstanding.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

49. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge, the Transaction Fee Charge and the DIP Charge (collectively, with the KERP Charge, the “**Charges**”), as among them, as against the Property other than the KERP Funds, shall be as follows:

*First* – the Administration Charge (to the maximum amount of US\$1,000,000);

*Second* – the Directors’ Charge (to the maximum amount of US\$5,200,000);

*Third* – (a) the Transaction Fee Charge (to the maximum amount of the GLC Fees (as defined in the DIP Agreement)); (b) the DIP Charge; and (c) the Cargill Margin Charge, on a *pari passu* basis; and

*Fourth* – the Transaction Fee Charge (to the maximum amount of US\$5,600,000 less the GLC Fees) on a *pari passu* basis with the Senior Priority Notes and Senior Priority Advances (each as defined in the First Broking Affidavit).

50. **THIS COURT ORDERS** that the KERP Charge (to the maximum amount of US\$● million) shall rank first solely as against the KERP Funds and the other Charges shall rank subordinate to the KERP Charge as against the KERP Funds in the priorities set out in paragraph 49.

51. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

52. **THIS COURT ORDERS** that each of the Charges 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, except for the portion of the Transaction Fee Charge which ranks *pari passu* basis with the Senior Priority Notes and Senior Priority Advances.

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

54. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the KERP Charge, the Transaction Fee Charge, the DIP Charge, the DIP Agreement and the Definitive Documents 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**") and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by the pendency of these proceedings and the declarations of insolvency made herein; any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; the filing of any assignments for the general benefit of creditors made pursuant to the BIA; the provisions of any federal or provincial statutes; or 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant 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 Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Agreement or the Definitive Documents, 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.

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

#### **SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA, (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (iii) 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.

57. **THIS COURT ORDERS** that the Commercial List E-Service Guide (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide 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: <http://cfcanada.fticonsulting.com/tacora>.

58. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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.

59. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in

these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

## **GENERAL**

60. **THIS COURT ORDERS** that the Applicant 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.

61. **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 Applicant, the Business or the Property.

62. **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 Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

63. **THIS COURT ORDERS** that each of the Applicant 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.

64. **THIS COURT ORDERS** that any interested party (including the Applicant, the Monitor and the DIP Lenders) 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.

65. **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 Filing Date.

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

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.**

**(Applicant)**

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

PROCEEDINGS COMMENCED AT  
TORONTO

**Order**

**BENNETT JONES LLP**

3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Kevin Zych (LSO#33129T)  
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Tel: 416.863.1200 / Fax: 416.863.1716

*Lawyers for the Ad Hoc Group of  
Noteholders*

# **Tab 4**

Court File No.

\_\_\_\_\_ CV-23-00707394-00CL

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

THE HONOURABLE \_\_\_\_\_ )

JUSTICE \_\_\_\_\_ KIMMEL )

~~WEEKDAY~~ TUESDAY, THE # 24<sup>th</sup>

DAY OF ~~MONTH, 20YR~~ OCTOBER, 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  
~~[APPLICANT'S NAME]~~ (the "  
TACORA RESOURCES INC.

(Applicant")

**AMENDED AND RESTATED INITIAL ORDER**

THIS ~~APPLICATION~~ MOTION, made by the ~~Applicant~~, ad hoc group of holders (the "Ad Hoc Group") of the 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023 (the "SPNs") and 8.250% Senior Secured Notes (the "SSNs") due 2026 of Tacora Resources Inc. ("Tacora" or the "Applicant") for an order amending and restating the initial order issued by the Court on October 10, 2023 (the "Filing Date"), among other things, approving the Ad Hoc Group DIP Agreement (as defined below) pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day in person at 330 University Avenue, Toronto, Ontario.

ON READING the ~~affidavit of [NAME] sworn [DATE]~~ Motion Record of the Ad Hoc Group dated October 16, 2023, the Application Record of Tacora dated October 10, 2023, the affidavits of Joe Broking sworn October 9, 2023 (the "Broking Affidavit") and October 15, 2023 (the Exhibits thereto "Second Broking Affidavit"), the affidavits of Chetan Bhandari sworn October 9, 2023 and October 15, 2023, the consent of FTI Consulting Canada Inc. ("FTI") to act as Court-appointed monitor of Tacora (in such capacity, the "Monitor"), the Pre-Filing Report and First Report of FTI, and the other materials filed in connection with

this motion, 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 ~~[NAMES]~~ the Ad Hoc Group, counsel for Tacora, counsel for Cargill, Incorporated, counsel for the Monitor and those other parties listed on the counsel slip, no one else appearing ~~for~~ ~~[NAME]~~<sup>1</sup> although duly served as it appears from the affidavit of service of ~~[NAME]~~ sworn ~~[DATE]~~ and on reading the consent of [MONITOR'S NAME] to act as the Monitor Thomas Gray dated October 16, 2023.

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the ~~Notice~~ Motion Record of ~~Application and the Application Record~~ Ad Hoc Group is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant 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").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant is 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.

5. **{ THIS COURT ORDERS** that, subject to the terms of the DIP Agreement (as defined below), the Applicant shall be entitled to continue to utilize the ~~central~~ cash management system<sup>3</sup> currently in place as described in the Broking Affidavit ~~of [NAME] sworn [DATE]~~ 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 Applicant 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 Applicant, 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 ~~the any~~ Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. }

6. **THIS COURT ORDERS** that, subject to the terms of the DIP Agreement, the Applicant 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; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant 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), and maintenance and security services; ~~and~~

- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and

(c) payments on behalf of Tacora Resources LLC to pay salaries and wages for U.S. based employees and rent for the Applicant's head office located in Grand Rapids, Minnesota.

8. **THIS COURT ORDERS** that the Applicant 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 Applicant in connection with the sale of goods and services by the Applicant, 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 Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~or resiliated~~<sup>4</sup> in accordance with the CCAA, the Applicant 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 Applicant 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.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is 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 Applicant to any of its creditors as of this date; (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.

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and 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, and to dispose of redundant or non-material assets not exceeding US\$ 1,000,000 in any one transaction or US\$ 5,000,000 in the aggregate;
- (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 Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant'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 Applicant'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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims ~~{or-resiliates}~~ 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 ~~{or-resiliation}~~ of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer ~~{or-resiliation}~~ is delivered pursuant to Section 32 of the CCAA, then ~~(a)~~ during the notice period prior to the effective time of the disclaimer ~~{or-resiliation}~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and ~~(b)~~ at the effective time of the disclaimer ~~{or-resiliation}~~, 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 Applicant 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 APPLICANT OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including ~~[DATE—MAX. 30 DAYS]~~ February 9, 2024, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the

foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (ia) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ib) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (ic) prevent the filing of any registration to preserve or perfect a security interest, or (id) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

16. **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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, during the Stay Period, Cargill International Trading Pte Ltd. ("Cargill") shall not terminate or cease to perform pursuant to the Offtake Agreement (as defined in the Broking Affidavit) while such agreement remains in effect, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **NO PRE-FILING VS POST-FILING SET-OFF**

17. THIS COURT ORDERS that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicant in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicant in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicant in respect of obligations arising on or after the date of this Order, each without the consent of the Applicant and the Monitor, or leave of this Court. For greater certainty, Cargill shall not set-off any amount due under the Advance Payment Facility Agreement (as defined in the Broking Affidavit) against any amounts that are or may become due to the Applicant on or after the date of this Order.

#### **CONTINUATION OF SERVICES**

18. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Applicant, 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 Applicant, and that the Applicant 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

19. ~~18.~~ **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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. ~~19.~~ **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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. ~~20.~~ **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,<sup>7</sup> including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which

obligation may become due and payable after the commencement of these 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.

22. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of US\$ 5,200,000, as security for the indemnity provided in paragraph ~~20~~21 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~38~~49 and ~~40~~52 herein.

23. ~~22.~~ **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 Applicant'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 ~~20~~21 of this Order.

#### ENGAGEMENT OF GREENHILL

24. THIS COURT ORDERS that the engagement of Greenhill & Co. Canada Ltd. ("Greenhill") by the Applicant as investment banker pursuant to the engagement letter dated as of January 23, 2023 (the "Greenhill Engagement Letter") and payment by the Applicant of the Monthly Advisory Fee (as defined in the Greenhill Engagement Letter) and the Transaction Fee (as defined in the Broking Affidavit) are hereby approved, subject to the priority provided for herein.

25. THIS COURT ORDERS that Greenhill shall be entitled to the benefit of and are hereby granted a charge (the "Transaction Fee Charge") on the Property as security for the Transaction Fee, which charge shall not exceed an aggregate amount of US\$5,600,000. The Transaction Fee Charge shall have the priority set out in paragraphs 49 and 52 herein.

26. THIS COURT ORDERS that Greenhill shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Greenhill Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

#### ENGAGEMENT OF GLC

27. THIS COURT ORDERS that the engagement of GLC Advisors & Co., and GLC Securities, LLC (together, "GLC") as an investment banker to the DIP Lenders pursuant to the engagement letter dated as of April 25, 2023 and as amended as of September 7, 2023 (the "GLC Engagement Letter") and payment by the Applicant of the Monthly Advisory Fees, Transaction Fee, Discretionary Fee and Expenses (each as defined in the GLC Engagement Letter) are hereby approved and shall be secured by the DIP Charge (as defined below) with the priority provided for herein.

#### APPOINTMENT OF MONITOR

28. ~~23.~~ THIS COURT ORDERS that ~~[MONITOR'S NAME]~~FTL is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

29. ~~24.~~ 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 Applicant'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) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lenders and ~~its~~their counsel ~~on a [TIME INTERVAL] basis of financial and other information as,~~ pursuant to and in accordance with the DIP Agreement (as defined herein), or as may otherwise be agreed ~~to~~ between the Applicant and the DIP ~~Lender~~ Lenders ~~which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender~~ Lenders;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP ~~Lender~~ Lenders under the DIP Agreement, which

information shall be reviewed with the Monitor and delivered to the DIP Lenders and ~~its~~their counsel ~~on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by~~ in accordance with the DIP Lender ~~Agreement~~;

- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) 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 Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(h) hold and administer funds in connection with arrangements made among the Applicant, any counterparties and the Monitor or by Order of this Court;

(i) ~~(h)~~ 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) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

30. ~~25.~~ **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.

31. ~~26.~~ **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~~, the Newfoundland Environmental Protection Act, the Newfoundland Water Resources Act, the Newfoundland Occupational Health and Safety Act, and the 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.

32. ~~27.~~ **THIS COURT ORDERS** that ~~that~~ the Monitor shall provide any creditor of the Applicant and the DIP Lenders s with information provided by the Applicant 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 Applicant 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 Applicant may agree.

33. ~~28.~~ **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.

#### ADMINISTRATION CHARGE

34. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a ~~[TIME INTERVAL]~~ bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, reasonable retainers ~~in~~ ~~the amount[s] of \$●-[, respectively,]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

35. ~~30.~~ **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.

36. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any, and~~ the Applicant's counsel and Greenhill for its Monthly Advisory Fee (as defined by the Greenhill Engagement Letter) 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 US\$●1,000,000, 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 ~~38~~49 and ~~40~~52 hereof.

#### DIP FINANCING

37. ~~32.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow ~~under a~~ super-priority, debtor-in-possession, non-revolving credit facility ~~from [DIP LENDER'S NAME] (the "DIP Facility") under a DIP Loan Agreement dated October 24, 2023 (the "DIP Agreement") from (i) Brigade Capital Management, LP; (ii) Concise Capital Management LP; (iii) Millstreet Capital Management LLC; (iv) MSD Partners, LP; (v) O-Brien-Staley Partners; and (vi) Snowcat Capital Management, LP (collectively, in such capacity, the "DIP Lenders")~~ in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under ~~such credit facility~~ the DIP Agreement shall not exceed ●the principal amount of US\$119,005,000 unless permitted by further Order of this Court.

38. ~~33.~~ **THIS COURT ORDERS** ~~THAT such credit~~ that the DIP f facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed~~ DIP Agreement attached as Exhibit "L" to the Affidavit of Thomas Gray sworn October 16, 2023, with such minor amendments as are necessary and agreed to between the parties.

39. ~~34.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such ~~credit agreements, mortgages, charges, hypothecs and~~ security documents, ~~guarantees~~ and other definitive documents (collectively, the "Definitive

Documents"), as are contemplated by the ~~Commitment Letter~~ DIP Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the ~~Commitment Letter~~ DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. ~~35.~~ **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and ~~is~~ are hereby granted a charge (the "DIP Lender's Charge") on the Property, which ~~DIP Lender's Charge~~ shall not secure an obligation that exists before this Order is made. The ~~DIP Lender's Charge~~ shall have the priority set out in paragraphs ~~{38}~~ 49 and ~~{40}~~ 52 hereof.

41. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the ~~DIP Lender's Charge~~ or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement or the Definitive Documents ~~or the DIP Lender's Charge~~, the ~~DIP Lender~~ Lenders may, upon ~~•~~ five (5) business days notice to the Applicant and the Monitor, ~~may~~ exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the ~~Commitment Letter~~ DIP Agreement, Definitive Documents and the ~~DIP Lender's Charge~~, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicant against the obligations of the Applicant to the DIP Lenders under the ~~Commitment Letter~~ DIP Agreement, the Definitive Documents or the ~~DIP Lender's Charge~~, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

42. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act of Canada* (the "BIA"), with respect to any advances made under the Definitive Documents.

43. THIS COURT ORDERS AND DECLARES that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the Definitive Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "Variation"), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lenders, whether under this Order (as made prior to the Variation), under the DIP Agreement or the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lenders being given notice of the Variation, and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the DIP Agreement and the Definitive Documents.

#### KEY EMPLOYEE RETENTION PLAN

44. THIS COURT ORDERS that the Key Employee Retention Plan (the "KERP"), as described in the DIP Agreement, is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

45. THIS COURT ORDERS that payments made by the Applicant pursuant to the KERP do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. THIS COURT ORDERS that the Applicant is authorized to pay up to US\$• to the Monitor to hold in a segregated account (the "KERP Funds") and the key employees referred to in the KERP (the "Key Employees") shall be entitled to the benefit of and are hereby granted a charge on the KERP Funds (the "KERP Charge"), which charge shall not exceed an aggregate amount of US\$• to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 49 and 52 hereof. The Monitor shall not be responsible for making the payments to the Key Employees under the KERP; paying any tax withholdings or remittances payable to any tax

authorities or otherwise in respect of the KERP; or reporting or making disclosure with respect to the KERP to any taxing authorities or otherwise.

MARGIN ADVANCES AND CARGILL MARGIN CHARGE

47. THIS COURT ORDERS that Cargill shall continue to make the deemed Margin Advances (as defined in the Advance Payments Facility Agreement) under section 2.2 of the Advance Payments Facility Agreement to fund any Margin Amounts (as defined in the Advance Payments Facility Agreement) required to be funded from and after October 24, 2023.

48. THIS COURT ORDERS that Cargill shall be entitled to the benefit of and is hereby granted a charge (the "Cargill Margin Charge") in the amount of all such Margin Advances advanced by Cargill on or after October 24, 2023 that are at any time outstanding.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

49. ~~38.~~ THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge, the ~~Administration~~ Transaction Fee Charge and the DIP Lender's Charge (collectively, with the KERP Charge, the "Charges"), as among them, as against the Property other than the KERP Funds, shall be as follows<sup>9</sup>:

*First* ~~— the~~ Administration Charge (to the maximum amount of US\$~~1,000,000~~);

*Second* ~~—DIP Lender—~~ the Directors's Charge (to the maximum amount of US\$5,200,000); and

*Third* ~~—Directors'—~~ (a) the Transaction Fee Charge (to the maximum amount of ~~\$~~1,000,000~~~~); the GLC Fees (as defined in the DIP Agreement)); (b) the DIP Charge; and (c) the Cargill Margin Charge, on a pari passu basis; and

*Fourth* ~~—~~ the Transaction Fee Charge (to the maximum amount of US\$5,600,000 less the GLC Fees) on a pari passu basis with the Senior Priority Notes and Senior Priority Advances (each as defined in the First Broking Affidavit).

50. THIS COURT ORDERS that the KERP Charge (to the maximum amount of US\$~~1~~ million) shall rank first solely as against the KERP Funds and the other Charges shall rank

subordinate to the KERP Charge as against the KERP Funds in the priorities set out in paragraph 49.

51. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (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.

52. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ Charges 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, except for the portion of the Transaction Fee Charge which ranks pari passu basis with the Senior Priority Notes and Senior Priority Advances.

53. ~~41.~~ **THIS COURT ORDERS** that, except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant 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 DIP Lender's Charge~~ Charges, unless the Applicant also obtains the prior written consent of the Monitor, the ~~DIP Lender and the~~ beneficiaries of the Administration Charge, the Directors' Charge, DIP Charge and the ~~Administration~~ KERP Charge, or further Order of this Court.

54. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter,~~ Directors' Charge, the KERP Charge, the Transaction Fee Charge, the DIP Charge, the DIP Agreement and the Definitive Documents ~~and the DIP Lender's Charge~~ 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") and/or the DIP Lenders thereunder 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant 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 Applicant entering into the ~~Commitment Letter~~DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the ~~Commitment Letter~~DIP Agreement or the Definitive Documents, 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.

55. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

56. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall ~~(i)a~~ without delay, publish in ~~[newspapers specified by the Court]~~the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA, ~~(ii)b~~ within five (5) days after the date of this Order, ~~(A)i~~ make this Order publicly available in the manner prescribed under the CCAA, ~~(B)ii~~ send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$~~1000~~1,000, and ~~(C)iii~~ 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.

**57.** ~~45.~~ **THIS COURT ORDERS** that the ~~E-Service Protocol of the~~ Commercial List **E-Service Guide** (the "~~Protocol~~**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~**Guide** (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~<https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (Ontario) (the "Rules"), 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~~**13** of the ~~Protocol~~**Guide**, service of documents in accordance with the ~~Protocol~~**Guide** 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: ~~'<@>'~~ <http://cfcanada.fticonsulting.com/tacora>.

**58.** ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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.

**59.** **THIS COURT ORDERS that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SORS/DORS).**

**GENERAL**

60. ~~47.~~ **THIS COURT ORDERS** that the Applicant 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.

61. ~~48.~~ **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 Applicant, the Business or the Property.

62. ~~49.~~ **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 Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

63. ~~50.~~ **THIS COURT ORDERS** that each of the Applicant 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.

64. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the Applicant, the Monitor and the ~~Monitor~~ DIP Lenders) 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.

65. ~~52.~~ **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~~ Filing Date.

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

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

(Applicant)

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT  
TORONTO

Order

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Statistics:	
	Count

Insertions	314
Deletions	287
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	603

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<sup>1</sup> ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

<sup>2</sup> ~~If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

<sup>3</sup> ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

<sup>4</sup> ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

<sup>5</sup> ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

<sup>6</sup> ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

<sup>7</sup> ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

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~~<sup>8</sup>Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

~~<sup>9</sup>The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF TACORA RESOURCES INC.**

**(Applicant)**

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

PROCEEDINGS COMMENCED AT  
TORONTO

**Motion Record**  
**(Returnable October 24, 2023)**

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