

No. S-226670  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

**AND**

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c.57, AS AMENDED AND THE *BUSINESS CORPORATIONS ACT*, S.N.B.  
1981, C-9.1, AS AMENDED**

**AND**

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
TREVALI MINING CORPORATION AND TREVALI MINING CORPORATION (NEW  
BRUNSWICK) LTD.**

**PETITIONERS**

**SUPPLEMENTAL REPORT TO THE SECOND REPORT OF THE MONITOR**

**SEPTEMBER 14, 2022**

**SUPPLEMENTAL REPORT TO THE  
SECOND REPORT OF THE MONITOR**

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## INTRODUCTION

1. The purpose of this Supplemental Report to the Second Report (the “**Supplemental Report**”) is to supplement the Second Report dated September 12, 2022, which was filed in connection with Trevali’s application for the SISP Order and the KERP Order and specifically addresses the proposed retention by the Applicants of National Bank Financial Inc. to act as Sales Agent in connection with the SISP.
2. The Supplemental Report should be read in conjunction with the Second Report and all capitalized terms used herein are as defined in the Second Report.

## TERMS OF REFERENCE

3. In preparing this report, the Monitor has relied upon certain Information including Trevali’s unaudited financial information, books and records and discussions with Management.
4. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
5. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
6. Future oriented financial information reported to be relied on in preparing this report is based on Management’s assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars to be consistent with the Applicants’ primary reporting currency.

## APPOINTMENT OF A SALES AGENT

8. The SISP Order provides for, among other things:
  - a. approval of the procedures for a SISP;
  - b. approval of a Sales Agent Agreement for Trevali Corp. to retain National Bank Financial Inc. as Sales Agent; and
  - c. granting the Sales Agent Charge to secure the Sales Agent's fees.
9. As described in the Second Report, the Monitor is of the view that the SISP will allow the Applicants to pursue sales or other restructuring transactions for Rosh Pinah and Caribou in a fair and transparent manner.
10. At the date of the Second Report, the Applicants had selected the Sales Agent to provide investment banking advice and assistance in connection with the SISP but had not yet reached a final agreement on engagement terms or executed a formal engagement letter.
11. The fee arrangement and other terms were negotiated by the Applicants in consultation with the Monitor and the advisors to the RCF Administrative Agent. On September 14, 2022, the Applicants and Sales Agent substantially agreed to the terms of a Sales Agent Agreement, a copy of which is attached as Appendix "A".
12. The Sales Agent Agreement provides for fees to be paid to the Sales Agent including the following:
  - a. an engagement fee (the "**Engagement Fee**") of CAD\$150,000 per month commencing September 12, 2022 for a minimum period of four months and a maximum of six months. A credit of 50% of the aggregate Engagement Fees paid during the first five months of the engagement shall be deducted from the Asset Sale Transaction Fee or the Restructuring Transaction Fee as defined below;

- b. if Trevali Corp. requests that a fairness opinion be delivered to the Applicants, its board of directors or any board committee, a fee (the “**Opinion Fee**”) of CAD\$500,000 shall be payable upon the delivery of the first opinion to the Applicants. Any subsequent opinion shall be deliverable at an incremental cost of CAD\$250,000 for each opinion. The Opinion Fee(s) shall be fully creditable against the Asset Sale Transaction Fee or the Restructuring Transaction Fee;
  - c. an asset sale transaction fee (“**Asset Sale Transaction Fee**”) shall be payable upon closing of an asset sale transaction of 1.5% of the transaction value, subject to a minimum transaction fee of CAD\$1.5 million in the event of a sale of Rosh Pinah; and
  - d. a restructuring transaction fee (“**Restructuring Transaction Fee**”) upon completion of a restructuring transaction of 1.5% of the gross financing proceeds, subject to a minimum fee of CAD\$1.5 million. If the Restructuring Transaction is comprised solely of the RCF Lenders rolling their debt under a “credit bid” then the Restructuring Transaction Fee shall be CAD\$1.0 million. The Sales Agent will be entitled to receive only one of the Asset Sale Transaction Fee or the Restructuring Transaction Fee.
13. The Monitor has reviewed the fees in comparable formal restructuring proceedings of a similar scale and is of the view that the fees and terms provided for in the Sales Agent Agreement are reasonable in the circumstances.
14. The SISP Order provides for the Sales Agent’s Charge which ranks subordinate to the Administration Charge, D&O Charge, Intercompany Advances Charge and KERP Charge. It is the Monitor’s view that the Sales Agent Charge, including the amount and relative priority thereof, is reasonable in the circumstances and necessary to ensure the Sales Agent’s ongoing assistance in the CCAA Proceedings.
15. Based on the forgoing and the reasons set out in the Second Report, the Monitor respectfully recommends that this Honourable Court grant the SISP Order.

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All of which is respectfully submitted this 14<sup>th</sup> day of September 2022.

FTI Consulting Canada Inc.  
In its capacity as Monitor of Trevali



Tom Powell  
Senior Managing Director



Mike Clark  
Senior Director

# **Appendix A**

## **Sales Agent Agreement**

September 12, 2022

Trevali Mining Corporation  
1900 – 999 West Hastings Street  
Vancouver, British Columbia  
V6C 2W2

Attention: Ricus Grimbeek, President & Chief Executive Officer

Dear Sirs and Mesdames:

National Bank Financial Inc. (“**NBF**”) understands that Trevali Mining Corporation (the “**Company**”) has obtained from the Superior Court of British Columbia protection from its creditors under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and this letter agreement (the “**Agreement**”) sets out the terms and conditions pursuant to which the Company has engaged NBF as its financial advisor in connection with a transaction (the “**Transaction**”) which, for the purposes of this Agreement, shall include, except as expressly excluded below: (i) a sale or disposition (whether in one or a series of transactions), directly or indirectly, by the Company, of the Rosh Pinah Mine (“**Rosh Pinah**”) and the Caribou Mine (“**Caribou**”) (individually and collectively an “**Asset Sale**”); and (ii) some other investment, restructuring, recapitalization or other form of reorganization of the business, property or affairs of the Company or its subsidiaries (a “**Restructuring Transaction**”).

NBF acknowledges that the Company has engaged Endeavour Financial to assist the Company in sourcing third party investors with an interest in making an investment by way of debt or a royalty stream in the Company.

Furthermore, the parties agree that this Agreement supersedes and replaces the previous letter agreement between NBF and the Company dated June 27, 2022.

(1) **Services**

NBF’s services in connection with this Agreement will include identifying and analyzing the financial and strategic alternatives available to the Company, providing financial analysis and advice on structuring, planning, negotiating and documenting a potential Transaction. In consultation with the Company and the court appointed Monitor, NBF will assist the Company in preparing confidential offering materials, contacting prospective purchasers and sources of capital, evaluating proposals and assist in the completion of the Transaction.



(2) **Fees and Expenses**

For the services performed by NBF hereunder, the Company will pay to NBF the following fees (subject to and conditional upon the approval of these fees by the Monitor and Court under the CCAA process):

- (a) **Engagement Fee:** An engagement fee (the “**Engagement Fee**”) of C\$150,000 per month payable at the start of each month, commencing as of September 12, 2022 (prorated in the case of the first month), for a minimum period of four months and a maximum of six months. 50% of the aggregate Engagement Fees paid during the first five months of this engagement shall be creditable against the Asset Sale Transaction Fee or the Restructuring Transaction Fee;
- (b) **Fairness Opinion Fee:** If the Company requests, in writing, that a fairness opinion be delivered to the Company, the board of directors or any board committee, a fairness opinion fee (the “**Opinion Fee**”) of C\$500,000 shall be payable upon the delivery of the first opinion to the Company. Any subsequent opinion shall be delivered at an incremental cost of C\$250,000 for each opinion, payable upon delivery. The Opinion Fee(s) paid shall be fully creditable against the Asset Sale Transaction Fee or the Restructuring Transaction Fee;
- (c) **Asset Sale Transaction Fee:** An asset sale transaction fee, payable upon closing of a Transaction, of 150 (one hundred and fifty) basis points of the Transaction Value (as defined below) subject to a minimum transaction fee of C\$1,500,000 in the event of the sale of Rosh Pinah.
- (d) **Restructuring Transaction Fee:** Upon completion of a Restructuring Transaction: 150 (one hundred and fifty) basis points of the Gross Financing Proceeds (as defined below) subject to a minimum fee of C\$1,500,000. If the Restructuring Transaction is comprised solely of the RCF lenders rolling their debt under a so called ‘credit bid’ then the Restructuring Transaction Fee shall be C\$1,000,000.

“**Transaction Value**” for purposes of calculating the Asset Sale Transaction Fee shall include all amounts received by the Company or any affiliate or shareholder of the Company either from the purchaser or by way of special distributions or dividends, in connection with the Transaction, including cash, securities, property, delayed payments from earn-outs or the exercise of options or rights. For purposes of payment of the Asset Sale Transaction Fee with respect to any portion of the Transaction Value that is not received at the closing of the Transaction, NBF shall estimate at closing such proceeds receivable, and the Asset Sale Transaction Fee with respect to such proceeds shall be payable to at closing based on such estimate.

If the consideration paid or received in a Transaction as referred to in or contemplated by this Agreement is in whole or in part in the form of securities or assets, the value of such securities or assets, for purposes of calculating the Asset Sale Transaction Fee, shall be the fair market value thereof on the effective date of such Transaction. Such fair market value shall be determined by NBF and the Company using methodologies determined to be the most appropriate for the type of security or asset.

For the purpose of calculation of “Transaction Value”, debt securities or promissory notes, including those assumed by the purchaser, shall be valued at their fair market value at their date of issue and all other securities for which a public trading market existed prior to the consummation of a Transaction shall be valued at their respective market prices at the close of business on the last business day prior to the closing of the Transaction. To the extent no such market prices are reported on such date for such securities, the securities shall be valued at their bid price or most recent reported closing price, whichever is greater. Preferred securities (or similar instruments) and warrants for which a public trading market did not exist prior to the issue thereof, shall also be valued at their respective fair market values at their date of issue.

“**Gross Financing Proceeds**”, for purposes of calculating the Restructuring Transaction Fee, means all amounts received by the Company or any affiliate of the Company in connection with the relevant transaction, or committed at financial close and to be invested over a certain period of time by investors.

Notwithstanding any termination of the engagement of NBF hereunder if at any time during the 12 months following the termination of such engagement the Company, either (i) directly or indirectly, either alone or in combination with others (including any entity, group, joint venture, partnership or other business combination of which the Company is a member, or in which it otherwise participates), effects or completes an Asset Sale, or (ii) effects or completes a Restructuring Transaction, then the Company will pay NBF, as the case may be, (i) the Asset Sale Transaction Fee in the amount and at such time as provided for in paragraph (c) above, or (ii) the Restructuring Transaction Fee in the amount and at such time as specified in paragraph (d) above.

The Company will promptly reimburse NBF for all reasonable expenses incurred by NBF in entering into and performing its services under this Agreement, including but not limited to printing, courier, travel and accommodation, communication, telephone and database service expenses and the reasonable fees and disbursements of counsel (subject to a \$50,000 cap on legal fees) and any other advisors retained by NBF with the consent of the Company, such consent not to be unreasonably withheld. Such expenses will be payable on receipt by the Company of invoices from NBF whether or not the Transaction or any part thereof is completed.

All or part of the amounts payable under this Section 2 may be subject to the federal

Harmonized Sales Tax or applicable provincial sales tax (collectively, “**Tax**”). Where Tax is applicable, an additional amount equal to the amount of Tax owing will be charged to the Company.

For the avoidance of doubt, NBF will be entitled to received only one of the Asset Sale Transaction Fee pursuant to paragraph 2(c) or the Restructuring Transaction Fee pursuant to paragraph 2(d) above, and no Restructuring Transaction Fee will be payable in respect of any transaction for which the Company pays an Asset Sale Transaction Fee, or vice versa.

(3) **Payment of Fees**

The Company shall pay to NBF the fees and reimburse the expenses provided for in this Agreement promptly when due.

(4) **Term of Engagement**

The engagement of NBF pursuant to this Agreement shall commence as of the date hereof and shall terminate upon the termination of NBF’s engagement by either the Company or NBF upon written notice to the other, provided that the obligations of the Company to indemnify, to pay any amounts due to NBF pursuant to this Agreement including fees, expenses and Tax, and to maintain the confidentiality of NBF’s advice and opinions shall survive the completion of NBF’s engagement hereunder, any withdrawal or termination of the Transaction or the expiry or other termination of this Agreement.

(5) **Information**

The Company will make available or cause to be made available to NBF on a timely basis, all information (financial or otherwise), data, documents, opinions, appraisals, valuations or other information and materials of whatsoever nature or kind respecting the Company and its affiliates as NBF may reasonably require or consider appropriate in carrying out its services hereunder. The Company also agrees to provide NBF with timely access to the directors, officers, employees, independent auditors, consultants and financial, legal and other professional advisors of the Company and its affiliates as NBF may reasonably require or consider appropriate in performing its services hereunder.

NBF shall be entitled to rely upon such information and all other information that is filed by the Company with applicable securities regulatory or other similar authorities and NBF shall be under no obligation to verify independently any such information so provided to or otherwise obtained by NBF. NBF shall also be under no obligation to determine whether there have been or to investigate any changes in any of such information occurring after the date any of the same were provided or obtained.

The Company agrees to advise NBF promptly of any material event or material change in

the business, affairs, condition (financial or otherwise) or prospects of the Company that occurs during the term of NBF's engagement hereunder. The Company shall inform NBF, promptly after it becomes aware thereof, of the issuance of any cease trading or similar order or the initiation or threat of an initiation of any proceeding, litigation or investigation with respect to the Transaction before or by any regulatory, administrative or other governmental or public body or authority or any courts.

If any representative of NBF is requested by the Company or required by law to attend any hearing or proceeding before any regulatory or judicial authority in connection with the matters herein contemplated, the Company shall promptly reimburse NBF for: (i) the time spent by its personnel in connection therewith, at a rate based on NBF's normal per diem rates; (ii) all reasonable expenses incurred by NBF's personnel in connection therewith; and (iii) the fees and disbursements of NBF's counsel. NBF acknowledges that it will likely be required to provide affidavit evidence in the CCAA proceedings and that the provision of such evidence is part of the services being provided by NBF and is not captured by this paragraph.

(6) **Indemnification**

The Company hereby agrees to indemnify NBF in accordance with Schedule "A" hereto, which Schedule forms part of this Agreement and the consideration of which is the entering into of this Agreement. Such indemnity (the "**Indemnity**") shall be executed and delivered to NBF on the execution of this Agreement and shall be in addition to, and not in substitution for, any liability which the Company or any other person may have to NBF or to other persons indemnified pursuant to the Indemnity apart from such Indemnity.

(7) **Confidentiality**

NBF shall keep confidential all information obtained by it from the Company in connection with its engagement hereunder. This confidentiality obligation shall not apply or extend to information now in the public domain, information which subsequently becomes public other than through breach by NBF of its obligations hereunder, information disclosed to NBF by third parties in respect of which such third parties are not under an obligation of confidentiality to the Company or information which is required by law to be disclosed.

The advice or opinions of NBF, including any background or supporting materials and analysis, shall not be publicly disclosed or referred to or provided to any third party by the Company without the prior written consent of NBF.

Notwithstanding the foregoing: (i) NBF acknowledges that its retainer, including this engagement letter, will be disclosed in the CCAA proceedings as part of the process to obtain court approval of this engagement; (ii) the engagement and advice of NBF may be described in any public document of the Company related to a Transaction if such disclosure is required

by applicable law, stock exchange or securities commission requirement or is approved by NBF; (iii) subject to review by NBF of the final form of any disclosure document to be sent to the Company's security-holders in connection with any proposed Transaction, the Company may include in such disclosure document a summary and the complete text of any NBF opinion in its final form; and (iv) the Company may disclose any information required by applicable law, any stock exchange or any securities commission.

(8) **Acknowledgement of Securities Activities, No Fiduciary Relationship, etc.**

The Company acknowledges that NBF is a full service securities firm engaged in securities trading and brokerage activities as well as providing investment banking and financial advisory services and that in the ordinary course of its trading and brokerage activities, NBF and its affiliates at any time may hold long or short positions, and may trade or otherwise effect transactions, for its own account or the accounts of customers, in debt or equity securities of the Company or any other company that may be involved in a Transaction or related derivative securities.

NBF acknowledges its responsibility to comply with applicable securities laws as they relate to trading securities with knowledge of a material fact or a material change that has not been generally disclosed. Further, NBF has internal procedures which provide for the placing of relevant securities on a "grey list" or a "restricted list" and for restrictions on trading by NBF and its investment banking personnel for their own account in accordance with such procedures.

The Company further acknowledges that NBF has been retained hereunder solely as an advisor to the Company, and not as an advisor to or agent for any other person, and that the Company's engagement of NBF is as an independent contractor and not in any other capacity including as a fiduciary. Neither this engagement, nor the delivery of any advice in connection with this engagement, is intended to confer rights upon persons not a party hereto (including shareholders, creditors or employees of the Company) as against NBF or any of NBF's affiliates or their respective directors, officers, agents and employees. The Company further acknowledges that it is not relying on the advice of NBF for tax, legal or accounting matters, it is seeking and will rely on the advice of its own professionals and advisors for such matters and it will make an independent analysis and decision regarding any Transaction based on such advice.

(9) **Advertisement**

The Company agrees that NBF has the right to place advertisements in financial and other newspapers and journals at its own expense describing its services to the Company hereunder, provided that NBF shall submit a copy of any such advertisements to the Company for its approval, such approval not to be unreasonably withheld. If requested by NBF, the Company will include a mutually acceptable reference to NBF in any press release or other public

announcement made by the Company regarding services provided by NBF to the Company hereunder.

(10) **Retention of NBF**

In order to render the Services under this Agreement, the Company has or shall apply promptly to the applicable court, for approval of (a) this Agreement; (b) the retention of NBF by the Company under the terms of this Agreement; (c) the payment of the fees and expenses of NBF under this Agreement in the form and at times contemplated hereby; (d) security or charge rank for such fees, in propriety over the claim of any secured and unsecured creditor of the Company. The Company shall use its commercially reasonable efforts to obtain such court approval and authorization. NBF shall have no obligation to provide any services under this Agreement unless NBF's retention under the terms of this Agreement is approved in the manner set forth above by a final order of the applicable court which order is acceptable to NBF, acting reasonably.

(11) **Notice**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given, if it is delivered personally to Trevali Mining Corporation, 1900 – 999 West Hastings Street, Vancouver, British Columbia, V6C 2W2 to the attention of Brendan Creaney, Chief Financial Officer and to National Bank Financial Inc. at 475 Howe Street, Suite 3000 Vancouver BC V6C 2B3, to the attention of Morten Eisenhardt, Managing Director, Investment Banking, Global Metals and Mining and in all cases delivered personally to a responsible officer or employee of the addressee.

Either party hereto may change its address by notice to the other in the above manner.

(11) **Other Matters**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and the parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of British Columbia. If any provision hereof shall be determined to be invalid or unenforceable in any respect such determination shall not affect such provision in any other respect or any other provision hereof. Headings used herein are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be and all of which together will be deemed to be one and the same document.

All financial references in this Agreement are to Canadian dollars unless otherwise indicated.

(12) **Language**

The parties hereto have required that this Agreement and all documents and notices related thereto and/or resulting therefrom be drawn up in English.

Les parties aux présentes ont exigé que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en langue anglaise.

(13) **Acceptance**

Please confirm that the foregoing is in accordance with the Company's understanding by signing and returning the attached duplicate copy of this letter, which shall thereupon constitute a binding agreement between the Company and NBF.

Yours very truly,

**NATIONAL BANK FINANCIAL INC.**

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**Morten Eisenhardt**  
Managing Director  
Investment Banking  
Global Metals and Mining

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**Andrew Armstrong**  
Managing Director  
Mergers & Acquisitions

Accepted and agreed to as of the \_\_\_\_\_ day of September, 2022

**TREVALI MINING CORPORATION**

By: \_\_\_\_\_  
Brendan Creaney  
Chief Financial Officer

## SCHEDULE "A"

### INDEMNITY

In connection with the engagement (the "**Engagement**") of National Bank Financial Inc. ("**NBF**") pursuant to an engagement letter (the "**Engagement Letter**") between NBF and Trevali Mining Corporation (the "**Company**") dated September 12, 2022, the Company agrees to indemnify and hold harmless NBF, each of its subsidiaries and each of their respective directors, officers, employees, partners, agents, each other person, if any, controlling NBF or any of its subsidiaries and each shareholder of NBF (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**"), from and against any and all losses, expenses, claims (including shareholder actions, derivative or otherwise), actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of their counsel (collectively, the "**Losses**") that may be incurred in advising with respect to and/or defending any action, suit, proceeding, investigation or claim that may be made or threatened against any Indemnified Party or in enforcing this indemnity (collectively, the "**Claims**") to which any Indemnified Party may become subject or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise out of or are based upon, directly or indirectly, the Engagement. The Company agrees to waive any right the Company may have of first requiring the Indemnified Party to proceed against or enforce any other right, power, remedy or security or claim payment from any other person before claiming under this indemnity. The Company also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or any person asserting Claims on behalf of or in right of the Company for or in connection with the Engagement except to the extent any Losses incurred by the Company are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted primarily from the negligence or willful misconduct of such Indemnified Party. The Company will not, without NBF's prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any Claim in respect of which indemnification may be sought hereunder (whether or not any Indemnified Party is a party thereto) unless the Company has acknowledged in writing that the Indemnified Parties are entitled to be indemnified in respect of such Claim and such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Party from any liabilities arising out of such Claim without any admission of negligence, misconduct, liability or responsibility by or on behalf of any Indemnified Party.

Promptly after receiving notice of a Claim against NBF or any other Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from the Company, NBF or any such other Indemnified Party will notify the Company in writing of the particulars thereof, provided that the omission so to notify the Company shall not relieve the Company of any liability which the Company may have to NBF or any other Indemnified Party except and only to the extent that any such delay in or failure to give notice as herein required prejudices the defence of such Claim or results in any material increase in the liability which the Company has under this indemnity. The Company shall have 14 days after receipt of such notice to undertake, conduct and control, through counsel of its own choosing and at its own expense, the settlement or defence of the Claim. If the Company undertakes, conducts and controls the settlement or defence of the Claim, the relevant Indemnified Parties shall have the right to participate in the settlement or defence of the Claim.

The foregoing indemnity shall not apply to the extent that a court of competent jurisdiction in a final judgment that has become non-appealable shall determine that such Losses to which the Indemnified Party may be subject were primarily caused by the negligence or willful misconduct of the Indemnified Party.

If for any reason the foregoing indemnity is unavailable (other than in accordance with the terms hereof) to NBF or any other Indemnified Party or is insufficient to hold NBF or any other Indemnified Party harmless in respect of a Claim, the Company shall contribute to the amount paid or payable by NBF or the other Indemnified Party as a result of such Claim in such proportion as is appropriate to reflect not only the relative benefits received by the Company on the one hand and NBF or any other Indemnified Party on the other hand but also the relative fault of the Company, NBF or any other Indemnified Party as well as any relevant equitable considerations, provided that the Company shall in any event contribute to the amount paid or payable by NBF or any other Indemnified Party as a result of such Claim any excess of such amount over the amount of the fees received by NBF under the Engagement Letter.

The Company hereby constitutes NBF as trustee for each of the other Indemnified Parties of the Company's covenants under this indemnity with respect to those persons and NBF agrees to accept such trust and to hold and enforce such covenants on behalf of those persons.

The Company also agrees to reimburse NBF upon receipt of its invoices for the time spent by its personnel in connection with any Claim at their normal *per diem* rates. An Indemnified Party may retain counsel to separately represent it in the defence of a Claim, which shall be at the Company's expense if (i) the Company does not promptly assume the defence of the Claim within 14 days after receiving actual notice of the Claim, (ii) the Company agrees to separate representation or (iii) the Indemnified Party is advised by counsel that there is an actual or potential conflict in the Company's and such Indemnified Party's respective interests or additional defences are available to the Indemnified Party, which makes representation by the same counsel inappropriate.

The obligations of the Company hereunder are in addition to any liabilities which the Company may otherwise have to NBF or any other Indemnified Party.

DATED as of September \_\_, 2022.

**TREVALI MINING CORPORATION.**

**NATIONAL BANK FINANCIAL INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_