

**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. B-9.1, AS AMENDED

AND

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

PETITIONERS

**NOTICE OF APPLICATION**

**Name of Applicants:** Glencore Canada Corporation ("**Glencore**") and Bank of Nova Scotia ("**BNS**"), in its capacity as administrative agent for the revolving credit facility lenders (in such capacity, the "**RCF Administrative Agent**" and together, the "**Applicants**")

**TO: The Service List, attached hereto as Schedule "A"**

TAKE NOTICE that an application will be made by the Applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia, in person on **Monday, the 9<sup>th</sup> day of January, 2023 at 9:00 a.m.** for the order set out in Part 1 below.

**PART 1: ORDER SOUGHT**

1. The Applicants seek the following orders:
  - (a) An order (the "**Receivership Order**") substantially in the form attached hereto as **Schedule "B"** appointing FTI Consulting Canada Inc. ("**FTI**") as receiver, without security, of all assets, undertakings, and property of Trevali Mining (New Brunswick) Ltd. ("**Trevali (NB)**"), including all proceeds thereof, other than any

real property, mineral claims, mining leases, or real property leases owned or held by Trevali (NB) (the “**Property**”).

- (b) Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

## **PART 2: FACTUAL BASIS**

### **The Loan Documents**

#### *The RC Facility*

1. Pursuant to a second amended and restated credit agreement dated as of August 6, 2020, as amended by a fourth amending agreement dated November 19, 2021 (the “**RCF Credit Agreement**”), among Trevali Mining Corporation (“**Trevali Corp.**”, together with Trevali (NB), the “**Petitioners**”), as borrower, the lenders party thereto from time to time (the “**RCF Lenders**”), as lenders and BNS, as the administrative agent for the benefit of the RCF Lenders, the RCF Lenders agreed to extend a \$150 million revolving loan to Trevali Corp. on a senior secured basis (the “**RC Facility**”).

Affidavit of Brendan Creaney, dated August 19, 2022, at para 74

2. The RC Facility draws as at August 19, 2022 totalled approximately \$84.5 million, with a further \$4.4 million utilized for the purposes of obtaining letters of credit.

Affidavit of Brendan Creaney, dated August 19, 2022, at para 76

3. The RC Facility matured on September 18, 2022, with a mandatory prepayment of approximately \$7.5 million already outstanding as of August 17, 2022 that was not paid.

Affidavit of Brendan Creaney, dated August 19, 2022, at para 77

4. To secure Trevali Corp.’s obligations under the RCF Credit Agreement, Trevali Corp. and certain of its subsidiaries, including Trevali (NB), granted a comprehensive security package that includes the grant of:

- (a) a first ranking security interest in all of Trevali Corp.'s and Trevali (NB)'s present and future personal property pursuant to various general security agreements, debentures, and fixed and floating charges; and
- (b) a first ranking security interest in certain of Trevali (NB)'s real property pursuant to a mortgage.

Affidavit of Brendan Creaney, dated August 19, 2022, at para 78

- 5. The RFC Lenders also provided interim financing up to the principal amount of \$16.5 million to the Petitioners by way of amendment to existing RCF Credit Agreement (the "**Interim Financing Tranche**").

Fourth Report of the Monitor, dated October 11, 2022, at paras 16-17

- 6. The obligations in connection with Interim Financing Tranche were secured by a super-priority charge on the assets, undertakings, and properties of the Petitioners (the "**Interim Lender's Charge**"). The relative priority of the Interim Lenders' Charge is behind all other charges granted in the CCAA Proceedings, except the Sales Agent Charge in respect of all remaining amounts secured thereby.

Fourth Report of the Monitor, dated October 11, 2022, at para 17

Amended and Restated Initial Order, pronounced August 29, 2022

*The Glencore Facility*

- 7. On August 6, 2020, Trevali Corp. entered into a second lien secured facility agreement (the "**Glencore Facility Agreement**") with Glencore up to a maximum of \$20 million (the "**Glencore Facility**"). The Glencore Facility was reduced to \$13 million in December 2020, and the full \$13 million limit has been drawn. The Glencore Facility had a maturity date of September 18, 2022.

Affidavit of Brendan Creaney, dated August 19, 2022, at paras 81-82

- 8. To secure Trevali Corp.'s obligations under the Glencore Facility, Trevali Corp. and certain of its subsidiaries, including Trevali (NB), granted a comprehensive security package that substantially mirrors the security in place with respect to the RC Facility and includes the grant of:

- (a) a second ranking security interest in all of Trevali Corp's and Trevali (NB)'s present and future personal property pursuant to various general security agreements, debentures, and fixed and floating charges; and
- (b) a second ranking security interest in certain of Trevali (NB)'s real property pursuant to a mortgage.

Affidavit of Brendan Creaney, dated August 19, 2022, at para 83

### **Trevali (NB)'s Defaults**

- 9. Trevali (NB)'s defaults are apparent and admitted to.
- 10. A number of the qualifying Events of Default in the Glencore Facility and the RC Facility and the securities granted thereunder have been triggered, including:
  - (a) Trevali (NB) failed to pay the full outstanding credit on the Maturity Date;
  - (b) Trevali (NB) has failed and continues to fail to pay outstanding amounts as they become due under the Credit Documents;
  - (c) Trevali (NB) has admitted their inability to pay their debts generally as they become due; and
  - (d) Trevali (NB) has commenced an insolvency proceeding.

Affidavit of Katerina Doumakis, sworn on January 4, 2023

- 11. Trevali (NB) has no means of meeting its liabilities at the Caribou Mine generally as they become due.

Pre-Filing Report of the Proposed Monitor, dated August 19, 2022, at para 13

- 12. Trevali (NB) was unable to make the mandatory prepayment of approximately \$7.5 million on the RC Facility when the payment was due on August 17, 2022. Trevali (NB) was also unable to pay out the RC Facility and the Glencore Facility when they matured in September 2022.

Affidavit of Brendan Creaney, dated August 19, 2022, at para 106

Pre-Filing Report of the Proposed Monitor, dated August 19, 2022, at para 13

13. The failure to make these payment constituted Events of Default under the RC Facility and the Glencore Facility, and the security granted in relation thereto, which, in addition to the other defaults identified above, give the Applicants the right to take steps to enforce against Trevali (NB)'s assets.

Affidavit of Brendan Creaney, dated August 19, 2022, at para 106

### **The SISP**

14. On September 14, 2022, this Court approved a sales and investment solicitation process (the "**SISP**") to solicit offers for the purchase of the Caribou Mine owned by Trevali (NB). The SISP failed to garner any viable bids for the Caribou Mine.

Notice of Application, dated December 16, 2022, at paras 1 and 6

15. After the SISP failed in mid-October, Trevali (NB), the Monitor, and His Majesty the King in Right of the Province of New Brunswick, as represented by the Department of Natural Resources and Energy Development ("**DNRED**") started considering alternative paths forward for Trevali (NB).
16. Given Trevali (NB)'s liquidity crisis and inability to continue as a going concern, Trevali (NB) has acknowledged that one of the following paths would be expected. Either Trevali (NB) would declare bankruptcy or the CCAA proceedings would be continued, funded by DNRED, but bifurcated from the current CCAA proceeding, with the Monitor being granted enhanced powers.

Affidavit of Brendan Creaney, dated December 9, 2022, at para 9

17. No restructuring is proposed for Trevali (NB) and no *en bloc* sale relating to the Caribou Mine is proposed after the failed SISP.

### **PART 3: LEGAL BASIS**

#### **Jurisdiction to Grant the Requested Relief**

1. The jurisdiction of this Court to grant the Receivership Order is found in section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**").

## The Test for Appointing a Receiver

2. Section 243 of the BIA provides that, on application by a secured creditor, this Court may appoint a receiver to do any or all of the following if it considers it to be “just and convenient” to do so:
  - (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
  - (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
  - (c) take any other action that the court considers advisable.
  
3. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, this Court identified several factors that may inform a holistic determination of whether it is “just and convenient” to appoint a receiver, including:
  - (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
  - (b) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
  - (c) the nature of the property;
  - (d) the apprehended or actual waste of the debtor’s assets;
  - (e) the preservation and protection of the property pending judicial resolution;
  - (f) the balance of convenience to the parties;
  - (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.

*Maple Trade Finance Inc v CY Oriental Holdings Ltd.*, 2009 BCSC 1527  
at para 25 [*Maple Trade*]

Frank Bennett, *Bennett on Receiverships*, 4th ed (Toronto:  
Carswell, 2011) at 189-196

4. In applying these factors, this Court has held that the right of a secured creditor to apply for a receiver under a security agreement holds considerable weight and is a “strong factor” in support of granting a receivership order.

*Maple Trade* at para 26

**It is Just and Convenient to Appoint a Receiver in the Circumstances**

5. It is just and convenient in the present circumstances to appoint a receiver over the Property on the terms sought by the Applicants for, *inter alia*, the following reasons:
- (a) The Applicants have a general and continuing security interest in all of Trevali (NB)’s property by virtue of the security granted in relation to the Glencore Facility and the RC Facility, including the Interim Lenders’ Charge.

- (b) Trevali (NB) has defaulted under the Glencore Facility and the RC Facility. Such defaults are evident and admitted. These defaults entitle the Applicants to enforce their security.
- (c) The cash burn associated with the continued operation of the Caribou Mine, along with the use and depreciation of the equipment, is resulting in significant losses for creditors. Allowing Trevali (NB) to continue to operate its business, and preventing the Applicants from enforcing their security, would materially prejudice creditors. With no restructuring proposed or sale in the CCAA process, every dollar spent by Trevali (NB) or asset depreciated is a direct reduction to the secured creditors' recovery.
- (d) The remedial purpose of the CCAA – to permit the debtor to carry on business and, where possible, to avoid the costs of liquidating its assets – is no longer being served. Trevali (NB) has admitted that it cannot meet its obligations as they come due, no restructuring of Trevali (NB) is proposed, and efforts to sell the Caribou Mine assets through the CCAA proceedings have failed. Given the remedial purpose of the CCAA has come to an end, the appropriate next step is to realize on any remaining value in the estate in an orderly fashion.

*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60,  
[2010] 3 SCR 379 at para 15

- (e) Trevali (NB) has acknowledged that there is no possibility of a restructuring following the failed SISF of the Caribou Mine.
  - (f) The appointment of a receiver will protect the interest of all stakeholders.
  - (g) The balance of convenience favours the appointment of a receiver in these circumstances.
6. For the above reasons, the Applicants submit that it is just and convenient that this Court appoint FTI as receiver of the Property on the terms set out in the proposed Receivership Order.



**PART 4: MATERIAL TO BE RELIED ON**

1. Affidavit of Katerina Doumakis, sworn on January 4, 2023.
2. Affidavit of Ricci Cheung, sworn on January 4, 2023.
3. Notice of Application of Trevali Mining Corporation and Trevali Mining (New Brunswick) Ltd., dated December 16, 2022.
4. Affidavit of Brendan Creaney, dated December 9, 2022.
5. Fourth Report of the Monitor, dated October 11, 2022.
6. Amended and Restated Initial Order, pronounced August 29, 2022.
7. Affidavit of Brendan Creaney, dated August 19, 2022.
8. Pre-Filing Report of the Proposed Monitor, dated August 19, 2022.
9. Such other materials as counsel may advise and this Court permits.

The Applicants estimate that the application will take 1 hour.


This matter is not within the jurisdiction of a master. Madam Justice Fitzpatrick is seized of these proceedings.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the Applicants 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

DATED: January 4, 2023



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Counsel for Glencore Canada  
Corporation  
McCarthy Tétrault LLP  
(H. Lance Williams and Ashley Bowron)

**To be completed by the court only:**

Order made

in the terms requested in paragraphs .....  
of Part 1 of this Notice of Application

with the following variations and additional terms:

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DATED: \_\_\_\_\_ Signature of  Judge  
 Master

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

## **SCHEDULE "A"**

**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

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C. B-9.1, AS AMENDED

AND

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

PETITIONERS

**SERVICE LIST**

As at January 3, 2023

Monitor's Website: <http://cfcanada.fticonsulting.com/trevali/>

Name of Counsel:	Name of Parties:
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[mike.clark@fticonsulting.com](mailto:mike.clark@fticonsulting.com); [huw.parks@fticonsulting.com](mailto:huw.parks@fticonsulting.com); [john.sandrelli@dentons.com](mailto:john.sandrelli@dentons.com);  
[jordan.schultz@dentons.com](mailto:jordan.schultz@dentons.com); [valerie.cross@dentons.com](mailto:valerie.cross@dentons.com); [eamonn.watson@dentons.com](mailto:eamonn.watson@dentons.com);  
[avic.arenas@dentons.com](mailto:avic.arenas@dentons.com); [chelsea.denton@dentons.com](mailto:chelsea.denton@dentons.com); [sbrotman@fasken.com](mailto:sbrotman@fasken.com);  
[kjackson@fasken.com](mailto:kjackson@fasken.com); [lwilliams@mccarthy.ca](mailto:lwilliams@mccarthy.ca); [abowron@mccarthy.ca](mailto:abowron@mccarthy.ca); [sdanielisz@mccarthy.ca](mailto:sdanielisz@mccarthy.ca);  
[ek@knd.law](mailto:ek@knd.law); [sn@knd.law](mailto:sn@knd.law); [ts@knd.law](mailto:ts@knd.law); [DCieloszczyk@koskieglavin.com](mailto:DCieloszczyk@koskieglavin.com); [mattery@osler.com](mailto:mattery@osler.com);  
[amanasterski@osler.com](mailto:amanasterski@osler.com); [jason.levine@justice.gc.ca](mailto:jason.levine@justice.gc.ca); [Christopher.Whibbs@gnb.ca](mailto:Christopher.Whibbs@gnb.ca);  
[wroberts@lawsonlundell.com](mailto:wroberts@lawsonlundell.com); [JPetrie@nbpower.com](mailto:JPetrie@nbpower.com); [LMurray@nbpower.com](mailto:LMurray@nbpower.com); [lhiebert@blg.com](mailto:lhiebert@blg.com);  
[tony.richardson@mcinnescooper.com](mailto:tony.richardson@mcinnescooper.com); [colin.brousson@dlapiper.com](mailto:colin.brousson@dlapiper.com); [jysimard@dsavocats.ca](mailto:jysimard@dsavocats.ca);  
[tjeffries@farris.com](mailto:tjeffries@farris.com); [lferguson@farris.com](mailto:lferguson@farris.com); [jbirch@cassels.com](mailto:jbirch@cassels.com); [wonyeaju@cassels.com](mailto:wonyeaju@cassels.com);  
[gnsbitt@fasken.com](mailto:gnsbitt@fasken.com); [ddvu@stikeman.com](mailto:ddvu@stikeman.com); [DRenton@stikeman.com](mailto:DRenton@stikeman.com)

## **SCHEDULE "B"**

**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. B-9.1, AS  
AMENDED

AND

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

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE	)	MONDAY, THE 9 <sup>TH</sup> DAY
	)	
MADAM JUSTICE FITZPATRICK	)	OF JANUARY, 2023
	)	

ON THE APPLICATION of Glencore Canada Corporation ("**Glencore**") and The Bank of Nova Scotia ("**BNS**"), as agent for the revolving credit facility lenders, for an order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing FTI Consulting Canada Inc. as receiver (in such capacity, the "**Receiver**") without security, of certain assets of the Petitioner Trevali Mining (New Brunswick) Ltd. ("**Trevali (NB)**") coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the materials filed in the within action, including the consent of FTI Consulting Canada Inc. to act as the Receiver; AND ON HEARING Lance Williams and Ashley Bowron, counsel for Glencore, and Kibben Jackson, counsel for BNS, and those other counsel enumerated in **Schedule "A"** hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

### **APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA, FTI Consulting Canada Inc. is appointed Receiver, without security, of all of the assets, undertakings and property of Trevali (NB), including all proceeds thereof, other than any real property, mineral claims, mining leases, or real property leases owned or held by Trevali (NB) (the “**Property**”).
2. Notwithstanding anything contained in this order: (A) the Property as defined above shall not include an amount (the “**Employment Amount**”) sufficient to pay (a) statutory severance to existing employees of Trevali (NB) as authorized in paragraph 11(b) of the Amended and Restated Initial Order dated August 29, 2022; and (b) the Retention Bonuses to employees of Trevali (NB) as provided for in the order of this court dated September 14, 2022, provided that the total Employment Amount shall not exceed US \$125,000; and (B) the Employment Amount is hereby authorized to be paid to the applicable individuals and any excess funds shall be delivered to the Receiver.

### **RECEIVER’S POWERS**

3. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including, without limitation, those conferred by this Order;
  - (d) to receive and collect all monies and accounts now owed or hereafter owing to Trevali (NB) and to exercise all remedies of Trevali (NB) in collecting these

amounts, including, without limitation, enforcement of any security held by Trevali (NB);

- (e) to settle, extend or compromise any indebtedness owing to Trevali (NB);
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of Trevali (NB), for any purpose pursuant to this Order;
- (g) to undertake environmental or workers' health and safety assessments of the Property and operations of Trevali (NB);
- (h) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of Trevali (NB), the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of a single transaction for consideration up to \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under the *Personal Property Security Act*, S.N.B. 1993, C. P-7.1, or any other applicable legislation, shall not be required;

- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and

the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;

- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of Trevali (NB);
- (n) to enter into agreements with any trustee in bankruptcy appointed in respect of Trevali (NB), including, without limitation, the ability to enter into occupation agreements for any property owned or leased by Trevali (NB);
- (o) to exercise any shareholder, partnership, joint venture or other rights which Trevali (NB) may have; and
- (p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including Trevali (NB), and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. Each of (i) Trevali (NB); (ii) all of Trevali (NB)'s current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Trevali (NB), and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental



authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.

6. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST TREVALI (NB) OR THE PROPERTY**

9. No Proceeding relating in any way to Trevali (NB) or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of Trevali (NB) or the Property are stayed and suspended pending the written consent of the Receiver or further order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the

expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on Trevali (NB) and the Receiver, and provided that nothing in this Order shall prevent any Person from commencing a Proceeding regarding an application for a bankruptcy order against Trevali (NB).

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

10. All rights and remedies (including, without limitation, set-off rights) against the Receiver or affecting Trevali (NB) or the Property are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or Trevali (NB) to carry on any business which Trevali (NB) is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. No Person, save and except Trevali Mining Corporation (“**TMC**”), 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 Trevali (NB), without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

#### **CONTINUATION OF SERVICES**

12. All Persons, save and except TMC, having oral or written agreements with Trevali (NB) 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 Trevali (NB) are 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 Receiver, and the Receiver shall be entitled to the continued use of Trevali (NB)’s current 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 Receiver in accordance with

normal payment practices of Trevali (NB) or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

### EMPLOYEES

14. The employment of all employees of Trevali (NB) shall be terminated effective on the pronouncement of this Order. The Receiver shall not be liable for any employee-related liabilities of Trevali (NB), including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47.

### LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order shall require the Receiver 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
16. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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 the Receiver is actually in possession.

17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver's appointment; or,
  - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
  
18. Notwithstanding anything in federal or provincial law, but subject to the preceding paragraph of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

20. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory court ordered or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4),

and 81.6(2) of the BIA, and subordinate to the Administration Charge (for such amounts as have been incurred by the date of this order), and the D&O Charge (each as defined in the Amended and Restated Order pronounced in these proceedings on August 29, 2022 (the “**ARIO**”)).

21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

23. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory court ordered or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge, the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and to the Administration Charge (for such amounts as have been incurred by the date of this order), and the D&O Charge (each as defined in the ARIO).
24. Neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. The Receiver is authorized to issue certificates substantially in the form annexed as **Schedule “B”** hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.
26. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

#### **ALLOCATION**

27. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver’s Charge and Receiver’s Borrowings Charge amongst the Property.

#### **SERVICE AND NOTICE OF MATERIALS**

28. The Receiver shall establish and maintain a website in respect of these receivership proceedings at: <http://cfcanda.fticonsulting.com/Trevali/> (the “**Website**”) and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these receivership proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in relation to these receivership proceedings must provide to counsel for the Receiver a demand for notice in the form attached as **Schedule “C”** (the “**Demand for Notice**”). The Receiver and any other interested party need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and any other interested party from any requirement to provide further notice in respect of these receivership proceedings until such Person delivers a properly completed Demand for Notice.

30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the “**Service List**”). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
31. Any interested party, including the Receiver, may serve any court materials in these receivership proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
32. Service of this Order on the service list maintained by the Monitor in these *Companies Creditors’ Arrangement Act* proceedings shall be deemed good service of this Order on those parties.
33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to Trevali (NB)’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## **GENERAL**

34. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days’ notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of Trevali (NB).
37. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver 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.

38. The need for endorsement of this Order by counsel appearing on this application other than counsel for Glencore and BNS is dispensed with.

THIS COURT REQUESTS the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT: THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Lawyer for Glencore Canada Corporation  
McCarthy Tétrault LLP  
(H. Lance Williams)

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Signature of Lawyer for The Bank of Nova Scotia  
Fasken Martineau DuMoulin LLP  
(Kibben Jackson)

BY THE COURT

---

REGISTRAR



**SCHEDULE "A"**  
**LIST OF COUNSEL**

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc. (the "**Receiver**"), the receiver of certain assets, undertakings and properties of Trevali Mining (New Brunswick) Ltd., including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (the "**Court**") dated the 9<sup>th</sup> day of January, 2023 (the "**Order**") made in SCBC Action No. S-226670, Vancouver Registry, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

FTI Consulting Canada Inc., solely in its  
capacity as Receiver of the Property, and not  
in its personal capacity

Per:  
Name:  
Title:

**SCHEDULE "C"**

**DEMAND FOR NOTICE**

**TO:** FTI Consulting Canada Inc.  
c/o [Name of Counsel to the Receiver]  
Attention:  
Email:

**AND TO:**

**Re: In the matter of the Receivership of Trevali Mining (New Brunswick) Ltd.**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_

**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. B-9.1, AS  
AMENDED

AND

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

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**ORDER**

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