

COURT FILE NUMBER 2101-05019

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF COALSPUR MINES (OPERATIONS) LTD.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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File Number: 1217428

**AFFIDAVIT #7 OF MICHAEL BEYER**  
**Sworn on November 29, 2021**

I, Michael Beyer, of the City of Palm Beach Gardens, in the State of Florida, **MAKE**

**OATH AND SAY THAT:**

1. I am the Chief Executive Officer (“**CEO**”) of Vista Energy Holdings LLC (“**VE Holdings**”), the parent corporation of Coalspur Mines (Operations) Ltd. (“**Coalspur**”). I have been CEO of VE Holdings and a related company, Vista Energy Resources LLC (“**VE Resources**”), since February 2019. As CEO of VE Holdings, I am responsible for overseeing, among other things, all coal mining operations of Coalspur and other subsidiaries of VE Holdings. Prior to my roles at VE Holdings and VE Resources, I served as President and CEO of Foresight Energy LP, an Illinois Basin coal producer, and as President of AEP Coal Inc, a Columbus, Ohio based coal

producer. I have held both finance and engineering positions related to the mining industry at PNC Bank and BethEnergy. I hold a Bachelor of Science in mining engineering from Pennsylvania State University, and a Master of Business Administration from Duquesne University.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where such matters are stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true.

3. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in Coalspur's Plan of Compromise and Arrangement, dated November 29, 2021 attached as **Exhibit "A"** hereto (as may be amended from time to time, the "**CCAA Plan**").

4. I swear this Affidavit in support of an application by Coalspur for orders:

- (a) accepting the filing of the CCAA Plan;
- (b) authorizing Coalspur to establish a single class of creditors for the purpose of considering and voting on the CCAA Plan, namely, the General Unsecured Creditor Class;
- (c) authorizing Coalspur to call, hold and conduct a virtual meeting of the General Unsecured Creditor Class (the "**Creditors' Meeting**") to consider and vote on a resolution to approve the CCAA Plan, and approving the procedures to be followed with respect to the Creditors' Meeting;
- (d) setting a date the week of January 10, 2022 for the hearing of Coalspur's application for an order sanctioning the CCAA Plan (the "**Plan Sanction Hearing**") should the

CCAA Plan be approved for filing and approved by the requisite majorities of creditors at the Creditors' Meeting;

- (e) permitting Coalspur, with the consent of the Monitor, to accept for filing any proofs of claim which may be submitted after the Claims Bar Date (as defined in the Claims Process Order granted in these CCAA proceedings on August 9, 2021, the "**Claims Process Order**") by one or more creditors where Coalspur determines such acceptance to be appropriate and deem such claims to constitute Proven Claims (as defined in the Claims Process Order) for purposes of voting on, and distributions under, the CCAA Plan;
- (f) authorizing Coalspur to grant Finning (Canada), a Division of Finning International Inc. ("**Finning**") a security interest in the Finning Personal Property (as defined below) in accordance with the terms of the Master Parts, Components and Services Agreement (the "**MPCSA**") between Finning and Coalspur, attached at **Confidential Exhibit "B"** to this Affidavit (the "**Confidential Exhibit**"), as continuing security for the payment or performance of Coalspur's obligations under the MPCSA relating to, arising from or connected with goods sold or services performed on or after April 27, 2021 (the day after the Filing Date (as defined below)), notwithstanding the restrictions contained at paragraph 9(b) of the Amended and Restated Initial Order, granted by the Honourable Madam Justice Shelley on May 6, 2021 (the "**ARIO**");
- (g) sealing the Confidential Exhibit on the Court file;
- (h) extending the Stay Period up to and including January 31, 2022, or such further and other date as this Honourable Court considers appropriate; and

- (i) such further and other relief as counsel for Coalspur may request and this Honourable Court may grant.

## **UPDATE ON THE CCAA PROCEEDINGS**

5. Coalspur has been working diligently, in good faith, and in close consultation with the Monitor, Cline Trust Company LLC (“CTC”), and its other principal stakeholders to advance these proceedings in a timely manner for the benefit of all stakeholders. In addition to negotiating and finalizing the CCAA Plan (as discussed further below), since the Stay Period was last extended on August 31, 2021, Coalspur has, among other things:

- (a) assisted the Monitor in the administration of the claims process (the “**Claims Process**”) in accordance with the Claims Process Order including, but not limited to:
  - (i) reviewing and recording all Proofs of Claim delivered by Creditors to the Monitor and Coalspur under the Claims Process;
  - (ii) responding to inquiries from the Monitor regarding the books and records of Coalspur in order to facilitate responses to questions or concerns raised by stakeholders within the Claims Process;
  - (iii) engaging in discussions with numerous stakeholders regarding discrepancies in their respective Proofs of Claim as compared to Coalspur’s book and records, and facilitating the exchange of information to the extent necessary;

- (iv) engaging in settlement discussions with numerous Creditors regarding resolution of disputes regarding the classification and/or amount claimed by such Creditors in their respective Proofs of Claim;
  - (v) fully and finally resolving various Creditor disputes within the Claims Process;
  - (vi) assisting the Monitor in the issuance of Notices of Revision or Disallowance to various Creditors, including Whirlybirds Inc. (“**Whirlybirds**”), Stillwater Supply Corp. (“**Stillwater**”), and others;
  - (vii) advancing the dispute resolution process under the Claims Process Order with respect to the Proofs of Claim filed by Stillwater and Whirlybirds, including canvassing a litigation schedule with counsel and scheduling cross examination of Stillwater’s representative for December 10, 2021; and
  - (viii) attending discussions with, and responding to inquiries from, multiple stakeholders and/or the Monitor regarding the Claims Process;
- (b) negotiated the MPCSA with Finning;
  - (c) negotiated a Master Lease Amending Agreement with TrinityRail Canada Inc. (“**TRCI**”) to, among other things, extend the term for TRCI’s leasing of railcars to Coalspur;
  - (d) commenced Coalspur’s annual capital, budget, and tax planning for the upcoming fiscal year;

- (e) commenced preparation of Coalspur's long term operational plan, including (i) reviewing supply arrangements with vendors, and (ii) engaging in discussions with certain counterparties to ensure a stable, long-term supply of critical materials to the Vista Coal Mine Project (the "**Project**");
- (f) completed Coalspur's annual insurance review and renewal process;
- (g) worked with the Monitor to prepare updated cash flow forecasts; and
- (h) operated its business in the normal course with a view to maximizing the value of the Applicants for all stakeholders.

6. In addition to the foregoing, since the last extension of the Stay Period, Coalspur has continued to diligently negotiate an extension with CTC to the current December 31, 2021 maturity date of the Secured Promissory Note, dated March 31, 2019, as amended, and the Secured Working Capital Promissory Note, dated June 19, 2019, as amended (the "**Notes**"). Coalspur remains indebted to CTC under the Notes in the aggregate principal amount of approximately CAD \$369.5 million.

7. In furtherance of these negotiations, Coalspur and CTC have exchanged both a term sheet and various drafts of an amended and restated credit agreement (the "**CTC ARCA**") which, subject to satisfaction of all conditions precedent under the CTC ARCA being satisfied, will extend the maturity date of the existing indebtedness to December 31, 2023. The CTC ARCA does not contemplate any increase in the amount of the credit facility or obligations owing by Coalspur to CTC, nor does it contemplate any additional grants of security by Coalspur to CTC other than the security already in place under the Notes. Among other things, Coalspur and CTC continue to negotiate the structure of one or more lump sum payments and/or ongoing cash sweep structures

to reduce Coalspur's indebtedness to CTC under the CTC ARCA. Such discussions are advanced, and Coalspur expects they will be concluded shortly.

8. A condition of CCAA Plan implementation is that the CTC ARCA and all related agreements and other documents contemplated thereunder are in form and substance acceptable to Coalspur, CTC, and the other parties thereto, and shall have been executed by the parties and become effective, subject only to the implementation of the CCAA Plan.

## **CCAA PLAN**

### **A. Overview**

9. Coalspur, in consultation with the Monitor and CTC, has developed the CCAA Plan in order to: (a) facilitate a restructuring of Coalspur and implement the Restructuring Transactions; (b) complete a restructuring of Coalspur's financial obligations; (c) enable the business of Coalspur to continue as a going concern in the expectation that a greater benefit will be derived from the continued operation of Coalspur's business than would result from the forced liquidation of its assets; and (d) effect a compromise and arrangement of all Affected Claims.

10. The CCAA Plan was developed in consultation with, and incorporates feedback provided by, the Monitor. It is the result of negotiation and consultation between Coalspur and its stakeholders and is supported by Coalspur's most significant economic stakeholders. If approved, the CCAA Plan will result in significant recoveries to Coalspur's creditors, including payment in full of all Accepted Secured Claims, Crown Priority Claims, Convenience Class Claims, and Post-Filing Ordinary Course Payables Claims, and payment of between 50% and 100% of all General Unsecured Claims, depending on the distribution election selected by the applicable General Unsecured Creditor and the satisfaction of certain conditions.

11. In general, the CCAA Plan includes the following key elements:
- (a) the operations of Coalspur will continue as normal and without disruption following the implementation of the CCAA Plan;
  - (b) all Unaffected Claims will continue in the normal course and in accordance with the applicable governing contractual documents and will not be compromised, released, discharged or otherwise affected by the CCAA Plan. Such Unaffected Claims include the Claims secured by CCAA Charges, the Claims held by CTC, the Komatsu Claim, the Caterpillar Claim, the Tanager Claim, the RBC Claim, Claims in respect of Regulatory Obligations, Post-Filing Ordinary Course Payables Claims, Municipal Property Tax Claims (except to the extent any such Claims constitute an Unsecured Municipal Property Tax Claim), and Claims which have been filed and preserved in accordance with the Claims Process Order that cannot be compromised due to provisions of the CCAA;
  - (c) all Accepted Secured Claims will be paid in full;
  - (d) General Unsecured Creditors with Accepted Claims less than or equal to \$15,000 (“**Convenience Class Creditors**”), and other General Unsecured Creditors who make a Distribution Election, will be paid in full in respect of their Accepted Claims, up to \$15,000 in full satisfaction of their General Unsecured Claims;
  - (e) all other General Unsecured Creditors will be entitled to payment in respect of their Accepted Claims based on their election, or deemed election, of one of the following two Distribution Elections:



- (i) *75% Distribution Election Amount* – any Accepted Claim of a General Unsecured Creditor will receive 75% of the amount of such Accepted Claim, payable in cash on the Initial Distribution Date; or
- (ii) *Installment Distribution Election Amount* – any Accepted Claim of a General Unsecured Creditor will receive:
  - (A) (i) 50% of the amount of such Accepted Claim, payable in cash on the Initial Distribution Date; (ii) 25% of the amount of the Accepted Claim on or within two weeks of the First Anniversary Distribution Date (as defined below) if certain pricing thresholds are met (as discussed further below); and (iii) 25% of the amount of the Accepted Claim on or within two weeks of the Second Anniversary Distribution Date (as defined below) if certain pricing thresholds are met (as discussed further below); or
  - (B) in the event that all amounts outstanding under the CTC ARCA are fully repaid by Coalspur prior to the Second Anniversary Distribution Date, the entire 50% (or whatever percentage remains outstanding) of their Accepted Claims, regardless of whether the required pricing thresholds have been met.
- (f) Equity Claims are not entitled to receive any distributions under the CCAA Plan and all Equity Claims (other than those held by CTC and VEH) and D&O Indemnity Claims that are based on Equity Claims will be fully and finally compromised, discharged and extinguished.

12. A more detailed discussion of the CCAA Plan is provided below.

**B. Classification of Creditors**

*Affected Creditors*

13. The CCAA Plan creates a single class of Affected Creditors – the General Unsecured Creditor Class. The General Unsecured Creditor Class consists of all Affected Creditors other than those specifically excluded pursuant to the CCAA Plan. Within the General Unsecured Creditor Class are: (a) Convenience Class Creditors comprised of Creditors holding Accepted Claims in an amount less than or equal to \$15,000, or those who have made a valid Convenience Class Distribution Election; and (b) all other Creditors having Affected Claims other than Secured Claims, Crown Priority Claims and Equity Claims.

14. Within the General Unsecured Creditor Class, Convenience Class Creditors are each deemed to vote in favour of the CCAA Plan as part of the General Unsecured Creditor Class in the amount of such Convenience Class Creditor's Accepted Claim. General Unsecured Creditors (other than Convenience Class Creditors) with Voting Claims are be entitled to one (1) vote as part of the General Unsecured Creditor Class in the amount equal to such General Unsecured Creditor's Voting Claim.

15. The CCAA Plan provides significant recoveries for the General Unsecured Creditor Class. Under the Plan:

- (a) Convenience Class Creditors are entitled to receive the lesser of a cash payment equal to \$15,000, or a cash payment equal to the Accepted Claim of such Convenience Class Creditor;

- (b) all other Creditors within the General Unsecured Creditor Class are entitled to make a Distribution Election to receive either:
- (i) 75% of the amount of their Accepted Claim, payable in cash on the Initial Distribution Date (the “**75% Distribution Election**”); or
  - (ii) 50% of the amount of their Accepted Claim, payable in cash on the Initial Distribution Date (the “**Initial Installment Payment**”) and 25% of the amount of their Accepted Claim on or within two weeks of December 31, 2022 (the “**First Anniversary Payment**”) and the date of such payment, the “**First Anniversary Distribution Date**”) and December 31, 2023 (the “**Second Anniversary Payment**”) and the date of such payment, the “**Second Anniversary Distribution Date**”) (the “**Installment Distribution Election**”), subject to satisfaction of the First Anniversary Condition (as defined below) and the Second Anniversary Condition (as defined below), and/or the caveat discussed in paragraph 18 below.

16. Accordingly, under the CCAA Plan, General Unsecured Creditors will receive distributions of between 50% and 100% of their Affected Claims.

17. Importantly, under the Installment Distribution Election, and subject to the caveat discussed at paragraph 18 below, the First Anniversary Payment only becomes payable by Coalspur if the value of the gC NEWC Index for coal as published by globalCOAL on each of the 52 consecutive Fridays immediately preceding the First Anniversary Distribution Date averages greater than USD \$105.00/metric tonne (the “**First Anniversary Condition**”). Similarly, for the Second Anniversary Payment to be made by Coalspur under the CCAA Plan, the value of the gC NEWC Index for coal as published by globalCOAL on each of the 52 consecutive Fridays

immediately preceding the Second Anniversary Distribution Date averages greater than USD \$105.00/metric tonne (the “**Second Anniversary Condition**”).

18. Section 7.1(d) of the CCAA Plan provides an exception to the requirement that the First Anniversary Condition and the Second Anniversary Conditions be satisfied prior to the First Anniversary Payment and Second Anniversary Payment being made. Pursuant to section 7.1(d) of the CCAA Plan, if all amounts outstanding under the CTC ARCA are fully repaid by Coalspur prior to the Second Anniversary Distribution Date, Coalspur is required to pay to General Unsecured Creditors with Accepted Claims who have made the Installment Distribution Election the remaining 50% (or whatever percentage remains outstanding as at the date that all amounts outstanding under the CTC ARCA are fully repaid by Coalspur) of their Accepted Claims, regardless of whether the First Anniversary Condition or the Second Anniversary Condition have been satisfied.

19. If a General Unsecured Creditor with an Accepted Claim, who is not a Convenience Class Creditor, does not deliver a Distribution Election Notice by that date that is 2 Business Days before the Creditors’ Meeting, such General Unsecured Creditor will be deemed to have made a 75% Distribution Election.

20. Creditors holding Accepted Secured Claims against Coalspur will receive payment of a cash amount equal to 100% of their Accepted Secured Claim and, as a result, are neither entitled to attend or vote at the Creditors’ Meeting.

*Unaffected Claims*

21. Certain Claims are excluded from the scope of the CCAA Plan (defined in the CCAA Plan as “**Unaffected Claims**”) which will not be compromised, released, discharged or otherwise affected by the CCAA Plan. Such Unaffected Claims include the following:

- (a) Claims secured by CCAA Charges;
- (b) the Claim of CTC in the amount of \$369,559,237.47 plus accrued but unpaid interest (if any) and all other amounts (including fees, costs and expenses), owing by Coalspur to CTC pursuant to the Notes;
- (c) the Claim of Komatsu International (Canada) Inc., dba Komatsu Financial (“**Komatsu**”) in the amount of \$93,115,896.95 owing by Coalspur to Komatsu pursuant to a Master Lease Agreement between Komatsu and Coalspur dated February 15, 2018, as amended;
- (d) the Claim of Caterpillar Financial Services Limited (“**Caterpillar**”) in the amount of \$38,830,230.30 owing by Coalspur to Caterpillar pursuant to terms of a Master Lease Agreement between Caterpillar, Coalspur, KC Euroholdings S.a.r.l., and Cutlass Collieries Ltd. dated July 1, 2018, as amended;
- (e) all amounts owing by Coalspur to Consolidated Tanager Limited pursuant to the terms of an Amended and Restated Transfer of Leases Agreement, dated as of February 19, 2016, as amended;
- (f) the Claim filed by Royal Bank of Canada (“**RBC**”) in the CCAA Proceedings in the amount of \$1,556,780;

- (g) all Claims in respect of Regulatory Obligations, including any suspension, abandonment and/or reclamation obligations owed or owing by Coalspur to a Regulator, but excluding Royalties;
- (h) Post-Filing Ordinary Course Payables Claims which will be paid in the ordinary course by Coalspur in accordance with usual practice;
- (i) Municipal Property Tax Claims remaining unpaid as of the Effective Date (except to the extent any such Claims constitute an Unsecured Municipal Property Tax Claim) which shall be paid by Coalspur in accordance with usual practice;
- (j) Claims which have been filed and preserved in accordance with the Claims Process Order against Directors that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA; and
- (k) Claims which have been filed and preserved in accordance with the Claims Process Order that cannot be compromised due to the provisions of Section 19(2) of the CCAA, except any Claims to which Section 10.11 of the CCAA Plan applies which shall be Affected Claims for the purposes of the CCAA Plan.

22. The Komatsu Claim and the Caterpillar Claim constitute “Unaffected Claims” under the CCAA Plan because, in each case, Coalspur is lessee under various equipment leases with Komatsu and Caterpillar which govern equipment used by Coalspur in its mining operations, and pursuant to which Komatsu and Caterpillar hold first lien security against such equipment.

23. Similarly, the RBC Claim is an “Unaffected Claim” under the CCAA Plan because the obligations due by Coalspur to RBC relate to: (a) two letters of credit issued by RBC on Coalspur’s behalf to the benefit of two business-critical counterparties; and (b) a credit card facility which

RBC advanced after Coalspur's prior credit card provider terminated its credit card facility as a result of Coalspur's filing for protection under the CCAA, and which facility is secured by cash collateral of \$200,000 as authorized by prior Order of the CCAA Court granted June 16, 2021.

24. The Tanager Claim is an "Unaffected Claim" under the CCAA Plan because upon payment by Coalspur of the \$10 million CAD transfer payment (of which approximately \$1.1 million, including accrued but unpaid interest, remains outstanding), Tanager is required to transfer title to certain mineral leases to Coalspur pursuant to the terms of an Amended and Restated Transfer of Leases Agreement, effective February 19, 2016, as amended. It is therefore imperative that such payments be made in order to preserve Coalspur's right, title and interest in the applicable mineral leases.

25. Persons with Unaffected Claims are not entitled to vote at the Creditors' Meeting or receive any distributions under the CCAA Plan in respect of the portion of their claim which is an Unaffected Claim. Nothing in the CCAA Plan shall affect the Applicants' or the Directors' rights to defences, both legal and equitable, with respect to any Unaffected Claim, including any rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

### ***Equity Claims***

26. At the Effective Time, the CCAA Plan will be binding on all holders of Equity Claims. Holders of Equity Claims will not receive a distribution or other consideration under the CCAA Plan and will not be entitled to vote on the CCAA Plan in respect of their Equity Claims. On the Effective Date, all Equity Claims (other than those held by CTC and VEH) will be finally, irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred without any compensation.

27. In proposing the CCAA Plan, Coalspur considered, among other things, and in consultation with its legal advisors, the legal entitlements of stakeholders in the absence of the CCAA Proceedings, their expected economic recovery if no CCAA Plan is approved and their proposed treatment under the CCAA Plan. Since the value of the recoveries to be given to Affected Creditors is less than the value of their Claims, there is no residual value in Coalspur to be given to the holders of Equity Claims. Coalspur believes that the CCAA Plan fairly balances all stakeholder interests.

**C. Distributions and Treatment of Affected Creditors**

28. On or prior to the Effective Date, Coalspur is required to deliver, or direct to be delivered, to the Monitor from Coalspur's Cash on Hand, the aggregate amount necessary, as determined by the Monitor in consultation with Coalspur:

- (a) the amount required to satisfy the CCAA Charges as of the Effective Date;
- (b) the amount required to satisfy the payment of the Secured Claims which are Accepted Secured Claims as of the Effective Date;
- (c) the amount required to satisfy the payment in full of the Crown Priority Claims<sup>1</sup>;  
and
- (d) the amount required to establish the General Unsecured Creditor Cash Fund.

29. The General Unsecured Creditor Cash Fund will be distributed by the Monitor as follows:

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<sup>1</sup> Defined as all unpaid amounts, if any, provided for in Section 6(3) of the CCAA.



- (a) Convenience Class Creditors and General Unsecured Creditors that made the 75% Distribution Election will receive distributions from the Monitor on behalf of Coalspur by cheque or wire transfer in accordance with the CCAA Plan; and
- (b) General Unsecured Creditors that made the Installment Distribution Election will receive distributions from the Monitor on behalf of Coalspur by cheque or wire transfer in the amount of the Initial Installment Payment (50% of their Accepted Claims).

30. The First Anniversary Payment (to the extent the First Anniversary Condition is satisfied or the amounts owing under the CTC ARCA are repaid) and the Second Anniversary Payment (to the extent the Second Anniversary Condition is satisfied or the amounts owing under the CTC ARCA are repaid) will be paid directly by Coalspur to the applicable General Unsecured Creditor within two weeks of the First Anniversary Distribution Date and/or the Second Anniversary Distribution Date, as applicable. Such amounts will not form part of the Plan Implementation Fund or be paid by Coalspur to the Monitor.

31. Similarly, any Secured Claims or General Unsecured Creditor Claims which remains in dispute as of the Initial Distribution Record Date (if any), will not delay or otherwise affect implementation of the CCAA Plan. Instead:

- (a) to the extent a Disputed Secured Claim is later determined to be an Accepted Secured Claim in accordance with the Claims Process Order, such Accepted Secured Claim will be paid by Coalspur in an amount equal to the value of the collateral secured by the Lien of such Creditor for each such Claim, not to exceed the total amount of such Accepted Secured Claim;

- (b) to the extent a Disputed Secured Claim or a Disputed General Unsecured Creditor Claim are later determined to be an Accepted Claim, in whole or in part, in accordance with the Claims Process Order, such General Unsecured Creditor will be deemed to have made the 75% Distribution Election, and will be paid 75% of its Accepted Claim by Coalspur.

32. The CCAA Plan preserves any security underlying a Disputed Secured Claim until such Disputed Secured Claim is finally determined to be an Accepted Secured Claim (in whole or in part), a General Unsecured Creditor Claim (in whole or in part), or a Disallowed Claim, and expressly provides that such security shall not be discharged prior to such final determination.

#### **F. Releases**

33. If sanctioned by the Court, the CCAA Plan provides broad releases of (a) Coalspur, together with its affiliates, representatives, employees and agents; (b) the Directors, the Officers and any current or former alleged fiduciary of Coalspur (whether acting as a director, officer, or other responsible party); (c) CTC and its directors, officers, managers, current or former alleged fiduciaries, affiliates, representatives, employees or agents; (d) VER and VEH and their respective directors, officers, managers, current or former alleged fiduciaries, affiliates, representatives, employees or agents; (e) the legal and financial advisors to Coalspur, CTC, VEH, VER and their respective partners, representatives, employees or agents; and (d) the Monitor and its current and former legal counsel, representatives, directors, officers, affiliates, member companies, related companies, administrators, employees, and agents (collectively, the “**Released Parties**”).

34. The requested releases are necessary to bring finality to the CCAA Proceedings and to protect the Released Parties from any and all Claims on or prior to the Effective Time in connection with, arising out of, or in any way related to (i) the business and operations of Coalspur, (ii) the

property and assets of Coalspur, (iii) the Affected Claims, the CCAA Plan or the CCAA Proceedings, (iv) the Equity Claims, (v) a contract that has been restructured, terminated, repudiated, disclaimed or resiliated prior to the Disclaimer Deadline in accordance with the CCAA, (vi) any Restructuring Transactions in respect of which the Released Parties had any role, whether in their capacity as Officers, Directors, managers or in any other capacity, (vii) liabilities of the Directors and Officers and any alleged fiduciary or other duty, including any and all Claims that may be made against the Directors or Officers where by law such Directors or Officers may be liable in their capacity as Directors or Officers, or (viii) any Claim that has been barred or extinguished by the Claims Process Order (all collectively, the “**Released Claims**”).

35. The releases provided in the CCAA Plan explicitly do not release or discharge:
- (a) Coalspur from any Unaffected Claim that has not been paid in full under the CCAA Plan to the extent of such non-payment;
  - (b) a Released Party from its obligations under the CCAA Plan;
  - (c) a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed gross negligence, willful misconduct, criminal or fraudulent acts in relation to a Released Claim for which it is responsible at law;
  - (d) Coalspur from such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA or the enforcement of a payment ordered by such regulatory body after the Effective Date based in part on facts that existed, or that relate in part to a time period, prior to the Effective Date solely to the extent that such facts or occurrence are continuing after the Effective

Date and the enforcement of such payment did not constitute a claim provable in bankruptcy prior to the Effective Date;

- (e) the Directors from any Claims which have been filed and preserved in accordance with the Claims Process Order that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA; or
- (f) Coalspur from any Disputed Secured Claim or Disputed General Unsecured Creditor Claim which has not become an Accepted Claim as of the Effective Time.

36. All of the Released Parties have made significant and often critical contributions to the development and implementation of Coalspur's restructuring in these CCAA Proceedings. I believe that the Released Parties have worked diligently towards ensuring the implementation and restructuring of Coalspur's financial obligations and operations for the benefit of its stakeholders and that such efforts have resulted in the execution and approval of the CCAA Plan. If the Restructuring Transactions under the CCAA Plan are consummated, Coalspur's going concern value will be preserved for the benefit of its stakeholders.

37. I am advised by counsel to the Monitor that the Monitor has reviewed the Releases in the CCAA Plan and supports their approval.

**G. Conditions to Implementation of the CCAA Plan**

38. In order for the CCAA Plan to be implemented, the following conditions, among others, must be satisfied:

- (a) the CCAA Plan shall have been approved by the Required Majorities;

- (b) the Sanction Order shall have been granted by the CCAA Court in a form acceptable to Coalspur and the Monitor, and shall be a final Order in full force and effect and not reversed, stayed, varied, modified or amended;
- (c) all applicable appeal periods in respect of the Sanction Order shall have expired and in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court upholding the Sanction Order;
- (d) the CTC ARCA and all related agreements and other documents contemplated thereunder shall be in form and substance acceptable to Coalspur, CTC and the other parties thereto, each acting reasonably, and shall have been executed by the parties and become effective, subject only to the implementation of the Plan;
- (e) the Monitor shall have received from Coalspur the funds needed to establish and shall have established the Plan Implementation Fund;
- (f) no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the compromises, arrangements, releases and transactions, including the Restructuring Transactions, contemplated by the CCAA Plan, and no proceedings therefor shall have been commenced before any court or governmental or regulatory authority;
- (g) all necessary corporate action and proceedings of Coalspur shall have been taken to approve the CCAA Plan and to enable Coalspur to execute, deliver and perform its obligations under the agreements, documents and other instruments to be executed and delivered by it pursuant to the CCAA Plan; and

- (h) all agreements, resolutions, documents and other instruments, which are reasonably necessary to be executed and delivered by Coalspur, in order to implement the CCAA Plan or perform Coalspur's obligations under the CCAA Plan or the Sanction Order, shall have been executed and delivered.

39. If the foregoing conditions have not been satisfied by January 31, 2022 (or such later date as Coalspur and the Monitor agree), the CCAA Plan will automatically terminate and Coalspur will not be under any further obligation to implement the CCAA Plan.

#### **PROPOSED CREDITORS' MEETING ORDER**

40. The proposed Creditors' Meeting Order authorizes Coalspur to convene a virtual meeting of the General Unsecured Creditor Class to consider and vote on the CCAA Plan. Coalspur proposes that the Creditors' Meeting be held virtually and not in person on January 6, 2022 by means of telephonic or electronic facility using a third-party service provider given the current challenges posed by the COVID-19 pandemic.

##### **A. Notification**

41. The proposed Creditors' Meeting Order provides for comprehensive notification of the Creditors' Meeting to the Affected Creditors, and contemplates that:

- (a) the Monitor shall, within 2 Business Days following the date of the Creditors' Meeting Order, post electronic copies of the General Unsecured Creditor Meeting Materials on the Monitor's Website and the CaseLines Filesite; and
- (b) the Monitor shall, not later than the 5th Business Day following the date of the Creditors' Meeting Order, deliver the General Unsecured Creditor Meeting Materials by pre-paid ordinary mail, courier, personal delivery or email to each

General Unsecured Creditor at the address set out in such General Unsecured Creditor's Proof of Claim (or in any other written notice that has been received by the Monitor in advance of such date regarding a change of address for a General Unsecured Creditor).

## **B. Conduct of the Creditors' Meeting**

42. The Creditors' Meeting Order provides that a representative of the Monitor will preside as the Chair of the Creditors' Meeting and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Creditors' Meeting. The Monitor may appoint scrutineers for the supervision and tabulation of the attendance at, quorum at, and votes cast at the Creditors' Meeting. A Person designated by the Monitor will act as secretary of the Creditors' Meeting.

43. The only Persons entitled to attend the Creditors' Meeting are (i) the Affected Creditors entitled to vote at the Creditors' Meeting (or, if applicable, any Person holding a valid General Unsecured Creditor Proxy on behalf of one or more such Affected Creditors) and any such Affected Creditor's legal counsel; (ii) Convenience Class Creditors; (iii) the Chairperson, the scrutineers and the secretary; (iv) the Monitor and the Monitor's legal counsel; (v) one or more representatives of the Board and/or senior management of Coalspur and Coalspur's legal counsel; and (vi) one or more representatives of CTC and CTC's legal counsel. Any other person may be admitted to the Creditors' Meeting on invitation of Coalspur, in consultation with the Monitor.

## **C. Voting**

44. The voting procedures were designed to provide a fair and equitable opportunity for Affected Creditors to register their votes for or against the CCAA Plan. The Creditors' Meeting Order and the CCAA Plan provide, *inter alia*:

- (a) at the Creditors' Meeting, the Chairperson will direct a vote using the voting options available at the virtual Creditors' Meeting or by proxy on a resolution to approve the CCAA Plan and any amendments thereto;
- (b) the quorum required at the Creditors' Meeting will be at least one General Unsecured Creditor with an Accepted Claim, present at the Creditors' Meeting in person (by electronic means) or by proxy;
- (c) if the requisite quorum is not present at the Creditors' Meeting, the Chairperson may adjourn the meeting, provided that any such adjournment or adjournments must be for a period of not more than seven days in total, unless otherwise agreed to by Coalspur and the Monitor;
- (d) each Affected Creditor will be permitted to attend the Creditors' Meeting itself or may appoint another person to attend the Creditors' Meeting as its proxyholder in accordance with process provided in the Creditors' Meeting Order. The Creditors' Meeting Order contains provisions detailing the procedures and deadlines for submitting a General Unsecured Creditor Proxy;
- (e) General Unsecured Creditors (other than Convenience Class Creditors) with Voting Claims shall be entitled to one (1) vote as part of the General Unsecured Creditor Class in the amount equal to such Creditor's Voting Claim;
- (f) a General Unsecured Creditor may transfer the whole of its Claim prior to the Creditors' Meeting, however, the Monitor is not obligated to deal with the transferee of such Claim as a General Unsecured Creditor in respect thereof, including allowing such transferee to vote at the Creditors' Meeting, unless a Proof



of Assignment has been received and acknowledged by the Monitor prior to 5:00 p.m. on the day that is at least ten (10) Business Days prior to the date of the Creditors' Meeting;

- (g) each Affected Creditor with a Disputed Claim against Coalspur as at the Creditors' Meetings Record Date shall be entitled to attend the Creditors' Meeting and shall be entitled to one vote at said Creditors' Meeting in respect of such Disputed Claim, however, the Monitor shall keep a separate record of votes cast by Affected Creditors with Disputed Claims unless and until (and then only to the extent that) such Disputed Claim is ultimately determined to be: (i) an Accepted Claim, in which case such vote shall have the dollar value attributable to such Accepted Claim; or (ii) a Disallowed Claim, in which case such vote shall be disregarded and not counted for any purpose;
- (h) Unaffected Creditors are not entitled to vote at the Creditors' Meeting; and
- (i) the Chairperson has the discretion to accept for voting purposes any General Unsecured Creditor Proxy submitted to the Monitor in accordance with the Creditors' Meeting Order notwithstanding any minor error or omission in such General Unsecured Creditor Proxy.

**D. Amendments to the Plan**

45. The Creditors' Meeting Order provides that Coalspur, may, at any time prior to or at the Creditors' Meeting, amend, restate, modify and/or supplement the CCAA Plan (each a "**Plan Modification**"), in consultation with the Monitor, provided that:

- (a) prior to the Creditors' Meeting, notice of any Plan Modification must be posted on the Monitor's Website and the CaseLines Filesite; and
- (b) during the Creditors' Meeting, notice of any Plan Modification must be given to all Affected Creditors present (or deemed present) at such meeting in person or by Proxy, promptly posted on the Monitor's Website and the CaseLines Filesite, and filed with the Court as soon as practicable following the Creditors' Meeting.

46. The Creditors' Meeting Order further permits Coalspur, in consultation with the Monitor, to effect a Plan Modification after the Creditors' Meeting (and both prior to and subsequent to the obtaining of any Sanction Order): (a) pursuant to an Order of the Court, or (b) where such Plan Modification concerns a matter which, in the opinion of Coalspur, is of an administrative nature required to give effect to the implementation of the CCAA Plan and the Sanction Order, or to cure any errors, omissions, or ambiguities, and in either case is not materially prejudicial to the financial or economic interests of the Affected Creditors. The Creditors' Meeting Order requires that the Monitor forthwith post on the Monitor's Website and the CaseLines Filesite any such Plan Modification.

#### **E. Approval and Court Sanction of the Plan**

47. To be approved, the CCAA Plan must receive an affirmative vote by the Required Majority at the Creditors' Meeting. The result of any vote at the Creditors' Meeting will be binding on all Affected Creditors, regardless of whether such Affected Creditor was present at or voted at the Creditors' Meeting) or was entitled to be present or vote at the Creditors' Meeting.

48. Coalspur propose that, in the event the CCAA Plan is approved by the Required Majority, Coalspur will bring an application on a date during the week of January 10, 2022 (or such later

date as is acceptable to Coalspur and the Monitor, and as scheduled by the CCAA Court) for a Sanction Order sanctioning the CCAA Plan under the CCAA.

49. The Monitor will provide a report to the CCAA Court as soon as practicable after the Creditors' Meeting with respect to: (a) the results of voting at the Creditors' Meeting; (b) whether the Required Majority has approved the CCAA Plan; (c) the separate tabulation for Disputed Claims; and (d) in its discretion, any other matters relating to the requested Sanction Order.

#### **F. Summary**

50. The CCAA Plan is the result of extensive input from, and negotiations with, Coalspur's significant stakeholders. It is supported by the Monitor and will result in significant recoveries to all creditors – including those in the General Unsecured Creditor Class. It will allow Coalspur to emerge from the CCAA Proceedings a well capitalized and financially viable entity for the benefit of all stakeholders.

51. Similarly, the proposed Creditors' Meeting Order has been developed in consultation with the Monitor and CTC, and incorporates their input. It has been structured by Coalspur to facilitate a transparent, efficient, and fair process by which Creditor's can consider and vote on the CCAA Plan.

52. Coalspur accordingly requests that this Court accept the CCAA Plan for filing and grant the proposed Creditors' Meeting Order.

## **LATE FILED CLAIMS**

53. On August 9, 2021, this Court granted the Claims Process Order which, among other things, established a Claims Bar Date of 5:00 p.m. (Mountain Time) on September 23, 2021 (the “**Claims Bar Date**”).

54. Since the Claims Bar Date, Coalspur and the Monitor have received, and continue to receive, additional proofs of claim (the “**Late Submitted Claims**”) which they are in the process of reviewing to determine whether the amounts claimed and proposed classification of claims made therein accord with Coalspur’s books and records. As at the swearing of this Affidavit, 11 Late Submitted Claims have been received by Coalspur and the Monitor. All Late Submitted Claims received to date have been submitted on an unsecured basis with respect to pre-filing amounts.

55. Coalspur is requesting authorization to accept for filing the Late Submitted Claims (including any additional Proofs of Claim which may be received prior to the Creditors’ Meeting) where Coalspur determines such acceptance to be appropriate and, where such Proofs of Claim are accepted in accordance with the Claims Process Order, to deem such Claims to constitute Proven Claims (as defined in the Claims Process Order) for purposes of voting on, and distributions under, the CCAA Plan, in each case with the consent of the Monitor.

56. Coalspur is of the view that the requested relief is fair and reasonable in light of the ongoing COVID-19 pandemic, the continuing remote work environment being adopted by a significant number of companies and employees, and the increased risk that the Claims Process Order may not have come to the attention of Coalspur’s creditors in a timely manner. In addition, the requested relief will not have any impact on Coalspur’s creditors with Accepted Claims submitted before the Claims Bar Date since no pool concept is being established under the CCAA Plan. To the extent

that a creditor is determined to have an Accepted Claim, such Accepted Claim will be paid in accordance with the Plan and based on the Distribution Election selected by the applicable creditors, regardless of the number or quantum of claims accepted by Coalspur and the Monitor.

57. I understand that the Monitor supports Coalspur's requested relief.

#### **ADDITIONAL GRANT OF SECURITY TO FINNING**

58. Finning and Coalspur are party to a number of agreements pursuant to which Finning has provided, and continues to provide parts and labour to, among other things, heavy equipment and vehicles used by Coalspur in the operation of the Project. As at the Filing Date, Coalspur was indebted to Finning in the amount of \$4,646,393.42 in respect of such parts and services, the vast majority of which was admitted as an Accepted Secured Claim in accordance with the Claims Process Order (the "**Pre-Filing Finning Claim**"). All obligations to Finning accruing after the Filing Date have been paid by Coalspur in the normal course and in accordance with the governing agreements.

59. Historically, all parts and inventory used by Finning at the Project were required to be transported to the mine site from other locations (predominantly Edmonton). Such arrangement resulted both in significant transportation costs for Coalspur and frequent downtimes for equipment repair while the necessary parts were shipped to the mine site. The inefficiencies caused by this arrangement were identified by Coalspur prior to the CCAA proceedings as an operational issue to be addressed.

60. Following lengthy discussions between Coalspur and Finning both prior to, and following the Filing Date, Finning and Coalspur agreed that maintenance of an inventory of common parts on-site at the Project would reduce transportation costs and equipment downtime, and increase

efficiencies in the mining operation at the Project. Finning and Coalspur accordingly negotiated the MPCSA to facilitate the on-site storage of certain parts and equipment at the Project. A copy of the MPCSA is attached as **Confidential Exhibit “B”** hereto.

61. A critical aspect of the MPCSA is an expansion of the scope of security previously granted by Coalspur to Finning to include the goods which will be delivered by Finning as inventory for storage at the Project, as well as the actual Storage Facility where such parts will be maintained. While Finning and Coalspur have finalized negotiating the form of MPCSA, it has not yet been executed in light of the current restriction in the ARIO on Coalspur granting security interests “upon or in respect of any of its Property”. The MPCSA requires that, in recognition of Finning’s equipment and parts remaining on-site and in the possession of Coalspur (instead of being shipped from another location), Coalspur grant Finning a security interest in:

- (a) all goods delivered by Finning to the Customer at the Site, including without limitation all Inventory;
- (b) all Parts and Components contained in the Storage Facility or any one of them;
- (c) the Storage Facility; and
- (d) all proceeds of the collateral above, including any insurance proceeds and any other payment representing indemnity or compensation for loss or damage to such property (all as defined in the Master Agreement) (the “**Finning Personal Property**”).

62. Importantly, the proposed security interest is limited to: “security for the payment or performance of the [Coalspur’s] obligations under this [MPCSA] relating to, arising from or connected with goods sold or services performed on or after April 27, 2021” (i.e. obligations

incurred after the Filing Date). No obligations have been incurred under the MPCSA because it has not yet been executed, and hence no security has been granted under the MPCSA, nor is any new security being granted by Coalspur with respect to the Pre-Filing Finning Claim (and, as noted above, all obligations accruing due after the Filing Date have been paid in the normal course). Accordingly, the security interest granted under the MPCSA will only secure new obligations which will be incurred under the MPCSA.

63. Coalspur seeks an Order authorizing it to grant the proposed security interest in the Finning Personal Property in accordance with the MPCSA. The security interest has been deliberately limited in scope to include only what is necessary to facilitate the maintenance by Finning of equipment and parts on-site at the Project, and secure only obligations incurred by Coalspur under the MPCSA and after the Filing Date. Such security is a key, and necessary part of the MPCSA and necessarily reflects the additional risk being undertaken by Finning in agreeing to deliver possession of parts and equipment to Coalspur as inventory at the Project and for its benefit to allow Coalspur to achieve operational efficiencies at the Project.

64. Such operational efficiencies and expected cost savings are only possible as a result of the onsite maintenance of inventory by Finning which, in turn, is only possible as a result of the MPCSA. The additional security is an inextricable part of the MPCSA which, in Coalspur's view, is both commercially reasonable and deliberately narrow.

#### **RESTRICTED COURT ACCESS ORDER**

65. The MPCSA contains highly confidential, commercially sensitive information which could materially harm the interests of both Coalspur and Finning if disclosed. Such information includes Finning's pricing and labour rates, discounts provided to Coalspur, warranty information, credit terms, and other confidential business information which could harm Finning's commercial

interests if disclosed to competitors, or current and/or potential customers. Finning has accordingly requested that the MPSCA remain confidential and not be disclosed.

66. Coalspur is accordingly seeking a Restricted Court Access Order in respect of the MPSCA, and is of the view that the Restricted Court Access Order generally in the form requested furthers the general commercial interest of preserving confidential information.

### **EXTENSION OF THE STAY PERIOD**

67. The current Stay Period in the CCAA proceedings expires on December 15, 2021.

68. Coalspur is seeking to extend the Stay Period up to and including January 31, 2022. Coalspur believes that the requested extension of the Stay Period is necessary and appropriate in the circumstances to, among other things, allow Coalspur sufficient time to present the CCAA Plan to its creditors, conduct the Creditors' Meeting in accordance with the proposed Creditors' Meeting Order and, if approved by the Required Majority, seek this Court's approval and sanction of the CCAA Plan.


69. Coalspur has acted, and continues to act, in good faith and with due diligence in these CCAA proceedings. Since the last extension of the Stay Period in August 2021, Coalspur has worked diligently to: (i) finalize the CCAA Plan, (ii) administer the Claims Process in conjunction with the Monitor and in accordance with the Claims Process Order, (iii) review and canvass resolution of Disputed Claims submitted within the Claims Process with applicable claimants, and (iv) operate its business in the normal course with a view to maximizing the value of Coalspur for the benefit of all stakeholders.


70. I understand that the Monitor will file a report which will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein,

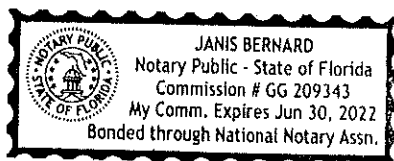


Coalspur will have sufficient funds to continue its operations and fund these CCAA proceedings through January 31, 2022.

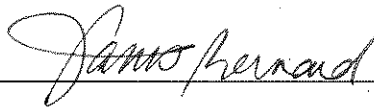
SWORN BEFORE ME at Palm Beach Gardens, in )  
the State of Florida, this 29<sup>th</sup> day of November, )  
2021. )  
)  
)  
)

  
\_\_\_\_\_  
Notary Public in and for the State of Florida

  
\_\_\_\_\_  
MICHAEL BEYER



This is **Exhibit "A"** to the Affidavit of Michael Beyer  
sworn before me this 29<sup>th</sup> day of November 2021.

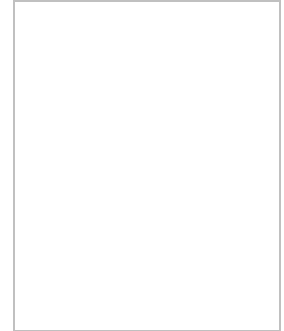
A handwritten signature in cursive script, appearing to read "James Bernard", is written over a horizontal line.

Notary Public in and for the State of Florida .

COURT FILE NUMBER 2101-05019

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



APPLICANT

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

**AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF COALSPUR MINES (OPERATIONS)  
LTD.**

DOCUMENT

**PLAN OF COMPROMISE AND ARRANGEMENT**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**PLAN OF COMPROMISE AND ARRANGEMENT OF COALSPUR MINES  
(OPERATIONS) LTD.**

**Pursuant to the *Companies' Creditors Arrangement Act* (Canada)**

Dated November 29, 2021

**RECITALS**

- A. Coalspur Mines (Operations) Ltd. ("**Coalspur**") is insolvent.
- B. Pursuant to an originating application having Court File no. 2101-05019 by Coalspur to the CCAA Court, the Honourable Mr. Justice Mah pronounced the Initial Order on April 26, 2021 granting protection to Coalspur under the CCAA and commencing the CCAA Proceedings.
- C. On May 6, 2021, the Honourable Madam Justice Shelley granted the Amended and Restated Initial Order.
- D. This Plan will facilitate the continuation of the business of Coalspur as a going concern and makes provision for recoveries to certain stakeholders.

**NOW THEREFORE** Coalspur hereby proposes and presents this Plan under and pursuant to the CCAA:

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Plan (including the recitals and Schedules hereto), unless otherwise stated, the capitalized terms and phrases set out below shall have the following meanings:

**"75% Distribution Election"** means an election made by a General Unsecured Creditor with an Accepted Claim greater than \$15,000 by delivery of a duly completed and executed Distribution Election Notice to the Monitor by no later than the Distribution Election Deadline electing to receive the 75% Distribution Election Amount in full satisfaction of its Accepted Claim;

**"75% Distribution Election Amount"** means, in respect of any Accepted Claim of a General Unsecured Creditor for which a valid Distribution Election has been made or has been deemed to have been made in accordance with this Plan, 75% of the amount of such Accepted Claim, payable in cash on the Initial Distribution Date;

**"Accepted Claim"** means the Affected Claim of a Creditor, as finally determined in accordance with the Claims Process Order and any other Order in the CCAA Proceedings and/or this Plan;

**"Accepted Secured Claim"** means the Secured Claim of a Creditor, as finally determined in accordance with the Claims Process Order and any other Order in the CCAA Proceedings and/or this Plan (including any Disputed Secured Claims which are accepted as Accepted Secured Claims

in accordance with Section 3.5(b) hereof), and including those claims listed on Schedule “D” hereto, but expressly excludes Unaffected Claims which would otherwise be Secured Claims;

“**Administration Charge**” means the Administration Charge granted under the Initial Order;

“**Affected Claim**” means a Claim, other than an Unaffected Claim;

“**Affected Creditor**” means a holder of an Affected Claim;

“**Amended and Restated Initial Order**” means the Order granted by the CCAA Court in the CCAA Proceedings on May 6, 2021, including as amended and restated by the CCAA Court thereafter;

“**Applicable Law**” means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, treaties, orders, judgments and decrees, and all official requests, directives, rules, guidelines, orders, policies, practices and other requirements of any Authorized Authority;

“**Approval of Settlement and Increase in Interim Facility Order**” means the Order granted by the CCAA Court in the CCAA Proceedings dated July 16, 2021, as such Order may be amended, restated or varied from time to time by subsequent Order(s);

“**Authorized Authority**” means, in relation to any Person, property, transaction, event or other matter, as applicable, any:

- (a) federal, provincial, territorial, state, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign;
- (b) agency, authority, commission, instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any Taxing Authority;
- (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, including the CCAA Court; or
- (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange,

in each case having jurisdiction over such Person, property, transaction, event or other matter;

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“**Builders’ Lien Act**” means the *Builders’ Lien Act*, RSA 2000, c. B-7, as amended;



“**Builders’ Lien Claim**” means any Claim that arises under or is subject to the Builders’ Lien Act that has or may have the benefit of a lien on any of the property or assets of Coalspur immediately prior to the Effective Time, including without limitation a lien under Section 6 of the Builders’ Lien Act;

“**Business Day**” means, with respect to any action to be taken, any day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Calgary, Alberta, Canada;

“**CaseLines Filesite**” means the online filesite established by the Monitor for managing the pleadings and other relevant documents in these CCAA Proceedings and hosted on the canada.caselines.com website, as approved by the CCAA Court in the CCAA Proceedings on June 16, 2021.

“**Cash on Hand**” means all cash and cash equivalents (including marketable securities and short-term investments);

“**Caterpillar**” means Caterpillar Financial Services Limited;

“**Caterpillar Claim**” means the amount of \$38,830,230.30 owing by Coalspur to Caterpillar pursuant to terms of three Master Lease Agreements between (amongst others) Caterpillar and Coalspur dated respectively June 26, 2017, July 1, 2018, and April 1, 2019, as each has been amended from time to time;

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

“**CCAA Charges**” means the Administration Charge, the Interim Lender’s Charge, and the Critical Supplier Charge, each as may be amended by Order of the CCAA Court;

“**CCAA Court**” means the Court of Queen’s Bench of Alberta;

“**CCAA Proceedings**” means the proceedings commenced in respect of Coalspur under the CCAA on April 26, 2021 in the CCAA Court bearing Court File No. 2101-05019;

“**Claim**” has the meaning set forth in the Claims Process Order and includes any of the following:

- (a) a Pre-Filing Claim;
- (b) a Subsequent Claim;
- (c) a D&O Claim;
- (d) a D&O Indemnity Claim;
- (e) a Secured Claim;
- (f) an Equity Claim;

- (g) a Convenience Class Claim;
- (h) a Municipal Property Tax Claim;
- (i) a Builders' Lien Claim;
- (j) a Crown Priority Claim;
- (k) a Garage Keepers' Lien Claim; and
- (l) a General Unsecured Creditor Claim.

**"Claims Process Order"** means the Claims Process Order granted by the CCAA Court in the CCAA Proceedings dated August 9, 2021, as such Order may be amended, restated or varied from time to time by subsequent Order(s);

**"Coalspur"** has the meaning attributed to it in the recitals;

**"Continuing Contract"** means a contract, arrangement or other agreement (oral or written) for which a notice of disclaimer pursuant to Section 32 of the CCAA has not been sent by Coalspur on or prior to the Disclaimer Deadline such that the agreement will remain in effect on the Effective Date;

**"Convenience Class Claim"** means (a) any Accepted Claim of a General Unsecured Creditor in an amount that is less than or equal to \$15,000, and (b) any Accepted Claim of a General Unsecured Creditor in an amount greater than \$15,000 if the relevant Creditor has made a valid Convenience Class Distribution Election for purposes of this Plan in accordance with the Creditors' Meeting Order and this Plan;

**"Convenience Class Creditor"** means a General Unsecured Creditor with a Convenience Class Claim;

**"Convenience Class Distribution Election"** means an election:

- (a) made by a General Unsecured Creditor with an Accepted Claim greater than \$15,000 by delivery of a duly completed and executed Distribution Election Notice to the Monitor by no later than the Distribution Election Deadline electing to receive the Convenience Class Distribution Election Amount in full satisfaction of its Accepted Claim; and
- (b) deemed to have been made by each General Unsecured Creditor with an Accepted Claim equal to or less than \$15,000;

**"Convenience Class Distribution Election Amount"** means, in respect of any Accepted Claim of a General Unsecured Creditor for which a valid Distribution Election has been made or has been deemed to have been made in accordance with this Plan, the lesser of (a) a cash amount equal to \$15,000 and (b) the cash amount of such Accepted Claim;

“**Creditor**” means any holder of a Claim and includes a transferee of the whole of a Claim that is recognized as a Creditor by Coalspur in accordance with this Plan, the Claims Process Order or any other Order, as applicable, or a trustee, liquidator, receiver, receiver and manager or other Person acting on behalf of such holder;

“**Creditors’ Meeting**” means the virtual meeting of the class of Affected Creditors called for the purposes of considering and voting in respect of this Plan, as set out in and held pursuant to the Creditors’ Meeting Order, and includes any postponements or adjournments thereof;

“**Creditors’ Meeting Order**” means an Order to be sought by Coalspur from the CCAA Court on or about December 7, 2021 that, among other things, accepts the filing of this Plan, and orders and declares the procedures to be followed in connection with the Creditors’ Meeting, as such Order may be amended, restated or varied from time to time by subsequent Order;

“**Creditors’ Meeting Record Date**” means, subject to the Creditors’ Meeting Order, 1:00 p.m. (Calgary time) on the date that is two (2) Business Days prior to the Creditors’ Meeting;

“**Critical Supplier Charge**” means the Critical Supplier Charge granted under the Stay Extension and Critical Supplier Charge Order;

“**Crown**” means Her Majesty in right of Canada or any province or territory of Canada;

“**Crown Priority Claims**” means all unpaid amounts, if any, provided for in Section 6(3) of the CCAA;

“**CTC**” means Cline Trust Company LLC;

“**CTC ARCA**” means an amended and restated credit agreement to be entered into among, *inter alios*, Coalspur, as borrower, each other Loan Party (as such term will be defined therein) party thereto, and CTC, as lender, and which will be effective only upon Plan implementation;

“**CTC Claim**” means the Claim in the amount of \$369,559,237.47, plus accrued but unpaid interest (if any) and all other amounts (including fees, costs and expenses), owing by Coalspur to CTC pursuant to (i) a Promissory Note dated March 31, 2019 issued by Coalspur in favour of VER, a Delaware limited liability company (formerly known as Cutlass Collieries LLC), as assigned by VER to CTC pursuant to an Assignment of Note dated March 31, 2019, as amended and modified by the Note Modification Agreement and Allonge effective as of July 5, 2019, as further amended and modified by the Note Modification Agreement and Allonge effective as of September 30, 2019, and as further amended and modified by the Note Modification Agreement and Allonge effective as of May 1, 2020 in the principal face amount of \$195,425,129.14 USD; and (ii) a Secured Promissory Note issued by Coalspur in favour of CTC dated June 19, 2019, as amended and restated by the Amended and Restated Secured Promissory Note dated August 16, 2019, as further amended and restated by the First Amended and Restated Secured Promissory Note dated October 16, 2019, and as amended and modified by the Note Modification Agreement and Allonge entered into as of May 1, 2020 in the principal face amount of \$106,582,294.39 USD;

“**D&O Claim**” means a Claim against a current or former Director or Officer of Coalspur;

“**D&O Indemnity Claim**” means any existing or future right of any Director or Officer against Coalspur which arose or arises as a result of any Person filing a Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by Coalspur;

“**Definitive Documents**” has the meaning attributed to it in the Initial Order;

“**Director**” means any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of Coalspur;

“**Disallowed Claim**” means a Claim (or any portion thereof) which has been finally disallowed in accordance with the Claims Process Order or any other Order;

“**Disclaimer Deadline**” means 5:00 p.m. (Calgary time) on the day which is 21 days prior to the Creditors’ Meeting for the General Unsecured Creditor Class or if such day is not a Business Day then the immediately preceding Business Day;

“**Disputed Claim**” means that portion of a Claim in respect of which a Creditor has delivered a Notice of Dispute pursuant to the Claims Process Order which has not been allowed or accepted for voting and/or distribution purposes or which has not been barred, determined, or finally disallowed pursuant to the Claims Process Order. For greater certainty, once a Disputed Claim is finally determined, it shall become an Accepted Claim or Disallowed Claim;

“**Disputed Secured Claim**” has the meaning given to it in Section 3.4(b) of this Plan;

“**Disputed General Unsecured Creditor Claim**” has the meaning given to it in Section 3.5 of this Plan;

“**Distribution Election**” means an election to receive the Convenience Class Distribution Election, the 75% Distribution Election, or the Installment Distribution Election;

“**Distribution Election Deadline**” means 5:00 p.m. on the date that is two Business Days before the Creditors’ Meeting;

“**Distribution Election Notice**” means the notice that is substantially in the form attached to this Plan at Schedule “C”;

“**Effective Date**” means the day on which the Monitor delivers the Monitor’s Certificate to Coalspur pursuant to Section 8.3 of this Plan;

“**Effective Time**” means 12:01 a.m. (Calgary time) on the Effective Date or such other time as the CCAA Court may order;

“**Equity Claim**” has the meaning given to it in Section 2(1) of the CCAA;

“**Filing Date**” means April 26, 2021;

**“First Anniversary Condition”** means that the value of the gC NEWC Index for coal as published by globalCOAL on each of the 52 consecutive Fridays immediately preceding December 31, 2022 averages greater than USD \$105.00/metric tonne;

**“First Anniversary Distribution Date”** means December 31, 2022, and if such date is a Sunday or statutory holiday, the next business day;

**“First Anniversary Payment”** means the payment of 25% of the amount of the Accepted Claim payable by Coalspur on or within two weeks of the First Anniversary Distribution Date to a General Unsecured Creditor who has made an Installment Distribution Election subject to satisfaction of the First Anniversary Condition;

**“Garage Keepers’ Lien Act”** means the *Garage Keepers’ Lien Act*, RSA 2000, c. G-2, as amended;

**“Garage Keepers’ Lien Claim”** means any Claim that arises under or is subject to the *Garage Keepers’ Lien Act*, that has or may have the benefit of a lien on any of the property or assets of Coalspur immediately prior to the Effective Time;

**“gC NEWC Index”** means the index published weekly on Fridays by globalCOAL at [www.globalcoal.com](http://www.globalcoal.com);

**“General Unsecured Creditor”** means the holder of a General Unsecured Creditor Claim;

**“General Unsecured Creditor Cash Fund”** means the amount of approximately \$21,196,000 being the total value of the Convenience Class Claims plus 75% of the General Unsecured Creditor Claims that are not Convenience Class Claims;

**“General Unsecured Creditor Claim”** means all Affected Claims, other than Secured Claims, Crown Priority Claims and Equity Claims;

**“General Unsecured Creditor Class”** means the class comprised of General Unsecured Creditors;

**“Initial Distribution Date”** means a date not more than five (5) Business Days after the Effective Date or such other date specified in the Sanction Order;

**“Initial Distribution Record Date”** means the date that is five (5) Business Days prior to the Initial Distribution Date;

**“Initial Installment Payment”** means the payment of 50% of the amount of the Accepted Claim payable by Coalspur in cash on the Initial Distribution Date to a General Unsecured Creditor who has made an Installment Distribution Election;

**“Initial Order”** means the Order granted by the CCAA Court in the CCAA Proceedings on April 26, 2021, as such Order may be amended, restated, varied or extended from time to time by subsequent Orders, including by the Amended and Restated Initial Order;

**“Installment Distribution Election”** means an election made by a General Unsecured Creditor with an Accepted Claim greater than \$15,000 by delivery of a duly completed and executed Distribution Election Notice to the Monitor by no later than the Distribution Election Deadline electing to receive the Installment Distribution Election Amount in full satisfaction of its Accepted Claim;

**“Installment Distribution Election Amount”** means, in respect of any Accepted Claim of a General Unsecured Creditor for which a valid Distribution Election has been made or has been deemed to have been made in accordance with this Plan:

- (a) the Initial Installment Payment, which shall be payable in cash by Coalspur on the Initial Distribution Date;
- (b) the First Anniversary Payment, which shall be payable by Coalspur on the First Anniversary Distribution Date only if the First Anniversary Condition has been satisfied; and
- (c) the Second Anniversary Payment, which shall be payable by Coalspur on the Second Anniversary Distribution Date only if the Second Anniversary Condition has been satisfied;

**“Interim Lender”** means CTC;

**“Interim Lender’s Charge”** means the Interim Lender’s Charge granted in favour of CTC pursuant to the Initial Order, as modified by the Approval of Settlement and Increase in Interim Facility Order in the amount of the Interim Lender’s Claims;

**“Interim Lender’s Claims”** means all debts, liabilities and obligations (including, without limitation accrued and outstanding fees, costs and interest) owing by Coalspur to CTC under the Interim Lender Loan Documents;

**“Interim Lender Loan Documents”** means the CCAA interim financing term sheet between Coalspur and the Interim Lender dated April 22, 2021, providing for interim financing for Coalspur in an aggregate principal committed amount of USD \$56,000,000 in connection with the CCAA Proceedings, and the Definitive Documents related thereto, as approved pursuant to the Initial Order, as modified by the Approval of Settlement and Increase in Interim Facility Order;

**“ITA”** means the *Income Tax Act* (Canada), R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), as amended;

**“Komatsu”** means the Komatsu International (Canada) Inc., dba Komatsu Financial;

**“Komatsu Claim”** means the Claim in the amount of \$93,115,896.95 owing by Coalspur to Komatsu pursuant to a Master Lease Agreement between Komatsu and Coalspur dated February 15, 2018, as amended by an Extension Agreement dated March 30, 2021, and pursuant to which Komatsu has filed registrations under the Alberta Personal Property Security Registry;

“**Lien**” means any mortgage, charge, pledge, assignment by way of security, lien, hypothec, security interest, deemed trust or other encumbrance granted or arising pursuant to a written agreement or statute or otherwise created by law;

“**Monitor**” means FTI Consulting Canada Inc., solely in its capacity as Court-appointed monitor of Coalspur in the CCAA Proceedings, and not in its corporate or personal capacity;

“**Monitor’s Certificate**” has the meaning given to it in Section 8.3 of this Plan;

“**Monitor’s Website**” means the website of the Monitor, <http://cfcanada.fticonsulting.com/coalspur/>, upon which the various materials arising in connection with the CCAA Proceedings are posted from time to time;

“**Municipal Property Tax Claim**” means all property taxes owing by Coalspur to a municipality pursuant to the *Municipal Government Act* (Alberta), including an Unsecured Municipal Property Tax Claim;

“**Notice of Dispute**” has the meaning given to it in the Claims Process Order;

“**Officer**” means any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of Coalspur;

“**Order**” means any order of the CCAA Court in the CCAA Proceedings;

“**Osler**” means Osler, Hoskin & Harcourt LLP, counsel to Coalspur;

“**Person**” shall be broadly interpreted and includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Authorized Authority;

“**Plan**” means this Plan of Compromise and Arrangement dated November 29, 2021, as it may be further amended, restated, supplemented or replaced in accordance with the terms hereof;

“**Plan Implementation Fund**” means an amount equal to the aggregate amount of funds to be delivered by Coalspur to the Monitor pursuant to Section 4.1 of this Plan, to be held in a segregated account and distributed by the Monitor in accordance with this Plan;

“**Plan Outside Date**” means January 31, 2022;

“**Post-Filing Ordinary Course Payables**” means post-Filing Date payables that were incurred by Coalspur (a) after the Filing Date and before the Effective Date; (b) in the ordinary course of

business; and (c) in compliance with the Initial Order and other Orders issued in connection with the CCAA Proceedings;

**“Post-Filing Ordinary Course Payables Claims”** means claims incurred as a result of Post-Filing Ordinary Course Payables;

**“Pre-Filing Claims”** has the meaning given to it in the Claims Process Order;

**“Proof of Assignment”** means a notice of transfer of the whole of a Claim executed by a Creditor and the transferee, together with satisfactory evidence of such transfer as may be reasonably required by the Monitor;

**“Proof of Claim”** means a proof of claim, in substantially the form(s) attached to the Claims Process Order, as submitted in accordance with the Claims Process Order;

**“RBC Claim”** means the Claim filed by Royal Bank of Canada in the CCAA Proceedings in the secured amount of \$1,556,780, which is secured against two letters of credit totaling \$1,356,780 and a \$200,000 cash collateral June 16, 2021 Order of the CCAA Court;

**“Regulatory Obligations”** has the meaning given to it in the Claims Process Order;

**“Released Claims”** has the meaning given to it in Section 10.4 of this Plan;

**“Released Party”** has the meaning given to it in Section 10.4 of this Plan;

**“Required Majority”** means the affirmative vote of a majority in number of all voting (in person or by proxy) Creditors holding Accepted Claims and representing not less than 66 $\frac{2}{3}$ % in value of the Accepted Claims voting (in person or by proxy) at such Creditors’ Meeting;

**“Restructuring Transactions”** has the meaning given to it in Section 6.1 of this Plan;

**“Sanction Order”** means an Order, in form and substance acceptable to Coalspur and the Monitor, among other things, sanctioning this Plan and giving directions regarding its implementation, which shall include the provisions set out in Section 8.1 of this Plan unless otherwise agreed to in writing by Coalspur and the Monitor;

**“Second Anniversary Condition”** means that the value of the gC NEWC Index for coal as published by globalCOAL on each of the 52 consecutive Fridays starting with the Friday immediately preceding the First Anniversary Distribution Date averages greater than USD \$105.00/metric tonne;

**“Second Anniversary Distribution Date”** means December 31, 2023, and if such date is a Sunday or statutory holiday, the next business day;

**“Second Anniversary Payment”** means the payment of 25% of the amount of the Accepted Claim payable by Coalspur on or within two weeks of the Second Anniversary Distribution Date to a General Unsecured Creditor who has made an Installment Distribution Election subject to satisfaction of the Second Anniversary Condition;



**“Secured Claim”** means a Claim which asserts or claims a Lien over the assets or property of Coalspur, but expressly excluding Unaffected Claims which would otherwise be Secured Claims;

**“Stay Extension and Critical Supplier Charge Order”** means the Order granted by the CCAA Court in the CCAA Proceedings dated July 9, 2021, as such Order may be amended, restated or varied from time to time by subsequent Order(s);

**“Subsequent Claim”** has the meaning given to it in the Claims Process Order;

**“Tanager”** means Consolidated Tanager Limited;

**“Tanager Claim”** means amounts owing by Coalspur to Tanager pursuant to the terms of an Amended and Restated Transfer of Leases Agreement, dated as of February 19, 2016, as amended pursuant to a First Amendment to Amended and Restated Transfer of Leases Agreement, effective as of November 9, 2019, a Second Amendment to Amended and Restated Transfer of Leases Agreement, effective as of December 15, 2020, and a Third Amendment to Amended and Restated Transfer of Leases Agreement, effective as of April 6, 2021;

**“Tax”** or **“Taxes”** means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

**“Taxing Authorities”** means Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of each and every province or territory of Canada or municipality therein and any political subdivision thereof, and any Canadian or foreign governmental authority exercising taxing powers in administering and/or collecting Taxes;

**“Unaffected Claim”** has the meaning given to it in Section 3.3 of this Plan;

**“Unaffected Creditor”** means a holder of an Unaffected Claim;

**“Unsecured Municipal Property Tax Claim”** means the portion of an unpaid Municipal Property Tax Claim accrued or allocable to the period prior to the Filing Date which constitutes linear property taxes pursuant to the *Municipal Government Act* (Alberta) or which is otherwise not secured by a Lien applicable to outstanding municipal taxes;

**“VEH”** means Vista Energy Holdings LLC;

**“VER”** means Vista Energy Resources LLC; and

“**Voting Claim**” means the amount of an Affected Claim for which a Proof of Claim is filed, which, as at the Creditors’ Meeting Record Date, (i) is an Accepted Claim or (ii) has been accepted or deemed to be accepted solely for voting purposes pursuant to the Claims Process Order, the Creditors’ Meeting Order or any other Order.

## **1.2 Article and Section Reference**

The terms “**this Plan**”, “**hereof**”, “**hereunder**”, “**herein**”, and similar expressions refer to this Plan, and not to any particular article, section, subsection, paragraph or clause of this Plan and include any variations, amendments, modifications or supplements hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph shall, unless otherwise stated, refer to an article, section, subsection, paragraph or clause of this Plan.

## **1.3 Extended Meanings**

In this Plan, where the context so requires, any word importing the singular number shall include the plural and vice versa, and any word or words importing gender shall include all genders.

## **1.4 Interpretation Not Affected by Headings**

The division of this Plan into articles, sections, subsections, paragraphs and clauses and the insertion of a table of contents and headings are for convenience of reference and shall not affect the construction or interpretation of this Plan.

## **1.5 Inclusive Meaning**

As used in this Plan, the words “**include**”, “**includes**”, “**including**” or similar words of inclusion means, in any case, those words as modified by the words “**without limitation**” and “**including without limitation**”; so that references to included matters shall be regarded as illustrative rather than exhaustive.

## **1.6 Currency**

Unless otherwise stated herein, all references to currency in this Plan are to lawful money of Canada. For the purposes of voting or distribution, a Claim shall be denominated in Canadian Dollars and all cash distributions under this Plan shall be paid in Canadian Dollars. Any Claim in a currency other than Canadian Dollars will be deemed to have been converted to Canadian Dollars at the noon spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian Dollars as at the Filing Date, which rate for greater certainty for the conversion of United States Dollars to Canadian Dollars was US 1 = CDN 1.2412.

## **1.7 Statutory References**

Any reference in this Plan to a statute includes all regulations made thereunder, all amendments to such statute or regulations in force from time to time to the date of this Plan and any statute or regulation that supplements or supersedes such statute or regulation to the date of this Plan.

## **1.8 Successors and Assigns**

The rights, benefits and obligations of any Person named or referenced in this Plan shall be binding on and shall inure to the benefit of any heir, administrator, executor, legal personal representative, successor or assign, as the case may be, or a trustee, receiver, interim receiver, receiver and manager, liquidator or other Person acting on behalf of such Person, as permitted hereunder.

## **1.9 Governing Law**

This Plan shall be governed by and construed and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. Any dispute or issue in connection with, or related to the interpretation, application or effect of this Plan and all proceedings taken in connection with this Plan and its revisions shall be subject to the exclusive jurisdiction of the CCAA Court.

## **1.10 Severability of Plan Provisions**

If any provision of this Plan is or becomes illegal, invalid or unenforceable on or following the Effective Date in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Plan, or the legality, validity or enforceability of that provision in any other jurisdiction.

## **1.11 Timing Generally**

Unless otherwise specified, all references to time herein, and in any document issued pursuant hereto, shall mean local time in Calgary, Alberta, Canada and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Calgary time) on such Business Day.

## **1.12 Time of Payments and Other Actions**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day. Wherever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day.

## **1.13 Schedules**

The following are the Schedules to this Plan, which are incorporated by reference into this Plan and form an integral part hereof:

- Schedule "A" - Restructuring Transactions
- Schedule "B" - Form of Monitor's Certificate
- Schedule "C" - Form of Distribution Election Notice

Schedule "D" - Accepted Secured Claims

**ARTICLE 2  
PURPOSE AND EFFECT OF PLAN**

**2.1 Purpose**

The purpose of this Plan is:

- (a) to implement a recapitalization of Coalspur;
- (b) to effect a compromise and arrangement of all Affected Claims; and
- (c) to effect a release and discharge of all Affected Claims and Released Claims;

in order to enable the business of Coalspur to continue as a going concern, in the expectation that a greater benefit will be derived from the continued operation of its business than would result from the forced liquidation of Coalspur's assets.

**2.2 Persons Affected**

The Plan provides for a compromise of all Affected Claims and the recapitalization of Coalspur. This Plan will become effective at the Effective Time and shall be binding upon and enure to the benefit of Coalspur and all Persons named or referred to in, or subject to, this Plan and their respective heirs, executors, administrators, legal representatives, successors and assigns in accordance with its terms.

**2.3 Persons Not Affected**

Except as expressly provided in this Plan, the Plan does not affect the Unaffected Creditors with respect to and to the extent of their Unaffected Claims.

**ARTICLE 3  
CLASSIFICATION OF CREDITORS AND CLAIMS AND OTHER ACTIONS ON  
EFFECTIVE DATE**

**3.1 Claims Procedure**

The procedure for determining the validity and quantum of the Affected Claims and for resolving Disputed Claims for voting and distribution purposes under this Plan shall be governed by the Claims Process Order, the Creditors' Meeting Order, the CCAA and this Plan.

**3.2 Classification of Creditors**

For the purposes of considering and voting on this Plan and receiving a distribution hereunder, the Affected Creditors are grouped into one class, being the General Unsecured Creditor Class.

### **3.3 Claims Unaffected by the Plan**

This Plan does not compromise, release, discharge or otherwise affect the following (collectively, “Unaffected Claims”):

- (a) The Claims secured by the CCAA Charges;
- (b) The CTC Claim;
- (c) The Komatsu Claim;
- (d) The Caterpillar Claim;
- (e) The Tanager Claim;
- (f) The RBC Claim;
- (g) Claims in respect of Regulatory Obligations;
- (h) Post-Filing Ordinary Course Payables Claims which shall be paid in the ordinary course in accordance with usual practice;
- (i) Municipal Property Tax Claims remaining unpaid as of the Effective Date (except to the extent any such Claims constitute an Unsecured Municipal Property Tax Claim) which shall be paid by Coalspur;
- (j) Claims which have been filed and preserved in accordance with the Claims Process Order against Directors that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA; and
- (k) Claims which have been filed and preserved in accordance with the Claims Process Order that cannot be compromised due to the provisions of Section 19(2) of the CCAA, except any Claims to which Section 10.11 of this Plan applies which shall be Affected Claims for the purposes of this Plan.

Persons with Unaffected Claims shall not be entitled to vote at any Creditors’ Meeting or receive any distributions under this Plan in respect of the portion of their claim which is an Unaffected Claim. Nothing in this Plan shall affect Coalspur’s or the Directors’ rights to defences, both legal and equitable, with respect to any Unaffected Claim including any rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

### **3.4 Secured Claims**

- (a) On or as soon as practicable following the Effective Date, the Monitor, on behalf of Coalspur, shall pay each Accepted Secured Claim from the Plan Implementation Fund in an amount equal to the Accepted Secured Claim.

- (b) In the event that a Secured Claim remains in dispute (with respect to either or both the quantum or its priority secured status) and such dispute is not finally resolved as of the Initial Distribution Record Date pursuant to the Claims Process Order or otherwise (a “**Disputed Secured Claim**”, which shall include, without limitation, the Disputed Secured Claims of Stillwater Supply Corp., Whirlybyrds Inc, and Construction eLink, Inc. if such claims have not been resolved by the Initial Distribution Record Date), Coalspur and the Person holding the Disputed Secured Claim shall proceed to finally determine whether the Disputed Secured Claim is an Accepted Secured Claim (in whole or in part), a General Unsecured Creditor Claim (in whole or in part), or a Disallowed Claim in accordance with the Claims Process Order or other Order or by agreement between Coalspur and the Person holding the Disputed Secured Claim. Subject to section 7.1(a)(iv), such process to determine the status of any Disputed Secured Claims shall in no way delay or otherwise affect the implementation of the Plan. If a Disputed Secured Claim is finally determined to be an Accepted Secured Claim (in whole or in part), such Accepted Secured Claim shall not be paid out of Plan Implementation Fund, but rather Coalspur shall be required to pay such Accepted Secured Claim in an amount equal to the value of the collateral secured by the Lien of such Creditor for each such Claim, not to exceed the total amount of such Accepted Secured Claim. If a Disputed Secured Claim is finally determined to be a General Unsecured Creditor Claim (in whole or in part), such General Unsecured Creditor Claim shall constitute a General Unsecured Creditor Claim for the purposes of this Plan, shall be deemed to have made the 75% Distribution Election hereunder, and shall be paid the amount to which it would have been entitled under this Plan by Coalspur rather than by the Monitor out of the General Unsecured Creditor Cash Fund. Any portion of a Disputed Secured Claim that is determined to be a Disallowed Claim shall be a Disallowed Claim for the purpose of the Plan.
- (c) As of the Effective Date, any security underlying any Secured Claim or any Accepted Secured Claim, whether arising pursuant to agreement or statute, registered or unregistered, perfected or unperfected, shall be irrevocably fully and finally discharged as against Coalspur and all of Coalspur’s business, assets and undertaking, however in no case shall the security underlying any Disputed Secured Claim be discharged until such Disputed Secured Claim is finally determined to be an Accepted Secured Claim (in whole or in part), a General Unsecured Creditor Claim (in whole or in part), or a Disallowed Claim.
- (d) For greater certainty, for the purposes of this Plan, a Municipal Property Tax Claim shall not constitute a Secured Claim and instead such Municipal Property Tax Claims (except to the extent an Unsecured Municipal Property Tax Claim) shall be paid by Coalspur in accordance with usual practice. All Unsecured Municipal Property Tax Claims shall be deemed to be and treated as General Unsecured Creditor Claims under this Plan.

### **3.5 Disputed General Unsecured Creditor Claims**

In the event that a General Unsecured Creditor Claim remains in dispute and such dispute is not finally resolved as of the Initial Distribution Record Date pursuant to the Claims Process Order or otherwise (a “**Disputed General Unsecured Creditor Claim**” which shall include, without limitation, the Disputed General Unsecured Creditor Claim of Stillwater Supply Corp. and Whirlybyrds Inc.), Coalspur and the Person holding the General Unsecured Creditor Claim shall proceed to finally determine whether the Disputed General Unsecured Creditor Claim is an Accepted Claim (in whole or in part) or a Disallowed Claim in accordance with the Claims Process Order or other Order or by agreement between Coalspur and the Person holding such General Unsecured Creditor Claim. Subject to section 7.1(a)(iv), such process to determine the status of such Disputed General Unsecured Creditor Claim shall in no way delay or otherwise affect the implementation of the Plan. If a Disputed General Unsecured Creditor Claim is finally determined to be an Accepted Claim (in whole or in part), the holder of such Accepted Claim shall be deemed to have made the 75% Distribution Election hereunder, and shall be paid the amount to which it is entitled under this Plan by Coalspur rather than by the Monitor out of the General Unsecured Creditor Cash Fund. Any portion of a Disputed Secured Claim that is determined to be a Disallowed Claim shall be a Disallowed Claim for the purpose of the Plan

### **3.6 Crown Priority Claims**

On or as soon as practicable following the Effective Date, the Monitor shall pay in full, on behalf of Coalspur, all Crown Priority Claims, if any, that were outstanding at the Filing Date or related to the period ending on the Filing Date, to the Crown, from the Plan Implementation Fund.

### **3.7 Claims Secured by CCAA Charges**

#### **(a) Administration Charge**

On the Effective Date, all outstanding obligations, liabilities, fees and disbursements secured by the Administration Charge which are evidenced by invoices as at the Effective Date shall be fully paid by the Monitor, on behalf of Coalspur, from the Plan Implementation Fund. The fees and disbursements of legal counsel to Coalspur, the Monitor, legal counsel to the Monitor, legal counsel to CTC or other Persons from time to time retained by Coalspur or, the Monitor or CTC and any other costs and expenses incurred by Coalspur or, the Monitor or CTC in connection with the implementation of this Plan, the resolution of Disputed Claims, and the termination of the CCAA Proceedings following the Effective Date shall continue to be secured by the Administration Charge until discharged by further Order of the CCAA Court on subsequent application and shall be paid by Coalspur in the normal course.

(b) Interim Lender's Charge

On the Effective Date, all outstanding obligations, liabilities, fees and disbursements secured by the Interim Lender's Charge which are evidenced by invoices as at the Effective Date shall be fully paid by the Monitor, on behalf of Coalspur, from the Plan Implementation Fund. Effective upon the Effective Date, the Interim Lender's Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of Coalspur and the Plan Implementation Fund.

(c) Critical Supplier Charge

On the Effective Date, all outstanding obligations, liabilities, fees and disbursements secured by the Critical Supplier Charge which are evidenced by invoices as at the Effective Date shall be fully paid by the Monitor, on behalf of Coalspur, from the Plan Implementation Fund. Effective upon the Effective Date, the Critical Supplier Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of Coalspur and the Plan Implementation Fund.

**ARTICLE 4  
ESTABLISHMENT OF THE PLAN IMPLEMENTATION FUND**

**4.1 Plan Implementation Fund**

On or prior to the Effective Date, Coalspur shall deliver, or direct to be delivered, to the Monitor from Coalspur's Cash on Hand the aggregate amount necessary, as determined by the Monitor in consultation with Coalspur, which amount shall be held by the Monitor in a segregated account of the Monitor and shall constitute the Plan Implementation Fund, and shall be used to pay or satisfy:

- (a) the amount required to satisfy the CCAA Charges as of the Effective Date in accordance with Section 3.7 of this Plan;
- (b) the amount required to satisfy the payment of the Secured Claims which are Accepted Secured Claims as of the Effective Date in accordance with Section 3.4 of this Plan;
- (c) the amount required to satisfy the payment in full of the Crown Priority Claims in accordance with Section 3.6 of this Plan; and
- (d) the amount required to establish the General Unsecured Creditor Cash Fund.

In the event that excess funds remain in Plan Implementation Fund after the payment of all amounts required under this Plan, the Monitor shall return such excess funds to Coalspur.



**ARTICLE 5**  
**VOTING AND TREATMENT OF CREDITORS**

**5.1 Voting by Creditors in the General Unsecured Creditor Class**

Pursuant to and in accordance with the Creditors' Meeting Order, each of the following Creditors shall be entitled to vote on this Plan at the Creditors' Meeting for the General Unsecured Creditor Class as follows:

- (a) Convenience Class Creditors shall each be deemed to vote in favour of the Plan in the amount of such Creditor's Accepted Claim; and
- (b) General Unsecured Creditors with Voting Claims shall be entitled to one (1) vote in the amount equal to such Creditor's Voting Claim.

**5.2 Treatment of General Unsecured Creditor Claims**

- (a) General Unsecured Creditors with Accepted Claims on the Initial Distribution Record Date equal to or less than \$15,000 shall be deemed to have made a Convenience Class Distribution Election and to have elected to and shall receive the Convenience Class Distribution Election Amount in respect of their Accepted Claim in accordance with the Plan;
- (b) General Unsecured Creditors with Accepted Claims greater than \$15,000 shall receive:
  - (i) the Convenience Class Distribution Election Amount in respect of their Accepted Claim, in accordance with the Plan, if a Convenience Class Distribution Election is made prior to the Distribution Election Deadline, paid in cash; or
  - (ii) the 75% Distribution Election Amount in respect of their Accepted Claim, in accordance with the Plan, paid in cash, if a 75% Distribution Election is made prior to the Distribution Election Deadline; or
  - (iii) the Installment Distribution Election Amount in respect of their Accepted Claim, in accordance with the Plan, if an Installment Distribution Election is made prior to the Distribution Election Deadline.
- (c) If a General Unsecured Creditor with an Accepted Claim, who is not a Convenience Class Creditor, does not deliver a Distribution Election Notice prior to the Distribution Election Deadline, such General Unsecured Creditor shall be deemed to have made a 75% Distribution Election.

### **5.3 Voting – Transferred Claims**

Any General Unsecured Creditor may transfer the whole but not a portion of its Claim prior to the Creditors' Meeting of the General Unsecured Creditors in accordance with the Claims Process Order and the Creditors' Meeting Order, as applicable, provided that the Monitor shall not be obligated to deal with the transferee of such Claim as a General Unsecured Creditor in respect thereof, including allowing such transferee to vote at the Creditors' Meeting for General Unsecured Creditors, unless a Proof of Assignment has been received by the Monitor prior to 5:00 p.m. (Calgary time) on the day that is at least ten (10) Business Days prior to the date of the Creditors' Meeting for General Unsecured Creditors and such transfer has been acknowledged in writing by the Monitor. Thereafter such transferee shall, for all purposes in accordance with the Claims Process Order, the Creditors' Meeting Order, the CCAA and this Plan, constitute a General Unsecured Creditor and shall be bound by any notices given or steps taken in respect of such Claim in accordance with the Creditors' Meeting Order and any further Orders.

If a General Unsecured Creditor transfers the whole of its Claim to more than one Person or part of such Claim to another Person after the Filing Date, such transfer shall not create a separate Voting Claim and such Claim shall continue to constitute and be dealt with for the purposes hereof as a single Voting Claim. Notwithstanding such transfer, the Monitor shall not be bound to recognize or acknowledge any such transfer and shall be entitled to give notices to and otherwise deal with such Claim only as a whole and only to and with the Person last holding such Claim in whole as the General Unsecured Creditor in respect of such Claim, provided such General Unsecured Creditor may, by notice in writing to the Monitor in accordance with and subject to the Creditors' Meeting Order and given prior to 5:00 p.m. (Calgary time) on the day that is at least ten (10) Business Days prior to the date of the Creditors' Meeting for General Unsecured Creditors, direct the subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such transferee of the Claim and the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with the Creditors' Meeting Order and any further Orders.

### **5.4 Voting**

Except as otherwise set out in this Plan or in the Creditors' Meeting Order, each Creditor holding a Voting Claim or its designated proxyholder shall be entitled to attend the Creditors' Meeting. The Monitor shall keep a separate record of votes cast by Creditors holding Disputed Claims and shall report to the CCAA Court with respect thereto at the CCAA Court hearing seeking the Sanction Order. The votes cast in respect of any Disputed Claims shall not be counted for any purpose unless, until and only to the extent that such Disputed Claim is finally determined to be an Accepted Claim. Coalspur and the Monitor shall have the right to seek the assistance of the CCAA Court in valuing any Disputed Claim in accordance with the Claims Process Order, the Creditors' Meeting Order, the CCAA and this Plan, if required, to ascertain the result of any vote on this Plan.

### **5.5 Holders of Equity Claims**

Holders of Equity Claims shall not be entitled to attend or vote in respect of their Equity Claims at any Creditors' Meeting and shall not receive any distribution under this Plan on account of their

Equity Claims. All Equity Claims (other than those held by CTC and VEH) and D&O Indemnity Claims that are based on Equity Claims shall be fully, finally and irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred on the Effective Date.

### **5.6 Other Non-Voting Persons**

Persons with claims secured by the CCAA Charges, Secured Claims, Crown Priority Claims, or Post-Filing Ordinary Course Payables Claims shall not be entitled to vote at any Creditors' Meeting in respect of the portion of their claim which is a claim secured by the CCAA Charges, a Secured Claim, a Crown Priority Claim or a Subsequent Claim. For certainty, CTC shall have the right to attend any Creditors' Meeting, but shall not be entitled to vote at any such Creditors' Meeting under the terms of this Plan.

## **ARTICLE 6 IMPLEMENTATION OF THE RESTRUCTURING TRANSACTIONS**

### **6.1 Restructuring Transactions**

Coalspur and the Monitor, each as applicable, will take the steps set forth in Schedule "A" hereto (collectively, the "**Restructuring Transactions**"), which shall be consummated and become effective in the order set out therein, and will take any actions as may be necessary to effect a restructuring of Coalspur's business or overall organizational structure to reflect and implement the recapitalization of Coalspur, the Restructuring Transactions and the provisions of this Plan.

The adoption, execution, delivery, implementation and consummation of all matters contemplated under this Plan involving corporate action of Coalspur will occur and be effective by the Effective Time, and will be authorized and approved under this Plan and by the CCAA Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, Directors or Officers of Coalspur. All necessary approvals to take actions shall be deemed to have been obtained from the applicable Directors or shareholders of Coalspur, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and no shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by this Plan shall be deemed to be effective and any such agreement shall have no force and effect.

### **6.2 Effectuating Documents**

Any current Director or Officer shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures and other agreements or documents, and take such other actions, as may be necessary or appropriate, on behalf of Coalspur, to effectuate and further evidence the terms and conditions of this Plan.

**ARTICLE 7**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**7.1 Distributions to the General Unsecured Creditor Class**

- (a) Initial Distribution Date Distributions:
  - (i) General Unsecured Creditors with Accepted Claims as of the Initial Distribution Date, other than those General Unsecured Creditors who have made the Installment Distribution Election, shall receive distributions from the General Unsecured Creditor Cash Fund in accordance with Section 5.2 of this Plan.
  - (ii) General Unsecured Creditors with Accepted Claims as of the Initial Distribution Date who have made the Installment Distribution Election, shall receive a distribution from the General Unsecured Creditor Cash Fund in the amount of the Initial Installment Payment in accordance with Section 5.2 of this Plan.
  - (iii) All cash distributions to be made under this Plan on the Initial Distribution Date to a Creditor shall be made by the Monitor on behalf of Coalspur by cheque or by wire transfer and (i) in the case of a cheque, will be sent, via regular mail, to such Creditor to the address specified in the Proof of Claim filed by such Creditor or such other address as the Creditor may from time to time notify the Monitor in writing in accordance with Section 11.10 of this Plan or (ii) in the case of a wire transfer, shall be sent to an account specified by the Creditor to the Monitor in writing to the satisfaction of the Monitor.
  - (iv) The Monitor may, but shall not be obligated to, make any distribution to the General Unsecured Creditors before all Disputed Claims have been finally resolved for distribution purposes in accordance with the Claims Process Order or further Order.
- (b) First Anniversary Distribution Date Distributions
  - (i) General Unsecured Creditors with Accepted Claims, who have made the Installment Distribution Election, shall, if the First Anniversary Condition is met, receive a cash distribution directly from Coalspur (and not from the Monitor or the Plan Implementation Fund) in the amount of the First Anniversary Payment on the First Anniversary Distribution Date;
  - (ii) Subject to Section 7.1(d), if the First Anniversary Condition is not satisfied, Coalspur shall have no obligation whatsoever in relation to the First Anniversary Payment;

- (iii) All cash distributions to be made under this Plan on the First Anniversary Distribution Date to a Creditor shall be made directly by Coalspur by cheque or by wire transfer and (i) in the case of a cheque, will be sent, via regular mail, to such Creditor to the address specified in the Proof of Claim filed by such Creditor or such other address as the Creditor may from time to time notify Coalspur in writing in accordance with Section 11.10 of this Plan or (ii) in the case of a wire transfer, shall be sent to an account specified by the Creditor to Coalspur in writing to the satisfaction of Coalspur.
- (c) Second Anniversary Distribution Date Distributions
  - (i) General Unsecured Creditors with Accepted Claims, who have made the Installment Distribution Election, shall, if the Second Anniversary Condition is met, receive a cash distribution directly from Coalspur (and not from the Monitor or the Plan Implementation Fund) in the amount of the Second Anniversary Payment on the Second Anniversary Distribution Date;
  - (ii) Subject to Section 7.1(d), if the Second Anniversary Condition is not satisfied, Coalspur shall have no obligation whatsoever in relation to the Second Anniversary Payment;
  - (iii) For clarity, where the First Anniversary Condition is not met, but the Second Anniversary Condition is met, General Unsecured Creditors with Accepted Claims, who have made the Installment Distribution Election, shall be entitled only to the Second Anniversary Payment;
  - (iv) All cash distributions to be made under this Plan on the Second Anniversary Distribution Date to a Creditor shall be made directly by Coalspur by cheque or by wire transfer and (i) in the case of a cheque, will be sent, via regular mail, to such Creditor to the address specified in the Proof of Claim filed by such Creditor or such other address as the Creditor may from time to time notify Coalspur in writing in accordance with Section 11.10 of this Plan or (ii) in the case of a wire transfer, shall be sent to an account specified by the Creditor to Coalspur in writing to the satisfaction of Coalspur.
- (d) Notwithstanding any other provision of this Plan, in the event that all amounts outstanding under the CTC ARCA are fully repaid by Coalspur prior to the Second Anniversary Distribution Date, Coalspur shall pay to General Unsecured Creditors with Accepted Claims who have made the Installment Distribution Election the remaining 50% (or whatever percentage remains outstanding as at the date that all amounts outstanding under the CTC ARCA are fully repaid by Coalspur) of their Accepted Claims, such payment to be made within 30 days of the indefeasible payment in full of all amounts outstanding under the CTC ARCA, and which will be accepted in full and final satisfaction of any other entitlement that such General Unsecured Creditors may have under this Plan. Any such cash distribution shall be

made by Coalspur by cheque or by wire transfer and (i) in the case of a cheque, will be sent, via regular mail, to such Creditor to the address specified in the Proof of Claim filed by such Creditor or such other address as the Creditor may from time to time notify Coalspur in writing in accordance with Section 11.10 of this Plan or (ii) in the case of a wire transfer, shall be sent to an account specified by the Creditor to Coalspur in writing to the satisfaction of Coalspur.

## **7.2 Disputed Claims**

An Affected Creditor holding a Disputed Claim shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Disputed Claim becomes an Accepted Claim.

## **7.3 Interest on Affected Claims**

Other than as expressly provided herein, no interest, penalties or costs shall accrue or be paid on an Affected Claim from and after or in respect of the period following the Filing Date and no holder of an Affected Claim will be entitled to any interest in respect of such Affected Claim accruing on or after or in respect of the period following the Filing Date. At the Effective Time, all interest accruing on any Affected Claim after or in respect of the period following the Filing Date shall be fully, finally and irrevocably and forever compromised, released discharged, cancelled, extinguished and barred under this Plan as against Coalspur and the Released Parties and the Plan Implementation Fund.

## **7.4 Distributions in Respect of Transferred Claims**

Coalspur and the Monitor shall not be obligated to deliver any distributions under this Plan to any transferee of the whole of an Affected Claim unless a Proof of Assignment has been delivered to the Monitor no later than the Initial Distribution Record Date.

## **7.5 Undeliverable and Unclaimed Distributions: Initial Distributions**

- (a) Initial Distribution Date Distributions
  - (i) If any Creditor entitled to a distribution pursuant to this Plan cannot be located by the Monitor on the Initial Distribution Date, or if any Initial Distribution delivery or distribution to be made pursuant to Section 7.1(a) of this Plan is returned as undeliverable, such cash shall be set aside by the Monitor and deposited in the Monitor's segregated, interest-bearing account.
  - (ii) If such Creditor is located by the Monitor within six (6) months after the Initial Distribution Date, such cash shall be distributed to such Creditor.
  - (iii) If such Creditor cannot be located by the Monitor or if any Initial Distribution delivery or distribution to be made pursuant to Section 7.1(a) of this Plan is returned as undeliverable, or in the case of any distribution

made by cheque, the cheque remains uncashed, for a period of more than six (6) months after the Initial Distribution Date or the date of delivery or mailing of the cheque, whichever is later, the Claim of any Creditor with respect to such undelivered or unclaimed distribution shall be discharged and forever barred, notwithstanding any Applicable Law to the contrary, and any such cash allocable to the undeliverable or unclaimed distribution shall be released and returned by the Monitor to Coalspur, free and clear of any claims of such Creditor or any other Creditors and their respective successors and assigns. Nothing contained in this Plan shall require Coalspur or the Monitor to attempt to locate any holder of any undeliverable or unclaimed distributions.

(b) First Anniversary Distribution Date Distributions

- (i) If any Creditor entitled to a First Anniversary Payment pursuant to this Plan cannot be located by Coalspur, or if any delivery or distribution to be made pursuant to Section 7.1(b) of this Plan is returned as undeliverable, or in the case of any distribution made by cheque, the cheque remains uncashed, for a period of more than six (6) months after the First Anniversary Distribution Date or the date of delivery or mailing of the cheque, whichever is later, the Claim of any Creditor with respect to such undelivered or unclaimed distribution shall be discharged and forever barred, notwithstanding any Applicable Law to the contrary, and any such cash allocable to the undeliverable or unclaimed distribution shall be retained by Coalspur, free and clear of any claims of such Creditor or any other Creditors and their respective successors and assigns. Nothing contained in this Plan shall require Coalspur to attempt to locate any holder of any undeliverable or unclaimed distributions.

(c) Second Anniversary Distribution Date Distributions

- (i) If any Creditor entitled to a Second Anniversary Payment pursuant to this Plan cannot be located by Coalspur, or if any delivery or distribution to be made pursuant to Section 7.1(c) of this Plan is returned as undeliverable, or in the case of any distribution made by cheque, the cheque remains uncashed, for a period of more than six (6) months after the Second Anniversary Distribution Date or the date of delivery or mailing of the cheque, whichever is later, the Claim of any Creditor with respect to such undelivered or unclaimed distribution shall be discharged and forever barred, notwithstanding any Applicable Law to the contrary, and any such cash allocable to the undeliverable or unclaimed distribution shall be retained by Coalspur, free and clear of any claims of such Creditor or any other Creditors and their respective successors and assigns.

- (d) For clarity, nothing contained in this Plan shall require Coalspur or the Monitor, as applicable, to attempt to locate any holder of any undeliverable or unclaimed distributions.

## **7.6 Tax Matters**

- (a) Any terms and conditions of any Affected Claims which purport to deal with the ordering of or grant of priority of payments of principal, interest, penalties or other amounts shall be deemed to be void and ineffective.
- (b) Notwithstanding any other provision in this Plan, each Creditor that is to receive a distribution or payment pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Authorized Authority on account of such distribution.
- (c) The Monitor shall not be liable in any way for any failure to deduct, withhold and remit any Tax obligations from any distributions payable hereunder to a Creditor or to any Person on behalf of any Creditor.

## **ARTICLE 8 CONDITIONS OF PLAN IMPLEMENTATION**

### **8.1 Sanction Order**

If this Plan is approved by the Required Majority, Coalspur shall bring an application before the CCAA Court for the Sanction Order, which Sanction Order shall provide (unless otherwise agreed to by Coalspur and the Monitor), among other things, that:

- (a) (i) this Plan has been approved by the Required Majority in conformity with the CCAA; (ii) Coalspur acted in good faith and complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the CCAA Court is satisfied that Coalspur has not done or purported to do anything that is not authorized by the CCAA; and (iv) this Plan and the transactions contemplated hereby (including the Restructuring Transactions) are fair and reasonable;
- (b) this Plan (including the compromises, arrangements, releases and the transactions contemplated herein, including the Restructuring Transactions) shall be sanctioned and approved pursuant to Section 6 of the CCAA and will be binding and effective as herein set out on Coalspur, all Creditors and all other Persons as provided for in this Plan or the Sanction Order and, at the Effective Time, will be effective and enure to the benefit of Coalspur, the Creditors and all other Persons as provided in this Plan or the Sanction Order;
- (c) authorizing and approving the steps to be taken under this Plan, including the Restructuring Transactions, on the date they are deemed to occur and be effected



by this Plan, and in the sequential order contemplated by Schedule "A" to this Plan on the Effective Date;

- (d) subject to the performance by Coalspur of its obligations under this Plan, and except to the extent expressly contemplated by this Plan or the Sanction Order, all Continuing Contracts that have not expired or been terminated prior to the Effective Date pursuant to their terms or by agreement will be and shall remain in full force and effect as at the Effective Date, unamended except as they may have been amended by agreement of the parties thereto subsequent to the Filing Date, and no Person who is a party to any such agreement shall, following the Effective Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such agreement, by reason of:
  - (i) any defaults or events of default arising as a result of the insolvency of Coalspur prior to the Effective Date;
  - (ii) the fact that Coalspur has sought or obtained relief under the CCAA or that this Plan has been implemented by Coalspur;
  - (iii) the effect on Coalspur of the completion of any of the transactions contemplated by this Plan, including the Restructuring Transactions;
  - (iv) any compromises or arrangements effected pursuant to this Plan; or
  - (v) any other event(s) which occurred on or prior to the Effective Date which would have entitled any Person thereto to enforce those rights and remedies, subject to any express provisions to the contrary in any agreements entered into with Coalspur after the Filing Date;
- (e) all Accepted Claims and Disallowed Claims determined in accordance with the Claims Process Order are final and binding on Coalspur and all Creditors;
- (f) upon the Effective Date, all Secured Claims and any security underlying such Secured Claims shall be irrevocably, fully and finally discharged as against Coalspur and all of Coalspur's business, assets and undertaking and, in the case of Disputed Secured Claims, to the extent such claims are determined to constitute Accepted Secured Claims after the Initial Distribution Date, Coalspur shall be responsible to pay such Accepted Secured Claims in accordance with such determination and in exchange for a discharge of any underlying security;
- (g) no meetings or votes of Persons holding Equity Claims are required in connection with this Plan;
- (h) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgments, or

other remedies or recoveries with respect to any Claim released, discharged or terminated pursuant to this Plan shall be permanently enjoined;

- (i) the releases effected by this Plan are approved, and declared to be binding and effective as of the Effective Date upon all Creditors, Coalspur, the Monitor and all other Persons affected by this Plan and shall enure to the benefit of all such Persons;
- (j) any Claims which have been preserved in accordance with the Claims Process Order against Directors that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA will be limited in recovery to the proceeds of any Directors' insurance policies;
- (k) except for the Administration Charge which shall continue in accordance with the Amended and Restated Initial Order, all CCAA Charges established by the Initial Order or any other Order, shall be terminated, released and discharged effective on the Effective Date;
- (l) upon receipt from Coalspur, the Monitor shall hold and distribute funds from the Plan Implementation Fund in accordance with this Plan;
- (m) any claims for which a Proof of Claim has not been filed, disputed or appealed by the dates required by the Claims Process Order shall be forever barred and extinguished in accordance with the Claims Process Order;
- (n) all Liens of Affected Creditors, including all security registrations in favour of any Affected Creditor, are discharged and extinguished, and Coalspur or its counsel shall be authorized and permitted to file discharges and full terminations of all Lien filings (whether pursuant to personal property security legislation or otherwise) against Coalspur in any jurisdiction without any further action or consent required whatsoever; and
- (o) the Monitor is authorized to perform its obligations under this Plan including on and after the Effective Date.

## **8.2 Conditions of Plan Implementation**

The implementation of this Plan shall be conditional upon the fulfillment or waiver, where applicable, of the following conditions on or before the Effective Date or the date specified therefor:

- (a) this Plan shall have been approved by the Required Majority;
- (b) the Sanction Order shall have been granted by the CCAA Court in a form acceptable to Coalspur and the Monitor, which shall be in full force and effect and not reversed, stayed, varied, modified or amended;

- (c) the CTC ARCA and all related agreements and other documents contemplated thereunder shall be in form and substance acceptable to Coalspur, CTC and the other parties thereto, each acting reasonably, and shall have been executed by the parties and become effective, subject only to the implementation of the Plan;
- (d) the Monitor shall have received from Coalspur the funds needed to establish and shall have established the Plan Implementation Fund;
- (e) no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the compromises, arrangements, releases and the transactions, including the Restructuring Transactions, contemplated by this Plan, and no proceedings therefor shall have been commenced before any court or governmental or regulatory authority;
- (f) all necessary corporate action and proceedings of Coalspur shall have been taken to approve this Plan and to enable Coalspur to execute, deliver and perform its obligations under the agreements, documents and other instruments to be executed and delivered by it pursuant to this Plan; and
- (g) all agreements, resolutions, documents and other instruments, which are reasonably necessary to be executed and delivered by Coalspur, in order to implement this Plan or perform Coalspur's obligations under this Plan or the Sanction Order, shall have been executed and delivered.

If the conditions in this Section 8.2 have not been satisfied by the Plan Outside Date (or such later date as Coalspur and the Monitor agree), this Plan shall automatically terminate, in which case Coalspur shall not be under any further obligation to implement this Plan.

### **8.3 Monitor's Certificate**

Upon satisfaction of the conditions set out in Section 8.2, Coalspur shall give written notice to the Monitor that the conditions set out in Section 8.2 have been satisfied, and the Monitor shall, as soon as possible following receipt of such written notice, deliver to Coalspur a certificate, in substantially the form as the certificate attached as Schedule "B" to this Plan (the "**Monitor's Certificate**"), which states that all conditions precedent set out in Section 8.2 have been satisfied, and shall specify therein the date of the delivery thereof. On or forthwith following the Effective Date, the Monitor shall file the Monitor's Certificate with the CCAA Court and shall post a copy of the same on the Monitor's Website and the CaseLines Filesite.

## **ARTICLE 9 AMENDMENTS TO THE PLAN**

### **9.1 Amendments to Plan Prior to Approval**

Coalspur, in consultation with the Monitor, reserves the right to vary, modify, amend or supplement this Plan by way of a supplementary or amended and restated plan or plans of compromise or arrangement or both filed with the CCAA Court at any time or from time to time

prior to the commencement of the Creditors' Meeting. Any such variation, modification, amendment or supplement shall be posted on the Monitor's Website and the CaseLines Filesite. Creditors are advised to check the Monitor's Website and the CaseLines Filesite regularly and set their respective permissions on the CaseLines Filesite to receive e-mail notifications of any updates to the CaseLines Filesite. Creditors who wish to receive another form of notice of any variation, modification, amendment or supplement to the Plan should contact the Monitor in the manner set out in Section 11.10 of this Plan. Creditors in attendance at the Creditors' Meeting will also be advised of any such variation, modification, amendment or supplement to the Plan.

In addition, Coalspur, in consultation with the Monitor, may propose a variation or modification of, or amendment or supplement to, this Plan during the Creditors' Meeting, provided that notice of such variation, modification, amendment or supplement is given to all Creditors entitled to vote present in person or by proxy at the applicable Creditors' Meeting prior to the vote being taken at such Creditors' Meeting, in which case any such variation, modification, amendment or supplement shall, for all purposes, be deemed to be part of and incorporated into this Plan. Any variation, amendment, modification or supplement at a Creditors' Meeting will be promptly posted on the Monitor's Website and the CaseLines Filesite, and filed with the CCAA Court as soon as practicable following the Creditors' Meeting.

## **9.2 Amendments to Plan Following Approval**

After the Creditors' Meeting (and both prior to and subsequent to obtaining the Sanction Order), Coalspur, in consultation with the Monitor, may at any time and from time to time vary, amend, modify or supplement this Plan without the need for obtaining an Order or providing notice to the Creditors, if Coalspur, acting reasonably and in good faith, determines that such variation, amendment, modification or supplement would not be materially prejudicial to the interests of any of the Creditors under this Plan or is necessary in order to give effect to the substance of this Plan or the Sanction Order.

# **ARTICLE 10 EFFECT OF THE PLAN**

## **10.1 Implementation**

At the Effective Time, subject to the satisfaction or waiver of the conditions contained in Section 8.2 of this Plan, this Plan shall be implemented by Coalspur and shall be binding upon all Persons in accordance with the terms of this Plan and the Sanction Order.

## **10.2 Effect of the Plan Generally**

At the Effective Time, the payment, compromise or satisfaction of any Affected Claims under this Plan shall be binding upon all Persons, his, her or its heirs, executors, administrators, legal or personal representatives, successors and assigns, as the case may be, for all purposes and this Plan will constitute: (a) a full, final and absolute settlement of all rights of any Persons against Coalspur and the Directors and Officers in respect of the Affected Claims and Equity Claims; and (b) an absolute release and discharge of all indebtedness, liabilities and obligations of or in respect of the Affected Claims and Equity Claims against Coalspur and the Directors and Officers and all Liens

granted by Coalspur in respect thereof, including any interest, costs, fees or penalties accruing thereon whether before or after the Filing Date.

### **10.3 Compromise Effective for All Purposes**

No Person who has a Claim as a guarantor, surety, indemnitor or similar covenant in respect of any Claim which is compromised under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim which is compromised or released under this Plan shall be entitled to any greater rights than the Creditor whose Claim was compromised under this Plan. Accordingly, the payment, compromise or other satisfaction of any Claim under this Plan, if sanctioned and approved by the CCAA Court, shall be binding upon such Creditor, his, her or its heirs, executors, administrators, successors and assigns for all purposes and, to such extent, shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, surety, indemnitor, director, joint covenantor, principal or otherwise.

### **10.4 Release of Coalspur and Other Released Parties**

At the Effective Time, for good and valuable consideration, including the distributions to be made pursuant to the Plan, every Creditor, Affected Creditor or other Person, on the Creditor's, Affected Creditor's or other Person's own behalf and on behalf of the Creditor's, Affected Creditor's or other Person's respective affiliates, present and former officers, directors, managers, employees, associated individuals, auditors, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitors, agents, dependents, heirs, executors, administrators, representatives, successors and assigns, as applicable, hereby is deemed to and does fully, finally, irrevocably and unconditionally release and forever discharge each of:

- (i) Coalspur and its affiliates, representatives, employees or agents;
- (ii) CTC and its directors, managers, officers, current or former alleged fiduciaries, affiliates, representatives, employees or agents;
- (iii) VER and VEH and their respective directors, managers, officers, current or former alleged fiduciaries, affiliates, representatives, employees or agents;
- (iv) the Directors, the Officers and any current or former alleged fiduciary of Coalspur (whether acting as a director, officer, or other responsible party);
- (v) the legal and financial advisors to Coalspur, CTC, VEH, VER and their respective partners, representatives, employees or agents; and
- (vi) FTI Consulting Canada Inc. and its current and former legal counsel, representatives, directors, officers, affiliates, member companies, related companies, administrators, employees, and agents,

(collectively the persons referred to in (i) to (vi) above, being, the “**Released Parties**” and individually, a “**Released Party**”),

of and from any and all Claims, and, without limitation, any and all past, present and future claims, causes of action, debts, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, accounts, covenants, damages, expenses, fees (including solicitors' fees or liens), costs, compensation, or causes of action of whatsoever kind or nature, whether foreseen or unforeseen, known or unknown, matured or unmatured, direct, indirect or derivative, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any act, inaction or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time relating to or otherwise in connection with (a) the business and operations of Coalspur, (b) the property and assets of Coalspur, (c) the Affected Claims, the Plan or the CCAA Proceedings, (d) the Equity Claims; (e) a contract that has been restructured, terminated, repudiated, disclaimed or resiliated prior to the Disclaimer Deadline in accordance with the CCAA, (f) any Restructuring Transaction in respect of which the Released Parties had any role, whether in their capacity as officers, managers or directors of any Released Party, or in any other capacity, (g) liabilities of the directors, managers and officers of any Released Party and any alleged fiduciary or other duty, including any and all Claims that may be made against such directors, managers or officers where by law such directors, managers or officers may be liable in their capacity as directors or officers, or (h) any Claim that has been barred or extinguished by the Claims Process Order (all collectively, the "**Released Claims**"); and at the Effective Time Coalspur is deemed to and does fully, finally, irrevocably and unconditionally release and forever discharge every other Released Party of and from any and all Released Claims.

Notwithstanding the foregoing, nothing in this Section 10.4 shall release or discharge:

- (a) Coalspur from any Unaffected Claim that has not been paid in full under this Plan to the extent of such non-payment;
- (b) a Released Party from its obligations under this Plan;
- (c) a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed gross negligence, willful misconduct, criminal or fraudulent acts in relation to a Released Claim for which it is responsible at law;
- (d) Coalspur from such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA or the enforcement of a payment ordered by such regulatory body after the Effective Date based in part on facts that existed, or that relate in part to a time period, prior to the Effective Date solely to the extent that such facts or occurrence are continuing after the Effective Date and the enforcement of such payment did not constitute a claim provable in bankruptcy prior to the Effective Date;
- (e) the Directors from any Claims which have been filed and preserved in accordance with the Claims Process Order that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA; or

- (f) Coalspur from any Disputed Secured Claim or Disputed General Unsecured Creditor Claim which has not become an Accepted Claim as of the Effective Time.

### **10.5 Injunction**

Subject to the exceptions stated in sub-paragraphs (a) through (e) of Section 10.4 of this Plan, all Persons, along with their respective affiliates, present and former officers, directors, managers, employees, associated individuals, auditors, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitors, agents, dependents, heirs, executors, administrators, representatives, successors and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to the Affected Claims, the Equity Claims and the Released Claims, from:

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any of the Released Parties or their property;
- (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property;
- (c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit or demand (including by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation) or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim in any manner or forum, against one or more of the Released Parties;
- (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Lien or encumbrance of any kind; or
- (e) taking any action to interfere with the implementation or consummation of the Plan;

and any such proceedings will be deemed to have no further effect against Coalspur or any of its assets and will be released, discharged or vacated without cost to Coalspur. All Persons shall cooperate with Coalspur and the Monitor in discharging any Lien and related registration and discontinuing any proceeding filed or commenced prior to the Effective Time, as Coalspur or the Monitor may reasonably request. Coalspur may apply to the CCAA Court to obtain a discharge or dismissal of any such proceedings if necessary without notice to any Person.

### **10.6 Knowledge of Claims**

Each Person to which Section 10.4 applies shall be deemed to have granted the releases set out in Section 10.4 notwithstanding that it may hereafter discover facts in addition to, or different from,

those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any Applicable Law which would limit the effect of such releases to those Claims or causes of action known or suspected to exist at the Effective Time.

### **10.7 Waiver of Defaults**

At the Effective Time, and subject to any express provisions to the contrary in any amending agreement entered into with Coalspur after the Filing Date, all Persons shall be deemed to have waived any and all defaults of Coalspur then existing or previously committed, caused by any of the provisions hereof, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in every contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease, personal property lease or other agreement, written or oral, and any amendments or supplements thereto, existing between such Person and Coalspur. Any and all notices of default, acceleration of payments and demands for payments under any instrument, or other notices, including any notices of intention to proceed to enforce security, arising from any of such aforesaid defaults shall be deemed to have been rescinded and withdrawn. For greater certainty, nothing in this Section shall waive any obligations of Coalspur in respect of any Unaffected Claim.

### **10.8 Consents and Waivers**

At the Effective Time, all Creditors shall be deemed to have consented and to have agreed to all of the provisions of this Plan in its entirety. Each Creditor shall be deemed to have (a) granted, and executed and delivered to Coalspur all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety and (b) agreed that if any conflict exists between the provisions of any agreement or arrangement, written or oral, existing between Coalspur and such Creditor and the provisions of this Plan, then the provisions of this Plan shall govern and the provisions of such other agreement or arrangement shall be amended accordingly.

### **10.9 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **10.10 Preferential Transactions**

Sections 95 to 101 of the BIA and any Applicable Law relating to preferences, settlements, fraudulent conveyances or transfers at undervalue shall not apply in any respect, including, without limitation, to any dealings prior to the Filing Date, to this Plan, to any payments or distributions made in connection with the restructuring and recapitalization of Coalspur, whether made before or after the Filing Date, or to any and all transactions contemplated by and to be implemented pursuant to this Plan.



### **10.11 Compromise of Claims under Section 19(2) of the CCAA**

On the Effective Date, the following Claims which have been preserved in accordance with the Claims Process Order shall be compromised under this Plan, including pursuant to the terms of this Article 10 and shall be deemed to be a Released Claim pursuant to Section 10.4 of this Plan:

- (a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;
- (b) any award of damages by a court in civil proceedings in respect of
  - (i) bodily harm intentionally inflicted, or sexual assault, or
  - (ii) wrongful death resulting from an act referred to in subparagraph (i);
- (c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;
- (d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of Coalspur that arises from an Equity Claim; or
- (e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d),

provided that this Section shall only apply to a Person who voted (in person or by proxy) in favour of this Plan at the Creditors' Meeting.

## **ARTICLE 11 GENERAL PROVISIONS**

### **11.1 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan may be deemed to occur without any additional act or formality other than as may be expressly set out herein, each of the Persons affected hereto shall make, do, and execute or cause to be made, done or executed all such further acts, deeds, agreements, assignments, transfers, conveyances, discharges, assurances, instruments, documents, elections, consents or filings as may be reasonably required by Coalspur in order to implement this Plan.

### **11.2 Set-Off**

The law of set-off applies to all Claims made against Coalspur and to all actions instituted by it for the recovery of debts due to Coalspur in the same manner and to the same extent as if Coalspur was plaintiff or defendant, as the case may be.

### **11.3 Paramourty**

Without limiting any other provision hereof, from and after the Effective Date, in the event of any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed, or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease, personal property lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between Coalspur and any other Persons affected by this Plan, the terms, conditions and provisions of this Plan shall govern and shall take precedence and priority.

### **11.4 Revocation, Withdrawal, or Non-Consummation**

Coalspur reserves the right to revoke or withdraw this Plan at any time prior to the Effective Time and to file a subsequent plan or plans of compromise or arrangement. If Coalspur revokes or withdraws this Plan, or if the Sanction Order is not issued, (a) this Plan shall be null and void in all respects, (b) any Affected Claim, any settlement or compromise embodied in this Plan (including the fixing or limiting of any Affected Claim to an amount certain), and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (c) nothing contained in this Plan, and no action taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Affected Claims by or against Coalspur or any Person; (ii) prejudice in any manner the rights of Coalspur or any Person in any further proceedings involving Coalspur, or (iii) constitute an admission of any sort by Coalspur or any Person. For clarity, in the event that Coalspur revokes or withdraws this Plan, the claims process approved by the Claims Process Order will be unaffected and will remain in full force and effect.

### **11.5 Preservation of Rights of Action**

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, following the Effective Time, Coalspur will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that Coalspur may hold against any Person or entity, without further approval of the CCAA Court.

### **11.6 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings with respect to Coalspur and not in its personal or corporate capacity. The Monitor will not be responsible or liable in its personal or corporate capacity for carrying out its obligations under the Plan or the Sanction Order, and the Monitor is not responsible or liable for any obligations of Coalspur whatsoever. The Monitor will have the powers and protections granted to it by this Plan, by the CCAA and by any Order, including the Initial Order, the Claims Process Order, and the Creditors' Meeting Order. Both prior to and after the Effective Date, Coalspur shall provide such assistance as reasonably required by the Monitor in connection with the completion of the Monitor's duties and obligations under this Plan.

### **11.7 Reliance Upon Consent**

For the purposes of this Plan, where a matter shall have been agreed, waived, consented to or approved by Coalspur, or a matter must be satisfactory or acceptable to Coalspur, any Person shall be entitled to rely on written confirmation from Osler that Coalspur has agreed, waived, consented to or approved a particular matter.

### **11.8 Obligation to Pay Only to the Extent Funds are Available**

Notwithstanding any other provision of this Plan, and without in any way limiting the protections for the Monitor set out in the Orders or the CCAA, the Monitor shall have no obligation to make any payment contemplated under this Plan, and nothing shall be construed as obligating the Monitor to make any such payment, unless and until the Monitor is in receipt of funds adequate to effect any such payment in full.

### **11.9 Monitor shall have no Personal Liability**

The Monitor shall not incur any liability whatsoever, including in respect of (a) any amount paid, required to be paid or not paid pursuant to this Plan, (b) any costs or expenses incurred in connection with, in relation to or as a result of any payment made, required to be made or not made, or (c) any deficiency in the Plan Implementation Fund or any reserves established pursuant to this Plan.

### **11.10 Notices**

Any notice or communication to be delivered hereunder will be in writing and will reference this Plan and may, subject to as hereinafter provided, be made or given by mail, personal delivery or by e-mail transmission addressed to the respective parties as follows:

- (a) if to Coalspur:

Coalspur Mines (Operations) Ltd.  
3825 PGA Blvd., Suite 1001  
Palm Beach Gardens, FL 33410  
Attn: Michael J. Beyer and Jim Murphy  
E-mails: mbeyer@clinegrp.com  
jmurphy@clinegrp.com

With a copy to (which shall not constitute notice):

Osler, Hoskin & Harcourt LLP  
Brookfield Place, Suite 2700  
225 6 Ave SW

Calgary, AB T2P 1N2  
Attention: Randal Van de Mosselaer / Kathryn Esaw

E-mail: [rvandemosselaer@osler.com](mailto:rvandemosselaer@osler.com) / [kesaw@osler.com](mailto:kesaw@osler.com)

(b) if to the Monitor:

FTI Consulting Canada Inc.  
520 Fifth Avenue S.W.  
Suite 1610  
Calgary, AB T2P 3R7  
Attention: Dustin Olver / Lindsay Shierman

E-mail: [dustin.olver@fitconsulting.com](mailto:dustin.olver@fitconsulting.com) / [Lindsay.shierman@fticonsulting.com](mailto:Lindsay.shierman@fticonsulting.com)

With a copy to (which shall not constitute notice):

Blake, Cassels & Graydon LLP  
855 - 2nd Street S.W.  
Suite 3500, Bankers Hall East Tower  
Calgary, Alberta, T2P 4J8  
Attention: Kelly Bourassa / James Reid

E-mail: [kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com) / [james.reid@blakes.com](mailto:james.reid@blakes.com)

(c) if to a Creditor:

To the address specified in the Proof of Claim filed by such Creditor or such other address as the Creditor may from time to time notify the Monitor in accordance with this Section,

or to such other address as any party may from time to time notify the others in accordance with this Section. All such notices and communications which are delivered will be deemed to have been received on the date of delivery. All such notices and communications which are faxed or e-mailed will be deemed to be received on the date faxed or e-mailed if sent before 5:00 p.m. (Calgary time) on a Business Day and otherwise will be deemed to be received on the Business Day next following the day upon which such fax or e-mail was sent. Any notice or other communication sent by mail will be deemed to have been received on the third Business Day after the date of mailing within Alberta, on the fifth Business Day after the date of mailing within Canada, and the tenth Business Day after mailing internationally.

If during any period during which notices or other communications are being given pursuant to this Plan a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further order of the CCAA Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective

if given by courier, personal delivery or electronic or digital transmission in accordance with this Plan.

**SCHEDULE “A”**  
**RESTRUCTURING TRANSACTIONS**

Commencing at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected in five minute increments (unless otherwise indicated) and at the times set out in this section (or in such other manner or order or at such other time or times as Coalspur may determine in consultation with the Monitor), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

- (a) Coalspur, CTC and the other parties thereto shall execute and deliver the CTC ARCA and all documents and agreements required thereunder.
- (b) the Monitor shall make the payments and distributions contemplated by the Plan commencing on, or as soon as practicable following, the Effective Date in accordance with the terms of the Plan;
- (c) except for the Administration Charge which shall continue in accordance with the Amended and Restated Initial Order, the CCAA Charges shall be deemed to be released as against the assets of Coalspur and the Plan Implementation Fund;
- (d) the Affected Creditors shall be entitled to the treatment set out in the Plan in full and final settlement of their Affected Claims, and:
  - (i) the Affected Claims shall, and shall be deemed to be, fully, finally and irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred and such Affected Creditors shall have no further right, title or interest in and to its Affected Claim;
  - (ii) no Person who has a claim under any guarantee, surety, indemnity or similar covenant in respect of any Affected Claim or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of an Affected Claim will be entitled to any greater rights as against Coalspur than the Person whose Affected Claim is compromised under the Plan;
  - (iii) all debentures, notes, certificates, indentures, guarantees, agreements, invoices and other instruments evidencing Affected Claims (and all guarantees associated with each of the foregoing), will not entitle any holder to any compensation or participation other than as expressly provided for in the Plan and will be deemed cancelled and extinguished;
- (e) all rights to indemnification or exculpation now existing in favour of present and former Directors of Coalspur shall survive the completion of the Plan and shall continue in full force and effect in accordance with their terms for a period of not less than six (6) years from the Effective Date; and

- (f) the releases and injunctions referred to in Article 11 of the Plan shall become effective, and the Released Claim shall be deemed to be, fully, finally, irrevocably and forever compromised, settled, released, discharged, extinguished, cancelled and barred and Coalspur shall be fully, finally and irrevocably released from any and all claims, liabilities or obligations of any kind to an Affected Creditor, Creditor or Person, and the Affected Creditors shall only have rights thereafter as against the General Unsecured Creditor Cash Fund held by the Monitor.

**SCHEDULE “B”  
FORM OF MONITOR’S CERTIFICATE**

COURT FILE NUMBER 2101-05019

COURT COURT OF QUEEN’S BENCH OF  
ALBERTA

JUDICIAL CENTRE CALGARY



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

**AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF COALSPUR MINES (OPERATIONS)  
LTD.**

DOCUMENT **MONITOR’S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Blake, Cassels & Graydon LLP  
855 - 2nd Street S.W.  
Suite 3500, Bankers Hall East Tower  
Calgary, Alberta, T2P 4J8  
Attention: Kelly Bourassa / James Reid

**RECITALS**

- A. Pursuant to the Initial Order of this Honourable Court dated April 26, 2021 as amended, Coalspur Mines (Operations) Ltd. sought and obtained protection from its creditors under the *Companies’ Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended;
- B. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as the monitor of Coalspur (the “**Monitor**”) with the powers, duties and obligations set out in the Initial Order;
- C. Coalspur has filed a Plan of Compromise and Arrangement under the CCAA dated November 29, 2021, which Plan has been approved by the Required Majority of Creditors in the General Unsecured Creditors Class and the Court; and



D. Unless otherwise indicated herein, initially capitalized terms used herein have the meaning set out in the Plan.

THE MONITOR HEREBY CERTIFIES the following:

1. The Monitor has received written confirmation from Coalspur, in form and substance satisfactory to the Monitor, that the conditions to the implementation of the Plan set out in Section 8.2 of the Plan have been satisfied in accordance with the Plan.

This Certificate was delivered by the Monitor to Coalspur on \_\_\_\_\_  
[Date] at \_\_\_\_\_ [a.m. / p.m. Calgary Time].

**FTI CONSULTING CANADA INC**, in its capacity as the Court-appointed Monitor of Coalspur and not in its personal or corporate capacity

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

**SCHEDULE “C”**  
**FORM OF DISTRIBUTION ELECTION NOTICE**  
**DISTRIBUTION ELECTION NOTICE**

**TO: FTI CONSULTING CANADA INC., in its capacity as Monitor of Coalspur Mines (Operations) Ltd. (the “Monitor”)**

**AND TO: Coalspur Mines (Operations) Ltd. (“Coalspur”)**

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Reference is made to the Plan of Compromise and Arrangement of Coalspur dated November 29, 2021 made pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (as may be amended, restated or supplemented from time to time, the “**CCAA Plan**”).

All capitalized terms used but not defined herein shall have the meanings given to such terms in the CCAA Plan.

The undersigned is a General Unsecured Creditor and has an Accepted Claim against Coalspur in excess of \$15,000 being, in particular, the amount of \$\_\_\_\_\_.  
**[complete]**

Pursuant to Section 5.2 of the CCAA Plan, the undersigned, by checking the applicable box, hereby makes a Distribution Election whereby it elects to receive, in full and final satisfaction of its entire Accepted Claim against Coalspur, **one** of the following:

- the amount of \$15,000 (the “**Convenience Class Distribution Election**”); or
- the amount of 75% of the undersigned’s Accepted Claim (the “**75% Distribution Election**”); or
- the amount of:
  - 50% of the undersigned’s Accepted Claim payable in cash on the Initial Distribution Date;
  - 25% of the undersigned’s Accepted Claim payable in cash on the First Anniversary Distribution Date, provided that the First Anniversary Condition has been satisfied or the amounts owing under the CTC ARCA are repaid; and
  - 25% of the undersigned’s Accepted Claim payable in cash on the Second Anniversary Distribution Date, provided that the Second Anniversary Condition has been satisfied or the amounts owing under the CTC ARCA are repaid (the “**Installment Distribution Election**”);

and hereby notifies Coalspur and the Monitor of such election.

The undersigned acknowledges that, in delivering this election, it is making a Distribution Election in respect of all and not part of its Accepted Claim.

**The undersigned acknowledges that if the undersigned selects Convenience Class Distribution Election, the undersigned will be deemed to vote in favour of the CCAA Plan.**

If the undersigned does not deliver a valid Distribution Election Notice prior to the Distribution Election Deadline, or this Distribution Election Notice does not indicate a Distribution Election, or more than one Distribution Election is recorded, the undersigned will be deemed to have made the 75% Distribution Election and shall be required to attend at the Creditors' Meeting of the General Unsecured Creditor Class to cast its vote on the CCAA Plan.

The undersigned acknowledges that this election will be final and irrevocable once delivered to the Monitor.

**[Signature page follows]**

DATED this \_\_\_\_ day of \_\_\_\_\_, 202 \_\_\_\_.

**GENERAL UNSECURED CREDITOR'S SIGNATURE:**

\_\_\_\_\_  
(Print Legal Name of General Unsecured  
Creditor)

\_\_\_\_\_  
(Print Legal Name of Assignee, if applicable)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
(Signature of the General Unsecured  
Creditor/Assignee or an Authorized Signing  
Officer of the General Unsecured  
Creditor/Assignee)

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
(Print Name and Title of Authorized Signing  
Officer of the General Unsecured  
Creditor/Assignee, if applicable)

\_\_\_\_\_  
(Mailing Address of the General Unsecured Creditor/Assignee)

\_\_\_\_\_  
(Telephone Number of the General Unsecured  
Creditor/Assignee or Authorized Signing  
Officer of the General Unsecured  
Creditor/Assignee)

\_\_\_\_\_  
(Email Address of the General Unsecured  
Creditor/Assignee or Authorized Signing Officer  
of the General Unsecured Creditor/Assignee)

**Note: To be valid, this Distribution Election Notice must be received by the Monitor by mail, courier, email or facsimile at the address below before 5:00 p.m. (Calgary time) on January 4, 2022, or two (2) Business Days prior to any adjournment, postponement or rescheduling of the Creditors' Meeting.**

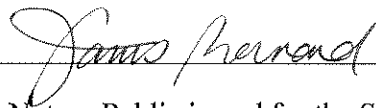
**FTI Consulting Canada Inc.  
1610, 520 5th Avenue  
Calgary, AB T2P 3R7  
Attention: Hailey Liu  
Facsimile: 403-232-6116  
E-mail: Coalspur@fticonsulting.com**

**SCHEDULE “D”**  
**ACCEPTED SECURED CLAIMS**

1. Claim of SMS Equipment Inc. in the amount of \$568,750
2. Claim of SMS Equipment Inc. in the amount of \$3,798,473.00
3. Claim of Finning (Canada) a division of Finning International Inc. in the amount of \$3,949,434
4. Claim of Grimshaw Trucking LP in the amount of \$93,155

This is **Confidential Exhibit "B"** to the Affidavit of Michael Beyer

sworn before me this 29<sup>th</sup> day of November 2021.

A handwritten signature in cursive script, reading "James Hernandez", is written over a horizontal line.

Notary Public in and for the State of Florida

**Confidential Exhibit “B”**