

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 **ORDER**  
**(Creditors' Virtual Meeting Order)**

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File Number: 1217428

DATE ON WHICH ORDER WAS PRONOUNCED: December 7, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr Justice K. Feth

LOCATION OF HEARING: Edmonton, Alberta (BY WEBEX)

UPON the application of **COALSPUR MINES (OPERATIONS) LTD.** (the "**Applicant**"), filed November 29, 2021 for an Order, among other things: (i) accepting the filing of the Applicant's Plan of Compromise and Arrangement, dated November 29, 2021, attached hereto as Schedule "1", as it may be amended, restated, supplemented or modified (the "**CCAA Plan**"); (ii) authorizing the classification of creditors for purposes of voting on the CCAA Plan;

(iii) authorizing and directing the Applicant to call, hold and conduct a meeting of Affected Creditors to vote on a resolution to approve the CCAA Plan; (iv) authorizing and directing the mailing and distribution of the General Unsecured Creditor Meeting Materials; (v) approving the procedures to be followed with respect to the virtual Creditors' Meeting; and (vi) setting a date for the hearing of the Applicant's application for a Sanction Order; **AND UPON** reviewing the Seventh Affidavit of Michael Beyer, sworn November 29, 2021; **AND UPON** reading the Seventh Report of FTI Consulting Canada Inc. in its capacity as Monitor of the Applicant (the "**Monitor**"); **AND UPON** hearing from counsel for the Applicant, the Monitor, and such other parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **DEFINED TERMS**

1. All capitalized terms used but not otherwise defined herein having the meanings ascribed to such terms in the CCAA Plan.

#### **THE CCAA PLAN**

2. The CCAA Plan is hereby accepted for filing and the Applicant is hereby authorized and directed to call the Creditors' Meeting for the purpose of having the Affected Creditors vote on the CCAA Plan in the manner set out herein.

3. The Applicant 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 shall be posted on the Monitor's Website and the CaseLines Filesite; and

- (b) during the Creditors' Meeting, notice of any Plan Modification shall 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.

4. After the Creditors' Meeting (and both prior to and subsequent to the obtaining of any Sanction Order), the Applicant may at any time and from time to time, in consultation with the Monitor, effect a Plan Modification (a) pursuant to an Order of the Court, or (b) where such Plan Modification concerns a matter which, in the opinion of the Applicant, 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 Monitor shall forthwith post on the Monitor's Website and the CaseLines Filesite any such Plan Modification.

#### **FORMS OF DOCUMENTS**

5. The (i) Notice to Affected Creditors substantially in the form attached as Schedule "2" hereto (the "**Notice to Affected Creditors**"), (ii) General Unsecured Creditor Proxy substantially in the form attached as Schedule "3" hereto (the "**General Unsecured Creditor Proxy**"), and (iv) Distribution Election Notice substantially in the form attached as Schedule "4" hereto and at Schedule "C" to the CCAA Plan (the "**Distribution Election Notice**"), as each may be amended, supplemented or restated, are hereby approved and the Applicant, with the consent of the Monitor, is hereby authorized to make changes to such forms as may be necessary to conform the contents thereof to the terms of the CCAA Plan or this Creditors' Meeting Order.

## **CLASSIFICATION OF CREDITORS**

6. For the purposes of considering and voting on the CCAA Plan, there will be one (1) class of Creditors: the General Unsecured Creditor Class.

## **NOTICE TO GENERAL UNSECURED CREDITORS**

7. The Monitor shall, within two (2) Business Days following the date of the granting of this Creditors' Meeting Order, post electronic copies of meeting materials (the "**General Unsecured Creditor Meeting Materials**") comprising the following on the Monitor's Website and the CaseLines Filesite:

- (a) the Notice to Affected Creditors;
- (b) this Creditors' Meeting Order;
- (c) a blank form of General Unsecured Creditor Proxy, to be submitted to the Monitor by any General Unsecured Creditor who wishes to vote at the Creditors' Meeting, whether in person or by proxy; and
- (d) the Distribution Election Notice.

8. The Monitor shall, not later than the fifth (5<sup>th</sup>) Business Day following the date of the granting of this 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).

## **MONITOR'S REPORT ON PLAN**

9. No later than seven (7) Business Days before the date of the Creditors' Meeting, the Monitor shall serve a report regarding the CCAA Plan pursuant to section 23(1)(d.1) of the CCAA by posting such report on the Monitor's Website and the CaseLines Filesite.

## **CONDUCT AT CREDITOR'S MEETING**

10. The Applicant is hereby authorized to call, hold and conduct the Creditors' Meeting of the General Unsecured Creditor Class on January 6, 2022 at 1:00 p.m. (Calgary time) for the purpose of considering and if deemed advisable by the General Unsecured Creditor Class, voting in favour of, with or without variation, the CCAA Plan.

11. In light of the COVID-19 pandemic, the Applicant is authorized to hold the Creditors' Meeting entirely by electronic means.

12. A representative of the Monitor shall act as chairperson (the "**Chairperson**") of the Creditors' Meeting and, subject to any further Order of this Court, shall decide all matters relating to the conduct of the Creditors' Meeting.

13. The Monitor may appoint one or more scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at the Creditors' Meeting. One or more people designated by the Monitor shall act as secretary at the Creditors' Meeting.

14. The quorum required at the Creditors' Meeting shall be at least one General Unsecured Creditor with an Accepted Claim, present at the Creditors' Meeting in person (by electronic means) or by proxy.

15. 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 the Applicant and the Monitor. In the event of any such adjournment, the Applicant and the Monitor will not be required to deliver any notice of adjournment of the Creditors' Meeting or adjourned Creditors' Meeting provided that the Monitor shall forthwith post notice of the adjournment on the Monitor's Website and the CaseLines Filesite. Any General Unsecured Creditor Proxy validly delivered in connection with the Creditors' Meeting will be accepted as a proxy in respect of any adjourned Creditors' Meeting.

16. The only Persons entitled to attend a 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 the Applicant and the Applicant's legal counsel; and (vi) one or more representatives of Cline Trust Company LLC ("CTC") and CTC's legal counsel. Any other person may be admitted to the Creditors' Meeting on invitation of the Applicant, in consultation with the Monitor.

#### **ASSIGNMENT OF AFFECTED CLAIMS PRIOR TO CREDITORS' MEETING**

17. Any General Unsecured Creditor may transfer the whole of its Claim prior to the Creditors' Meeting in accordance with this Creditors' Meeting Order. 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. If the Monitor receives and acknowledges such Proof of Assignment in accordance with this Creditors' Meeting Order (i) the transferor of the applicable Claim shall no longer constitute a General Unsecured Creditor in respect of such Claim, and (ii) the transferee or assignee of the applicable Claim shall constitute a General Unsecured Creditor in respect of such Claim and shall be bound by any and all notices previously given to the transferor or assignor in respect thereof and any General Unsecured Creditor Proxy duly submitted in accordance with this Creditors' Meeting Order.

18. 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 this Creditors' Meeting Order given 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, direct that 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 this Creditors' Meeting Order.

19. The provisions of this Creditors' Meeting Order shall govern the assignment of Claims and override the assignment provisions contained at paragraph 9 of the Claims Process Order, except

in respect of Claims that have, as at the date of this Creditors' Meeting Order, provided actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, and delivered such notice to the Applicant and the Monitor, all pursuant to the Claims Process Order.

## **VOTING AT THE CREDITORS' MEETING**

### **A. General Voting Procedures**

20. At the Creditors' Meeting, the Chairperson shall direct a vote using the voting options available at the Creditors' Meeting or by proxy on a resolution to approve the CCAA Plan and any amendments thereto.

### **B. General Unsecured Creditors**

21. 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 General Unsecured Creditor's Voting Claim.

22. A General Unsecured Creditor with Accepted Claims exceeding an aggregate of \$15,000 may elect to be treated as a Convenience Class Creditor and to receive \$15,000 in full satisfaction of such Accepted Claims in accordance with the CCAA Plan (to the extent implemented and in accordance with the terms thereof) by submitting a Distribution Election Notice to the Monitor by no later than 2 Business Days before the Creditors' Meeting (the "**Distribution Election Deadline**"), subject to a later date as the Applicant, in consultation with the Monitor, may agree in the event of an adjournment, postponement or other rescheduling of the Creditors' Meeting.



23. Any General Unsecured Creditor that is entitled to vote at the Creditors' Meeting must: (i) duly complete and sign a General Unsecured Creditor Proxy; (ii) specify in the General Unsecured Creditor Proxy the name of the Person with the power to attend and vote at the Creditors' Meeting on behalf of such General Unsecured Creditor; and (iii) deliver such General Unsecured Creditor Proxy to the Monitor so that it is received at or prior to 5:00 p.m. on the day that is 2 Business Days before the Creditors' Meeting and such delivery must be made in accordance with the instructions accompanying such General Unsecured Creditor Proxy.

24. In the event that a General Unsecured Creditor validly submits a General Unsecured Creditor Proxy to the Monitor and subsequently attends the Creditors' Meeting in person (electronically) and votes inconsistently, such General Unsecured Creditor's vote at the Creditors' Meeting shall supersede and revoke the earlier received General Unsecured Creditor Proxy.

25. Notwithstanding anything in paragraph 23 or any minor error or omission in any General Unsecured Creditor Proxy that is submitted to the Monitor, the Chairperson shall have the discretion to accept for voting purposes any General Unsecured Creditor Proxy submitted to the Monitor in accordance with this Creditors' Meeting Order.

**C. Convenience Class Creditors**

26. Notwithstanding anything else in this Creditors' Meeting Order, each Convenience Class Creditor will be deemed to vote as part of the General Unsecured Creditor Class in favour of the CCAA Plan. Each vote shall have a value equal to such Convenience Class Creditor's Accepted Claim or Disputed Claim. Convenience Class Creditors shall not be entitled to vote at the Creditors' Meeting, whether in person or by proxy.

### **VOTING OF DISPUTED CLAIMS**

27. Each Affected Creditor with a Disputed Claim against the Applicant as at the Creditors' Meeting 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. Any vote cast in respect of a Disputed Claim shall be dealt with in accordance with paragraph 28 hereof, 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.

28. The Monitor shall keep a separate record of votes cast by Affected Creditors with Disputed Claims and shall report to the Court with respect thereto at the Sanction Hearing. If approval or non-approval of the CCAA Plan by Affected Creditors would be affected by the votes cast in respect of Disputed Claims, such result shall be reported to the Court as soon as reasonably practicable after the Creditors' Meeting.

29. The Applicant and the Monitor shall have the right to seek the assistance of the Court at any time in valuing any Disputed Claim if required to ascertain the result of any vote on the CCAA Plan.

### **APPROVAL OF THE CCAA PLAN**

30. The CCAA Plan must receive an affirmative vote of the Required Majority at the Creditors' Meeting in order to be approved by the Affected Creditors.

31. Subject to paragraphs 27 and 28 hereof, for purpose of calculating the two-thirds majority in value of Accepted Claims at the Creditors' Meeting, the aggregate amount of Accepted Claims of all Affected Creditors that vote in favour of the CCAA Plan (in person or by proxy) at the Creditors' Meeting shall be divided by the aggregate amount of all Voting Claims of all Affected Creditors that vote on the CCAA Plan (in person or by proxy) at the Creditors' Meeting.

32. The result of any vote at the Creditors' Meeting shall 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.

#### **PLAN SANCTION**

33. The Monitor shall provide a Monitor's Report (the "**Monitor's Report Regarding the Creditors' Meeting**") to the 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 required by paragraph 28 of this Creditors' Meeting Order; and
- (d) in its discretion, any other matters relating to the requested Sanction Order.

34. An electronic copy of the Monitor's Report Regarding the Creditors' Meeting and a copy of the materials filed in respect of the application by the Applicant for the Sanction Order (the "**Sanction Application**") shall be posted on the Monitor's Website and the CaseLines Filesite prior to the Sanction Application.

35. In the event the CCAA Plan is approved by the Required Majority, the Sanction Application shall be held on January 13, 2022 at 3:00 p.m. (Calgary time), or such later date as shall be acceptable to the Applicant and the Monitor, and as scheduled by this Court upon application by the Applicant (the “**Sanction Hearing Date**”).

36. Any Affected Creditor that wishes to oppose the sanctioning of the CCAA Plan must serve on Coalspur, the Monitor and the service list established in these proceedings (the “**Service List**”) copies of all evidence, written argument and/or other materials to be used by the Affected Creditor to oppose the Sanction Application by no later than 5:00 p.m. (Calgary time) on the date that is 2 Business Days prior to the Sanction Hearing Date.

37. Service of this Creditors’ Meeting Order by the Monitor or the Applicant in accordance with the Caselines Service Order granted by the Honourable Madam Justice Romaine on July 16, 2021, shall constitute good and sufficient service of notice of the Sanction Application on all Persons entitled to receive such service and no other form of notice or service need be made and no other materials need be served in respect of the Sanction Application.

38. In the event that the Sanction Application is adjourned, only those Persons appearing on the Service List shall be served with notice of the adjourned date.

#### **GENERAL PROVISIONS**

39. Notwithstanding anything contained in this Creditors’ Meeting Order, the Applicant may decide not to call, hold and conduct the Creditors’ Meeting, provided that:

- (a) in the case of a decision not to conduct a Creditors' Meeting, the Monitor, the Applicant or the Chairperson shall communicate such decision to Affected Creditors prior to any vote being taken at the Creditors' Meeting;
- (b) the Applicant shall forthwith provide notice to the Service List of any such decision and shall file a copy thereof with the Court forthwith and in any event prior to the Sanction Application; and
- (c) the Monitor shall post an electronic copy of any such decision on the Monitor's Website and the CaseLines Filesite forthwith and in any event prior to the Sanction Application.

40. Nothing in this Creditors' Meeting Order has the effect of determining Accepted Claims for purposes of distributions or payments under the CCAA Plan.

41. The Monitor, in addition to its prescribed rights and obligations under the CCAA and the Initial Order, shall assist the Applicant in connection with the matters described herein, and is hereby authorized and directed to take such other actions and fulfill such other roles as are contemplated by this Creditors' Meeting Order. The Monitor shall work with the third-party service provider to facilitate the implementation of the Creditors' Meeting by telephonic or electronic means to the extent necessary or desirable in the sole opinion of the Monitor.

42. The Applicant and the Monitor shall use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms hereunder are completed and executed and the time in which they are submitted and may waive strict compliance with the requirements

of this Creditors' Meeting Order, including with respect to the completion, execution and time of delivery of required forms.

43. The Monitor may, if necessary, apply to this Court for advice and directions regarding its obligations under this Creditors' Meeting Order.

44. Any notices or other communications to be given under this Creditors' Meeting Order by any Person to the Monitor or the Applicant shall be in writing in substantially the form, if any, provided in this Creditors' Meeting Order and will be deemed sufficiently given only if given by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile, or email addressed to:

Applicant's Counsel:	Osler, Hoskin & Harcourt LLP 2700, Brookfield Place 225 6 <sup>th</sup> Avenue SW Calgary, AB T2P 1N2  Attention: Randal Van de Mosselaer and Emily Paplawski Email: <a href="mailto:Rvandemosselaer@osler.com">Rvandemosselaer@osler.com</a> and <a href="mailto:Epaplawski@osler.com">Epaplawski@osler.com</a> Facsimile: 403-260-7024
Monitor:	FTI Consulting Canada Inc. 1610, 520 5 <sup>th</sup> Avenue Calgary, AB T2P 3R7  Attention: Dustin Olver and Lindsay Shierman Email: <a href="mailto:Dustin.Olver@fticonsulting.com">Dustin.Olver@fticonsulting.com</a> and <a href="mailto:Lindsay.Shierman@fticonsulting.com">Lindsay.Shierman@fticonsulting.com</a> Facsimile: 403-232-6116
Monitor's Counsel:	Blake, Cassels & Graydon LLP Suite 3500, Bankers Hall East Tower 855 - 2nd Street S.W. Calgary, AB T2P 4J8  Attention: Kelly Bourassa and James Reid Email: <a href="mailto:kelly.bourassa@blakes.com">kelly.bourassa@blakes.com</a> and <a href="mailto:james.reid@blakes.com">james.reid@blakes.com</a> Facsimile: 403-260-9700

45. Any such notice or communication shall be deemed to have been received: (a) if sent by prepaid ordinary mail or registered mail, on the third Business Day after mailing in Alberta, the fifth Business Day after mailing in Canada (other than within Alberta), and the tenth Business Day after mailing internationally; (b) if sent by courier or personal delivery, on the date of actual delivery; and (c) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than a Business Day, on the following Business Day.

46. In the event that the day on which any notice or communication required to be delivered pursuant to this Creditors' Meeting Order is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

47. If, during any period in which notices or other communications are being given pursuant to this Creditors' Meeting Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Creditors' Meeting Order.

48. All references to time herein shall mean prevailing local time in Calgary, Alberta, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day, unless otherwise indicated.

49. References to the singular herein shall include the plural, references to the plural shall include the singular, and any gender shall include the other gender.

50. Subject to any further Order of the Court, in the event of any conflict, inconsistency, ambiguity or difference between the provisions of the CCAA Plan and this Creditors' Meeting Order, the provisions of the CCAA Plan shall govern and be paramount, and any such provision of this Creditors' Meeting Order shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

51. This Creditors' Meeting Order shall have full force and effect in all provinces and territories in Canada.

52. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Creditors' Meeting Order and to assist the Applicant, the Monitor, and their respective representatives and agents in carrying out the terms of this Creditors' Meeting Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and the Monitor, as an officer of this Court, as may be reasonably necessary or desirable to give effect to this Order.

  
\_\_\_\_\_  
Justice of the Court of Queen's Bench of Alberta



**SCHEDULE "1"**  
**CCAA PLAN**

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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File Number: 1217428

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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](http://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