

COURT FILE NO. 2503 00016

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton



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

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **APPLICATION – Amended and Restated Initial Order, Approve Key Employee Retention Plan (“KERP”), KERP Charge, and Leased Equipment Return Process**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DARREN R. BIEGANEK, KC/ ZACHARY SOPROVICH Barrister & Solicitor Phone: 780.441.4386 Fax: 780.428.9683 Email: dbieganek@dcllp.com	File # 204-219113 DUNCAN CRAIG LLP LAWYERS MEDIATORS 2800 Rice Howard Place 10060 Jasper Avenue Edmonton, Alberta Canada T5J 3V9
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NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date	January 20, 2025
Time	3:30 p.m.
Where	https://albertacourts.webex.com/meet/virtual.courtroom86
Before Whom	Justice J.T. Neilson

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, KMC Mining Corporation (“**KMC** or the “**Applicant**”) seeks an amended and restated initial order (“**ARIO**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), on the terms substantially as set out in the draft ARIO attached hereto as **Schedule “A”**, amending and restating the Initial Order granted by the Honourable M.J. Lema on January 10, 2025 (the “**Initial Order**”) including but not restricted to the following relief:
 - (a) abridging time for service and deeming service of this Application and deeming service to be good and sufficient, if necessary;
 - (b) extending the Stay Period up to and including June 16, 2025 or such further and other date as this Court may consider appropriate;
 - (c) approving a key employee retention plan (“**KERP**”) and granting a charge up to the amount of \$745,000 (“**KERP Charge**”) over the Applicant’s undertaking, property and assets (“**Property**”) and directing that the KERP Charge constitute a charge on the Property and that such charges shall subsequent to the Administration Charge, Interim Lender’s Charge and Directors’ Charge (pursuant to paragraph 38 of the Initial Order), but otherwise rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise; and
 - (d) such further and other relief as the circumstances may require and the Court deems appropriate.
2. Attached hereto as **Schedule “B”** is a comparison of the ARIO sought by the Applicant to the previously granted Initial Order.
3. The Applicant seeks an Order authorizing a process to return certain leased equipment to the respective equipment lessor (the “**Leased Equipment Return Process**”) on the terms substantially as set out in the draft Order – Leased Equipment Return Process attached hereto as **Schedule “C”** to permit the Applicant, subject to the Monitor’s approval, return certain leased equipment which is unnecessary for current operations and which has little or no equity.
4. The Applicant seeks a Sealing Order with respect to the Supplementary Confidential Affidavit of Bryn Jones sworn January 14, 2025 (the “**Fourth Confidential Affidavit**”) until December 31, 2025.

Grounds from making this application:

5. The Applicant is a corporation registered pursuant to the laws of the Province of Alberta, was founded in 1949 and derives most of its business from large-scale oil sands projects, as well as engagement in extraction of other valuable materials. The Applicant’s primary operations include mine development, contract mining and land reclamation.
6. The Applicant is a company to which the CCAA applies as it is insolvent and owes more than \$5,000,000 to its creditors.
7. At all material times, the Applicant has and continues to act in good faith and with due diligence.

8. In addition to the Initial Order, on January 10, 2025, the Honourable Justice M.J. Lema also granted an Order approving a sales and investment solicitation process (the “**SISP**”). The Applicant expects that the SISP will be operational at or before this Application for the ARIO.
9. The Applicant requires a continued stay of proceeding to preserve the asset and business base of the Applicant, impose a stay on the collection or realization of creditors and preserve the existing contracts of the Applicant for the benefit of all stakeholders while allowing the implementation of the SISP, which will broadly market the highly specialized Property of the Applicant with a goal to maximize value of all stakeholders and with Court approval for sales pursuant to the SISP to be sought in April 2025.
10. With respect to the KERP and the KERP Charge, the Applicant has certain key employees who are integral to the continued operation of the Applicant’s business, including to permit the Applicant to have the SISP implemented and executed, which is a benefit to all stakeholders.
11. The KERP Charge is necessary and appropriate in these CCAA proceedings.
12. With respect to the Leased Equipment Return process, the Applicant has certain leased equipment which it, in consultation with the Monitor, has determined is beneficial for all stakeholders if said equipment be returned to the respective lessor (“**Equipment Lessor**”) as the equipment as, *inter alia*:
 - (a) is of a value that there is little or no equity when considering the amounts owed on the respective leases; and
 - (b) the equipment is not needed for current operations.
13. The Leased Equipment Return Process would be overseen by the Monitor and would, *inter alia*:
 - (a) require the Applicant to notify an Equipment Lessor of any leased equipment the Applicant proposes to return to the Equipment Lessor;
 - (b) require the Equipment Lessor to provide a payout statement in respect of each applicable piece of leased equipment to the Applicant and Monitor;
 - (c) thereafter have the Monitor review the subject lease, complete an independent security review, review the payout statement and compare the same to valuation estimates of the applicable leased equipment;
 - (d) if approved by the Monitor, the Monitor shall notify the Applicant and Equipment Lessor in writing as to which of the leased equipment the Monitor approves being returned to the Equipment Lessor, and any costs which the Applicant, in consultation with the Monitor, determines may be payable by the Equipment Lessor prior to the release of equipment;
 - (e) if approved by the Monitor, require the Equipment Lessor to demobilize and remove the leased equipment at the Equipment Lessor’s sole cost and expense;
 - (f) permit the Equipment Lessor to sell the leased equipment, with the Equipment Lessor to fully account to the Applicant and Monitor of all sale proceeds, and (i) in the event there is a

surplus, pay the same to the Applicant or Monitor, to be held in trust, and (ii) in the event there is a deficiency, the same will be an unsecured claim against the Applicant;

- (g) confirm that an Equipment Lessor may, notwithstanding anything else, elect that any of its leased equipment shall remain in the SISP; and
- (h) confirm that with respect to costs of leased equipment included in the SISP, whether the subject of an election by the Equipment Lessor to keep the leased equipment in the SISP or otherwise, those would remain subject to the charges authorized and continued by the Court in each of the Initial Order and ARIO and, subject to paragraph 47 of the ARIO, would be allocated their share of costs of the CCAA proceedings once the SISP is complete based on the pro rata share of gross sale proceeds to be determined by the Monitor.

14. With respect to the Sealing Order, the Fourth Confidential Affidavit contains information with respect to certain employees of the Applicant. A sealing order with respect to the Fourth Confidential Affidavit (“**Sealing Order**”) is necessary and appropriate with respect to the Fourth Confidential Affidavit as:
 - (a) specific employee names and the corresponding KERP compensation is sensitive personal information and information that the Applicant ought to keep confidential;
 - (b) if the requested Sealing Order is not granted, personal information and compensation of certain employees of the Applicant would be publicly disclosed;
 - (c) reasonable alternative measures will not prevent the risk; and
 - (d) the benefits of the Sealing Order to the process and all stakeholders outweigh the deleterious effects on the rights and interests of the public in accessing the information at this time.
15. The Sealing Order is sought to apply until December 31, 2025, unless further extended by Court Order.
16. All relief sought is appropriate in the circumstances.
17. The Applicant further relies on the grounds set out in the Affidavits of Bryn Jones sworn on December 31, 2024 and January 14, 2025, and such further and other grounds as counsel for the Applicant may advise and this Honourable Court may permit.

Material or evidence to be relied on:

18. This Application and the Draft ARIO;
19. The Initial Order and Order – Approve Sales and Investment Solicitation Process granted January 10, 2025;
20. Affidavit of Bryn Jones sworn December 31, 2024 and the Supplemental Confidential Affidavit of Bryn Jones sworn December 31, 2024;
21. Affidavit of Bryn Jones sworn January 14, 2025 and the Supplemental Confidential Affidavit of Bryn Jones sworn January 14, 2025;

22. Pre-filing Report of the Monitor/ Third Report of Proposal Trustee dated January 2, 2025;
23. First Report of the Monitor, to be filed;
24. Bench Brief of the Applicant;
25. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

26. Rules 6.11, 11.27 and 13.5 of the *Alberta Rules of Court*;
27. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

28. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and in particular sections 11 and 11.02 thereof;
29. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

30. N/A.

How the application is proposed to be heard or considered:

31. By way of Webex hearing before the Honourable Justice Neilson.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

Draft ARIO

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

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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ZACHARY SOPROVICH
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File # 204-219113
DUNCAN CRAIG LLP
LAWYERS MEDIATORS
2800 Rice Howard Place
10060 Jasper Avenue
Edmonton, Alberta Canada T5J 3V9

DATE ON WHICH ORDER PRONOUNCED:

JANUARY 20, 2025

NAME OF JUSTICE WHO MADE THIS ORDER:

J.T. NEILSON

LOCATION OF HEARING:

EDMONTON, ALBERTA

UPON the application of **KMC Mining Corporation** ("**KMC**") (the "**Applicant**"); **AND UPON** having read the Application, the Affidavit of Bryn Jones sworn January 14, 2025, and the Affidavit of Service, filed; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application; **AND UPON** hearing counsel for the Applicant, Counsel for FTI Consulting Canada Inc. (the "**Monitor**") and counsel for ATB Financial in its capacity as Administrative Agent for the Lenders (collectively the "**Syndicate**"), counsel for The Klemke Foundation ("**TKF**"), and others appearing; **AND UPON** reading the Pre-Filing Report of the Monitor and the First Report of the Monitor; **AND UPON** reviewing the initial order granted in the within proceedings by the Honourable Justice M.J. Lema on January 10, 2025 (the "**Initial Order**"); **AND UPON** noting the Order – Approve Sales and Investment Solicitation Process granted by the

Honourable M.J. Lema on January 10, 2025 (the “**Order – Approve SISP**”); **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicant is a company to which the *Companies’ Creditors Arrangement Act* of Canada (the “**CCAA**”) applies.
3. The proceedings commenced by the Applicant under Division 1 of Part III of the *Bankruptcy and Insolvency Act* (the “**BIA**”), and such proceedings (the “**NOI Proceedings**”) are hereby taken up and continued under the CCAA and the provisions of Division 1 of Part III of the BIA shall have no further application to the Applicant and the NOI Proceedings are hereby terminated, provided that, notwithstanding the termination of the NOI Proceedings, the Order of the Honourable Justice Burns dated December 9, 2024 providing for an initial stay extension, administration charge, and an interim financing charge (the “**First Order**”), the Sale Approval and Vesting Order regarding an equipment sale to Gibraltar Mining Limited (“**Gibraltar SAVO**”) dated December 20, 2024 and the Sealing Orders dated December 9, 2024 and December 20, 2024 in the NOI Proceedings are taken up and continue to apply in these CCAA Proceedings.
4. The terms of the Initial Order granted in these proceedings shall be operative and shall continue to govern the period until the granting of this Order. The terms of the Initial Order are hereby amended and restated by the terms of this Order from and after the granting of this Order.

PLAN OF ARRANGEMENT

5. The Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

6. The Applicant shall:
 - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);

- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order;
 - (d) be entitled to utilize its cash management system currently in place (“**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the proprietary, validity or legality of any transfer, payment, collection, or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any person (as defined herein) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be in its capacity as provider of the Cash Management System an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; and
 - (e) subject to further order of the Court be allowed to keep its Property where it is currently located without interference from any land owner upon which such Property may be situated;
7. To the extent permitted by law, the Applicant shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.

8. Except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Applicant following the date of this Order.
9. The Applicant shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,
 - (iii) Quebec Pension Plan, and
 - (iv) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicant.

10. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicant from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.
11. Except as specifically permitted in this Order, the Applicant are hereby directed, until further order of this Court:
 - (a) except in respect of payments to equipment lessors whose equipment is being utilized or will be utilized by the Applicant in the ordinary course of the Applicant's business, to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. The Applicant shall, subject to such requirements as are imposed by the CCAA have the right to:
 - (a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets provided that any sale shall require authorization by this Court in accordance with section 36 of the CCAA;
 - (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
 - (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with section 32 of the CCAA; and

- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. The Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.
14. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

15. Until and including **June 16, 2025** or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Applicant to carry on any business that the Applicant are not lawfully entitled to carry on;
 - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien; or
 - (e) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment.
17. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract,

agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicant, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreements or arrangements. The Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with the payment practices of the Applicant, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 17 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION

22. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicant after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
23. The directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000.00**, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.
24. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. **FTI Consulting Canada Inc.** is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicant;
 - (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the Interim Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
 - (d) advise the Applicant in its preparation of the Applicant' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the Interim Lender;
 - (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
 - (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicant to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicant or to perform its duties arising under this Order;
 - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
 - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicant and any other Person; and
 - (j) perform such other duties as are required by this Order or by this Court from time to time.
27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its

obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

28. The Monitor shall provide any creditor of the Applicant and the Interim Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.
29. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
30. The Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, if they so request, retainers in amounts to be agreed upon, such amounts not to exceed, in the aggregate, the sum of

\$200,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. The Monitor and its legal counsel shall pass their accounts from time to time.
32. The approval and authorization of the charge in favour of the Proposal Trustee, its legal counsel and legal counsel for the Applicant granted under the First Order is taken up under the CCAA and the Monitor, counsel to the Monitor, if any, and the Applicant's counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

INTERIM FINANCING

33. The approval, authorization and empowerment of the Applicant under the First Order to obtain and borrow under a credit facility from Lenders noted in the Interim Financing Term Sheet ("**Term Sheet**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures is confirmed and such credit facility is taken up under the CCAA provided that borrowings under such credit facility shall not exceed \$6,000,000 unless permitted by further Order of this Court.
34. Such credit facility shall as set forth in the Term sheet as approved in the First Order is authorized to be amended on the terms and subject to the conditions set forth in the Amended and Restated Term Sheet between the Applicant and the Interim Lender dated as of December 20, 2024 (the "**Amended Term Sheet**"), filed.
35. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Amended Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Amended Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the “**Interim Lender's Charge**”) on the Property to secure all obligations under the Amended Term Sheet and the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender's Charge shall not secure any obligation existing before the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 41 and 43 hereof.
37. Notwithstanding any other provision of this Order:
- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon 10 days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Amended Term Sheet, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the Interim Lender to the Applicant against the obligations of the Applicant to the Interim Lender under the Amended Term Sheet, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
 - (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.
38. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA, with respect to any advances made under the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN

39. The key employee retention plan (“**KERP**”) attached to the Confidential Supplementary Affidavit of Bryn Jones sworn January 14, 2025 is hereby authorized and approved and the

Applicant (and any other person that may be appointed to act on behalf of the Applicant, including without limitation the Monitor) is authorized and directed to perform the obligations under the KERP, including making all payments to the beneficiaries of the KERP of amounts due and owing under the KERP at the time specific and in accordance with the terms of the KERP.

40. The beneficiaries of the KERP are hereby granted a charge (the "**KERP Charge**") on the Property (as defined in the Initial Order), which charge shall not exceed \$745,000, to secure all obligations under the KERP.
41. The priorities of the Directors' Charge, the Administration Charge, the Interim Lender's Charge and the KERP Charge, as among them, shall be as follows:
 - First – Administration Charge (to the maximum amount of **\$500,000**);
 - Second – Interim Lender's Charge (to the maximum of **\$6,000,000**;
 - Third – Directors' Charge (to the maximum amount of **\$500,000**); and
 - Fourth – KERP Charge (to the maximum amount of **\$745,000**).
42. The filing, registration or perfection of the Directors' Charge, the Administration Charge, the Interim Lender's Charge and the KERP Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
43. Each of the Directors' Charge, the Administration Charge, the Interim Lender's Charge and the KERP Charge (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the priority limits previously set forth in paragraph 12 of the First Order
44. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, the Interim Lender's Charge or the KERP Charge unless the Applicant also obtains the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Directors' Charge, the Administration Charge and the KERP Charge, or further order of this Court.

45. The Directors' Charge, the Administration Charge, the KERP Charge, the Amended Term Sheet the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
 - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - (d) the provisions of any federal or provincial statutes; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Amended Term Sheet or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicant entering into the Amended Term Sheet, or the execution, delivery or performance of the Definitive Documents; and
 - (iii) the payments made by the Applicant pursuant to this Order, including the Amended Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

WAGE EARNER PROTECTION PROGRAM ACT

46. Pursuant to section 5(5) of the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47, s 1 ("**WEPPA**"), the Applicant and its collective former employees meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.

ALLOCATION

47. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Interim Lender's Charge, the Directors' Charge and the KERP Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

48. The Monitor shall (i) without delay, publish in the Edmonton Journal a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
49. The Monitor shall establish a case website in respect of the within proceedings at <http://cfcanada.fticonsulting.com/KMCMining/> (the "**Monitor's Website**").
50. A person that wishes to be served with any application and other materials in these proceedings must deliver to the Applicant and the Monitor by way of ordinary mail, courier, or electronic transmission, a request to be added to the Service List (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on the Monitor's Website.
51. Any party to these proceedings may serve any Court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's Website.
52. The Applicant and, where applicable, the Monitor are at liberty to serve this Order, any other materials and Orders in these proceedings, any notices or other correspondence, by

forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses last shown on the records of the Applicant and that any such service or notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, the third (3rd) business day after mailing.

53. Service or distribution in accordance with this Order shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

GENERAL

54. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
55. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
56. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.
57. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
58. Each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the

Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

59. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
60. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of King's Bench of Alberta

Schedule "B"

Comparison of Draft ARIO to Initial Order granted January 10, 2025

COURT FILE NO. 2503 00016

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

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

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **INITIAL-AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

DARREN R. BIEGANEK, KC/
ZACHARY SOPROVICH
Barrister & Solicitor
Phone: 780.441.4386
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File # 204-219113
DUNCAN CRAIG LLP
LAWYERS MEDIATORS
2800 Rice Howard Place
10060 Jasper Avenue
Edmonton, Alberta Canada T5J 3V9

DATE ON WHICH ORDER PRONOUNCED:

JANUARY 20, 2025

NAME OF JUSTICE WHO MADE THIS ORDER:

J.T. NEILSON

LOCATION OF HEARING:

EDMONTON, ALBERTA

UPON the application of **KMC Mining Corporation** ("**KMC**") (the "**Applicant**"); **AND UPON** having read the ~~Originating~~ Application, the Affidavit of Bryn Jones sworn January 14, 2025, and the Affidavit of Service, filed; ~~AND UPON reading the consent of FTI Consulting Canada Inc. to act as Monitor (herein now the "Monitor")~~; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application; **AND UPON** hearing counsel for the Applicant, Counsel for ~~the FTI Consulting Canada Inc. (the "Monitor")~~ ~~Monitor~~ and counsel for ATB Financial in its capacity as Administrative Agent for the Lenders (collectively the "**Syndicate**"), counsel for The Klemke Foundation ("**TKF**"), and others appearing; **AND UPON** reading the Pre-Filing Report of ~~the Monitor~~ the proposed Monitor and the First Report of the Monitor; **AND UPON** reviewing the initial order granted in the within proceedings by the Honourable Justice M.J. Lema on January 10, 2025 (the "**Initial Order**"); ~~AND UPON noting the Order~~

– Approve Sales and Investment Solicitation Process granted by the Honourable M.J. Lema on January 10, 2025 (the “Order – Approve SISP”); IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicant is a company to which the *Companies’ Creditors Arrangement Act* of Canada (the “**CCAA**”) applies.
3. The proceedings commenced by the Applicant under Division 1 of Part III of the *Bankruptcy and Insolvency Act* (the “**BIA**”), and such proceedings (the “**NOI Proceedings**”) are hereby taken up and continued under the CCAA and the provisions of Division 1 of Part III of the BIA shall have no further application to the Applicant and the NOI Proceedings are hereby terminated, provided that, notwithstanding the termination of the NOI Proceedings, the Order of the Honourable Justice Burns dated December 9, 2024 providing for an initial stay extension, administration charge, and an interim financing charge (the “**First Order**”), the Sale Approval and Vesting Order regarding an equipment sale to Gibraltar Mining Limited (“**Gibraltar SAVO**”) dated December 20, 2024 and the Sealing Orders dated December 9, 2024 and December 20, 2024 in the NOI Proceedings are taken up and continue to apply in these CCAA Proceedings.
- ~~3.4.~~ The terms of the Initial Order granted in these proceedings shall be operative and shall continue to govern the period until the granting of this Order. The terms of the Initial Order are hereby amended and restated by the terms of this Order from and after the granting of this Order.

PLAN OF ARRANGEMENT

- ~~4.5.~~ The Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

- ~~5.6.~~ The Applicant shall:
 - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);

- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property;
- (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order;
- (d) be entitled to utilize its cash management system currently in place (“**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the proprietary, validity or legality of any transfer, payment, collection, or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any person (as defined herein) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be in its capacity as provider of the Cash Management System an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; and
- (e) subject to further order of the Court be allowed to keep its Property where it is currently located without interference from any land owner upon which such Property may be situated;

6.7. To the extent permitted by law, the Applicant shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.

7.8. Except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8.9. The Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,
 - (iii) Quebec Pension Plan, and
 - (iv) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicant.

~~9.10.~~ Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicant from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.

~~10.11.~~ Except as specifically permitted in this Order, the Applicant are hereby directed, until further order of this Court:

- (a) except in respect of payments to equipment lessors whose equipment is being utilized or will be utilized by the Applicant in the ordinary course of the Applicant's business, to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

~~11.12.~~ The Applicant shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets provided that any sale shall require authorization by this Court in accordance with section 36 of the CCAA;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with section 32 of the CCAA; and

- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12.13. The Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

13.14. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

- (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours’ prior written notice; and
- (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

~~14-15.~~ Until and including ~~January 20~~June 16, 2025 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

~~15-16.~~ During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

- (a) empower the Applicant to carry on any business that the Applicant are not lawfully entitled to carry on;
- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
- (c) prevent the filing of any registration to preserve or perfect a security interest;
- (d) prevent the registration of a claim for lien; or
- (e) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment.

~~16-17.~~ Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

~~17-18.~~ During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract,

agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18-19. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicant, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreements or arrangements. The Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with the payment practices of the Applicant, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19-20. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20-21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph ~~16-17~~ of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION

21-22. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicant after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22-23. The directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000.00**, as security for the indemnity provided in paragraph 24-22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38-41 and 40-43 herein.

23-24. Notwithstanding any language in any applicable insurance policy to the contrary:

- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
- (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24-22 of this Order.

APPOINTMENT OF MONITOR

24-25. **FTI Consulting Canada Inc.** is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25-26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements, Business and dealings with the Property;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicant;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the Interim Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
- (d) advise the Applicant in its preparation of the Applicant' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the Interim Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicant to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicant or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicant and any other Person; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

26:27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its

obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

27-28. The Monitor shall provide any creditor of the Applicant and the Interim Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28-29. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29-30. The Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, if they so request, retainers in amounts to be agreed upon, such amounts not to exceed, in the aggregate, the sum of

\$200,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

~~30-31.~~ The Monitor and its legal counsel shall pass their accounts from time to time.

~~31-32.~~ The approval and authorization of the charge in favour of the Proposal Trustee, its legal counsel and legal counsel for the Applicant granted under the First Order is taken up under the CCAA and the Monitor, counsel to the Monitor, if any, and the Applicant's counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~38-41~~ and ~~40-43~~ hereof.

INTERIM FINANCING

~~32-33.~~ The approval, authorization and empowerment of the Applicant under the First Order to obtain and borrow under a credit facility from Lenders noted in the Interim Financing Term Sheet ("**Term Sheet**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures is confirmed and such credit facility is taken up under the CCAA provided that borrowings under such credit facility shall not exceed \$6,000,000 unless permitted by further Order of this Court.

~~33-34.~~ Such credit facility shall as set forth in the Term sheet as approved in the First Order is authorized to be amended on the terms and subject to the conditions set forth in the Amended and Restated Term Sheet between the Applicant and the Interim Lender dated as of December 20, 2024 (the "**Amended Term Sheet**"), filed.

~~34-35.~~ The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Amended Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Amended Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

~~35-36.~~ The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the “**Interim Lender's Charge**”) on the Property to secure all obligations under the Amended Term Sheet and the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender's Charge shall not secure any obligation existing before the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs ~~38-41~~ and ~~40-43~~ hereof.

~~36-37.~~ Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon 10 days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Amended Term Sheet, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the Interim Lender to the Applicant against the obligations of the Applicant to the Interim Lender under the Amended Term Sheet, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

~~37-38.~~ The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA, with respect to any advances made under the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN

39. The key employee retention plan (“KERP”) attached to the Confidential Supplementary Affidavit of Bryn Jones sworn January 14, 2025 is hereby authorized and approved and the

Applicant (and any other person that may be appointed to act on behalf of the Applicant, including without limitation the Monitor) is authorized and directed to perform the obligations under the KERP, including making all payments to the beneficiaries of the KERP of amounts due and owing under the KERP at the time specific and in accordance with the terms of the KERP.

40. The beneficiaries of the KERP are hereby granted a charge (the "KERP Charge") on the Property (as defined in the Initial Order), which charge shall not exceed \$745,000, to secure all obligations under the KERP.

~~38-41.~~ The priorities of the Directors' Charge, the Administration Charge, ~~and~~ the Interim Lender's Charge and the KERP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of **\$500,000**);

Second – Interim Lender's Charge (to the maximum of **\$6,000,000**; ~~and~~

Third – Directors' Charge (to the maximum amount of **\$500,000**); ~~and-~~

Fourth – KERP Charge (to the maximum amount of **\$745,000**).

~~39-42.~~ The filing, registration or perfection of the Directors' Charge, the Administration Charge, the Interim Lender's Charge and the KERP Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

~~40-43.~~ Each of the Directors' Charge, the Administration Charge, the Interim Lender's Charge and the KERP Charge (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the priority limits previously set forth in paragraph 12 of the First Order

~~41-44.~~ Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, ~~or~~ the Interim Lender's Charge or the KERP Charge, unless the Applicant also obtains the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Directors' Charge, ~~and~~ the Administration Charge and the KERP Charge, or further order of this Court.

42.45. The Directors' Charge, the Administration Charge, the KERP Charge, the Amended Term Sheet the Definitive Documents and, the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Amended Term Sheet or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicant entering into the Amended Term Sheet, or the execution, delivery or performance of the Definitive Documents; and
 - (iii) the payments made by the Applicant pursuant to this Order, including the Amended Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

WAGE EARNER PROTECTION PROGRAM ACT

~~43.~~ Pursuant to section 5(5) of the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicant and its collective former employees meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.

~~46.~~

ALLOCATION

~~44.~~47. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Interim Lender's Charge, the Directors' Charge and the KERP Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

~~45.~~48. The Monitor shall (i) without delay, publish in the Edmonton Journal a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

~~46.~~49. The Monitor shall establish a case website in respect of the within proceedings at <http://cfcanada.fticonsulting.com/KMCMining/> (the "**Monitor's Website**").

~~47.~~50. A person that wishes to be served with any application and other materials in these proceedings must deliver to the Applicant and the Monitor by way of ordinary mail, courier, or electronic transmission, a request to be added to the Service List (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on the Monitor's Website.

~~48.~~51. Any party to these proceedings may serve any Court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's Website.

~~49-52.~~ The Applicant and, where applicable, the Monitor are at liberty to serve this Order, any other materials and Orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses last shown on the records of the Applicant and that any such service or notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, the third (3rd) business day after mailing.

~~50-53.~~ Service or distribution in accordance with this Order shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

~~51. — A motion in these proceedings is hereby scheduled to be heard before this Court on January 20, 2025 at 3:30 PM (the "Comeback Hearing"). The Applicant is entitled to serve any Court materials in connection with the Comeback Hearing on the Service List by courier, personal delivery, or electronic transmission in accordance with this Order.~~

GENERAL

~~52-54.~~ The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

~~53-55.~~ Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

~~54-56.~~ Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.

~~55-57.~~ This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect

to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

56-58. Each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

57-59. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58-60. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of King's Bench of Alberta

Schedule "C"

Draft Order – Leased Equipment Return Process

COURT FILE NO. 2503 00016

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

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

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **ORDER – LEASED EQUIPMENT SALES OR RETURN PROCESS**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

DARREN R. BIEGANEK, KC/
ZACHARY SOPROVICH
Barrister & Solicitor
Phone: 780.441.4386
Fax: 780.428.9683
Email: dbieganeke@dcllp.com

File # 204-219113
DUNCAN CRAIG LLP
LAWYERS MEDIATORS
2800 Rice Howard Place
10060 Jasper Avenue
Edmonton, Alberta Canada T5J 3V9

DATE ON WHICH ORDER PRONOUNCED:

JANUARY 20, 2025

NAME OF JUSTICE WHO MADE THIS ORDER:

J.T. NEILSON

LOCATION OF HEARING:

EDMONTON, ALBERTA

UPON the application of **KMC Mining Corporation** (the “**Applicant**”); **AND UPON** having read the Application, the Affidavit of Bryn Jones sworn January 14, 2025, and the Affidavit of Service, filed; **AND UPON** being advised that the secured creditors who are likely to be affected by this Order have been provided notice of this application; **AND UPON** hearing counsel for the Applicant, Counsel for FTI Consulting Canada Inc. (the “**Monitor**”) and counsel for ATB Financial in its capacity as Administrative Agent for the Lenders (collectively the “**Syndicate**”), counsel for The Klemke Foundation (“**TKF**”), and others appearing; **AND UPON** reading the Pre-Filing Report of the Monitor and the First Report of the Monitor; **AND UPON** reviewing the initial order granted in the within proceedings by the Honourable Justice M.J. Lema on January 10, 2025 (the “**Initial Order**”); **AND UPON** noting the Order – Approve Sales and Investment Solicitation Process granted by the Honourable M.J. Lema on January 10, 2025 (the “**Order – Approve SISP**”) and the Amended and

Restated Initial Order granted by the Honourable Justice J.T. Neilson on this January 20, 2025 (“ARIO”); **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

LEASED EQUIPMENT RETURN PROCESS

2. In this Order:
 - (a) “**Equipment Lessor**” shall mean any individual, firm, corporation, governmental body or agency, or any other entities which the Applicant has leased any assets or equipment from;
 - (b) “**Lease**” shall mean any lease between the Applicant and an Equipment Lessor; and
 - (c) “**Leased Equipment**” shall mean any assets or equipment subject to a Lease.
3. The Applicant may elect to return any Leased Equipment to an Equipment Lessor via the following process:
 - (a) the Applicant shall notify (the “**Equipment Return Notice**”) the Equipment Lessor and the Monitor in writing of any Leased Equipment that the Applicant seeks to return to the Equipment Lessor;
 - (b) within 5 days of receipt of the Equipment Return Notice from the Applicant, the Equipment Lessor shall provide a payout statement (“**Payout Statement**”) to the Applicant and the Monitor in respect of each individual unit of Leased Equipment the Applicant has requested to return;
 - (c) within 7 business days of receipt of the Payout Statement, the Monitor shall review the applicable Lease, complete an independent security review and review the Payout Statement and shall advise the Applicant and Equipment Lessor in writing if it approves (“**Monitor’s Approval Notice**”) such return, which of the Leased Equipment the Monitor approves being returned to the Equipment Lessor (“**Returnable Equipment**”) and any costs which KMC, in consultation with the Monitor, determines may be payable by the Equipment Lessor prior to the release of the Returnable Equipment;
 - (d) the Equipment Lessor shall, after receipt of the Monitor’s Approval Notice, demobilize and remove the Returnable Equipment, at the Equipment Lessor’s sole cost and expense. The Applicant will use commercially reasonable efforts to facilitate such demobilization and removal as may be necessary;

- (e) after removal of the Returnable Equipment, the Equipment Lessor is at liberty to sell or dispose the Returnable Equipment (a "**Disposition**") following the procedure set forth in section 60 of the *Personal Property Security Act* ("**PPSA**"),
- (f) within 30 days following a Disposition, the Equipment Lessor is required to provide a written accounting to the Applicant and the Monitor pursuant to section 61(3) of the PPSA;
- (g) if there is any deficiency owing to the Equipment Lessor after the Disposition, such deficiency claim will be considered an unsecured claim against the Applicant provable as such in any claims process which may be established in these proceedings; and
- (h) if there is a surplus after any Disposition, the Equipment Lessor shall forthwith remit the surplus to the Applicant's legal counsel or the Monitor, to be held in trust pending further Order of this Honourable Court.

4. Notwithstanding anything else within this Order:

- (a) the Monitor's written approval is required prior to any Leased Equipment being returned to an Equipment Lessor; and
- (b) notwithstanding receipt of the Monitor's Approval Notice approving the return of any Leased Equipment, an Equipment Lessor may elect to have any Leased Equipment remain in the sales and investment solicitation process ("**SISP**"), as set out the Order – Approve SISP by providing an election ("**SISP Election**") to the Applicant and the Monitor in writing.

5. All Leased Equipment included in the SISP, whether the subject of a SISP Election to keep the Leased Equipment in the SISP or otherwise, will remain subject to the charges authorized and continued by the Court in each of the Initial Order and the ARIO and, subject to paragraph 47 of the ARIO, will be allocated their share of the costs of the proceedings once the SISP is complete based on their pro rata share of gross sale proceeds calculated by the Monitor.

GENERAL

- 6. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 7. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

8. Each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
9. This Order may be served in accordance with the provisions of the ARIO.
10. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of King's Bench of Alberta