

COURT FILE NO.

Clerk's Stamp

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 – Approval of Sales and Investment Solicitation Process**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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DATE ON WHICH ORDER PRONOUNCED: JANUARY 10, 2025

NAME OF JUSTICE WHO MADE THIS ORDER: M.J. LEMA

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 December 31, 2024, the Monitor's Pre-filing Report, and the Affidavit of Service, filed; AND UPON hearing counsel for the Applicant, counsel for the Monitor and any other interested parties appearing at this Application; AND UPON noting the Order granted December 9, 2024 under Division 1 of Part III of the *Bankruptcy and Insolvency Act* (the "**Proposal Proceedings**") in Court Action #24-3162620 (the "**First Order**"); AND UPON noting the **Initial Order** granted in these proceedings on this same January 10, 2025, wherein, *inter alia*, the Proposal Proceedings were taken up and continued in these CCAA proceedings, and thereafter terminated;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of the Application for this Order is deemed to be good and sufficient and this Application is properly returnable today.

2. Capitalized terms not defined herein shall have the meanings ascribed to them in the sales and investment solicitation process ("**SISP**") attached hereto as **Schedule "A"**.

Approval of Sales Agent and SISP

3. The Applicant is hereby authorized to engage and Ernst & Young Orenda Corporate Finance Inc. (the "**Sales Agent**") pursuant to the terms of the Engagement Letter between the Applicant and Sales Agent dated December 23, 2024 (the "**Engagement Letter**"), an unredacted copy of which is appended to the Supplementary Confidential Affidavit of Bryn Jones sworn December 31, 2024. The Engagement Letter is hereby approved and the Applicant is authorized and directed to do all things as are reasonably necessary to conduct and give effect to the Engagement Letter and carry out its obligations thereunder, including payment of amounts due to be paid pursuant to the terms of the Engagement Letter.
4. The SISP is hereby approved.
5. Each of the Applicant, the Monitor and the Sales Agent are hereby authorized and directed to implement the SISP and to do all things reasonably necessary to conduct and give full effect to the SISP and carry out its obligations thereunder.
6. Any person who has Property of the Applicant situated upon land which it owns, occupies or utilizes shall allow representatives of each of the Applicant, the Monitor and the Sales Agent reasonable access to their lands to allow the SISP to be conducted and for the purpose of allowing prospective Bidders to view and inspect the Property.
7. On or before April 30, 2025, or as soon as practical thereafter, the Applicant shall be at liberty to apply for a Sale Approval and Vesting Order with respect to its Property or Business in favour of the Successful Bidder(s) in accordance with the SISP.
8. The Monitor and Sales Agent and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor or Sales Agent in performing their obligations under the SISP.
9. In connection with the SISP and pursuant to section 7(3)(c) of *the Personal Information Protection and Electronic Documents Act (Canada)*, the Applicant, the Monitor and the Sales Agent are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall (i) return all such information to the Applicant, the Monitor or the Sales Agent, as applicable; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of any Property or Business shall be entitled to continue to use the personal information provided to it, and related to the Property or Business

purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant, the Monitor or the Sales Agent, as applicable, or ensure that other personal information is destroyed.

Pre-Emptive Sales

10. With respect to the authority granted to the Applicant at paragraph 17 of the First Order to sell and dispose of redundant or non-material assets, that authority shall be taken up and continue within these CCAA Proceedings and:
 - a. the aggregate limit is increased from \$1,000,000 to \$6,000,000; and
 - b. any reference to the Proposal Trustee shall now be reference to the Monitor.

11. In addition to the authority granted to the Applicant at paragraph 17 of the First Order and referenced in the preceding paragraph, at any time prior to commencement of the SISP, or while the SISP is ongoing, and without further Court approval the Applicant may remove any Property or Business from the SISP and proceed to sell the same to a third party, if the Applicant receives an unconditional offer to purchase (a **"Pre-Emptive Sale"**), provided however that any Pre-Emptive Sale must be approved by:
 - a. the Applicant;
 - b. the Monitor;
 - c. the Interim Lender (as defined within the Initial Order); and
 - d. any other creditor whose rights are directly affected, in the opinion of the Monitor, by the Pre-Emptive Sale;

(with the approvals being the **"Required Approvals"**).

12. For any Pre-Emptive Sale where the Required Approvals have been attained, thereafter on delivery of a Monitor's certificate to the purchaser substantially in the form set out in **Schedule "B"** hereto (the **"Monitor's Closing Certificate"**), all of the Applicant's right, title and interest in and to the purchased assets subject to the Pre-Emptive Sale (the **"Purchased Assets"**) shall vest absolutely in the name of the purchaser, free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, **"Claims"**) including, without limiting the generality of the foregoing:
 - a. any encumbrances or charges created by the Order – First Stay Extension granted in Action # 24-3162620 on December 9, 2024;

- b. any encumbrance or charges created by the Initial Order granted in this Action on January 10, 2025;
 - c. any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the any permitted encumbrances, caveats, interests, easements, and restrictive covenants which are specifically listed in any Pre-Emptive Sale (collectively, “**Permitted Encumbrances**”)), and for greater certainty, this Court orders that all Claims including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets; and
 - d. any liens or claims of lien under the *Prompt Payment and Construction Lien Act*, RSA 2000, c P-26.4.
13. Upon delivery of the Monitor’s Closing Certificate, and after filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to accept delivery of such Monitor’s Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the purchaser clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:
 - a. the Registrar of the Alberta Personal Property Registry (the “**PPR Registrar**”) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Applicant in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
14. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and any Pre-Emptive Sale. Presentment of this Order and the Monitor’s Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
15. No authorization, approval or other action by and no notice to or filing with any Governmental Authorities or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Applicant of any Pre-Emptive Sale.
16. For the purposes of determining the nature and priority of Claims with respect to any Pre-Emptive Sale, net proceeds from sale of the Purchased Assets (the “**PES Proceeds**”) shall stand in the place and stead of the Purchased Assets from and after delivery of the Monitor’s Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge,

security interest, lien, or other Claim against the Purchased Assets and may be asserted against the PES Proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

17. Without affecting the rights of any parties pursuant to the prior paragraph, upon receipt of the PES Proceeds, the Applicant is authorized and directed to remit to its legal counsel the PES Proceeds, or alternatively to the Monitor, to be held in trust until further Order of this Court.
18. Except as expressly provided for in a Pre-Emptive Sale, the purchaser shall not, by completion of the Pre-Emptive Sale transaction, have liability of any kind whatsoever in respect of any Claims against the Applicant.
19. Upon completion of the Pre-Emptive Sale transaction, the Applicant and all persons who claim by, through or under the Applicant in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith permit the purchaser to take possession of the Purchased Assets and the purchaser shall, within a reasonable period of time upon completion of the Pre-Emptive Sale (but no later than one month, unless agreed upon by the Monitor and the Applicant), make arrangements to remove the Purchased Assets from their then current location. Unless otherwise ordered (whether before or after the date of this Order), the Monitor shall not make any distributions to creditors of PES Proceeds from the sale of the Purchased Assets without further order of this Court.
20. The purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Applicant, or any person claiming by, through or against the Applicant.
21. Immediately upon closing of the Pre-Emptive Sale transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Applicant.
22. The Monitor is directed to file with the Court a copy of the Monitor's Closing Certificate forthwith after delivery thereof to the purchaser.

Service and Miscellaneous Matters

23. The Applicant shall be at liberty to serve this Order, any other material or Orders in these proceedings, any notice or other correspondence, by forwarding true copies thereof by pre-paid ordinary mail, courier, personal delivery, facsimile transmission or email to those parties served with notice of this Application and that any such service of notice by courier, personal delivery, facsimile transmission or email shall be deemed to be received on the

next business day following the date of forwarding thereof, sent by ordinary mail, on the third business day after mailing.

24. The Monitor shall effect service of this Order on the remaining creditors and other interested parties by posting same on its website which has been established for the purposes of this proceeding at <http://cfcanada.fticonsulting.com/KMCMining/> and that service effected in such manner shall be deemed to be effective on the next business day following the date of posting this Order to such website.
25. The Applicant or the Monitor may apply to this Court for directions with respect to the SISP at any time.
26. This Order and all of its provisions are effective as of 12:01 a.m. Edmonton time on the date this Order is signed by a Justice of the Court of King's Bench of Alberta.

Justice of the Court of King's Bench of Alberta

Schedule "A"

Sales and Investment Solicitation Process

SALES AND INVESTMENT SOLICITATION PROCESS

Introduction

- 1) On December 5, 2024, KMC Mining Corporation (“**KMC**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. 27 (as amended) (“**BIA**”) which proceedings were subsequently taken up and continued under the provisions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCA**”) pursuant to an Order of the Alberta Court of King’s Bench (the “**Court**”) as amended and restated from time to time (the “**Initial Order**”) on January 10, 2025 (the “**CCA Proceedings**”). Further documents with respect to the CCA Proceedings are available on the Monitor’s website at <http://cfcanada.fticonsulting.com/kmcmining/>.
- 2) The Initial Order, among other things:
 - a) stayed all proceedings against KMC and their assets; and
 - b) appointed FTI Consulting Canada Inc. as the Monitor of KMC (in such capacity the “**Monitor**”).
- 3) Further to KMC’s restructuring efforts, KMC will, under the supervision of the Monitor and with the assistance of Ernst & Young Orenda Corporate Finance Inc. (the “**Sales Agent**”), and to the extent described herein, conduct a Sales and Investment Solicitation Process described herein (the “**SISP**”) as approved by the Court pursuant to an Order obtained on January 10, 2025 (the “**SISP Order**”). KMC intends to provide all qualified interested parties with an opportunity to participate in the SISP.
- 4) Set forth below are the procedures (the “**SISP Procedures**”) to be followed with respect to the SISP to be undertaken to seek a Successful Bid(s) (as defined below), and if there are Successful Bid(s), to complete the transaction(s) contemplated by the Successful Bid(s). The SISP Procedures will be posted to the Monitor’s website and the Data Room.

Defined Terms

- 5) All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Initial Order. In addition, capitalized terms used but not otherwise defined in the SISP Procedures shall have the following meanings:

“**Business**” means the business carried on by KMC;

“**Business Day**” means a day, other than a Saturday or Sunday, on which banks are open for business in the City of Edmonton, Alberta, Canada;

“**Property**” means the undertaking, property and assets of KMC or any portion thereof.

Solicitation Process and Timeline

- 6) The SISP is intended to solicit interest in, and opportunities for: (i) a sale, or partial sale, of all, substantially all, or certain amounts, of the Property or Business, whether through an asset purchase, share purchase or combination thereof; or (ii) for a restructuring, recapitalization, reorganization or refinancing of the KMC or its Business, or a combination thereof (the “**Opportunity**”).
- 7) The SISP Procedures set forth herein describe the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning KMC, its Business and its Property, the manner in which any bid becomes a Qualified Phase I Bid or a Qualified Phase II Bid (each as defined below), the receipt and negotiation of bids received, the ultimate selection of a Successful Bid, if any, and the approval thereof by the Court.
- 8) The Sales Agent shall implement these SISP Procedures. If there is disagreement as to the interpretation of these SISP Procedures, the Court will have jurisdiction to hear and resolve any such dispute.
- 9) The following table sets out the key milestones under this SISP, subject to extension by the Sales Agent with approval of the Monitor pursuant to and in accordance with these SISP Procedures:

Milestone	Deadline
Marketing Material Completed	January 13, 2025
Marketing Period Launched	January 15, 2025
Virtual Data Room Open	January 17, 2025
Qualified Phase I Bid Deadline	February 28, 2025
Final Form of APA to be provided to Qualified Phase I Bidders	March 3, 2025
Proposal Evaluation/Due Diligence/Negotiation Period	March 1 to 24, 2025
Deadline to Submit Phase II Bid	March 28, 2025
Court Approval	April 2025

Solicitation of Interest: Notice of the Sale Process

- 10) As soon as reasonably practicable, but, in any event, by no later than two (2) days from the SISP Order:
 - a) the Sales Agent, in consultation with the Monitor and KMC, will prepare a list of Potential Bidders, including (i) parties that have approached KMC, the Monitor, or the Sales Agent indicating an interest in the Opportunity; and (ii) strategic and financial parties who the Sales Agent, in consultation with the Monitor, believe may be interested in purchasing all

or part of the Business or Assets pursuant to the Sale Process (collectively, the “**Known Potential Bidders**”); and

- b) the Sales Agent, with KMC and in consultation with the Monitor, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the procedures under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Sales Agent, Monitor and KMC and their respective counsel which shall inure to the benefit of any purchaser of the Business or any of the Property (an “**NDA**”).
- 11) The Sales Agent will cause the Teaser Letter and the NDA to be sent to each Known Potential Bidder by no later than two (2) business days from the SISP Order and to any other party who requests a copy of the Teaser Letter and NDA and who is identified to the Sales Agent as a Potential Bidder as soon as reasonably practicable after such request or identification, as applicable.
 - 12) The Monitor will post information respecting the Opportunity on its website maintained for the CCAA Proceedings. The Sales Agent will also issue a press release setting out relevant information from such notice with Canada Newswire designating dissemination in Canada and major financial centers in the United States. The Sales Agent will also undertake such further and other advertising in industry relevant publications as it sees fit.
 - 13) In order to participate in the SISP, each person (a “**Potential Bidder**”) must deliver to the Sales Agent at the addresses specified in **Exhibit “A”** (including by email) hereto an executed NDA, following which the Potential Bidder shall receive access to the electronic data room containing confidential information concerning the Business and Property (the “**Data Room**”) with respect to the Business or Property which the Potential Bidder is interested in. For greater certainty, no Potential Bidder shall receive Data Room access or any confidential information relating to the Business or the Property unless and until an executed NDA is delivered to the Sales Agent.

Phase I

- 14) All Potential Bidders that are parties to an NDA with KMC and the Sales Agent in accordance with these SISP Procedures shall be deemed to be a qualified Phase I bidder (a “**Qualified Phase I Bidder**”) and will be promptly notified of such classification by the Sales Agent.
- 15) As noted, each Qualified Phase I Bidder shall be provided with access to the Data Room and, if requested by the Qualified Phase I Bidder and deemed appropriate by the Sales Agent, a management presentation, together with such further information as the Sales Agent may deem appropriate. Neither the Sales Agent, the Monitor or KMC make any representations or warranties as to the accuracy or completeness of any information furnished pursuant to these SISP Procedures including, without limitation, the information contained in the Teaser or in the Data Room.
- 16) A Phase I Bid will be deemed to be a “**Qualified Phase I Bid**” only if the Phase I Bid complies with all of the following:
 - a) it includes a term sheet describing the terms and conditions of the proposed transaction, including identification of: (i) the Business or Property proposed to be acquired; (ii) the

liabilities of KMC proposed to be assumed; (iii) the purchase price for the Business or Property proposed to be acquired expressed in Canadian or United States dollars (the "**Purchase Price**"); (iv) the effective date of the proposed transaction; and (v) the structure and financing of the proposed transaction;

- b) it is not subject to a financing condition and it includes written evidence of the financial ability to consummate the proposed transaction that will allow the Sales Agent to make a reasonable determination as to the Qualified Phase I Bidder's financial and other capabilities to consummate the transaction contemplated by its Phase I Bid;
 - c) it contains a description of the conditions precedent and approvals required for a final and binding offer, including, without limitation, any anticipated corporate, security holder, internal or regulatory approvals required to close the transaction, an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - d) it contains an outline of any additional due diligence required to be conducted by the Qualified Phase I Bidder in order to submit a final and binding offer;
 - e) it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the bid and the complete terms of any such participation;
 - f) it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
 - g) it contains such other information as may reasonably be requested by the Sales Agent; and
 - h) it is received by the Phase I Bid Deadline.
- 17) The Sales Agent, in consultation with KMC and the Monitor, will assess the Phase I Bids received by the Phase I Bid Deadline and determine which bids constitute Qualified Phase I Bids. The Sales Agent in consultation with the Monitor may, in its sole discretion, waive compliance with any one or more of the requirements specified herein and deem such non-compliant bids to be Qualified Phase I Bids.
- 18) The Sales Agent may, in consultation with KMC and the Monitor, reject any Phase I Bid if it determines that such bid does not constitute a Qualified Phase I Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interests of the estates of KMC, or any of its creditors or other stakeholders.
- 19) To the extent that a Phase I Bid is so determined by the Sales Agent to be a Qualified Phase I Bid, the corresponding Qualified Phase I Bidder (any such bidder, a "**Phase II Bidder**") shall be permitted to proceed to Phase II of the SISP. The Sales Agent shall notify each Qualified Phase I Bidder as to whether or not such person has been determined to be a Phase II Bidder.

Phase II

- 20) The Sales Agent shall allow each Phase II Bidder such further access to confirmatory due diligence materials as the Sales Agent deems appropriate in its reasonable business judgment including scheduling set dates and times to facilitate inspections of the Property where the property may be situated but subject to competitive and other business considerations.
- 21) Phase II of the SISP will be limited to those persons that were identified by the Sales Agent as a Phase II Bidder. Subject to the discretion of the Monitor, and in consultation with KMC and the Sales Agent, all acting reasonably, no person shall be permitted to participate in Phase II of the SISP without having participated in Phase I of the SISP and who were designated as a Phase II Bidder in accordance herewith.
- 22) A Phase II Bidder that wishes to make a formal offer to purchase the Business or Property shall submit a binding offer (a "**Phase II Bid**") and a copy of the purchase and sale agreement that they are prepared to sign ("**Definitive Agreement**") to the Sales Agent and KMC at the addresses specified in **Exhibit "A"** hereto so as to be received by each of them no later than 12:00 p.m. (Mountain Time) on March 28, 2025 or such other date or time as may be agreed to by the Sales Agent, acting in its sole discretion (the "**Phase II Bid Deadline**"). Such Phase II Bid shall be a "**Qualified Phase II Bid**" and such Phase II Bidder shall be a "**Qualified Phase II Bidder**" only if its Phase II Bid complies with all of the following:
- a) it complies with all of the requirements in respect of Qualified Phase I Bids, other than the requirements set out in Paragraphs 16(c), 16(d), and 16(h);
 - b) it clearly identifies the form of consideration being proposed to satisfy the Purchase Price and estimated value of the consideration in Canadian or United States dollars. The Sales Agent's preference is for cash consideration, provided that the Sales Agent will consider securities or other forms of consideration;
 - c) it includes a letter stating that its Phase II Bid is irrevocable until the earlier of: (i) the approval of a Successful Bid (as defined herein) by the Court in accordance with these SISP Procedures; and (ii) thirty (30) calendar days following the Phase II Bid Deadline, provided that if such Qualified Phase II Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
 - d) it includes written evidence of a firm irrevocable commitment for all required financing, or other evidence of the financial ability of such Qualified Phase II Bidder (including, for greater certainty, such Qualified Phase II Bidder's designated purchaser(s), if any) to consummate the proposed transaction, that will allow the Sales Agent to make a reasonable determination as to the Qualified Phase II Bidder's financial and other capabilities to consummate the transaction contemplated by its bid;
 - e) it is not conditioned on: (i) the outcome of unperformed due diligence; and/or (ii) obtaining financing;
 - f) it includes an acknowledgement and representation that the Qualified Phase II Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any

documents, information and/or the Business or Property to be acquired and liabilities to be assumed in making its bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Business or Property to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly provided in a Definitive Agreement; and (iii) the transaction will be completed on an “as is, where is” basis;

- g) it includes evidence, in form and substance reasonably satisfactory to the Sales Agent, of authorization and approval from the Qualified Phase II Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Phase II Bid, and identifies any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - h) it is accompanied by a refundable deposit (a “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Sales Agent), or such other form acceptable to the Sales Agent, payable to the order of the Sales Agent, in trust, in an amount equal to ten percent (10%) of that total consideration set out in its Phase II Bid;
 - i) the Phase II Bid includes an executed Definitive Agreement, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by the Sales Agent), together with a blackline against the draft form of Definitive Agreement which will be prepared by the Sales Agent and posted in the Data Room;
 - j) it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment; and
 - k) it contains such other information as may reasonably be requested by the Sales Agent.
- 23) The Sales Agent, in consultation with KMC and the Monitor, will assess the Phase II Bids received by the Phase II Bid Deadline and determine which of the bids constitute Qualified Phase II Bids. The Sales Agent in consultation with the Monitor, may, in its sole discretion, waive compliance with any one or more of the requirements specified herein and deem such non-compliant bids to be Qualified Phase II Bids. The Sales Agent may, where it is considered appropriate in its discretion, continue negotiations with one or more Qualified Phase II Bidders to agree on terms of Successful Bids.
- 24) The Sales Agent may, in consultation with KMC and the Monitor, reject any Phase II Bid if it determines that such bid does not constitute a Qualified Phase II Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interests of the estates of the Company, or any of its creditors or other stakeholders.
- 25) The Sales Agent, in consultation with KMC and the Monitor, shall select the winning bid or bids (collectively, the “**Successful Bids**”, and the corresponding bidder(s), collectively, the “**Successful Bidders**”).
- 26) The Sales Agent will notify Qualified Phase II Bidders if not selected as among the Successful Bidders.

Court Approval

- 27) KMC shall apply to the Court (the “**Approval Application**”) for an order approving the Successful Bids and authorizing KMC to enter into any and all necessary agreements with respect to the Successful Bids, as well as an order vesting title to the Business or Property in the name of the Successful Bidders.
- 28) The Approval Application will be held on a date to be scheduled by the Court upon application by KMC. The Approval Application may be adjourned or rescheduled by KMC, in its sole discretion, without further notice.
- 29) All Qualified Phase II Bids (other than Successful Bids) shall be deemed rejected on and as of the date of approval of the Successful Bids by the Court.

Deposits

- 30) All Deposits shall be retained by the Sales Agent (or as otherwise directed by the Monitor in consultation with KMC and the Sales Agent) and deposited in a trust account. The Deposits paid by the Successful Bidders whose bids are approved at the Approval Application shall be applied to the Purchase Price to be paid or investment amount to be made by the Successful Bidders upon closing of the approved transaction. All Deposits will be non-refundable unless Court approval of any bid is declined. The Deposits of Phase II Bidders not selected as Successful Bidders shall be returned to such bidders within five (5) Business Days of the date upon which the Successful Bids are approved by the Court. If there are no Successful Bids, then all Deposits shall be returned to the Phase II bidders within five (5) Business Days of the date upon which the SISP is terminated in accordance with these SISP Procedures.

No Amendment

- 31) There shall be no amendments to the SISP Procedures, including for greater certainty, the process and procedures set out herein, without the written consent of the Sales Agent in consultation with the Monitor and KMC.

“As Is, Where Is”

- 32) Any sale of the Business or Property will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Sales Agent, KMC or the Monitor or any of their respective affiliates, advisors, agents or representatives, except to the extent otherwise provided under a Definitive Agreement with a Successful Bidder executed and delivered by KMC. Neither the Sales Agent, the Monitor or KMC, nor any of their respective affiliates, advisors, agents or representatives make any representation or warranty as to the accuracy or completeness of any information furnished pursuant to these SISP Procedures, including, without limitation, information contained in the Teaser or in the Data Room, except to the extent otherwise provided under a Definitive Agreement with a Successful Bidder executed and delivered by KMC.

Free of Any and All Claims and Interests

33) In the event of a sale of the Business or the Property, to the extent permitted by law and the Court, all of the rights, title and interests of the Company in and to the Business or the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests on or against the Property (collectively, the “**Claims and Interests**”). Such Claims and Interests shall attach only to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in a Definitive Agreement with a Successful Bidder and as permitted by applicable law.

No Obligation to Conclude a Transaction

34) KMC has no obligation to agree to conclude a sale or investment arising out of this SISP, and it reserves the right and unfettered discretion to reject any offer or other proposal made in connection with this SISP. In addition, at any time during this SISP, the Sales Agent, in consultation with the Monitor and KMC, may determine to amend, modify or terminate these SISP Procedures in whole or in part in respect of all or a part of the Property or Business, and shall provide notice of such a decision to all Qualified Phase I Bidders or Qualified Phase II Bidders, as applicable.

Pre-Emptive Sales

35) Nothing within this SISP limits KMC’s ability to enter into a Pre-Emptive Sale as defined within the SISP Order.

Further Orders

36) At any time during this SISP, KMC or the Monitor may apply to the Court for advice and directions with respect to the discharge of the Sales Agent’s powers and duties hereunder.

Exhibit "A"

Sales Agent Contact Information

Ernst & Young Orenda Corporate Finance Inc.
2200, 215 2nd Street SW
Calgary, AB T2P 1M4

Attn: Barry Munro / Alix Paris / Rhys Jones
barry.g.munro@ca.ey.com / alixandra.e.paris@ca.ey.com / rhys.jones@ca.ey.com
(403) 206-5017 / (403) 206-5228 / (416) 932-4298

Schedule "B"

Monitor's Closing Certificate

COURT FILE NO.

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 **MONITOR'S CERTIFICATE**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECITALS

1. Pursuant to an Initial Order of the Court of King's Bench of Alberta dated January 10, 2025, FTI Consulting Canada Inc. was appointed as the Monitor (the "**Monitor**") of KMC Mining Corporation (the "**Applicant**");
2. Pursuant to an Order of the Court of King's Bench of Alberta dated January 10, 2025, the Applicant was granted authority to, *inter alia*, negotiate sales of its assets with third parties, so long as certain conditions were met, including but not limited to the approval of the Monitor ("**Pre-Emptive Sale**");
3. Pursuant to a Pre-Emptive Sale agreement made as of **[Date of Agreement]** (the "**Sale Agreement**") between the Applicant and **[Name of Purchaser]** (the "**Purchaser**") with respect to the assets as described within the Sale Agreement (the "**Purchased Assets**",

with the Sale Agreement for the Purchased Assets being the “**Pre-Emptive Sale Transaction**”) and providing for the vesting in the Purchaser of the Applicant’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set under the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and (iii) the Pre-Emptive Sale Transaction has been completed to the satisfaction of the Monitor.

4. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Order – Approval of Sales and Investment Solicitation Process granted January 10, 2025 in these proceedings.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid the purchase price for the Purchased Assets;
2. The conditions to closing as set out in sections **[NTD]** of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Pre-Emptive Sale Transaction has been completed to the satisfaction of the Monitor.

This Certificate was delivered by the Monitor at **[Time]** on **[Date]**.

FTI Consulting Canada Inc., in its capacity as Monitor of KMC Mining Corporation, and not in its personal capacity.

Per:

Name:

Title: