

COURT FILE NO.

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

Clerk's Stamp

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 ORIGINATING APPLICATION

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
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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 10, 2025
Time	10:00 a.m.
Where	https://albertacourts.webex.com/meet/virtual.courtroom86
Before Whom	Justice M.J. Lema

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

Basis for this claim:Background and NOI Proceedings

1. KMC Mining Corporation (“**KMC** or the “**Applicant**”) is a company to which the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) applies.
2. 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.
3. As of November 25, 2024, the Applicant employed 61 full-time employees (of which 17 are located at its head office in Edmonton, Alberta and 42 are field employees working in Fort McMurray or a field office location maintained there).
4. On December 5, 2024, the Applicant filed a notice of intention to make a proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”) (being Court Action #24-3162620, and with said proceedings being the “**NOI Proceedings**”) naming FTI Consulting Canada Inc. (“**FTI**”) as the Proposal Trustee.
5. As a result of the NOI, all proceedings against the Applicant and its property were automatically stayed for an initial period of thirty (30) days.
6. On December 9, 2024, the Applicant made application and was granted an Order by this Honourable Court in the NOI Proceedings, *inter alia*, extending the BIA stay of proceedings to February 18, 2025 (the “**First Order**”).
7. As part of the First Order, the Applicant was also granted the following charges:
 - (a) an Administration Charge in the amount of \$500,000; and
 - (b) an Interim Lender’s Charge up to the amount of \$6,000,000.
8. Due to the limited time to serve notice of the application for the First Order, the Administration Charge and Interim Lender’s Charge were only sought, at that time, to rank in priority to the Applicant’s two senior secured creditors:
 - (a) a syndicate of lenders led by ATB Financial and including Canadian Western Bank, Export Development Canada and Laurentian Bank of Canada (collectively the “**Syndicate**”); and
 - (b) The Klemke Foundation.
9. The NOI Proceedings were a temporary measure taken given Court availability in December 2024.
10. The Applicant always intended to make this Application in January 2025 to, *inter alia*, have the NOI Proceedings taken up under the CCAA, have the sales and investment solicitation process (“**SISP**”) approved and seek that the Charges (as hereinafter defined) rank in priority to all creditors.

Need for CCAA Proceedings

11. Utilization of the insolvency proceedings under the CCAA is appropriate in the circumstances to preserve the asset and business base of the Applicant, stabilize current operations, 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 assets of the Applicant with a goal to maximize value of all stakeholders.
12. The Applicant's total asset base consists primarily of specialized mining development equipment, including, inter alia, the Komatsu 930E, a haul truck which is over 24 feet tall and 30 feet wide and weighs more than 1 million pounds when loaded, or the Komatsu PC8000 hydraulic excavator, which is one of the largest hydraulic excavators in the world and weighs 1.6 million pounds when loaded. The Applicant's assets are niche products that require enhanced processes for their marketing and post-sale movement.
13. Given the size of some of the assets, the cost of moving them to other locations can be substantial and, in some cases, in excess of \$1,000,000.
14. The netbook value of the Applicant's property and equipment was \$264,096,000 as of September 30, 2024.
15. The Applicant's primary secured creditor is the Syndicate. As of October 31, 2024, the Applicant is indebted to the Syndicate in the approximate amount of \$104,827,000. The Applicant has received a Notice of Default from the Syndicate.
16. The Applicant's other senior secured creditor is The Klemke Foundation, a private charitable foundation to which the Applicant is indebted in the approximate amount of \$49,290,859.
17. Additionally, the Applicant is indebted to heavy equipment lessors (in the approximate amount of \$52,649,983 as of October 31, 2024), light duty lessors (\$2,973,244) and unsecured trade payables (\$22,218,366).
18. Due to sudden and unexpected cancellation of its mining services by its most significant customer, Suncor Energy Inc. ("**Suncor**"), and with no prospect of sufficient replacement work in the immediate future, the Applicant does not have sufficient working capital to continue to pay its debts while maintaining adequate cash flows to continue operations over an extended period of time. While the Applicant does have certain work still ongoing which generates revenue on a monthly basis, the scope of the work is insufficient to allow the Applicant to continue to pay its debts generally as they come due.
19. The Applicant has been actively identifying opportunities for the sale of its fleet of equipment and has been searching for business opportunities that will allow it to discharge its obligations to its creditors, however given the specialized nature of the Applicant's undertaking, property and assets ("**Property**") and the business carried on by the Applicant ("**Business**"), this process takes time and requires significant liquidity. As part of the Initial Order sought, the Applicant seeks approval of the SISP, which is a process designed to best market the Applicant's niche Property and Business.

Administration Charge

20. The Applicant seeks a charge over its Property in favour of the Monitor, counsel to the Monitor, and counsel to the Applicant (collectively, the "**Professionals Group**"), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order (the "**Administration Charge**").
21. The services of the Professionals Group are integral to the success and viability of these CCAA proceedings.

Interim Financing

22. The Applicant has forecasted a cash shortfall of approximately \$6,000,000, and requires interim financing of up to \$6,000,000 to stabilize its business, ensure current cash-flow generating operations can continue without disruption and to develop and implement the SISF for the orderly and efficient marketing and sale of their specialized assets.
23. Certain members of the Syndicate have agreed to provide the interim financing (the "**Interim Lender**") as a non-revolving credit facility (the "**Interim Financing**"), which was approved in the First Order, and which remains limited to what is reasonably necessary to fund the Applicant's operations during the restructuring.
24. The Interim Financing is essential to provide the Applicant with financing it requires to continue to operate its business and to maximize the value for its stakeholders through the sale of its Property and Business, and accordingly the Applicant seeks a charge in the amount of \$6,000,000 with respect to the Interim Financing ("**Interim Lender's Charge**").

Directors' Charge

25. The Applicant seeks a directors' charge in the amount of \$500,000 ("**Directors' Charge**") in favour of the directors and officers of the Applicant to secure obligations and liabilities that the directors and officers may incur as directors and officers after the commencement of these CCAA proceedings.
26. The Directors' Charge is intended to supplement and support the Applicant's insurance coverage currently in force related to directors' and officers' liability ("**D&O Policy**") to the extent said D&O Policy is insufficient, including any deductibles payable under the D&O Policy.

Key Employee Retention Plan Charge

27. The Applicant seeks a key employee retention plan ("**KERP**") charge in the amount of \$600,000 (the "**KERP Charge**").
28. The Applicant has certain key employees who are integral to the continued operation of the Business, including to permit the Applicant to continue its cash-flow generating operations, which is a benefit to all stakeholders.
29. As the KERP is in the process of being finalized, at this time, the intention is to seek the KERP Charge at the January 20, 2025 comeback application.

Ranking of Charges

30. The following charges are necessary to ensure the restructuring is successful, with priority amongst the charges sought as follows:
- (a) First – Administration Charge in the amount up to \$500,000 to secure payment of the reasonable professional fees and disbursements of the Monitor, legal counsel to the Monitor, and legal counsel to the Applicant;
 - (b) Second – Interim Lender’s Charge in the amount up to \$6,000,000 in order to secure repayment of funds advanced to the Applicant pursuant to the Interim Financing;
 - (c) Third – Directors’ Charge in the amount of to \$500,000; and
 - (d) Fourth – KERP Charge in the amount up to \$600,000 (subject to the timing mentioned in the preceding paragraph);
- (collectively the “**Charges**”).
31. The Charges are sought to constitute a charge on the Property and to rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise, and notwithstanding any priority limits previously set forth in paragraph 12 of the First Order.
32. The Charges are necessary and appropriate in these CCAA proceedings.

Sales and Investment Solicitation Process

33. The Applicant’s assets are niche products that require enhanced processes for their marketing and post-sale movement.
34. The SISP is the most viable method to market and sell the majority of the Property and Business, and the method to best maximize value to all stakeholders, and:
- (a) the SISP was developed with input from the Applicant, Ernst & Young Orenda Corporate Finance Inc. (the “**Sales Agent**”), the Interim Lender and the Monitor, with the Sales Agent to conduct the SISP in a fair and transparent manner in accordance with its Court-appointed duties;
 - (b) the SISP is to be broadly marketed by the Sales Agent;
 - (c) the SISP provides opportunity for one or more purchasers to put forth offers on any Property or Business of the Applicant, which would benefit all stakeholders;
 - (d) the time from implementation of the SISP to seeking Court approval of offers to purchase received is approximately 3 months, being a time period found to be satisfactory to the Applicant, Sales Agent and Monitor, and to balance the need to provide sufficient marketing time, and concluding sales in a timely and efficient manner;

- (e) there is no known, better alternative for a sale of the Property and Business than a fair and transparent SISP, and one that is open to any interested party to participate in; and
- (f) the SISP is intended to be a process open to any interested purchaser or purchasers. Information with respect to the Assets will be available without deposit to any potential purchaser upon executing a non-disclosure agreement.

Pre-Emptive Sale Process

35. Pursuant to the First Order, certain Property of the Applicant which is not required for ongoing operations, including surplus or redundant assets, was permitted to be able to be sold to third parties up to the aggregate maximum of \$1,000,000 so long that any sale was supported by the Proposal Trustee ("**Redundant Sale Process**"). The Applicant seeks that said Redundant Sale Process be taken up and continued in these CCAA proceedings (provided that any sale is subject to Monitor approval), and that it is appropriate to permit the Applicant to sell Property up to the aggregate amount of \$6,000,000 without further Court approval.
36. In addition to the Redundant Sale Process, the Applicant seeks at any time prior to commencement of the SISP, or while the SISP is ongoing, and without further Court approval that the Applicant may remove any Property or Business from the SISP and proceed to sell the same to a third party (a "**Pre-Emptive Sale**"), provided 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;

and that any Property or Business sold through a Pre-Emptive sale would 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.

37. Due to the niche nature of the Applicant's Property, and with the goal to maximize value to all stakeholders, the Pre-Emptive Sale process is just and reasonable in the circumstances, and not of prejudice to any party, as any Pre-Emptive Sale requires approval of any potentially affected party: the Applicant, Monitor, Interim Lender and any other creditors whose rights are directly affected.

WEPPA Declaration

38. The Applicant seeks a declaration under section 5(5) of the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("**WEPPA**") that it, and its collective former employees, meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 ("**WEPP Regulation**") and are individuals to whom WEPPA applies.

39. The Applicant has laid off approximately 350 employees. Of those employees, 67 were non-union employees. All were employees of the Applicant, an Alberta company. The Applicant, and its former employees, meet the criteria under WEPPA and the WEPP Regulation.

Sealing Order

40. The Supplementary Confidential Affidavit of Bryn Jones sworn December 31, 2024 (“**Third Confidential Affidavit**”) contains commercially sensitive information with respect to the Property of the Applicant and the valuation of said Property. A sealing order with respect to the Third Confidential Affidavit (“**Sealing Order**”) is necessary and appropriate with respect to the Third Confidential Affidavit as:
- (a) disclosure of the information would be detrimental to marketing efforts for the Property;
 - (b) if the requested Sealing Order is not granted, creditor recoveries may be reduced;
 - (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.
41. The Sealing Order is sought to apply until December 31, 2025, unless further extended by Court Order.
42. On December 20, 2024, in the NOI Proceedings, the Applicant applied for and was granted an Order selling two 2017 Komatsu 930E-4 Haul Trucks to Gibraltar Mines Limited, subject to the execution of definitive sales documents and closing of the transaction on or before January 9, 2025 (the “**Gibraltar SAVO**”). In support of the Gibraltar SAVO, a Supplementary Confidential Affidavit of Daniel Klemke was sworn on December 19, 2024 (the “**Second Confidential Affidavit**”) which included commercially sensitive information with respect to the Property of the Applicant and the valuation of said Property.
43. By a Sealing Order granted December 20, 2024 in the NOI Proceedings (the “**December 20 Sealing Order**”), the Second Confidential Affidavit was sealed until December 31, 2025, though as there was insufficient time to provide notice to the media, the December 20 Sealing Order provided that said Order would be reconsidered by this Court on January 10, 2025.
44. The Applicant seeks that the both the Third Confidential Affidavit and Second Confidential Affidavit be, and remain, sealed until December 31, 2025 (unless extended by further Court Order).
45. The Applicant further seeks that Exhibit “I” of the Affidavit of Daniel Klemke sworn December 6, 2024 in the NOI Proceedings be sealed until December 31, 2025. Said exhibit contains commercially sensitive information, and contains contractual confidentiality provisions which prevent disclosure.

Conclusion

46. The Applicant has total debts more than \$5 million, is insolvent and qualifies to access remedies available to it under the CCAA.

47. The Applicant's senior secured lenders have been provided advance notice of this Originating Application for an Initial Order and support the granting of the relief sought herein.
48. FTI has consented to act as CCAA Monitor of the Applicant, has been actively working with the Applicant since the NOI Proceedings and has significant experience in CCAA proceedings.
49. The relief sought is appropriate in the circumstances.
50. The Applicant further relies on the grounds set out in the Affidavit of Bryn Jones sworn on December 31, 2024, and such further and other grounds as counsel for the Applicant may advise and this Honourable Court may permit.

Remedy sought:

51. An Initial Order pursuant to section 11 of the CCAA, on the terms substantially as set out in the draft Initial Order attached hereto as **Schedule "A"** including but not restricted to the following relief:
 - (a) an Order abridging time for service and deeming service of the Application for the Initial Order to be good and sufficient;
 - (b) declaring the Applicant to be a company to which the CCAA applies;
 - (c) authorizing the Applicant to carry on business in a manner consistent with the preservation of their Business and Property;
 - (d) appointing FTI as Monitor of the Applicant in these CCAA proceedings (and in such capacity shall herein be referred to as the "**Monitor**") with the rights and duties set out in the CCAA and the Initial Order;
 - (e) staying, for an initial period of not more than 10 days all proceedings, rights and remedies against or in respect of the Applicant including their respective Business and Property, or the Monitor, except as otherwise set for the in the Initial Order;
 - (f) authorizing the Applicant to pay the reasonable fees and disbursements of the Monitor and its legal counsel and the Applicant's legal counsel;
 - (g) approving and granting priority to the Charges and directing that the Charges constitute a charge on the Property and that such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise:
 - (i) Administration Charge (to a current maximum of \$500,000);
 - (ii) Interim Lender's Charge (to a current maximum of \$6,000,000);
 - (iii) Directors' Charge (to a current maximum of \$500,000); and
 - (iv) KERP Charge (to a current maximum of \$600,000), or alternatively, the KERP Charge being adjourned and determined on January 20, 2025;

- (h) declaring that under section 5(5) of WEPPA that the Applicant, and its collective former non-union employees, meet the criteria prescribed by section 3.2 of WEPP Regulation and are individuals to whom WEPPA applies; and
 - (i) directing and authorizing the Applicant to schedule a comeback hearing on January 20, 2025.
52. An Order – Approve Sales and Investment Solicitation Process on the terms substantially set out in the draft Order attached hereto as **Schedule “B”**, including approving the Redundant Sale Process and raising the aggregate threshold to \$6,000,000, and approving the Pre-Emptive Sale Process.
53. A Sealing Order:
- (a) with respect to the Third Confidential Affidavit until December 31, 2025;
 - (b) confirming that the December 20 Sealing Order shall remain in force and that the Second Confidential Affidavit shall remain sealed until December 31, 2025 on the Court file with respect to the NOI Proceedings; and
 - (c) sealing Exhibit “I” of the Affidavit of Daniel Klemke sworn December 6, 2024 in the NOI Proceedings until December 31, 2025.
54. Such further and other relief as the circumstances may require and the Court deems appropriate.

Affidavit or other evidence to be used in support of this application:

- 55. This Originating Application and the Draft Initial CCAA Order;
- 56. Affidavit of Bryn Jones sworn December 31, 2024;
- 57. Supplemental Confidential Affidavit of Bryn Jones sworn December 31, 2024;
- 58. The Consent to Act as Monitor;
- 59. Pre-filing Report of the proposed CCAA Monitor, to be filed;
- 60. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 61. Rules 1.3(1), 3.8, 6.1, 6.11, 6.12, 11.27 and 13.5 of the *Alberta Rules of Court*;
- 62. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

- 63. *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and in particular sections 2, 11, 11.02(1), 11.51, 11.52 and 36 thereof;
- 64. *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 and in particular section 5(5) thereof;

65. *Wage Earner Protection Program Regulations*, SOR/2008-222 and in particular section 3.2 thereof;
66. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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"

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 **INITIAL ORDER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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

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** ("**KMC**") (the "**Applicant**"); **AND UPON** having read the Originating Application, the Affidavit of Bryn Jones, 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 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 proposed Monitor; **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.

PLAN OF ARRANGEMENT

4. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. Until and including **January 20, 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. 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. 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. 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. 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. 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. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 16 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. 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. 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 21

of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

23. 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 21 of this Order.

APPOINTMENT OF MONITOR

24. **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. 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. 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. 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. 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. 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. The Monitor and its legal counsel shall pass their accounts from time to time.
31. 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 and 40 hereof.

INTERIM FINANCING

32. 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. 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. 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 Commitment Letter 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. 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 and 40 hereof.
36. 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 Commitment Letter, 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 Commitment Letter, 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. 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.
38. The priorities of the Directors' Charge, the Administration Charge and the Interim Lender's 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**).
39. The filing, registration or perfection of the Directors' Charge, the Administration Charge, the Interim Lender's 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. Each of the Directors' Charge, the Administration Charge, the Interim Lender's 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. 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 Lien 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, or further order of this Court.
42. The Directors' Charge, the Administration Charge, the Amended Term Sheet the Definitive Documents, 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 Commitment Letter 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 Commitment Letter, or the execution, delivery or performance of the Definitive Documents; and

- (iii) the payments made by the Applicant pursuant to this Order, including the Commitment Letter 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.

ALLOCATION

- 44. 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 amongst the various assets comprising the Property.

SERVICE AND NOTICE

- 45. 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. The Monitor shall establish a case website in respect of the within proceedings at <http://cfcanada.fticonsulting.com/KMCMining/> (the "**Monitor's Website**").
- 47. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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"

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

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 T5J 3V9

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: